

## Difference between a Will and Estate Planning

A **Will** is a legally binding document that details one's wishes regarding the distribution of assets upon death.

There are many assets that will not form part of a Will such as assets owned within a family discretionary trust or assets owned as joint tenants (unlike tenancy in common) where the death of one implies that their share will automatically be transferred to the other.

Companies assets have share ownership issues, and where a shareholder dies, their portion of ownership can be vital to the remaining shareholder.

Taxation implications can have significant impact on the distribution of wealth. For example, a father's wishes to distribute his wealth equally among his three children, and in his Will the family home will go to the son, the investment property will go to the eldest daughter and the share portfolio to the young daughter. Obviously the family home will be capital gain tax free whereas the property and share portfolio may be subject to CGT if they have increased in value. The distribution in this case will not be equal.

A Will becomes invalid when people marry. Divorce affects a Will, but it does so differently in each state and territory. In some jurisdictions, divorce will automatically render a Will invalid. In others, divorce will simply revoke a former spouse as an executor or any gift left them.

Unlike divorce, marriage separation does not have an effect on a Will. The period of separation that occurs prior to divorce is possibly one of the most important times to ensure that a Will reflects the changed circumstances.

It is essential that a Will be up-to-date. Failing to update upon separation and death, a spouse may inherit any property left to them. Similarly, if a Will names a spouse as an executor, they will be entitled to take up that role regardless if you wanted them to or not.

Current studies show up to 45% of Australians do not have a current Will, meaning that assets will be distributed according to the rules of intestacy (rules that determines who is entitled to properties). These rules may not reflect the deceased's wishes and cause undue hardship, delay and cost to the family.

**Estate planning** is the process of anticipating and arranging for the distribution of the estate in advance or prior to death. The process attempts to eliminate uncertainties and maximise the value of the estate by reducing taxes and associated expenses. The ultimate goal of an estate plan is determined by the person's specific goals. Estate planning involves a Will, trusts, superannuation, beneficiary designations, life insurance, power of attorney and property ownership.

The key point of difference between the two documents is that a Will is only one aspect of the estate planning process, which comprises detailed instructions regarding assets possessions and how they are to be distributed. By contrast, an estate plan is an all-inclusive set of documentation explaining how every aspect of one's life is to be dealt with after death.

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**This article contains general information and should not be taken as an advice. The reader must not rely on such information as an alternative to an advice from an appropriate qualified professional.**

Estate plan comprises all what one's own, including the house, car, life insurance policy, bank accounts, superannuation, investments and more.

Further, careful estate planning includes:

- Naming a guardian and trustee for children under 18,
- Providing for the transfer of a business and personal dealings;
- Ensuring appropriate life insurance is in place to allow a business partner to purchase the deceased's share in the business at death and vice versa;
- Ensuring superannuation and life insurance monies are distributed in the most tax effective way.

If you need assistance, please call me on **04 3984 1952** or email **[info@eleganceaccounting.com.au](mailto:info@eleganceaccounting.com.au)**