

Case Study

Arnold - Divorced, 35

Arnold has recently divorced from his wife and the property settlement for his divorce has been finalised. He has life insurance in place to ensure that his children can be looked after if he were to die and that policy is his major current asset along with his superannuation fund – his children are named as equal beneficiaries of his insurance policy and of his death benefits under his superannuation. His current will appoints his ex-wife as his executor and directs his assets to her and then to his children. Arnold is considering using a will kit to ensure that he has a will in place which does not rely on his ex-wife.

Arnold plans to appoint his sister Maggie as executor of his will and give all of his assets to his children.

If Arnold were to manage his affairs in this way, there are some consequences that he has not considered. First, even though he has named Maggie as executor in his will, his ex-wife will be the guardian of his children if he dies. Given that the majority of his assets comprise the insurance policy and his superannuation, which will flow directly to his children on his death, his ex-wife will effectively control their inheritance, an outcome he would not want.

If Arnold were to, instead, have his will prepared to include a testamentary trust for his children, with Maggie as the trustee, then he would be able to name his estate as the beneficiary of both his insurance policy and his superannuation death benefit. This would have the effect of ensuring that all of his assets flow into his estate and will be governed by the terms of his will. Importantly for Arnold, this will mean that the legacy he means to leave to his children will be controlled by Maggie rather than his ex-wife. This will enable Maggie to ensure that any distributions from the trust are used directly for their benefit, rather than the benefit of his ex-wife.

