



**Tasmanian
Perpetual
Trustees**

Your guide to
**Estate Planning
and Administration**

Contents

Your future starts now	1
Life events	2
About the estate	3
Estate planning	5
The benefits of estate planning	6
The estate planning process	6
Where there's a Will there's a way	7
Why a person should have a Will	8
Advantages of a Will	9
If a person dies without a Will	9
Preparing a Will	10
Revising a Will	10
Locating the Will	12
Contesting a Will	12
Executorship	13
Selecting an Executor (see also page 26)	13
Duties of an Executor	14
The process of preparing the estate for administration	15
Administering the estate	16
Settling the liabilities	17
Distributing the estate	18
Power of Attorney	19
The benefits of a Power of Attorney	20
Who should be an Attorney?	21
Types of Power of Attorney	22
When should Power of Attorney be considered ?	22
Power of Attorney and Tasmanian Perpetual Trustees	23
Administration under Guardianship and Administration Orders	24
You and Tasmanian Perpetual Trustees	25
Appointing Tasmanian Perpetual Trustees as an Executor	26
Fees and commissions	28
Funeral bonds	33
Glossary of estate planning and administration	34
Important estate planning information	36
- Location of important documents	36
- Contact details of key people	36

Your future starts now

In a perfect world there would be no need to plan.

There would be no need to be concerned about safeguarding the future of yourself, your family or the other people and things that are important to you. However, common sense tells us that good planning is a vital aspect of almost everything we do in life. Sound planning can make a crucial difference in the quality of our lives, the security we enjoy as we grow older and the comfort that comes from knowing arrangements are in place for most of the events that can be expected through the years.

This guide aims to provide you with an overview of the processes involved in estate planning and estate administration and gives some information on the services provided by Tasmanian Perpetual Trustees in this important area.

This is a guide only – to confirm information or to enquire about any aspect of estate planning and estate administration, Wills or Powers of Attorney, you should contact your nearest branch of Tasmanian Perpetual Trustees.

At the end of this guide you will find a glossary of estate planning and estate administration. It provides some definitions of the words and phrases most often used in estate planning and estate administration.

Estate planning is a very important process for all people who want to set the direction in the way their assets are managed when they are gone.

It is never too early to begin estate planning. With estate planning your future starts now.

This document is not legal advice and Tasmanian Perpetual Trustees accepts no liability for people acting on information contained in this brochure. Any references to legislation are to Tasmanian legislation.

In the *Glossary* on pages 34 and 35 when a technical term is defined and used for the first time, the term will be underlined.

Life events

There are some very important events, which occur during a lifetime, which may require you to review your personal and financial objectives. By realising the importance of reviewing your estate planning, you can have peace of mind that your family has been provided for in the manner that best meets your wishes and their needs.

The following are examples of some of the typical events that occur and that may warrant a review of your estate planning:

- **Births** – When a new child or grandchild is born.
- **Disability** – A family member with special needs such as disability, illness or other infirmity usually requires special provisions to meet that family member's needs.
- **Deaths** – The death of a family member, beneficiary, Executor or guardian.
- **Marriage** – A marriage will revoke your Will and require it to be revised.
- **Divorce** – A divorce will revoke your Will. You may need to review your estate plan in the event of a divorce in order to know the effect the divorce has upon your child's or another beneficiary's inheritance.

For example:

- You named your divorced spouse as a beneficiary of your superannuation.
- You named a married son or daughter of yours as joint owner with their spouse, but they are now divorced.
- Your estate may actually be in the control of your ex-spouse if your children are minors.

Any of the above may require you to review the provisions in your Will.

- **Purchase of property** – Changes to investments or beneficiaries may require you to review your estate plan.

The above are only a few examples. There are many life circumstance changes which will require changes to any arrangements you have previously made for the distribution of your estate upon your death.

About the estate

At the time of death, almost everything a person owns becomes known as their 'estate'. This includes all possessions; the assets accrued throughout their life.

For example a home, car, bank accounts, insurance policies and other assets. In general, it does not include assets held as joint tenant with another person or assets of a partnership or a company.

A person's estate can be divided into the following categories:

- cash – in hand or in the bank;
- term deposits and annuities;
- liabilities – bills, loan, debts outstanding;
- real estate – land and buildings;
- investments and securities – debentures, bonds, shares, managed funds;
- life insurance – current policies;
- superannuation and any associated insurances;
- business interests – owned businesses and partnerships;
- farming – plant and livestock;
- an interest in the estate of a deceased person or in a family trust;
- personal effects – furniture, cars, jewellery etc.

This page has been left blank intentionally

Estate planning

Estate planning involves the development of strategies for providing for the beneficiaries by protecting assets; and distributing the estate according to the person's wishes in the most suitable and efficient way.

It provides advice on important issues that affect the estate and beneficiaries such as superannuation, life insurance and tax.

Estate planning can also be a comprehensive service resulting in the creation of a Will to provide instructions on the management and distribution of the estate after death. It may also involve the creation of a Power of Attorney to provide a means of deciding who will manage business and legal affairs if a person ever became incapacitated or unable to make decisions or sign documents.

Fact or fiction?

What about service personnel?

Service personnel who are on active service and who may be in imminent danger, can scribble a few notes on a piece of paper and this will generally be held by the Court as a valid Will even though the formal requirements are not met. These are called "Privileged" Wills.

The Australian Defence Force policy is that all active members should have a valid Will.

The benefits of estate planning

Estate planning is important to help your family and other beneficiaries to gain the maximum benefit from your estate.

The estate planning process can have the ability to protect the interests of the estate for its beneficiaries, often in a tax effective way, and protecting assets in the event of a beneficiary's bankruptcy or divorce. This thorough estate planning process will also help to make the transition easier for beneficiaries by ensuring, so far as is practicable, that difficulties are minimised through plans that have been made to avoid potential complications. Wills prepared without first completing a full estate planning process may not take into account all personal and family circumstances and may put at risk the value of the estate, leading to costly legal disputes.

The estate planning process

An experienced Estate Planner will consult your other professional advisers in order to get a full understanding of the family financial position and wishes of the Willmaker.

