

# **The 15 Common Estate Planning Mistakes**

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## Common Estate Planning Mistakes

<b>1</b>	<b>Not leaving a Will</b>	<p>The most common estate planning mistake made is simply not writing a Will. The Will is the most powerful estate planning tool and yet over 40% of Australians die intestate (ie without a Will) each year. This means that the deceased's estate will not be distributed according to their wishes, but according to strict State laws.</p>
<b>2</b>	<b>Not keeping your Will up to date</b>	<p>Review your Will each time you review your overall financial plan, or sooner if your circumstances change, eg, divorce, marriage, children, death of spouse, when you restructure your affairs (eg. establish a family trust), take out a major loan, buy or sell assets, adjust your superannuation arrangements etc. There are many examples of people bequeathing assets which they sold before they passed away. As a result, some beneficiaries received nothing, while others got more than was intended.</p>
<b>3</b>	<b>Not providing for dependants</b>	<p>Dependants not adequately provided for from your estate may contest the Will. The term 'adequately provided for' is relative to the size of your estate, the degree of dependence on you, and consideration of others to whom you have a financial or moral responsibility.</p> <p>If you want to leave someone out of your Will, you should make this clear in your Will. This will not preclude that person from lodging a claim, but it means that they cannot argue that they have simply been forgotten.</p> <p>Many people mistakenly assume that as long as a person is bequeathed something in the Will, no matter how small, that person cannot contest the Will. This is not true.</p> <p>If your ex-spouse is financially dependent on you, they may still have a right to claim on your estate.</p> <p>If you intend to leave someone out of your Will, you should obtain professional advice.</p>
<b>4</b>	<b>Being ambiguous</b>	<p>If you do not express your wishes clearly, you could be leaving your estate open to disputation. This is a very common mistake. It is best to get your Will drafted by a professional.</p>
<b>5</b>	<b>Not specifying debts to be paid</b>	<p>If you do not specify that debts are to be paid out before distribution of your assets, certain beneficiaries might be unintentionally liable for the debt.</p> <p>Consider the case of the father who left one child life insurance proceeds of \$400,000 and the other an investment portfolio, also worth \$400,000. On the surface, it was an equal distribution, but the investment portfolio had borrowings of \$100,000 - thus the second child actually received only \$300,000.</p>

<b>6</b>	<b>Not taking tax into account</b>	<p>This is a very common mistake—most people don't realise that tax might be payable, or else they don't know the extent of the liability.</p> <p>Example: A mother left one child the family home worth \$290,000; the other child was left the holiday home worth about the same. However the holiday home was subject to capital gains tax when sold, the family home was not. The second child was liable for \$55,000 in capital gains tax, thus making the distribution of assets inequitable.</p>
<b>7</b>	<b>Writing an 'informal' Will</b>	<p>Don't write lists or letters instructing how you want your assets distributed. Many people do this. Anything that looks like an 'informal Will' may be treated as a Will. This can create extra delays, anxiety and expense. Only write formal Wills, duly signed and witnessed.</p>
<b>8</b>	<b>Not nominating guardians</b>	<p>If you have a spouse or adult child who needs constant care and attention because they are incapacitated, or if you have children who are minors you should consider nominating a guardian to provide the care required should anything happen to you. Of course, you should check with that person first to make sure they're comfortable with that arrangement. If you do not nominate a guardian, it may be left to others, possibly the courts, to decide on who will look after your children or spouse.</p>
<b>9</b>	<b>Bequeathing assets not owned by the testator</b>	<p>This problem occurs when some of a person's assets are held by a family trust, a company, business or partnership.</p>
<b>10</b>	<b>Assuming your superannuation will bypass your estate</b>	<p>Superannuation is becoming a valuable asset for many Australians. Stating how you want your super (and associated insurance death benefits for your dependants) dealt with is an important matter. The trustee of your superannuation fund may not pass your superannuation assets across to your estate but instead pay it directly to your dependants. If superannuation is paid into your estate, your executor may need specific powers to distribute it to your dependants tax effectively.</p>
<b>11</b>	<b>Using beneficiaries as witnesses</b>	<p>Don't use beneficiaries or their spouses to witness your Will.</p>

<b>12</b>	<b>Appointing a beneficiary as executor</b>	<p>It is advisable to avoid appointing someone as executor who might have a conflict of interest (eg. a business partner who may wish to buy your share of the business). Ensure your appointed executor has the capacity and the time to carry out the duties imposed. Keep in mind that appointing an Executor is not a favour you bestow on a friend. It is a very important responsibility which can be time consuming and, at times, frustrating.</p> <p>It is also advisable that your executor be of a younger age than you. It is not uncommon for an appointed executor to predecease the person making the appointment.</p> <p>You can also appoint two executors in case one passes away before you, or, do as many people do and appoint Perpetual as your executor. We've got 116 years of experience in looking after peoples' estates and in handling disputes. Importantly, our fees for this service are charged on an hourly rate basis, not on the size of your estate.</p>
<b>13</b>	<b>Not granting adequate powers to executors</b>	<p>Make sure you give your executors sufficient power to carry out your wishes. This might include granting them the power to sell assets, make investment decisions (especially on behalf of minors) and make appropriations. Otherwise your executors may have to make costly court applications to get approvals for commonsense matters.</p>
<b>14</b>	<b>Not telling people where your will is located</b>	<p>Make sure that your executors know where your Will is stored.</p>
<b>15</b>	<b>Not making provision for a residue</b>	<p>If your bequests are made in specific dollar terms, you should provide directions in your will as to how you want any residue distributed (the size of your estate could grow after you write your will). If you do not provide these directions, the residue will fall into intestacy, and the relevant State laws will determine who will benefit from the residue.</p>
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