

When
do I need
to consider
a will



You cannot take it with you but what you leave behind may inflict conflict and heartache on the ones you love. So the question inevitably asked is: Why do I need a will?

Tan's ten good reasons.

- 1 A Will lessens the pain felt by your loved ones at a most difficult time
- 2 The guardianship of your young children who survive can be made known instead of having relatives argue as to who takes care of your children
- 3 A Will will prevent bitter family battles. This is especially important if there has been a second marriage. Having one family fight over your assets is bad enough. Can you imagine two families squabbling?
- 4 A Will will simplify the legal process. The process of unfreezing the deceased's estate can be complicated and costly
- 5 A Will should name who gets your assets. If you do not name your beneficiaries, the law has a fixed formula for distribution of your assets. That formula may not be as per your intentions
- 6 A Will will prevent confusion. Let your family know what your wishes are. Do you wish to be cremated and have your ashes scattered to the four corners of the wind?
- 7 A Will will hopefully help the family business. Upon death all assets of the deceased are frozen. Businesses may have a vacuum in management that ultimately leads to the business operating at a loss and the resultant loss of the family home
- 8 A Will will minimise the legal costs of settling the deceased's estate
- 9 A Will will eliminate the cost for an administrator bond. A bond is sometimes required by the courts before they will allow the deceased estate to be dealt with
- 10 A Will will allow you to tell that wayward child why he or she did not get anything.

14 . Entitlements on intestacy

(1) Subject to this section and section 15, where any person (“the intestate”) dies intestate as to all or any of his property, the property as to which he dies intestate (“the intestate property”) shall be distributed according to the entitlements set out in the following table:

| IF THE INTESTATE – | |
|--|--|
| 1. Dies leaving a husband or wife (whether or not other persons mentioned in item 2 or 3 also survive) | the surviving husband or wife shall be entitled, absolutely, to all household chattels included in the intestate property; |
| 2. Dies leaving a husband or wife and issue (Note provisions of subsection (3)) | (a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of \$50,000 — the surviving husband or wife shall be entitled to the whole of the intestate property; (b) where the net value of the intestate property (other than the household chattels) exceeds the sum of \$50,000 — the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of \$50,000, absolutely, together with interest on that sum in accordance with subsection (4) and, of the residue, the surviving husband or wife shall be entitled to one third and the issue shall be entitled in accordance with subsection (2b) to the other two-thirds; |
| 3. Dies leaving a husband or wife and one or more of the following, namely, a parent, a brother or sister, or child of a brother or sister, but leaving no issue | (a) where the net value of the intestate property (other than the household chattels) does not exceed the sum of \$75,000 — the surviving husband or wife shall be entitled to the whole of the intestate property; (b) where the net value of the intestate property (other than the household chattels) exceeds the sum of \$75,000 — the surviving husband or wife shall (in addition to the household chattels) be entitled to the sum of \$75,000, absolutely, together with interest on that sum in accordance with subsection (4), and, of the residue, the surviving husband or wife shall be entitled to one-half and, as to the other half — (i) where the intestate is survived by one parent or both parents — (A) if the value of that other half does not exceed the sum of \$6,000 or if no brother, sister, or child of a brother or sister survives the intestate — the parent or parents shall be entitled (in equal shares where both survive the intestate) to that other half; (B) in any other case — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of \$6,000, absolutely, and of the remainder, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one-half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half; (ii) where neither parent survives the intestate — the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half; |
| 4. Dies leaving a husband or wife but no issue, parent, brother, sister or child of a brother or sister | the surviving husband or wife shall be entitled to the whole of the intestate property; |
| 5. Dies leaving issue but no husband or wife | the issue shall be entitled in accordance with subsection (2b) to the whole of the intestate property; |
| 6. Dies leaving a parent or parents and one or more of the following, namely, a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue | (a) where the net value of the intestate property does not exceed the sum of \$6,000 — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property; (b) where the net value of the intestate property exceeds the sum of \$6,000 — the parent or parents shall be entitled (in equal shares where both survive the intestate) to the sum of \$6,000, absolutely, and of the residue, the parent or parents shall be entitled (in equal shares where both survive the intestate) to one half and the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the other half; |
| 7. Dies leaving a parent or parents but leaving no husband or wife and no issue, brother, sister or child of a brother or sister | the parent or parents shall be entitled (in equal shares where both survive the intestate) to the whole of the intestate property; |
| 8. Dies leaving one or more of the following, namely a brother or sister, or a child of a brother or sister, but leaving no husband or wife and no issue or parent | the brothers and sisters of the intestate and the children of deceased brothers and sisters of the intestate shall be entitled in accordance with subsection (3a) to the whole of the intestate property; |
| 9. Dies leaving no husband or wife and no issue, parent, brother, sister or child of a brother or sister but leaving a grandparent or grandparents | the grandparent or grandparents shall be entitled (in equal shares where more than one survive the intestate) to the whole of the intestate property; |
| 10. Dies leaving no husband or wife and no issue, parent, brother, sister, child of a brother or sister, or grandparent but leaving an uncle or aunt or a child of an uncle or aunt | the uncles and aunts of the intestate and the children of deceased uncles and aunts of the intestate shall be entitled in accordance with subsection (3a) to the whole of the intestate property but in applying that subsection for the purposes of this item a reference in that subsection to a brother or sister, or a child of a brother or sister, of the intestate shall be construed as a reference to an uncle or aunt, or a child of an uncle or aunt, of the intestate, as the case may be; |
| 11. Dies leaving no husband or wife and no issue, parent, brother, sister, child of a brother or sister, grandparent, uncle, aunt or child of an uncle or aunt | the whole of the intestate property passes to the Crown by way of escheat. |

