

The Australian Finance Podcast Episode Transcript

Episode: Your Crash Course Guide to Wills & Estates

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Speakers: Kate Campbell & Marlee Viero (Guest)

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Episode transcript:

Kate: Marlee, thank you so much for joining me on the Australian Finance Podcast today.

Marlee: Thank you for having me, Kate. It's awesome to be here.

Kate: Yes. We're talking about a pretty, well - interesting for me, I'm not sure if it's interesting for everybody else -, but we're talking about Wills & Estates today which we've actually had quite a few listener requests for, and I have a real life lawyer on the episode today to give you the lowdown on all of it.

Marlee: Yes, yes. It's awesome. Very good. Wills & Estates. It's interesting to me at least.

Kate: Yeah, and you've been working in this area for quite a while now. Haven't you?

Marlee: About 5 years. Yeah.

Kate: Yeah. Wonderful. We'll have a call to action at the end so everyone can find out about Marlee and Nest Legal if they want to learn more. But, why don't we just

dive in. Marlee, why do you think that it's so important to talk about wills and all that stuff that we don't really like to talk about?

Marlee: Yeah. It can be a little bit uncomfortable to talk about but it is super important. Basically, if you're an adult and you have any assets or children including things like super or life insurance, you should have an estate plan in place so that includes your will and other documents like powers of attorney and everything like that. Most people I guess kick into gear when they've got children or they've just purchased their first home, but really we see it as the kindest thing to do for the people that you leave behind. And if you're earning an income, you should probably have a will.

Kate: I can imagine that most people have some sort of assets whether it's super when they pass away and just leaving it without a will must get pretty messy.

Marlee: Absolutely. It can definitely make things messy. It can make things expensive and time consuming for your family and your loved ones, so yeah, it's definitely important to have it in place.

Kate: Is there an age where you would suggest listeners to start thinking about getting a will or is it just as soon as you turn 18 or what's the story there?

Marlee: Look, a lot of my clients are I suppose young families, young adults like 20's, early 30's probably just starting to have kids or have just bought a home. But I have had clients who are in their early 20's before. Perhaps they've come into an inheritance or something like that or they do have significant superannuation and started earning money at a young age. Not like a specific set age but I would definitely say 20's is a great place to start.

Kate: Yeah. And I think that some people even have insurance inside their super so there could be quite a substantial life insurance payout that you don't even realize it's there. When you might be thinking, hey, I don't have any assets to give my family.

Marlee: Totally, totally. I mean, you could just one day actually read the super statement that comes in the mail or through email and look at it and think oh wow if something happens to me there's actually like a \$150K wrap up in this that I didn't know about.

Kate: If you do have a will, how often should you get it reviewed?

Marlee: I recommend every 3-5 years at least have a read of it. Things like appointing executors and guardians that might need to be something that you update often especially as your children grow older or as the people that you've appointed

grow older. If you've appointed a parent, one of your parents in there for something, that might need to be something that's changed.

Kate: Yeah. I guess over that 18 years of a child's life a lot can change there and you don't necessarily want the same person that you appointed when they are born at the age of 15.

Marlee: Exactly.

Kate: Once you have this document, where is the best place to store it? I know some people like to keep things in a safe, do you give it to the lawyers? Because I know in the movies they always go the lawyer has the will and last testament. Stuff like that.

Marlee: Yeah. I mean, if you do a will through a law firm which is definitely recommended. Most law firms will have a safe custody holding which we call a deed's registry, and you can keep all of your original documents in there. We have fire proof safes that we keep all of our original documents. And if you choose to keep it at home which some people do. If you've got a safe at home, that's a great option. Otherwise, wherever you keep your important documents at home like your passports and birth certificates and things like that. The main thing is that your family knows where to find it if something happens to you. Keeping it you know, I don't know, in the [unclear] with other random things in your house may not be the best option. But if that's where you keep your important stuff then definitely you keep it there.

