



March/April 2024

THE BUSINESS NEWSLETTER FROM AUSWILD & CO
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THE BIGGEST MISTAKE YOU CAN MAKE IN LIFE

If you do not have a will, you are in good company. A nationally representative survey of 1,054 respondents revealed 60% of Australians – equivalent to 15 million people – do not have a will.

When businessman (and ironically, a lawyer) **Robert Holmes a Court** died suddenly of a heart attack at age 53 in 1990, he did so without a will. (His unsigned will was still in his briefcase!) Usually when one dies intestate (that is without a will), the assets of the estate will be distributed under a set formula. Fortunately for his widow, Janet, their four children waived their entitlements to two-thirds of his estate under the intestacy laws, thereby making her one of Australia's wealthiest women.

When **Peter Brock** was tragically killed in a racing accident in 2006, not only did he not leave a clear, unambiguous will, he left something far worse:

- A 2006 Will that was half-finished and unsigned;
- A 2003 "do-it-yourself" Will that was signed and witnessed - but with spaces left for his then wife Bev to fill in after his death; and
- A 1984 solicitor's Will that included his parents as beneficiaries.

Even when you have a will, you have to make sure it is up to date. When **Heath Ledger** died in 2008, his daughter Matilda was left out of a will completed before her birth.

So, **have you got a will?** If you have, **is it still current and relevant?** When was the last time you reviewed your will?

If you haven't prepared a will, and you are also the sole director of your company, your affairs will be very messy to handle. A family member or other person will have to apply to the court for letters of administration to manage your estate. This could take months. Who will be running your business whilst this happens?

Here are some tips on ensuring your will is valid and reflects your wishes –

- **See an expert.** Most of us will need to see a lawyer and perhaps our accountant and financial planner. Experts tend to frown on the \$30 DIY Wills that you can purchase from a newsagent. These may be suitable for young people but as soon as you have any complexity in your life, then you should seek the advice of specialists.
- **Keep it up to date.** An out of date will can be as bad as not having a will! If it hasn't been reviewed for more than two years or isn't current, make an appointment immediately to amend or draft a new will to reflect your current situation.

- ***Store your will in a safe place.*** Sad but true story – in 2002, an animal lover’s \$375,000 gift to the RSPCA was disputed after the will was eaten by her dog.
- ***Make sure someone knows where it is kept.*** Ensure your executors and at least one other person knows where your will is.
- ***Be careful who you appoint as executor.*** If they are elderly, they may die before you or be unable to cope with the responsibilities. Are your executors still your preferred choice? Are they willing to cope with the responsibilities?
- ***Be clear.*** A common mistake is to use everyday language. Vague, hard to define wording can render relevant clauses in the will invalid. If you wish to leave someone out of the will, say so in the will and state why. It will not necessarily stop them contesting the will but at least it makes it very clear that you have not forgotten them. Another disturbing fact is that estimates say that up to half of all wills in Australia are contested, usually by family members who believe that the deceased did not adequately provide for them.
- ***Consider any tax consequences.*** Remember that tax may be payable on some assets.
- ***Nominate a guardian for any young children.***
- ***Don’t use a beneficiary of your will as a witness.*** Always use someone independent to witness your will. That way, if your will is contested, the witness does not have a vested interest in the estate.
- ***Make a binding nomination for your superannuation.*** If you don’t, the trustees of the fund must decide how to distribute your entitlements.

And, whilst we have got your attention, do you have an ***enduring power of attorney*** in place?

Your business partners and family will be very pleased you had the foresight to put one in place, should you lose your marbles, suffer a similar tragic fate and be deemed mentally incapable of controlling your affairs. If you haven’t, make an appointment immediately with your legal adviser.

Just keep this in mind – ***“The biggest mistake we can make in life is not deciding what we want to happen at our death.”***