

THINGS YOU SHOULD KNOW ABOUT WILLS.

The advantages of leaving a Will

The principal reasons for making a Will are that:-

1. the assets of the testator will pass to the person or persons to whom the testator directs them to pass; and
2. the testator's estate will be administered by the person chosen by him or her.

What happens to an estate if no Will is left?

1. The estate will be administered by the person entitled to the largest share of the estate under the *Administration and Probate Act 1958*;
2. The estate of a person dying without a Will does not pass to the Crown as many believe, but is dealt with in accordance with a formula set out in the *Administration and Probate Act 1958*. The Act, for example, provides that:-
 - (a) if a person dies leaving a spouse but no child, the spouse takes the whole estate;
 - (b) if a person dies leaving a spouse and a child and an estate worth in excess of \$200,000, the spouse takes the personal chattels, the first \$100,000 and one third of residue, while the child takes two thirds of residue.

What assets can be disposed of by Will?

Only assets owned by the testator at the date of death will form part of the testator's estate. This will, therefore, exclude:-

- (a) assets in which the deceased held a joint interest. Joint assets will pass by operation of law to the surviving joint proprietor.
- (b) assets belonging to a family trust whether controlled by the testator or not. These assets will be administered by the trustee of the trust in accordance with the trust deed by which the trust was established;
- (c) superannuation benefits. They will be dealt with by the trustee of the superannuation fund in accordance with the trust deed by which the fund was established.

Effect of marriage on a Will.

Unless a Will is made in contemplation of marriage, a marriage by the testator will revoke his or her Will.

Effect of divorce on a Will.

Unlike a marriage, divorce does not revoke a Will in its entirety, but to the extent of any provision made in it for the benefit for the former spouse.

Should you have any queries arising out of this article or in relation to Wills or Estates generally please contact David Williams.

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