Kate: Yeah, sometimes I find it so antiquated that this is such an important document and you have to have this original on a piece of paper. In a digital age it just seems really odd that a lot still like that.

Marlee: I know. It's still very old school in that sense in having that original document. I mean, there's definitely certain circumstances even in the last few years with things like Black Saturday and everything like that where tragedies were people's original documents have been unfortunately destroyed. It is possible to prove a copy of a will but it's a lot more complicated, so definitely keep the original in a safe place.

Kate: Yeah, definitely. Alright. If we dive in a little bit deeper into all of the knitty-gritty about wills, thinking about what are some other things we need to start thinking about. If we are ready to get a will, what are all those different things that go into a will that we need to start thinking about?

Marlee: Yeah. One thing, if you've got children is guardianship of your children. You need to appoint someone that you trust to raise your kids in the same way you would

like to raise them. Someone that shares a similar parenting style to you, that has similar values and beliefs, and do they have a good relationship with your children. Do they live locally? You may not want your children to need to relocate if you've got your favorite sibling living in a different state to you. Is that the best thing for your children? Guardianship in wills isn't super water type because you have a whole different range of things that can come into play there. But the person you appoint may not be the person the kids live with but it's the person that will decide where the kids live and what's best for them. That would be one thing to think about.

The second thing would be your executor. That's the person who will do everything for you which I'm sure we'll go into more detail about later. Your assets and liabilities, and what you'd like to happen with those various assets. Lots of people just like to work in percentages and say I give everything to my spouse, or my children, or my sister. But other people especially that don't have dependents like to do different things with certain assets. Here in Australia we're lucky enough to have testamentary freedom so you could basically leave your entire estate to the lost dogs home if you want to. Lots of people like to leave charitable gifts as well, maybe leaving a token amount to your favorite charity before leaving everything else to other people as well.

Kate: Yeah. I think that's probably something my listeners are very interested in terms of assets. And if we do have some investments, some shares, maybe got some cash managed funds like can you specify specific things like, I want the money in this managed fund to go to this person, I want my BHP shares to go to someone else.

Marlee: Yeah, yeah. You absolutely can. The only thing to keep in mind with that is it may need to be updated more regularly especially if you change investments or sale shares, purchase shares and so on because then you run the risk of giving something to someone that doesn't exist anymore. Yeah, lots of people do leave, you know, I leave all of my shares to this person especially in blended family circumstances, if you're looking to provide for say a spouse and children of a previous relationship to make sure that all the people in your life are getting what you think they should.

Kate: Yeah. I can imagine once you start having blended families it can get quite complicated. Are there any rules on who you leave things too there?

Marlee: Like I said earlier we do have testamentary freedom in Australia, but when it comes to blended families and things, it can get quite complex. Most people want to balance the needs of say a new spouse and children from a previous relationship, and you have an obligation to provide for certain people, in the eyes

of the court so if a claim would have come up. You're morally obliged to provide for a spouse and children as well.

Kate: Okay, so there are some limitations. If you have a family, you can't just go and leave it all to some of a charity.

Marlee: I mean you could but you're potentially leaving your executor and your family with a bit of a headache once you pass away.

Kate: We thought about some of the things we might include in a will. The other thing I noticed you firm does that I haven't really seen talked about much is having that digital asset registered because we've got all these digital profiles, we've got photos, maybe we've got the currencies. Can we give these through someone, and how do we sort of account for all of these?

Marlee: Yeah, totally. I guess digital assets are so important and it is often overlooked I find. If you got a phone, if you got an email account, if you got Netflix, if you got digital assets. I guess the best way to deal with digital assets is firstly to have a clause in your will that actually deals with them and secondly a digital assets register to the company that.

In your digital assets register, you'd say things like what you want to happen to your Facebook account, what you want to happen to your cryptocurrency, who should be looking and checking your emails and all kinds of things like that. In appointing an executor, you can also appoint a separate digital assets register, so you might say I really want to appoint my mom as my executor. But moms have no idea about digital things so I'm going to appoint my brother to look after that side of things. And everything is also subject to all the terms and conditions of individual providers as well.

