

# business services directory

## Legal advice for park owners and operators including

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- Retail Leases Act
- Asset protection

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- Please contact either:-  
Lloyd Palmer, Darren Ricardo or Les Newman

## Protect your future - Wills and Powers of Attorney

By Robin Parsons, Special Counsel and Accredited Wills & Estates Specialist, Rigby Cooke Lawyers

One way of looking at wills and powers of attorney is to think of them as a form of protection for the assets you have worked hard to build up. A bit like insurance. If you die or become seriously ill or incapacitated, and you have in place up-to-date wills and powers of attorney, then there should be benefits and savings to you and your family, both economic and emotional.

If you die without leaving a will, your estate will usually take longer to wind up and it will be more expensive than if you had made a will. More importantly, though, you do not get to decide who will administer your estate, who will benefit from your estate, or when beneficiaries will receive their share of your estate.

Your assets, including your business if it is owned by you, will be sold and distributed according to a statutory formula. You have no say as to who will take over your interest in the business.

If, for example, you were to die leaving a spouse and one or more children, your spouse would receive only the first \$100,000 of your estate plus one-third of the balance of the estate. Your child or children would receive the remaining two-thirds of your estate when they reach 18 years of age.

That could mean not only that your spouse suffers financially as a result of not receiving a greater share of your estate but it might also be undesirable for your children to inherit a substantial amount of money at the age of 18 years. An option for your spouse would be to make a claim against your estate for a greater share of it but invariably that will lead to even greater expense to your estate.

If you are the sole director/shareholder of a company that owns the business, then dying without a will usually leaves the company without any person properly authorised to immediately manage the company.

Also, if you are going to make a will, it is usually better to get it professionally drawn up. Although it is possible to do it yourself or have a "simple" will prepared cheaply, the reality is that in many cases such a will fails to deal adequately with all assets and complexities and can result in far greater cost to your estate after you die.

A professionally drawn will can also provide other benefits such as significantly reducing the tax payable on income distributed for the benefit of children under 18 years of age as well as protecting assets from the risks of divorce or bankruptcy.

It is also a good idea to make an enduring power of attorney (financial) in case you lose the ability to manage your affairs. This can be important to ensure the continued smooth running of a business.

If you become seriously ill or incapacitated and do not have an enduring power of attorney (financial), then only the Guardianship List of VCAT can appoint someone as an administrator to make financial and legal decisions on your behalf. That person may not be the person you would have chosen. Even if it is, their actions will be monitored by government authorities who can over-ride decisions of the administrator who might be your spouse.

For complete "protection" you should also consider the benefits of making an Enduring Power of Attorney (Medical Treatment) and an Appointment of Enduring Guardian.

Please contact Robin Parsons at Rigby Cooke Lawyers on 03 9321 7826 or rparsons@rigbycooke.com.au if you need assistance with wills and/or powers of attorney.

*This article contains general information and should not be acted upon without specific professional advice based on your own circumstances.*