The Estate Planner will also use a comprehensive estate planning instruction checklist that covers all aspects of your situation. From this initial consultation, which usually takes approximately 1 hour, an estate planning strategy is developed.

A carefully developed estate planning strategy can help to:

- provide for the orderly transfer of property;
- minimise taxes on the estate;
- equalise the inheritances for the beneficiaries if required;
- provide for any special needs of family members and other dependants;
- recommend the appointment of a guardian for minor children;
- ensure the availability of cash to pay necessary taxes and administrative expenses;
- identify the need to develop a succession plan for a family business;
- ensure the continued operation of a family business.

Where there's a Will there's a way

A Will is a written direction that may describe the assets of a person's estate as well as naming or describing those beneficiaries (e.g. my children) who are to receive the estate after the Willmaker's death. A Will also normally appoints the person who is responsible for distributing the estate. This person is known as an Executor.

A Will may also establish trusts for persons or charities, leave specific items to specific people, suggest guardians for infant children and give funeral instructions.

A Will is always in writing. You may have heard that the Will needs to be dated and signed by both witnesses and the Willmaker at the same time and preferably, using the same pen. This is true!

Fact or fiction?

Signing a Will

Visually impaired people have a particular challenge when it comes to Wills. In general when a person signs their Will they are confirming that they have read and understand it. For a visually impaired person the signing clause is altered slightly to say the Will "having been read over to them" is confirmed by their signature.

Similarly, Wills for people who do not speak English have the standard signing clause modified "Having read a true translation of this Will in the (insert native language here) language".

Naturally cases of signing Wills for the visually impaired non-English speakers are more complex and require professional assistance.

In all cases a Will must be witnessed by two people, present at the same time and preferably signing with the same pen. It is not necessary that the witnesses be a Justice of the Peace or other legally qualified person but it is important to remember that if the witnesses or either of their spouse is a beneficiary of the Will, they may lose their inheritance.

Why a person should have a Will

There are a number of important reasons why a person should have a Will.

In particular, a Will can lessen the emotional distress that occurs when a person dies by providing clear, concise and effective directions about who gets what and, if necessary, giving explanations for why things have been divided up in this manner.

A Will is the only way people can direct how their estate is to be distributed following death. The alternative is set out rigidly in legislation, the *Administration and Probate Act 1935*. (Refer page 12)

As soon as a person becomes of legal age, they may make a Will. In Tasmania, this is all people over the age of 18 or a married person under 18. Even if only a few assets are owned, it is worthwhile making a Will and appointing an Executor to ensure certainty regarding what will happen to those assets after death. Additionally, an Executor of a Will has immediate authority to act from date of death. If there is no Will, little can really be done until the Court has confirmed the appointment of an Administrator – a process that could add many months to the time it takes to administer the estate.

Fact or fiction?

Is it true that if you leave someone \$1 in your Will they cannot contest it?

If a person thinks they should have been given more out of an estate they may be eligible to make a claim for an increased share of the estate. The legislation governing this is the *Testators Family Maintenance Act 1912*. To succeed in these cases the claimants have to prove that they are eligible to claim and that they have been inadequately provided for in the Will. Persons entitled to claim are: spouse, children, parents of the deceased and divorced spouses who receive maintenance. 'Inadequate' does not usually mean "I should have been given more". As the rule of thumb it is usually said to be that each dependant is entitled to the amount that a fair person would leave them. The Courts regularly have to exercise great judgement and wisdom in these cases.

Advantages of a Will

By having a properly prepared Will a person can:

- choose their own Executor to distribute the estate, eliminating the necessity of a more costly appointment of an Administrator – who may not be of your choosing;
- distribute property as they wish, including personal property of sentimental value;
- provide for future management of investments or a family business;
- record wishes for certain persons to be appointed guardians for minor children;
- utilise strategies to minimise taxation and administration expenses in the settlement of the estate;
- provide for special wishes, such as to make charitable donations or establish bequests; and
- create testamentary trusts to protect assets for future generations.

If a person dies without a Will

If a person dies without a Will, or what is known as intestate, their estate will be distributed as determined by the *Administration and Probate Act 1935* and administered by someone appointed by the Court, usually a family member.

If a person dies intestate, the legislation provides for the following scheme of distribution:

- If the estate is valued at less than \$50,000 it passes entirely to the spouse or partner, (in accordance with the *Relationships Act 2003*),
- If the estate is valued at more than \$50,000 it passes as follows:
 - i) first \$50,000 to the spouse, or partner;
 - ii) 1/3 of the balance over \$50,000 to the spouse or partner;
 - iii) 2/3 of the balance to the children or their descendents.

If there is no spouse, children, parents, grandparents, brothers, sisters, aunts, uncles or next-of-kin the whole of the estate goes to the State Government as Bona Vacantia – “abandoned treasure”.

Preparing a Will

Essentially a Will needs to do four things:

- 1) appoint an Executor;
- 2) dispose of all property;
- 3) make adequate provision for all those people for whom adequate provision ought to be made;
- 4) be correctly signed.

A Will is a very detailed and complex document and needs to clearly identify what portion of a person's estate will go to whom after the person dies, whilst also considering an array of regulatory requirements.

An incomplete and/or incorrectly signed Will can result in the Will not being legally effective and thus unable to be administered completely or in part, when needed. It could also lead to the estate being administered in a manner that was not intended.

For these reasons trying to make a Will without professional assistance (using a Will kit purchased from a Newsagent, for example) may cause problems or difficulties down the track. It is too important to leave it to chance and hope that the Will has been made in a way that achieves the desired objectives. It is far better to do it through experienced professionals or a Trustee Company like Tasmanian Perpetual Trustees, who have the qualifications and experience to do it properly.

Revising a Will

It is most important that a Will be complete and correct at all times. Willmakers should never let a situation continue where their Will does not exactly reflect what is wanted or needed.

A Will should be reviewed every 2-3 years or whenever there are major changes in circumstances such as getting married or divorced, having children, or buying a property. Changes in taxation laws may also make Will revision necessary, but this is rare.

There are also changes in circumstances that can automatically revoke a Will or make directions in a Will ineffectual. Tasmanian Perpetual Trustees' estate planning process anticipates some of these changing circumstances and helps avoid many of these problems.

