



Your estate is made up of everything you own at the time of your death. However, some things are not included in your estate and are not controlled by your Will.

What's Not Included in Your Estate?

Jointly owned assets

Any properties you own with another person as a joint tenant will not be included in the estate.

When a joint tenant of a property dies then the person's interest in the property passes automatically to the surviving joint tenant, assuming they meet a given set of rules for survivorship.

A formalised application to Landgate may also need to be made on behalf of the surviving tenant.

However, if you own property together with another person "as tenants in common" then your share or interest in that property will be controlled by your Will.

Discretionary Trusts, unit trusts and companies

Whether a Trust Asset forms part of a deceased estate depends on the type of estate and trust.

Generally, a trust is a separate legal entity and remains under the control of the trustee or successor trustee appointed after your death (in the case you were the trustee).

Assets owned by discretionary trusts, unit trust or companies controlled by you don't form part of your estate.

However, any shares in the company or units that you own, are considered your assets and will be included in your estate and distributed according to your Will.

Existing trusts such as a family trust also don't form part of your estate.

Life insurance

When you set up a life insurance policy you also nominate a beneficiary. Generally, the proceeds of a life policy are paid directly to the beneficiary, without any need to be included in a Will.

If you wish for your life insurance benefits to be controlled by the terms of your Will then you need to nominate your estate as the beneficiary of your policy.

Superannuation

Typically, superannuation benefits and life insurance associated with your superannuation are not considered part of an overall estate.

When you set up your superannuation fund and any associated life insurance you would have nominated beneficiar(ies) who, in most cases, will receive the benefits upon your death.

However, if there is any dispute or confusion between your Will beneficiary(ies) and your superannuation beneficiary(ies), the Superannuation Trustees will be left with a decision about where to allocate the benefits – a decision you have no control over. This may result in lengthy delays and benefits being paid to unintended recipients.

In this case you should prepare a Non-lapsing Binding Nomination (otherwise it requires updating every three years) to provide greater certainty about who will receive the benefits in the event of your death.

Questions?

If you have any questions about what is included in your estate, please contact Now Legal to ensure your assets are dealt with in accordance with your wishes.

The information in this article is general in nature and is not, and should not be relied upon as, legal advice. You should obtain advice specific to your circumstances from a lawyer, Legal Aid WA or a community legal centre.