

## Estate Planning

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I often hear people telling me that they have been “planning” on getting a Will done – but they just have not got around to it yet. I can tell you that in my law practice I am always seeing examples of what happens when someone just never quite “gets around to it”.

The law has a legal process (called intestacy) that deals when someone dies without a Will. The difference is that your estate will be handled based upon government mandated intestacy rules. This means that people you may want to receive from your estate may not get anything, and equally people that you do not wish to receive anything from your estate may benefit greatly. You will not have any control over who your personal representative (executor) will be, or the ability to expand or limit that person’s authority. You will not have any input into how your estate will be divided. You will not have the ability to deal with trusts for minor beneficiaries or input on how investments are handled. You will not be able to choose a testamentary guardian for any dependent children. You will not be able to try to build flexibility to take into account potential changes to tax laws in the future.

This is but a short list of the areas that may be impacted by not having a Will. Most importantly, by not having your affairs in order, you will be leaving a lot of uncertainty and potential conflict for those you leave behind.

And your estate planning documents should be more than just a Will. Everyone should have a complete estate planning package that includes a Will, an Enduring Power of Attorney and a Personal Directive. A Will only comes into play when a person dies, and before that event it has no legal effect. We can all expect that at some point we will all die. However, it is also reasonable to expect that at some point due to health, illness, or age related deterioration that we may face periods of time when we are not functioning to our full mental capacity. In this event your Will, and the person appointed thereunder, has no legal authority – as you are still alive although you may be incapacitated.

An Enduring Power of Attorney and a Personal Directive are sometimes collectively called a “Living Will”. These allow you to designate someone to look after your financial affairs (Enduring Power of Attorney) and your personal affairs such as medical decisions (Personal Directive) should you be unable to make decisions for yourself. These documents allow you to make advance medical direction on the type of medical treatment you do or do not want, how your property is to be managed, and your wishes for your day-to-day living arrangements. Making these decisions in advance can greatly reduce the burden placed on your loved ones.

If you do not have these documents in place then someone must make a formal application to the Court to have you placed under a Guardianship Order and/or a Trusteeship Order. This court process is a much more in-depth process than the relatively simple process of signing an Enduring Power of Attorney and a Personal Directive. Also, because you have not made advance decisions/instructions then a person assisting you under the court's authority will not have the ability to address issues you may have otherwise preferred be addressed. Since the court is not aware of what your personal wishes would have been there are limitations on the powers that the court can authorize to your Guardian and Trustee.

All too often I am contacted with a request to do estate planning documents after someone has started to decline – at a point when they no longer have the requisite mental capacity to sign estate planning documents. By this point you are not able to sign off on a Will, Enduring power of Attorney and Personal Directive - it is too late. There are no guarantees in life and no one knows what tomorrow will bring. However, I think everyone owes it to themselves and their loved ones to ensure that they have their personal affairs in order.

Everyone should have a Will, Enduring Power of Attorney, and a Personal Directive today. Don't put it off until it is too late.