Consider the following:

- marriage revokes a Will unless it is expressly made in contemplation of that marriage;
- divorce revokes a Will unless it is expressly made in contemplation of that divorce;
- if a significant relationship (also known as a defacto relationship) is started or ended, a Will may need to be changed because the *Relationships Act 2003* considers most significant relationships to be the same as marriages when considering Wills;
- if someone named in the Will changes his or her name and the Will is not updated, there can be delays in completing the administration;
- if a beneficiary dies, the Willmaker may want that share to be divided among the beneficiaries' children or given to the beneficiaries' spouse;
- if specifically described property (eg. 10 Jones Street, Petersville) is left to a beneficiary and that house is later sold, the beneficiary may receive nothing;
- a Will may need updating if significant changes occur in the nature of the estate. For example, if a hotel is inherited or a farm purchased, or assets are transferred to a trust or partnership. Even if the beneficiaries do not need to change, the Executor may need different powers to deal with assets in the best possible way;
- if inflation erodes the real value of a gift of a specific sum of money;
- if the extent of a property in a bequest changes. For example, if all the shares or money in a particular account have been left to a particular person and shares are bought or sold or money is deposited or withdrawn, the beneficiary may get less or more benefit than intended unless the Will is changed;
- if the nature of the property in a specific bequest changes. For example, the type or name of bank account, share type, or holding (eg. company takeover);
- if the circumstances of the beneficiaries change. For example, one of them may lose their house in a divorce and it might be fair for them to get a larger share from the estate.

Locating the Will

As the last Will provides the instructions that an Executor needs for administering an estate, it is important to ensure that it can be located when needed. Willmakers should ensure that their friends, relatives or close friends know where the Will is kept. If a safety deposit box is used, ensure that someone trusted has access to it and a copy of your Will is held by a solicitor, accountant or trusted friend.

Wills in safe custody:

Tasmanian Perpetual Trustees will retain Wills in safe custody for no charge when they are appointed Executor.

Contesting a Will

If the result of statutory distribution of an estate under an intestacy or the benefits provided under a Will leave members of the family or other dependents in needy circumstances, they can apply to the Court for an order under family provision legislation for a larger part of the estate to pass to them. This depends on their needs at the time of the application.

It is important therefore, to carefully consider any situation where one beneficiary (particularly children) is favoured over another. There may be good reasons for doing so, however, they should be carefully documented and stored with the Will. They may be required by the Court to be produced as evidence of intention.

The validity of a Will can also be challenged on the grounds that the Willmaker lacked testamentary capacity at the time of making the Will or that they did not know the document they were signing was in fact a Will.

Executorship

Executorship is the name given to the process of administering and distributing the estate of a deceased person to the beneficiaries of the Will. It is carried out by an Executor.

An Executor can be a person, several persons, or a Trustee Company like Tasmanian Perpetual Trustees.

The Executor is responsible for administering and distributing the property of the deceased. The job of an Executor is substantial, often complex, and they are personally liable for their errors.

Selecting an Executor

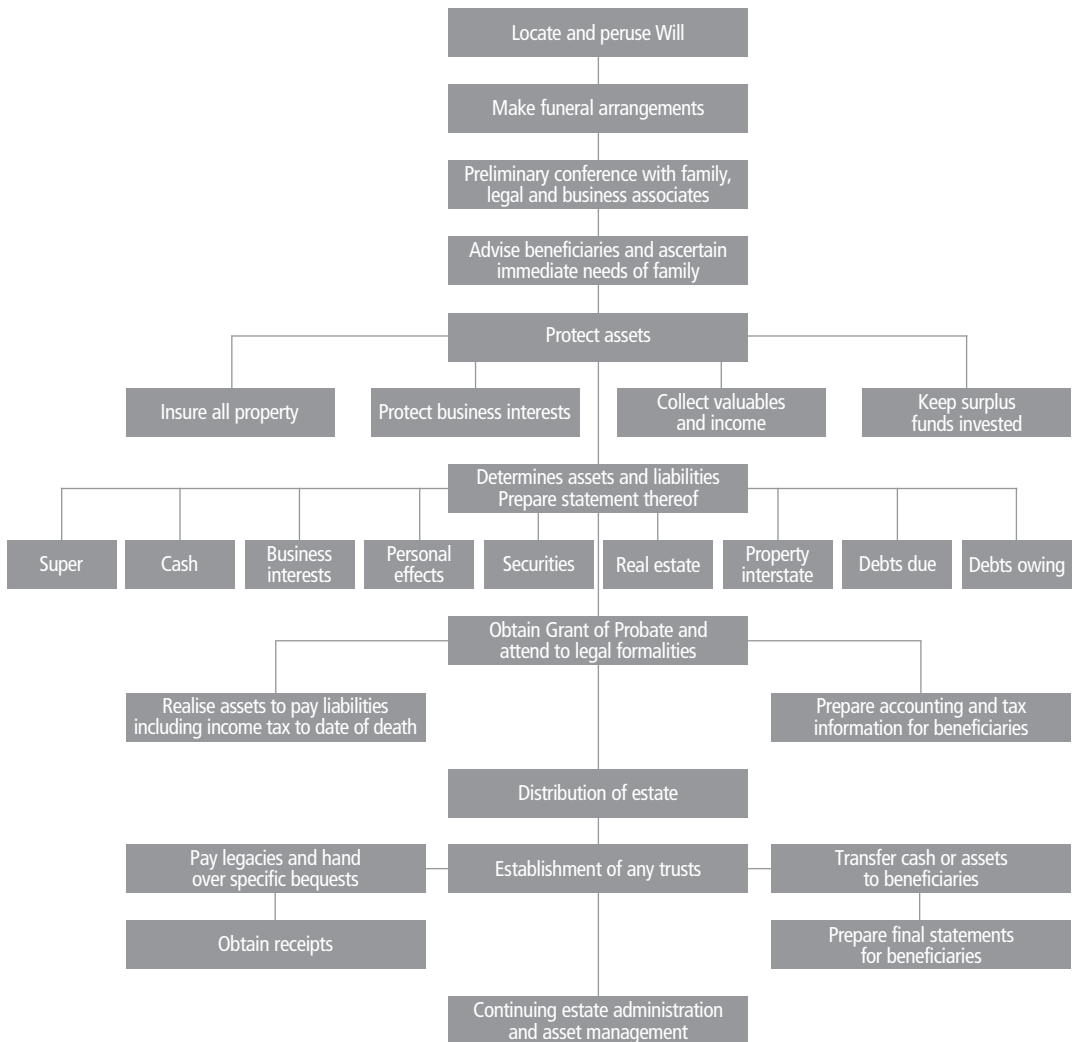
When deciding upon who will be the Executor, it is of utmost importance that the welfare of the beneficiaries is paramount. This depends upon the Executor's trustworthiness, business knowledge and acumen, impartiality in handling the estate and ability to maintain proper records. The Executor must also be ready, willing and able to carry out promptly and efficiently all the duties of an Executor when the time arrives for them to act.

