

# DON'T WAIT TO DO YOUR ESTATE PLANNING



Estate planning is an important facet of your financial security. A complete estate plan will allow you to retain control of your assets and determine who will make decisions on your behalf when you are no longer able to do so.

In addition to a Will, which sets out how your estate is to be managed after your death; it is important to make provisions for whilst you are still alive, in the event that you are unable to make your own decisions. This is done via the appointment of an enduring guardian and the granting of a power of attorney.

## YOUR WILL

It is important to make provisions for your Estate after your death. A Will legally formalises your intentions as to how your assets will be distributed after your death. Making a Will is the only way you can ensure that your assets are distributed as you wish following your death. Certain types of Wills allow you to take a more flexible, secure and tax-effective approach to your estate planning. For example, a testamentary trust structure in a Will can provide beneficiaries with enough flexibility to achieve tax savings, stamp duty benefits and asset protection.

If you die without a valid Will, you will have died 'intestate'. This means that there will be no legal, binding proof of your testamentary wishes and accordingly, your assets will be distributed in accordance with a set process set out in the *Succession Act 2006* (NSW).

In this situation, your family may have to apply for Letters of Administration from the Supreme Court in order to obtain the right to deal with your assets. This is a lengthy and expensive process and can cause significant stress during what is a difficult time for your family and loved ones. Making a Will also reduces the potential for dispute over your Estate.





## YOUR EXECUTOR:

Your executor is responsible for carrying out your wishes when you die. You should consider carefully who you choose to appoint as your executor(s) and substitute executors. An executor may be a beneficiary under your Will and should be an adult whom you trust to administer your estate responsibly and according to your wishes, such as your spouse, a trusted relative, friend, your lawyer or your accountant. You should appoint a substitute executor in case your first chosen executor pre-deceases you, renounces their appointment or is otherwise unable to act.

## YOUR DEPENDENTS:

If you have any dependents, children under the age of 18 or other people who rely on you substantially for financial support, you should appoint a guardian in your Will to care for them after your death. The guardian should be someone you trust to take on the responsibility of caring for your children, whom is familiar to them and whose values, beliefs and parenting style closely match your own. You should discuss the appointment with your chosen guardian.

## FUNERAL REQUESTS:

If you have any requests as to how you would like to be buried or for your funeral, your executor may be guided by a clause in your Will. An executor is not legally bound by special preferences as to burial noted in a Will unless it is an express indication that a person does not want to be cremated.

## SPECIFIC GIFTS:

You should consider whether you want to leave any specific gifts or monetary amounts to certain beneficiaries. After the payment of any liabilities or funeral expenses, anything that is not left as a specific gift becomes a part of your residuary estate.

## YOUR RESIDUARY ESTATE:

This is everything left over after payment of liabilities, funeral expenses and any administration costs associated with the estate. You should consider carefully to whom you want to give the balance of your estate.

## WHO MIGHT CONTEST YOUR WILL:

In some circumstances, friends and relatives may feel they have been inadequately provided for in a person's Will. The *Succession Act 2006* (NSW) allows a range of people (including, for example, children, grandchildren, de facto partners, spouses etc.) to contest a Will and apply for provision from that estate.

## OTHER ISSUES:

A Will does not come into effect until after you die, so it cannot make provisions for while you are still alive. If you wish to make provisions for what should happen if you are unable to manage your affairs or make healthcare decisions whilst you are alive, please talk to us about appointing an Enduring Guardian or an Enduring Power of Attorney.





## APPOINTMENT OF ENDURING GUARDIAN:

Your Guardian is the person you nominate to make lifestyle, medical and/or dental decisions (as applicable) for you if you become unable to make those decisions for yourself. You should appoint someone you trust and who is sensitive to your wishes. Your Guardian has no power to deal with your assets.

A Guardian is usually appointed as a precautionary measure so that if you are unable to make decisions concerning where you live and the types of medical and dental treatment you will receive, your Guardian will be able to make those decisions for you.

Guardians are required to act within the limitations and conditions set down in the Appointment of Enduring Guardian. We recommend the appointment of a substitute guardian, in the event that your chosen guardian is unable or unwilling to act.

## ENDURING POWER OF ATTORNEY:

Your Attorney is the person you nominate to conduct your financial and property related affairs on your behalf. Your Attorney's powers can be unlimited or restricted depending on your requirements. If unrestricted, your Attorney is able to do anything that you yourself could lawfully do. A Power of Attorney may be revoked at any time and ceases to be valid upon death of the Appointor. An Enduring Power of Attorney is one which specifies that it continues to be effective in the event of the Appointor's incapacity.

Many people grant a Power of Attorney as a precaution so that their affairs may be managed by someone sensitive to their needs if they become unable to manage their own affairs. A Power of Attorney may be effective immediately, or upon a certain event taking place, or in the event a medical professional deems you incapable of making decisions for yourself (and provides evidence to that effect).

### NEXT STEPS

Get in touch with Enrizen via email or phone to review your estate planning and discuss your options.



T: +61 (0) 2 8316 3950  
[enquiries@enrizen.com.au](mailto:enquiries@enrizen.com.au)  
[www.enrizen.com.au](http://www.enrizen.com.au)

Level 28, 88 Phillip Street,  
Sydney, NSW  
Australia 2000

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