The saying goes that there is nothing more certain than death and taxes. You never know when your time will be up. When Steve Irwin was stung and died, the number of queries on estate planning rose substantially at my firm

Some legal issues that may arise for your beneficiaries if no Will is made

If you die without a Will, all your money and possessions (your Estate) will be distributed according to strict legal rules and regulations. These rules are called the Laws of Intestacy. In many cases the Intestacy Laws distribute an Estate in a way the deceased would not have wanted, sometimes with disastrous results.

For example in the event of the death of a married person the Intestacy rules divide the Estate into shares with a share going to the surviving husband or wife (the spouse). The amount a spouse can inherit is restricted to an amount set by the government. The popular belief that a spouse automatically inherits everything is simply not true.

Even lawyers have a tough time

Have a look at the table on the left. Confusing is it not? Even lawyers have a tough time deciphering how the estate is to be divided. Hence, have a Will prepared for your family's sake.

Look at paragraph 11 of the table. If there are no surviving members of your family then the whole Estate could go to the Crown (Government).

Can you imagine the possible nightmare you could leave if you die without a Will? Many people who do not have close family would want their Estate to go to close friends or a charity rather than the Government or unknown relations.

Anyone whose circumstances have changed — perhaps through marriage, the birth of children, divorce, remarriage, or the death of a close relative, for example — should make a new Will.

If you get married, any Will you made when single/divorced is revoked (cancelled). There are some exceptions to this, but it is always advisable to make a new Will after marriage.

So what do you do? Do you rush in to see your lawyer to get one done immediately? No, do not rush in. Have some thought on the following questions first.

1. WHO WILL BE MY TRUSTEE? This should be a person you trust to manage your estate. He or she will be able to sell your properties and deal with your money. The trustee should be financially savvy and not disappear with your money

2. WHO WILL LOOK AFTER MY YOUNG CHILDREN? Remember the episode of *Everybody Loves Raymond* and how he wanted to appoint his friend and wife as guardian of his children. His friend's answer was, "What, and deal with your crazy family?" and the chagrin of Raymond's parents and Robert at not being chosen

3. WHO DO I LEAVE MY PROPERTIES TO?

Yes, where do your millions go to? How do I distribute it? Does that son who cheated me and never visited me get anything?

To cut a long story short...

We acted for a 70-year-old widower whose wife died without leaving a will. Prior to his wife's death, our client and his wife had bought certain properties in their son's name. The son was in the process of transferring the properties back to our client and his wife at the request of our client's wife.

However the wife of our client died prior to the agreed transfer. Our client then had to sue his own natural son because his son refused to acknowledge that the properties belonged to our client and his wife. Our client was forced to endure six gruelling days of cross-examination in the Supreme Court regarding his financial and family background. It was a lucky thing our client did not die during the process.

We won the case but at a great price to our client. His family had totally disintegrated as a result of his children fighting each other because of the failure of his wife to prepare a will. His fatherly love for his wayward son probably broke his heart even though he won the court case. Moral of the story: make sure you prepare a will as families have broken up in many instances because of greed. ■

www.tanandtanlawyers.com