You might say I leave my expensive iTunes Library with \$10,000 to my best friend but I don't know if iTunes will allow you to do that. So, there's a lot of different things that can crop up there. But the main things to consider with digital assets is sentimental value like photos of your family, if you got it on a Dropbox or something, financial value certainly cryptocurrency like you mentioned earlier and you know maybe even Paypal accounts and anywhere that you have important information stored online.

Kate: Yeah, because I can imagine you might want to give your financial stuff to a family member but possibly there might be something on your Facebook page. You don't want them to be able to just scroll through your Facebook messages so you probably want some control over that.

Marlee: Absolutely, absolutely. And with Facebook, for example, you can appoint someone actually through the settings part of Facebook to be your nominated person if something happens to you. You can do it manually through Facebook as well. But there's a lot of different ways.

Kate: Yeah, possibly more providers will start doing that. I mean I haven't thought about who gets the audible library. I don't even know if you can transfer it like that.

Marlee: Exactly, and I find it most... I did a little bit of research into these a couple of years ago, and Facebook, Instagram, they all have things that you can do. Gmail has an inactive user account. There's lots of different things. And also a lot of those providers really respect the privacy of their users as well, so you may not be able to just access someone's Facebook messages and things like that depending on the terms and conditions at the time.

Kate: I don't think any of us. I mean, when I got my will drawn up, 5 or 6 years ago now, I definitely hadn't considered any of those social media sites or Instagram pages or anything like that which, yeah, it's something to think about.

Marlee: Absolutely.

Kate: Yeah. The next question I wanted to talk about which is often a hot topic whenever wills gets brought up in the news or anything like that is about DIY will kits and those kits you can buy from the post office, sort of get off the internet for \$99 or the like. Often the words around it are like that is really dangerous to do and they just... I don't know if this is true or not but often people say they don't hold up in court. What are your thoughts on DIY will kits?

Marlee: Look, if you're making a will, you're making it because you want to work and you want to make the whole thing less stressful for your family. If you go down the DIY path, you're running a risk that that's not going to happen. I guess, when people come into our office, they often think about how they think their will look like. But we ask so many questions to get a full and proper understanding of everything going on in your life, your family structure, your asset structure, what kind of estate plan is actually best for you. Often the document that you think you're going to walk away with will look completely different - the document you end up with.

With homemade wills or DIY wills, they haven't really been made in part of a broader conversation actually about estate planning. They may not deal with property adequately. They may use incorrect language resulting in all kinds of trouble down the path when you're trying to prove the will, or they may not be signed properly. We've got very strict guidelines or rules as to how wills need to be signed in Victoria, 2 witnesses over 18, same pen, they have to sign at the

bottom of every page. The list goes on. Will kits are slightly better than doing it yourself only because they provide some guidance but they are not custom to you. They're not custom to your needs and your estate plan and your personal circumstances.

Kate: So you can't just write on a piece of paper, "I want to leave everything to my best friend." That won't work?

Marlee: I mean you could. It is possible to prove what we call informal wills. Invalid wills, we can prove them as informal wills. But the process of proving a will like that is so much more complicated. It's way more expensive. It is way more time consuming, so having it done properly just saves all of that stress and heartache.

Kate: I'm thinking one of the reasons people probably are going to these DIY kits is maybe because they can't afford a lawyer. What would you suggest people do in that situation?

Marlee: I think that a will is really an investment. If it's something that you invest in and get it right. Hopefully you won't need to update it. If you get it done properly, we provide for a lot of contingencies in our documents. We don't just plan for what happens if something happens to you. We also plan for what happens if someone, something happens to your next of kin, your spouse, your children, and so on. If it's definitely not possible then I would definitely say the will kit route is more preferred to just doing it yourself at home.

Kate: So, lawyer, DIY kit, informal will.

Marlee: Yeah.

Kate: In order of preference.

Marlee: Yes.