All people have the right to choose who will be their Executor. This right is one of the most important choices when making a Will. Some choose to name a family member or friend as their Executor, or to make use of the knowledge and skills of professionals and have an experienced Trustee Company like Tasmanian Perpetual Trustees, as their Executor.

Duties of an Executor

Some of the various duties of an Executor are listed on the following pages. Not all estates will require all of these steps. The main duties of an Executor are the duty of care, the duty to act personally, and the duty to act in the best interests of all beneficiaries.

This section provides a broad overview of the steps an Executor such as Tasmanian Perpetual Trustees undertakes in administering an estate.



The process for preparing the estate for administration

Stage 1:

- Locate and examine the Will of the deceased.
- If necessary, make funeral arrangements. Whilst this is an Executor's responsibility, the family usually attends to these details.
- Assist to provide for beneficiaries, immediate or emergency, personal requirements.
- If necessary, obtain advice to fully understand the terms of the Will and any special instructions. Also, consult with other advisers familiar with the affairs of the deceased in order to obtain information concerning the financial situation of the deceased.

Stage 2:

- Become familiar with the deceased's assets and business interests and take all necessary steps to protect property. If a private business is involved, take steps to arrange for suitable management, if necessary.
- Take an inventory and custody of cash, securities, jewellery etc. and other documents and records of value, from the residence and place of business of the deceased.
- Contact banks and other financial institutions to confirm details of securities held in safe custody, loans, and loan guarantees outstanding. Obtain current statements.
- Ascertain the particulars and adequacy of all personal and business insurance policies, including amount, benefits, terms and beneficiaries.
- Determine benefits, if any, due under government or corporate pensions or superannuation.
- Obtain details of any outstanding salary, death benefits, deferred profit sharing, medical, group life, or health insurance or any other possible amounts due arising from the deceased's employment.
- If the deceased's residence is now vacant, arrange for its protection and supervision, and specific insurance requirements for extended unoccupancy cover. Search the title to all real estate in which the deceased had an interest.

Stage 3:

- Inspect and have valued any real estate.
- Check leases, mortgages and statutory outgoings such as rates and land tax.
- Determine values of all investments and arrange for collection of future income payments.
- Determine the deceased's interest in any other estates or trusts.
- Determine any liabilities.

Stage 4:

- Prepare a detailed inventory of assets and liabilities as at date of death.
- Determine whether or not to apply for Probate. This application requires production of the original Will, Death Certificate, assets and liabilities statement, affidavit of Executor and, in some cases, such as for poorly executed Wills, affidavits from the witnesses.
- Prepare final income tax return(s) for assessment.

With Probate formalities now dealt with, the Executor is in a position to administer the estate, that is:

- to deal with the assets;
- settle the liabilities and income tax;
- pay legacies;
- satisfy general and specific bequests and gifts of real estate;
- make the final distribution;
- prepare final accounts to distribute estate;
- set up any ongoing trusts.

Administering the estate

Dealing with the assets:

- **Cash** - When authorised, close bank and investment accounts. Whenever feasible, invest part or all of cash balances until needed.
- **Investments** - Remove from the safety deposit box and take possession. Register in the Executor's name. Review to determine in consultation with beneficiaries which should be held and which (if any) are specifically bequeathed in the Will and which should be sold. Sell investments and securities as determined, to pay tax and other liabilities, as well as to provide cash for any bequests. Review regularly while the estate continues.
- **Real estate** - Arrange sale or transfer to beneficiaries as the Will requires or as circumstances permit.

- **Insurance, superannuation and annuities** - Submit necessary claim forms and supporting documents to life insurance companies and/or Trustees and where they form part of the estate, collect proceeds of life insurance, superannuation and annuity policies. Arrange for cancellation or transfer of general insurance on assets as they are transferred or sold.
- **Household and personal possessions** - Deliver to the beneficiaries all household goods, jewellery and other personal possessions that have been bequeathed. Arrange for the removal and sale of the balance of these assets, usually through an auctioneer.
- **Private business** - Arrange for or participate in, continuation and competent management of the business. Alternatively, arrange for its sale, winding up or transfer under the business succession agreement.
- **Other assets** - Deal with any other assets as required by necessity or by the Will.

Note: The costs of transferring assets such as stamp duty and/or legal fees may or may not be payable by the recipient, depending on the terms of the Will. It is important to take advice on this point.

Settling the liabilities:

- **Debts and liabilities** - Advertise for creditors and other claims on the estate. Check all claims and pay valid debts. Some credit cards have a death benefit feature (Executors should investigate this possibility). As funds become available, discharge any bank or private loans, mortgage payable and/or business liabilities.
- **Income tax** - At death the deceased is generally deemed to have disposed of all property at fair market value at that time. Therefore, in addition to determining regular taxable income relative to the year of death, all the deceased's capital gains or losses (if any) as of the date of death must also be determined. If the surviving spouse or testamentary trust receives the entire estate, it is possible that no capital gains tax will be payable until that spouse dies. Advice may be required on this point. Prepare an income tax return for the portion of the year to the date of death, and for any previously unassessed period. Pay taxes and obtain final assessment. Prepare income tax returns for the estate annually until wound up, and advise beneficiaries of taxable income, if any, allocated to them and upon which they are liable for income tax.
- **Other duties or taxes** - Make a reserve for duties or taxes in respect of foreign jurisdictions and instruct a suitable professional to prepare and file returns. Settle any balances owing and obtain discharges.

