

A young girl with long brown hair in a ponytail, wearing glasses and a blue backpack with orange accents, is holding the hand of an adult wearing a white shirt. They are both looking up at a building in the background. The scene is set outdoors during the day.

Beneficiary Information Guide

When you receive an inheritance, it's good to think about making sure you have the right legal arrangements in place to protect it. In this guide we cover some things for you to consider to protect and maximise the value of your inheritance.

We're happy to discuss any of this with you personally.

Relationship Property

Inherited monies are treated as your own separate property in terms of matrimonial or relationship assets unless you consciously or unconsciously mix these with your other family assets. This is called intermingling and could include:

- Repaying a debt over a jointly owned or occupied property, or
- Using an inherited item for the benefit of your partner or family, or
- Payment into a joint bank account, or
- Paying joint debt or that of your partner.

Under our property laws, relationship property is split 50:50 if you separate.

Some best-practice measures:

- If you wish to ensure your inheritance remains your own separate property then you should keep the money in a separate account in your sole name for your sole use and benefit.
- You may also want to consider directing that your inheritance be paid to a trust that you are a beneficiary of (depending on whether the Will allows for that to happen), which will keep it separate from your personal assets.



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Contracting Out Agreement

To add an additional layer of protection around defining what is your separate property as opposed to relationship property, you and your partner could sign a Contracting Out Agreement (more commonly known as a pre-nuptial agreement, or a 'pre-nup'.)

This agreement sets out what will happen to your assets if you and your partner split up, for example:

- What property you each keep entirely as your separate property, and
- What property will be considered relationship property and split 50:50

Please note: Your partner will need to be independently advised by a separate lawyer.

When is the best time to arrange a Contracting Out Agreement?

There is no requirement for a Contracting Out Agreement to be signed before marriage, or within a certain period of time after your relationship starts.

This means that, provided you and your partner agree, you can have one signed at any time during your relationship.

Best practice, however, is to have one signed sooner rather than later as once you have been in a relationship for three years or more, the 50:50 rule will automatically be in effect.



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Setting up a Trust

Sometimes it is in your interest not to have assets, such as an inheritance, held by you personally. In these cases, a family trust can come in handy. For example, you may want to:

- Protect your inheritance against creditor claims (particularly if you run your own business), or
- Put it aside for your children's education or benefit, rather than your child's partner.

Every circumstance is a little different. If you're not sure whether a family trust is a right fit for you and your family, then we are happy to discuss with you.

We can discuss your particular circumstances and advise whether setting up a trust is the best option to ensure that your inheritance is protected.

Wills

Having a Will of your own in place is a fundamental part of making sure that your assets go where you want them to go when you pass away.

If you die without a Will, your assets will be distributed according to the default rules established by law, which may not be what you want or expect.

This can also add further costs for your estate administration.

If you already have a Will, it is also very important to make sure that you review it regularly and update it if you experience any major life changes, such as:

- The death of a partner or child
- A change in your marriage or civil union circumstances
- A significant change in your assets
- The death of one of your executors

If you don't have a Will, feel free to have a chat with us about the process of getting one created for you.



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Enduring Power of Attorney in Relation to Property

Having an Enduring Power of Attorney (EPA) in relation to property allows you to delegate the decision making power that you have over your assets to someone else.

This can be particularly useful for elderly people who are struggling to manage their own affairs due to old age, but also for anyone in the event of that person losing their mental capacity.

If you lose the mental capacity to manage your own property and do not have an EPA in place, your family may not be able to assist you to deal with your assets without going through a costly court application to appoint a property manager on your behalf.

Important Consideration

If you're thinking about setting up an EPA in relation to property, you should also consider setting up an EPA in relation to personal care and welfare at the same time.

This type of EPA delegates to someone else the ability to make decisions about your medical and living arrangements if you are unable to communicate your wishes in that regard.

Always plan for the future

As with a Will, we recommend that everyone has EPAs for property and personal care and welfare in place as a safety net in case something happens to them that causes them to lose the ability to make these decisions themselves.

Investment Advice

If you have received a large inheritance you may want to think about talking to an investment advisor about how to best deal with it to ensure the asset is preserved for the future.

While we can't provide you with investment advice, we can point you in the right direction. Please feel free to get in touch with us.



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