Kate: Okay, great. If you for some reason sadly die tomorrow and you don't have a will or you used the DIY kit and it's deemed to be invalid. What happens then like where does the money go? Does it just go to the government or...?

Marlee: No, common misconception. That's the worst, worst, worst case scenario. If you die without a will, or a valid will, you die what we call intestate and there are formulas in each state that determine how your estate is actually distributed and who it goes to. So if you've got a spouse, if you've got children, if you've got the blended family situation we spoke about earlier, if you don't have any of those people, if you you've got parents, siblings, and so on, the basic of the courts will for you provides for a lot of different circumstances.

I think you'd be looking at nieces and nephews before it goes to the government. But you run the risk of it not getting to who you wanted it to get to. You run the risk as well of not knowing who is going to be managing everything for you. If you pass without a will instead of having an executor you have what we call an administrator, so you won't get a say whoever that person is, so it just becomes messy and complicated.

Kate: I'm guessing it can take probably quite a while for the court system to work all of that out?

Marlee: Once you've got your application together, it doesn't take, it actually is a little bit quicker than having a will.

Kate: Really?

Marlee: Because with the new system in Victoria, it's all done electronically now and then you just have to post the will in. If the court is satisfied with the application they will make it quite quickly, but it's the work before actually applying for probate all that is of administration that takes the longest. If you don't have a will, that's where it takes a lot of time. Whereas, if you have a will it makes that process much more streamlined.

Kate: Yeah. I mean, you've mentioned Victoria a few times. Is doing a will different in every state?

Marlee: Yeah, it can be. And probate and administration are different state by state as well.

Kate: Is it based on the state the person passes away in, or lives in, or got the will drawn up in?

Marlee: Actually, where your assets are is really the telltale signs. If you've got, say, a property in Victoria and then a property in Queensland you'll need to get what we call a refill of probates. So you would get a probate in Victoria to deal with your Victorian assets, and then you'll have to ship everything over to the Queensland Supreme Court to get it re-stamped in Queensland to allow you to deal with your Queensland assets.

Kate: That sounds a little painful.

Marlee: It can be, but it's possible.

Kate: Yeah. A lot of my listeners probably don't have property. What if you've just got shares, maybe you had managed funds, cash in the bank account?

Marlee: Usually then we would just get probate where you live at the time. Shares and bank accounts, the court doesn't mind too much if they are interstate.

Kate: You mentioned earlier when you get to pick who is your executor. What is the role of an executor to start with?

Marlee: It's a pretty big job. I won't lie. It's the person that does everything for you, from planning your funeral, calling in your assets, selling property, closing bank accounts, paying off liabilities, and then they also become your trustee and they look after funds for any minor beneficiaries like children until they come of age.

Kate: Sounds like a lot of work. Do they get paid for that?

Marlee: They can get paid for that if your will provides a provision for an executor's commission. The Executor's commission can be awarded in 1 of 3 ways. Firstly, if the will has a clause that allows it. Secondly, if the executor seeks consent from all beneficiaries over 18. And lastly, if they make an application to the court. The wording is 'pains and troubles' that it causes them in dealing with the estate. The more painful and troublesome your estate is, the more they are likely to get out of it. But it is never more than 5%.

Kate: Okay. Who should you appoint as your executor considering how big of a job it is?

Marlee: Someone that you trust implicitly. Someone who is financially savvy. I recommend someone who is local where possible just because logistically dealing with an executor in the state or overseas can be quite difficult and the risk of losing documents is high. Yes, someone responsible. That's the main criteria.

Kate: Okay. And you probably should ask them if they are happy to be your executor while you're still alive?

Kate: Yes. Definitely having to chat with them just will make things easier, so that they are not surprised when they read your will or if someone else reads your will. You can also appoint joint executors. So if you've got a friend who maybe is a financial planner or a lawyer and you want to appoint them with one of your kids. That's quite a common thing. Just appoint people that get along with each other. That can otherwise cause a lot of headache down the track. And also, someone that gets along with the guardian of your children because that's sort of a working role together.