Distributing the estate

The following must be considered by an Executor of an estate at distribution time:

- Terms of the Will.
- Transferring assets directly to beneficiaries.
- Payment of legacies.
- Hand over of bequests.
- Preparation of estate accounts.
- Accounting to beneficiaries including taxation information.
- Transfer of gifts of real estate.
- Ensuring that distributions are equal in value where required.
- Cash distributions.
- Capital gains tax implications.
- Providing taxation information including capital gains tax information.
- Final distributions.

Power of Attorney

A Power of Attorney is a legal agreement that gives a person or organisation the ability to make decisions and sign documents on another person's behalf. This agreement is represented by documentation that details the agreement to give a specified person, persons or organisation the power to deal with another person's assets and financial affairs whilst they are still alive but unable for any reason to act personally.

Fact or fiction?

I'll leave them all my debts

Many people jocularly say that they will leave someone all their debts. Can this be done? Well in a sense, yes it can. There is a general principle that "debt follows the land" and if a property that is mortgaged is specifically left to a beneficiary, unless the Will says otherwise (and they usually do), they have to take the mortgage with the property.

The benefits of a Power of Attorney

A Power of Attorney enables a person to take action now to ensure that their best interests are safeguarded if they lose their ability to make decisions or sign documents personally.

This ensures that a trusted person attends to essential matters at the right time.

A Power of Attorney can lie 'dormant' for years if need be but importantly it is there and ready to be used when required.

If you were unexpectedly prevented from attending to your financial matters through illness or absence, imagine the problems that could arise.

The following are some examples of how a Power of Attorney can be used:

- use your available funds to pay your everyday expenses and those of your family;
- collect social security, Medicare, or other government benefits;
- invest your money;
- handle transactions with banks and other financial institutions;
- buy and redeem insurance policies and annuities;
- lodge taxation return and pay taxation assessments;
- operate your small business;
- claim property you inherit or are otherwise entitled to;
- hire someone to represent you in court;
- manage your investments.

Who should be an Attorney?

A Power of Attorney gives a person, called an Attorney, the power to act and sign on behalf of another when required. This person nominated may be:

- A relative.
- A friend.
- An associate.
- Tasmanian Perpetual Trustees.

An Attorney becomes the agent of the person giving the Power of Attorney and the decisions that they make are binding. Therefore it is very important to choose someone reliable, trustworthy and experienced in financial management.

You can appoint more than one Attorney. For example, you may appoint initially a spouse and if unable to act, appoint Tasmanian Perpetual Trustees in substitution, to be your Attorney to look after your financial affairs.

Fact or fiction?

Is it true that some people contest Wills just to cause trouble?

There have been cases where large estates have been significantly reduced through years of litigation between the family. Think of the dispute between Rose Hancock-Porteous and Gina Rhinehart over Lang Hancock's estate or Dicken's Jarndyce case in Bleak House that went on for 50 years. Some State legislation provides that a person that makes a claim on an estate that is found to be unmeritorious, might have to pay everybody's legal costs.

Types of Power of Attorney

There are two types of Power of Attorney, an Enduring Power of Attorney and a General Power of Attorney.

The Powers of Attorney Act provides that a person granting an Enduring Power of Attorney must first understand that they:

- (a) may specify or limit the power to be given to an attorney and also instruct an attorney about the exercise of the power;
- (b) know when the power will begin;
- (c) know that once the power for a matter begins, they still have power to make, and will have full control over, the matter subject to terms or information about exercising the power included in the Enduring Power of Attorney;
- (d) know they may revoke the Enduring Power of Attorney at any time whilst they retain the mental capacity to do so;

- (e) know that the powers they have given continue even if they subsequently lose their mental capacity;
- (f) know that they will be unable to oversee the use of the power if they subsequently lose mental capacity.

An **Enduring Power of Attorney** allows financial or legal decisions to be made on your behalf even if you lose the capacity to make them yourself.

However, with regard to personal, medical or lifestyle decisions an Enduring Guardian must also be appointed.

An Enduring Power of Attorney may begin operating at a specified time and may continue to operate even if the person loses the ability to make decisions for themselves at some time in the future.

The Enduring Power of Attorney ceases to operate on death. The Will then becomes the legal document to dispose of your estate and your Executor commences the estate administration.

A **General Power of Attorney** is basically the same as an Enduring Power of Attorney except that it ceases to operate when the capacity to make decisions is lost, which is probably when it is needed most. This is why most Powers of Attorney made these days are Enduring Powers of Attorney.

Both a General and an Enduring Power of Attorney can be limited to certain types of transactions, or for a specified period of time, or for a defined set of circumstances.

When should a Power of Attorney be considered?

A Power of Attorney can only be made when a person is capable of making decisions for themselves. It can be made at any time so that it is ready, if and when it is needed. For this reason it is often suggested that an Enduring Power of Attorney document be prepared at the same time as a Will.

People should also consider making an Enduring Power of Attorney if they are planning to travel overseas or are failing in health. By appointing an Enduring Power of Attorney to act at these times, a person's best interests are safeguarded if the ability to make decisions independently is lost, even temporarily.

If decision making ability is lost through illness, accident or trauma and a Power of Attorney has not been made, it may be necessary for an Administrator to be appointed to make those decisions. The Guardianship and Administration Board of Tasmania chooses the Administrator. The Administrator appointed by the Board may not be the same as the disabled person would have chosen for themselves.

Power of Attorney and Tasmanian Perpetual Trustees

Acting as an Attorney is often a responsibility best given to a trained professional rather than a burden put on friends or family. Tasmanian Perpetual Trustees can prepare a Power of Attorney to be held on a contingency basis.

If Tasmanian Perpetual Trustees is appointed as Attorney, an account manager with whom the family can talk, in complete confidence is appointed. This account manager will work closely with the family to ensure that the person's best interests will be looked after should the Enduring Power of Attorney need to be activated. Tasmanian Perpetual Trustees will hold the Power of Attorney with the understanding it is only to be used on instructions or in the case of emergency. Naturally, the person retains the right to revoke the Power of Attorney at any time.

