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## **Mistakes in Will can be costly**

More than half of all adult Australians die without a Will – and those who do have a Will often make basic mistakes that mean their wishes are not precisely carried out, says Mr Lachlan Wraith, head of personal trusts at Equity Trustees Limited.

“Indeed, there are elementary mistakes made that can make a Will invalid, or more likely to be challenged, so that the intentions of the person are not realised,” he said.

“It is not widely known that the legal costs of most challenges to a Will are paid for out of the estate, thus reducing the amount for distribution to beneficiaries.

“It is also ironic that people such as business owners, who have spent a lifetime minimising any unnecessary dealings with government, can end up leaving it to a government body to distribute their estate by not having a Will.”

Mr Wraith said that for those who do have a Will, a common mistake made is in the appointment of an executor.

“When appointing an executor, an easy mistake to make is choosing an old friend because they are someone who can be trusted.

“Two major problems can arise if friends are appointed as executor. The first is that they may not be capable of doing the job required (ask yourself whether they are financially competent). The second problem is that if they are the same age as you (or older), they may die before you,” he said.

Mr Wraith warns that if your executor dies before you, and your Will is not changed with the appointment of another executor, then by law their Executor will become your executor – and this may be someone you do not know, or who you do not trust.

Mr Wraith says that some common mistakes people make with their Wills include:

## **1. Executors**

As already mentioned, Mr Wraith advises that appointing an executor needs careful consideration.

“Avoid putting anyone in a position of conflict (such as a business partner who may want to buy your shares) or people who are likely to die before you, or people who may not be competent.”

## **2. Giving executors power**

Make sure your executors are given the necessary power to carry out your wishes easily.

“Otherwise executors may have to apply to the court for approvals to carry out fairly routine actions, a cost which will end up reducing the size of the estate,” Mr Wraith said.

## **3. Clarity of wording**

Mr Wraith said that people who use “do-it-yourself” Wills often word them very badly, don’t make their intentions clear, or word bequests ambiguously.

“This is one reason to have your Wills drafted by professionals, particularly if there are complicated bequests,” he said.

## **4. Effect of debt**

If you have debt against particular assets, such as a mortgage over a property, recognise the effect of this in your Will and specify that all debt must be repaid before distributions are made.

“For example, someone may have two investment properties of equal value and leave one each to their children,” Mr Wraith said.

“If one carries a mortgage, care needs to be taken that this debt is not inherited with the property, making the inheritance unequal.”

## **5. Tax effect**

Not recognising the effect of tax, particularly capital gains tax (CGT), is another common mistake that can lead to unintended unfairness in bequests.

“If one child receives the family home and the other a holiday home of equal value, the second child will receive less because CGT will be payable,” Mr Wraith said.

## **6. Guardians**

If you have young children you should name a guardian, Mr Wraith advises.

“Otherwise the decision will be made for you, possibly by the court.”

## **7. Only have one Will**

Mr Wraith says this might sound obvious but often people prepare a Will, and subsequently write notes to show new estate planning considerations, which may be interpreted as a new Will.

“This can result in costly challenges to the Will and cause unnecessary family stress,” he said.

## **8. Not keeping it up-to-date**

Review your Will when your financial or personal circumstances change.

“This includes family changes such as births, marriage and divorce, or financial circumstances such as sale of assets,” Mr Wraith says.

## **9. Leaving someone out**

If you decide not to leave anything to a family member, Mr Wraith suggests that it is a good idea to say in the Will why and give reasons.

“It may not prevent them challenging, but they won’t be able to claim they were forgotten. Also, if there is a good financial reason they have been left out, such as giving them various financial gifts over the years, give details in the Will itself.”

## **10. Not providing for dependants**

Dependants often contest a Will if they believe they are not adequately provided for.

“This may include a divorced spouse if you have been providing maintenance,” Mr Wraith says.

## **11. Nominating assets not owned**

This problem often occurs when some of a person’s assets are held by a family trust, a company, business or partnership or even a superannuation fund.

“A person can only leave assets directly owned by them,” Mr Wraith said.

“Another mistake that can be made is mentioning an asset in a Will, such as a share portfolio, that has already been sold.”

## **12. Witnesses can’t be beneficiaries**

Mr Wraith warns that if a beneficiary is a witness to your Will, any gifts to them may be invalidated.

### **13. Hiding the Will**

Not being able to find the Will is a fairly common occurrence. “Make sure that the executor knows where it is and, ideally, talk through the contents so that he or she knows what you intend and why.

“It is also best to have a copy of the Will kept by the executor separately from other family papers,” he said.

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