

by **Rebekah Sanfuentes**



7 Biggest estate myths

1. **The government will get my money if I die without a will**

It is a commonly held view that if you do not have a will or the provisions of your will cannot take effect for any reason, and you therefore die intestate, that the government gets your assets on your death.

This is definitely not the case!

In all Australian jurisdictions there are Rules of Intestacy – these rules set out how your estate is distributed in the event that you die without a valid will. The way your estate will be distributed depends on whether you have a spouse and/or children. If you die without a spouse or a child, your estate would be distributed to your parents, your brothers and sisters, your nieces and nephews, your grandparents or your aunts and uncles.

Only if you die without any relatives will your estate be paid to the government. However, the cost of doing family research and locating relatives of an intestate can be very high. Having a valid will in place means your estate will not be burdened with potentially significant costs and you can ensure that your estate goes to the people you wish to benefit.

2. Your will covers your superannuation

While there are circumstances where your superannuation will be paid to your estate and be distributed in accordance with the terms of your will, this would only happen if you do not leave a spouse, child or financial dependent. In the first instance, the trustee of a superannuation company will pay directly to the spouse or child of the deceased – they don't care what your will says!

Just like wills, superannuation benefits can be contested. People can come forward and make claims about a relationship of financial dependency on the deceased. If you had intended to make no provision for your children in your will, be aware that your superannuation may still be up for grabs.

The best thing you can do is to make a binding death nomination on your superannuation. We provide superannuation and binding death nomination advice for free as part of our will making service.

3. If you go missing nothing can be done regarding your affairs for 7 years

It is a common belief that if someone goes missing you must wait seven years before they are presumed to be dead and their affairs can be dealt with. While this is the case at common law, Queensland legislation now gives the Court the power to issue a grant of probate to an executor of a will, or if someone has gone missing without a will, a grant of letters of administration to a person entitled so that the deceased's affairs can be dealt with even if it is not known where they are or whether they are alive.

4. Estate planning is just for the wealthy

Estate planning is for everyone. People often don't realise the extent of their assets. Once you take superannuation into account, your estate could be worth many hundreds of thousands of dollars, even if you don't own any property or have much money in the bank. The legal costs of administering the estate of a person who did not leave a will are often substantially more than if you make a will, regardless of whether they had any assets or not.

It's important to take steps to ensure that money will flow through to the people you would like to be taken care of if you die. If claims need to be made against your superannuation or your will by your family members it can cost thousands of dollars and take many months and sometimes years to sort out.

Our Offices:

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5. Young people don't need to do estate planning

Do you have a casual job at a supermarket and spend all the money in your bank account partying on the weekend? You might think there will be no assets to administer if something should happen to you. If you are working you have superannuation and if you have superannuation then you most likely have a death benefit. That could be worth a lot of money for the people who are left behind.

It is also important to make an enduring power of attorney as soon as you are able to. If you have an accident or suffer a severe injury, your family and friends could be saved a great deal of stress, worry and time if you have a substituted decision-maker already appointed who can step in and get your affairs sorted out in the event that you temporarily or permanently lose capacity to make decisions for yourself.

6. Homemade / Do-it-Yourself wills and powers of attorney are a good way to save money

Although homemade wills and powers of attorney might save you a few hundred dollars at the outset they are fraught with danger.

There are strict rules wills must comply with and a very small error could end up costing your estate many thousands of dollars in legal fees to rectify. It is very common for homemade wills to end up before a judge because of issues of construction or failure to adhere to the formal requirements.

If you are not familiar with the relevant legislation it is best to talk to a solicitor who can ensure that your estate will not be subject to a challenge due to an error that you had no idea about and could end up making your will completely invalid. If you haven't got your power of attorney document right then it may be worthless and that may not come to light until you are no longer able to rectify the errors.

7. If I leave someone \$10 they can't make a claim on my estate

It is a common misconception that if you leave someone a gift in your will, no matter how small, they can't contest your estate. That is definitely not the case. In Queensland, a spouse, child (including step-child) and financial dependent can contest your will if they feel they have been left with inadequate provision for their proper maintenance and support.

Doing some estate planning before you pass away can ensure that assets are kept out of your estate on your death and protected from claims, for example, by transferring a property from your sole name into joint names. If you are trying to ensure that a child you are no longer in contact with can't bring a claim on your death, steps can be taken to reduce the assets available to satisfy such a claim. Don't make the mistake of thinking that you have given them a small gift of money and that's all they will get. Estate litigation is costly, particularly when claims are contested, and the legal costs substantially reduce the benefit that your beneficiaries will receive once everything has been sorted out.

Contact one of our expert Wills and Estates lawyers on 07 3816 9555 or by email rsanfuentes@mcna.com.au if you require assistance with your estate planning.

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