If the Power of Attorney is activated, records are maintained and regular financial statements issued.

Besides being an experienced member of the Tasmanian Perpetual Trustees team, the account manager is supported by in-house specialists that can assist with investments and income tax.

Fact or fiction?

Is it true there must be a 'Reading of the Will' ?

This is a dramatic idea much loved by Hollywood – but it is not a legal requirement and many families would find it quite stressful. It may also be a breach of confidentiality. However, once Probate of a Will has been granted by the Supreme Court, the Court records can generally be searched and copied by anyone, for a fee.

Administration under Guardianship and Administration Orders

Adults who have not made an Enduring Power of Attorney and who subsequently become incapable through injury or illness of managing their own financial affairs or requiring decision-making assistance may need to have guardians and administrators appointed by the Guardianship and Administration Board to look after them. Tasmanian Perpetual Trustees, when appointed as an Administrator by the Guardianship and Administration Board, can manage the financial interests of a client and advise on a variety of financial and legal issues.

Enduring Guardianship

When taking out an Enduring Power of Attorney consideration should also be given to appointing an Enduring Guardian. Someone to make lifestyle decisions for you if, as a result of an accident, illness, or some other event, you lose your mental capacity to make reasonable judgements about your future lifestyle conditions.

Decisions such as:

- where you should live e.g. to continue to live at home or move into a nursing home;
- the health care or medical treatment you should receive;
- other personal services you should receive e.g. home support, meals on wheels etc.

An example of the need for an Enduring Guardianship is set out below.

You are ill and your condition is worsening. You can no longer live at home on your own. Mentally, you are unable to make a decision about where to live. Your daughter wants you to live at her home and she has made arrangements for this. Your son believes you will be best cared for in a nursing home. Prior to losing capacity, you appointed an Enduring Guardian. The decision of where you will live once you have lost capacity is now up to your guardian to make.

You and Tasmanian Perpetual Trustees

Regardless of whether your estate is large or small, Tasmanian Perpetual Trustees can help you in planning to achieve the maximum benefit for the beneficiaries of your estate.

A relationship with Tasmanian Perpetual Trustees provides many advantages, particularly at the present time when changing market conditions call for close attention to planning and investments.

Tasmanian Perpetual Trustees pays careful attention to trends in investment planning, taxation and other current economic matters. This knowledge will be of great value to you long before the work of actual estate administration begins and it can be particularly valuable where the investment of funds on behalf of children is concerned.

Comprehensive financial planning and investment advice is available. Tasmanian Perpetual Trustees has the knowledge and experience to assist you with a comprehensive estate planning process that includes a Will and Power of Attorney. Your Will ensures that your estate will be transferred in accordance with your wishes. Your Power of Attorney also provides a means of deciding who will manage your financial and legal affairs if you are ever unable to do so yourself.

The experienced staff at Tasmanian Perpetual Trustees have the expertise to provide you with high quality estate planning services that are tailored to your personal requirements.

Appointing Tasmanian Perpetual Trustees as an Executor

Being an Executor can be a difficult and challenging exercise. It is generally best given to professionals who have the expertise and skills to ensure that your estate is managed as efficiently and effectively as possible.

There are many reasons why it is a good idea to appoint Tasmanian Perpetual Trustees as an Executor.

For example, consider the following:

- **Complexity of the law** - The law relating to Executors and the administration of estates is complicated. An ordinary person who is appointed as Executor is generally unfamiliar with the law and its intricacies. Appointing a friend or family member as Executor could place a heavy responsibility on that person and the estate could suffer through inexperience. Usually, inexperienced Executors will generally need to be guided by and rely on a lawyer and accountant, all of whom charge professional fees.
- **Availability** - A friend or family member may not be available when the time comes. They may die before you, may fall ill or die during the Executorship or may have moved out of the State or country or are otherwise unable to act. Tasmanian Perpetual Trustees does not grow old, become ill, or die, or move away. It is always available.
- **Conflict** - Conflicts sometimes occur between beneficiaries. An individual, private Executor may be swayed by pressure or preferences. Tasmanian Perpetual Trustees remains impartial and treats all beneficiaries with equal consideration.

These are a few examples which show why you should choose your Executor wisely. To ensure personalised attention to the interests of all beneficiaries combined with speed, safety and certainty in Trust administration, appointing Tasmanian Perpetual Trustees is a wise choice. The specialist staff at Tasmanian Perpetual Trustees are trained and experienced in all aspects of trustee work.

It can also be the case that family members or friends acting as Executors can be quite costly.

It is not always correct to assume that it is more economical to appoint a relative or friend as Executor. Private individuals often make the most expensive Executors. The volume of work required is large, even in the case of a small estate, and is often beyond the unassisted capacity of an inexperienced Executor. The law relating to estates and taxation is complex and the inexperienced Executor may often sacrifice money unnecessarily due to lack of knowledge or sheer inability to cope with the amount of work.

It is also worthwhile to consider the cost for legal, accounting and taxation advice to bring a private Executor 'up to speed'.

Furthermore, when you appoint Tasmanian Perpetual Trustees as your Executor you have peace of mind from knowing that its operations are strictly controlled by law to ensure the safety of the estate and the interests of beneficiaries.

Tasmanian Perpetual Trustees was established in 1887 to be an impartial and professional Executor and Trustee for Tasmanians and over 120 years later this remains a core part of its expertise and reputation. Tasmanian Perpetual Trustees has faithfully administered many thousands of estates entrusted to its care and by appointing them as your Executor you are assured of security and continuity of service.

Fact or fiction?

If you don't have "sound mind" you can't have a Will.

Tasmania is one of the few Australian jurisdictions that will enable a person who lacks testamentary capacity (the ability to understand that they have property, that they are planning to dispose of that property and to whom that property will pass) to have a Will made for them. The process is described in the Wills Act 1992 and involves the Guardianship and Administration Board hearing submissions from family and friends and then deciding what provisions the Will of that person should have. The Board is required to make a Will that is most likely what the person would have wanted, had they enjoyed testamentary capacity. It is then prepared and a copy sent to the person and a copy to the Public Trustee for safekeeping.

