

dividing your estate

General Advice Disclaimer

Information provided in this document is general in nature and does not constitute financial or legal advice.

Every effort has been made to ensure that the information provided is accurate, but information may become outdated as legislation and new government announcements are made. Individuals must not rely on this information to make a financial, investment or legal decision as it does not take into account their personal circumstance.

Before making any decision, we recommend you consult a licensed adviser or legal practitioner to take into account your particular objectives, circumstances and individual needs.



Our wills

Our standard wills divide assets into two types:

- Personal property
- Residuary estate

We divide assets into these two different categories as they usually have different characteristics and most people want them treated differently.

Personal Property

Personal property tends to be those assets of lower value or changing nature. Examples of these include the following types of assets that are held in your personal name:

- Your clothes and personal effects
- Your household furniture
- Your car

Residuary Estate

Your residuary estate will be all your remaining assets not previously dealt with (either as personal property or a specific gift you have made). This can include the following types of assets that are in your personal name:

- Money in personal bank accounts
- Shares you own
- Real property in your name.

What if I want an item in a different category?

There are ways we can make sure that a particular item is directed to where you want it to end up. Two of the main strategies include:

- Making a specific gift of that asset to your intended beneficiary (see our flyer on specific gifts);
- Changing the definition of personal property in our wills to include or exclude that particular item.

Ultimately which one is appropriate depends on the circumstances. Get in contact to find out more.

What do you mean 'in my personal name'?

The assets you own may not legally be owned by you and therefore, may not fall into your estate and be addressed by your will. Understanding how an asset is owned is probably the single most important thing you can do when preparing to draft your will and power of attorney.

One of the easiest ways of identifying assets [and helps clients to understand how assets pass], is to separate the assets as follows:

assets owned personally

This includes assets that are held in the client's own name.

What fits into this column varies greatly depending on the circumstances.

For example, care should be taken to ensure that any asset in this column, is not subject to a prior right, including, for example:

- Shares in private companies or units in unit trusts subject to an agreement containing an option to purchase by the other stakeholders
- Pre-existing mutual wills prescribing how you are allowed to structure your will
- Jointly owned property. See our information flyer on Joint tenants vs tenants in common

You should also be aware of assets or liabilities that may fall within this column, but are not often remembered, including, for example:

- Life insurance that is held in your name [as opposed to being held by a superfund]
- Unpaid present entitlements or loans owing to you

assets inside structures

This column covers assets inside entities such as trusts, companies, partnerships etc.

What fits into this column varies greatly depending on the circumstances.

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You should also be aware of assets or liabilities that may fall within this column, but are not often remembered, including, for example, unpaid present entitlements or loans owing to the entity.

superannuation benefits

Superannuation means all of your superannuation benefits, whether they be held through a Self-Managed fund or retail/industry fund.

It includes also:

- Assets your self managed fund holds on bare trust
- Any life insurance taken out by your superfund.



Dealing with your assets

Importantly, only assets held in your personal name [i.e. 'assets held personally' in the first column of the above table] are governed by your will.

Assets inside structures must be dealt with by ensuring control of that entity goes to the right person(s) at the right time. To work out how control passes on your death or incapacity, you need to look at the governing document for the entity, for example:

- For trusts: the trust deed;
- For companies: the constitution or any shareholder agreement;
- For partnerships: the partnership agreement.

Ultimately, what is required varies depending on that particular entity, so specific advice should be obtained on what is necessary to ensure control of the entity passes in accordance with your wishes.

For superannuation, super funds generally allow you to make 'nominations' that are like a will for your superannuation benefits – they direct the trustee of your superannuation fund to where you want your funds to go on death.

There are different types of nominations available depending on the superannuation fund. There are also strict rules on the category of person you can leave your superannuation to and as such, specific advice should be obtained regarding how to draft your nominations.

