

DOES YOUR WILL DO WHAT YOU WANT IT TO? - ASSETS THAT DO NOT AUTOMATICALLY FORM PART OF YOUR ESTATE

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Were you aware that you may not be able to give away all assets by your will? It is important when preparing your estate plan that you seek estate planning advice in relation to assets which can be dealt with by your will and assets that may not be able to be dealt with by your will and to then appropriately deal with your assets to give effect to your wishes.

Some common misconceptions we come across are that the below assets are automatically dealt with by a will:

- *Jointly held property* - This property automatically passes to the surviving joint owner(s) on the death of the first joint owner and will not form part of the estate of the first joint owner dying. Where appropriate, the joint tenancy can be severed and converted to tenants in common which will then allow for the deceased's interest in the property to be dealt with by their will.
- *Property held in trust* - Trust assets do not form part of your estate to be dealt with by your will as the trust property passes to or is held for the beneficiaries of the trust according to the terms of the trust. However, if you have control of a trust, you may be able to pass the control of the trust under your will (subject to the terms of the trust deed).
- *Superannuation* - Your superannuation may or may not form part of your estate.

Where your superannuation fund allows you to make a binding death nomination, and where it is valid, then the trustee of your superannuation fund must pay your death benefit in accordance with your nomination. However, it is important that the rules of the superannuation fund in making a binding death nomination be complied with to ensure it is valid. The nomination will normally allow for superannuation dependents and/or your estate to be nominated as beneficiaries.

If you have no nomination, a preferential nomination or an invalid binding death nomination, the trustee of your superannuation fund will have the discretion to decide to whom your death benefit will be paid, being either to your superannuation dependents and/or your estate.

Given superannuation (and the insurances attached to it) can be substantial in value, it is important that proper consideration be given to what will happen to the superannuation

asset on death.

- *The proceeds of life insurance policies* - Depending on your beneficiary nomination, your life insurance may or may not be paid to your estate. If the owner of the policy has nominated a beneficiary of the policy, the nomination takes precedence over the terms of the will. It follows, that where a nomination is made, the proceeds of the policy do not form part of the estate unless the beneficiary is your estate. If you wish the proceeds of the policy to go to someone other than the nominee you cannot do it by will and rather you must change the nomination.

To ensure that your wishes for your assets can be implemented on death it is critical you obtain estate planning advice on dealing with those assets that will form part of your estate and those that will not.

If you would like advice on your estate plan, [please contact our wills & estates team](#) who can assist you with tailoring an estate plan to suit your needs.

AUTHORS