Fees and commissions

Professional fees

In common with other professional service providers, Tasmanian Perpetual Trustees charges fees for providing services. We believe our fees are fair and competitive. All fees and charges are inclusive of GST and are current at date of printing.

Estate planning

The fee to prepare a new Will or revise an existing Will (where Tasmanian Perpetual Trustees **is** appointed an Executor):

\$88	single person
------	---------------

\$132	couple
-------	--------

The above fee will include preparation of a Power of Attorney.

The fee to prepare a new Will or revise an existing Will (where Tasmanian Perpetual Trustees **is not** appointed the Executor):

\$495	single person (basic Will)*
-------	-----------------------------

\$660	couple (basic Will)*
-------	----------------------

** If the Will is complex an hourly fee of \$275 will apply*

A discount of 25% will apply to holders of a Seniors Card.

Estate administration - Executorship

Tasmanian Perpetual Trustees provides a premium service covering the full range of administrative and legal services usually necessary to complete every aspect of estate administration. The fees reflect the expertise and effort required to fulfil legal and associated responsibilities, the personalised nature of our service and the benefits we provide in terms of impartiality, peace of mind and security.

Gross value of the estate	Maximum flat rate of commission applied to the gross value of the estate*
Up to \$300,000	5.5%
\$300,001 to \$500,000	4.4%
\$500,001 to \$1,000,000	3.3%
\$1,000,001 to \$2,000,000	2.2%
Above \$2,000,001	1.1%

* *The following assets are NOT counted as part of the estate and therefore are excluded from capital commission charges:*

- *assets held as joint tenants (e.g. where the deceased might own a home as “joint tenants” with his or her partner); and*
- *superannuation and life insurance assets which are not paid to the estate (e.g. where the policy specifically nominates a beneficiary and the benefit is paid directly to that nominated beneficiary).*

Example of the impact of fees and commissions on an estate (value of \$205,000)

Type of assets of deceased	Asset values	Estate commission	Explanation
Family home in joint names	\$350,000	No commission	Family home in joint names (Joint Tenants) with spouse - not part of the estate - no commission payable.
Furniture and effects	\$25,000	No commission	Furniture and effects owned jointly with Spouse - not part of the estate - no commission payable.
Motor vehicle	\$10,000	5.5% Commission	Motor vehicle in name of deceased - will be sold or transferred depending on terms of Will - commission payable.
Life insurance	\$150,000	5.5% Commission	No nominated beneficiary and proceeds paid to the Estate - commission payable.
Superannuation	\$200,000	No commission	A nominated beneficiary and proceeds paid by the superannuation fund directly to the nominated beneficiary and therefore is not part of the estate - no commission payable.
Managed funds	\$50,000	No commission	Managed funds in joint names with spouse - not part of the estate - no commission payable.
Share portfolio	\$40,000	5.5% Commission	Shares all held in the sole name of the deceased and forms part of the estate - will be transferred or sold depending on the terms of the Will - commission payable.
Cash	\$5,000	5.5% Commission	Cash held in the sole name of the deceased and forms part of the estate - commission payable.
Value of the assets of the deceased (including jointly owned)	\$830,000		
Estate value	\$205,000		
Commission payable @ 5.5%	\$11,275		
Distribution to beneficiaries	\$193,725*		

* excludes consideration of out-of-pocket, incidental and testamentary expenses which would also be deducted from the estate.

Example of the impact of fees and commissions on an estate (value of \$550,000)

Type of assets of deceased	Asset values	Estate commission	Explanation
Family home in joint names	\$350,000	No commission	Family home in joint names (Joint Tenants) with spouse - not part of the estate - no commission payable.
Furniture and effects	\$25,000	No commission	Furniture and effects owned jointly with spouse - not part of the estate - no commission payable.
Motor vehicle	\$10,000	3.3% Commission	Motor vehicle in name of deceased - will be sold or transferred depending on terms of Will - commission payable.
Life insurance	\$150,000	3.3% Commission	No nominated beneficiary and proceeds paid to the estate - commission payable.
Superannuation	\$200,000	No commission	A nominated beneficiary and proceeds paid by the Superannuation Fund directly to the nominated beneficiary and therefore is not part of the Estate - no commission payable.
Managed funds	\$140,000	3.3% Commission	Managed funds in sole name
Share portfolio	\$205,000	3.3% Commission	Shares all held in the sole name of the deceased and forms part of the estate - will be transferred or sold depending on the terms of the Will - commission payable.
Cash	\$45,000	3.3% Commission	Cash held in the sole name of the deceased and forms part of the Estate - commission payable.
Value of the assets of the deceased (including jointly owned)	\$1,125,000		
Estate Value	\$550,000		
Commission payable @ 3.3%	\$18,150		
Distribution to beneficiaries	\$531,850*		

* excludes consideration of out-of-pocket, incidental and testamentary expenses which would also be deducted from the estate.

Out-of-pocket expenses

To cover incidental and out-of-pocket expenses incurred during the administration of an estate, such as postage, photocopying, facsimile and telephone costs, or travelling, a charge of \$88 per Residuary beneficiary and \$44 per Legatee, will apply.

A fee of \$9.90 will also apply for the processing of each Electronic Funds Transfer (EFT) or for the preparation and drawing of a cheque.

Family beneficial rate

A family beneficial rate* of 3.3% will apply to the transfer (not sale) of real property for estates under \$1,000,000, otherwise the aforementioned scale of fees will apply.

**The family beneficial rate applies to a spouse (husband, wife or significant relationship as defined by the Relationships Act 2003) and children including adopted children and step children.*

Income collection fee

For income collected whilst administering the estate, a fee of 5.5% of the income received will apply.

Ongoing trust administration

If an ongoing Trust is administered, for example, to provide for infant or vulnerable beneficiaries, a trusteeship fee of 1.1% p.a. is charged on the gross value of trust assets, from the time the trust is established and for its duration. This fee will cover the ongoing care, maintenance and administration of the trust.

Depending on the value of the trust, a fee may be charged to the trust for specialist investment advice.

