



Hutchinson
Legal

Loan to your
Children

Appointing an
Executor

Importance
of a Will

SPRING 2023

Insight

Spring is Here

Francis Atterbury said: “It is the attention to detail that makes the difference between average and stunning”. In this Spring edition, we focus on the finer details of estate planning, aiming to reduce legal complexities and provide valuable guidance. We hope you enjoy!

A loan to your children – a generous gift or a future rift

Parents have long considered lending money to their children to help them financially. However, if the children do not repay the loan, the consequences may be far-reaching.

If a loan agreement is in writing and the child cannot repay it, the parent, (known as the lender) can enforce repayment of the debt in a civil court proceeding. This is a costly exercise depending on the loan amount and the terms of the loan.

But what happens if the loan agreement was made verbally or with a handshake? The majority of these cases result in the payment being presumed to be a “gift” or an

“advancement” rather than a loan. If a parent does agree to a loan without any formal agreement, they should also be prepared to part with that money permanently. It is highly recommended that all loan agreements are written and formally executed.

You can read the full article on our website at <https://www.hutchinsonlegal.com.au/resources/a-loan-to-your-children/>

If you would like to discuss this or any other issues, the Family Law team will be happy to assist on 9870 9870.

“The beautiful spring came, and when nature resumes her loveliness, the human soul is apt to revive also.”

HARRIET ANN JACOBS

FAST FACTS

1700

The number of different species of Australian native bees.

20%

Australia's population suffers from hay fever.

6 weeks

Average duration of time in which a magpie hatches and becomes capable of flight (swooping season).

What factors should I consider when appointing an executor in my will?

The appointment of an Executor is a very important decision. It has a significant impact on the administration of your affairs after your death and also upon the dynamic of family relationships.

An Executor is in charge of you and your estate from the moment of your death. He, she or they can make decisions about the disposal of your body, your funeral arrangements and the way in which your estate is administered in accordance with your Will. He, she or they can also

step into roles you occupy such as sole Directors, Trustees, Guardians or Appointors of a Family Trust or as the Trustee of a Self-Managed Super Fund.

Any number of Executors can be appointed in a Will but only four (4) can apply for Probate. Not all of the appointed Executors need apply for Probate and the opportunity exists for those appointed to choose one or two named Executors to make the application for Probate and one or more of the others can then be appointed as Reserve Executors.

It is important to weigh up the particular skill set of the people appointed, against the dynamics of family relationships. In cases where a Testator has multiple children (even if one is an Accountant or Financial Planner) it is often recommended appointing all of them, to prevent family conflict and resentment.

Executors who are not professionals can engage Lawyers to do the legal work but they can still be in charge of any decisions which need to be made in the administration of the estate. If the

potential for family conflict exists by the nature of any appointment, it can often be eliminated by a discussion at the time the Will is made.

You can read the full article on our website at <https://www.hutchinsonlegal.com.au/resources/appointing-an-executor-in-my-will/>

If you need any advice on who to appoint as your Executor, please ask our Wills and Estates Team by contacting them on 9870 9870.



Staff Spotlight

In this edition, we feature Annabel Tee, who has recently been promoted to Associate. Annabel shares her insights on her career and working at Hutchinson Legal.

"Becoming a lawyer was driven by a strong desire to make a tangible difference in people's lives and be a source of support during their toughest times. Working at Hutchinson Legal has allowed me to fulfil this passion and connect with my clients."

"My enthusiasm for law centres around areas that involve dealing with individuals, especially family law. I believe the decisions parents make, can significantly impact their children's lives, for better or worse. Being a part of shaping the next generation motivates me."

"To ensure my clients feel supported and understood throughout the legal process, I prioritise being available for them. I avoid using complex legal jargon and take the time to explain matters with care and compassion. Providing pragmatic options, beyond mere legal advice, helps them navigate the challenges more effectively."

"For those seeking legal representation for the first time, I always emphasise the importance of honesty with their lawyers. It is crucial to find a trustworthy legal counsel in whom they can have confidence to guide them through the process successfully."

Outside of work, Annabel enjoys exploring the newest coffee roasters in town. Hot mat Pilates sessions are Annabel's go-to ways to unwind and stay energised.



Why it is important to have a valid and up to date will

A recent court case has highlighted the need for you to have a valid and up to date Will.

In a case involving the estate of the late Mr Thomas, a will was found at Mr Thomas's home following his death in 2021.

Friends of Mr Thomas, Richard and Deborah Nightingale, and his nearest living relatives led by his cousin Gregory Campbell, issued a proceeding in the Supreme Court of Victoria

Under the Will validly made in 2011, Mr and Mrs Nightingale had been appointed as executors and trustees of his estate, as well as being the estate's sole beneficiaries. However, at some point between the making of the Will and his death, the Court found that Mr Thomas had deleted the names of Mr

and Mrs Nightingale as both executors and beneficiaries from the Will using black ink.

As the Will contained no other directions, the Court found that the Will was invalid as a result of the markings made by Mr Thomas. It lacked essential information including the nomination of at least one executor and instructions as to who would receive his estate upon his death.

You can read the full article on our website at <https://www.hutchinsonlegal.com.au/resources/a-valid-and-up-to-date-will/>

If you wish to discuss your will, please contact our Wills and Estates Team on (03) 9870 9870.



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