Power of Attorney management under “enduring” phase or management under an Order of the Guardianship and Administration Board

If a client’s assets are managed or administered under the “enduring” provisions of a Power of Attorney or under an Administration Order of the Guardianship and Administration Board because the client suffers loss of intellectual competency, a management fee of 1.1% p.a. or \$1,500.00 p.a. (whichever is the greater) is charged on the gross value of the assets managed or administered in this trust capacity from the time of appointment and for its duration.

This fee will cover the ongoing care, maintenance and administration of the trust.

Depending on the value of the trust, a fee may be charged to the trust for specialist investment advice.

Funeral bonds

A Tasmanian Perpetual Trustees Funeral Bond is a simple and practical investment plan designed to accumulate and safeguard funds that can only be used for your funeral.

It also means that those you care about are not burdened with added distress at a very difficult time.

There are many other benefits:

- Several flexible payment plans.
- Funds are securely invested and capital guaranteed.
- Free of GST in most cases.
- Taxation advantages.
- Valuable pension exemptions (Centrelink and DVA).
- Designed to keep up with inflation.
- Option to assign direct to a funeral director.

The funds in the Tasmanian Perpetual Trustees Funeral Bond are only for the purpose of meeting your future funeral expenses. The account balance cannot be withdrawn prior to death. This means your funeral plans are safeguarded and cannot be compromised by the financial demands of everyday living.

The Tasmanian Perpetual Trustees Funeral Bond is simple and flexible. It allows people to save for the cost of future funeral expenses, either progressively or with a single lump sum. As the Funeral Bond is also an investment plan there may be a return on your investment by way of an annual bonus – depending on the performance of the relevant fund.

People can contribute to their funeral bond by a single lump sum payment or through an initial contribution of at least \$500 and further contributions of at least \$500 until the chosen maximum amount is reached. Another option allows you to make regular monthly payments of at least \$42 per month. A funeral bond can be held in individual or joint names – or ownership can be assigned to a funeral director to pay for a pre-planned funeral.

Couples can each own an individual funeral bond. The advantage of individual ownership is that each person can invest up to the nominated amount, with both parties separately covered for their own funeral expenses. Joint ownership means that a single Funeral Bond is owned by two people but one funeral only may be funded by the bond.

Glossary of estate planning and estate administration terms

Agent	A person or organisation who acts on your behalf and by whose actions the <u>Principal</u> is bound.
Attorney	An Agent who is authorised to act by a Power of Attorney.
Beneficiary	A person who benefits under the Will or trust.
Bequest	Disposition of personal property by Will, also known as a <u>legacy</u> .
Common form	A Will can be “proved” in common form. Nearly all Wills are proved in common form. In rare circumstances such as a conditional gift or where there are serious questions about the Willmaker’s mental capacity or intention a Will may need to be proved in <u>solemn form</u> by way of a formal Court hearing before a Judge.
Disability	Legal incapacity or inability to contract such as with infancy, bankruptcy, and lunacy.
Estate	The assets and liabilities of a person.
Executor	The one entrusted by the <u>testator</u> to carry out provisions of their Will.
Intestate	To die without having prepared a valid Will.
Joint tenancy	The ownership of property by several persons, where on the death of one joint owner the property passes to the survivors.
Legacy	Personal property (generally cash) bequeathed by a Will.
Life interest	A type of gift under a Will which enables a person (the <u>Life Tenant</u>) to occupy real estate or receive rents or other income from assets during their lifetime.
Life tenant	A person whose benefit in property is limited to his or her lifetime.
Liquidity	The availability of ready cash.

Power of appointment	A power given by Will or Deed by which a nominated person may choose beneficiaries as to certain property.
Principal	A person or organisation for whom the Agent acts.
Letters of Administration	A grant of Letters of Administration from the Court to the personal representative of a person who dies intestate, i.e., without a Will.
Probate	A grant of Probate from the Court to the personal representative of a person who dies leaving a valid Will which names an Executor.
Residuary beneficiary	The class of beneficiaries who share what is left over after all debts and costs are paid, legacies and bequests satisfied, and assets collected.
Residue	The portion that remains of a deceased's estate after setting aside all the legacies, other sums and property specifically allocated and payment of all debt has been made.
Settlement	Where the property is transferred to Trustees for the benefit of persons or institutions upon certain conditions.
Solemn form	A Will can be "proved" in Solemn Form. Nearly all Wills are proved in <u>Common Form</u> . In rare circumstances such as a conditional gift or where there are serious questions about the Willmaker's mental capacity or intention a Will may need to be proved in Solemn Form by way of a formal Court hearing before a Judge.
Testamentary trusts	Any Trust established under a Will. Often used to split income for tax purposes or to protect assets.
Testator	A person making a Will.
Will	A document providing for distribution of one's estate on death.
Willmaker	A person who makes a Will.

Important estate planning information

Location of important documents (eg Title deeds, life policies, capital gains and taxation records, Will, POA)

1.

2.

3.

4.

5.

Contact details of key people
(eg accountant, solicitor, Trustee etc)

1.

2.

3.

4.

5.



Tasmanian Perpetual Trustees

Burnie	17 Cattley Street	P: (03) 6440 8440	F: (03) 6440 8446
Devonport	53 Best Street	P: (03) 6498 7533	F: (03) 6498 7536
Glenorchy	366 Main Road	P: (03) 6214 7800	F: (03) 6222 1266
Hobart	29 Murray Street	P: (03) 6222 1222	F: (03) 6222 1266
Kings Meadows	Shop 27 Centro Meadow Mews	P: (03) 6336 6955	F: (03) 6348 1166
Kingston	Shop 1 Kingston Plaza	P: (03) 6211 8755	F: (03) 6222 1266
Launceston	23 Paterson Street	P: (03) 6348 1111	F: (03) 6348 1166
Rosny	11 Bayfield Street	P: (03) 6233 1533	F: (03) 6222 1266
Ulverstone	21 Reibey Street	P: (03) 6490 8333	F: (03) 6498 7536

info@tptl.com.au www.tasmanianperpetual.com.au

Tasmanian Perpetual Trustees Limited ABN 97 009 475 629 AFS Licence 234630
is a wholly owned subsidiary of MyState Limited ABN 26 133 623 962 V3 3.10.09

Wills | Investments | Lending | Financial Planning | Trustee Services