Your guardian sort of will may need funds for school fees and bits and pieces like that, and will have to communicate with your executor to get an advance of that child's inheritance to pay for those types of things, which is totally doable under a will and very, very common. It could be the same person. But if it is not the same person they should at least be able to work well together.

Kate: And so, if someone approaches me and says, "Can I be their executor?" What should I think about before just saying, "Yeah, sure."

Marlee: I would think about maybe their family circumstances. Think about if you can foresee any issues in the future if they pass away. Think about how close you feel to that person. Think about whether they have been open to you about their assets and liabilities. If something happens to them, would you know where. Who they bank with or who their insurance is with. Think about things like who we're going to have to call up to cancel registration on cars and just those little things that people don't think about calling up. The water authority and the council to let them know that they passed away may redirections. All of those types of things come into it.

Kate: Yeah. It does save a lot when you think about it like that.

Marlee: Yeah. And when people appoint a loved one like a spouse or a child or another family member, often they do it just because they love the person and they do it out of the kindness of their heart. If you are appointing someone as your executor who is not a beneficiary of your estate, that's when I would definitely start to think about the executor's commission to say thank you for acting on that role and appreciating they are not receiving anything out of your estate.

Kate: Yeah, because I can imagine if someone has lived a very wonderful life and they've gotten to quite an age and might have a self-managed super fund, and they've got different properties, and different assets, maybe they got a trust and a company. It could be a lot, a lot of work, like many months of work to do all that. Can you get a third party? Are there companies that do executor services?

Marlee: Yeah, definitely. If you don't want to appoint a family member or a friend or something like that, some law firms will act as executor for you. A lot of firms take that on. Otherwise, State Trustees, Australian Unity. There's a lot of different places out there that will do it. Just keep in mind that they charge a significant commission for doing that. If that's important to you then maybe you choose someone else.

Kate: Okay, it's a bit more than pains and troubles there.

Marlee: Yeah.

Kate: Alright. I think another really interesting question I want to talk about is often the drama you see after someone passes away, and a family, or an ex-wife, or daughter-in-law contests the will. And sometimes we have some very high profile cases in Australia about that. One of the rules around that, can anyone do it and how do you do it if you feel like you've been left out of a will. How would you go about contesting it?

Marlee: Yes. I mean, this differs from state to state as well. But in Victoria you need to firstly be an eligible person under the Administration and Probate Act. If you are, you need to be able to prove, firstly, that the deceased person had a moral obligation to provide for you. Generally, children, spouses, and so on can fulfill that criteria. Secondly, that you have a financial need. And thirdly, that the deceased's will didn't adequately provide for you. Those are the main things that you have to prove.

You also need to be prepared to make full financial and sometimes health disclosure to be able to prove that you are in need especially if we can't settle it outside of court. A small amount cases go all the way to a final hearing. Most are settled at mediation or before court. But, if it does go all the way to court, it's also a very expensive and time consuming process. It can cost about \$100K plus to contest the will if it doesn't get resolved early, plus sometimes the cost of the other parties as well.

In Victoria, we also have time limits so you can only contest a will 6 months after the date of the grant of probate. So not 6 months from death, but 6 months from when probate is actually granted. There's a lot of different things that come into it. But it is definitely possible, and it is something that is happening quite often.

Kate: There are some limitations on who can actually contest a will. That's probably good.

Marlee: Yeah, yeah. Exactly. There are some limitations on it so you can't just. If your next one ever passes away you can't just knock on the door and say, "I used to give him lemons off my tree."

Kate: Yeah. Most of this is dealt with outside of court so if you were a daughter and you got left out of the will and potentially fulfilled those criteria you could talk to the executor to discuss resolving this out of court.

Marlee: Exactly right. So you talk to the executor and hopefully try to negotiate a settlement. All beneficiaries would need to agree especially if it affects their share but, otherwise, if it ends up in court you get a judge to decide. But with that in

mind the court would usually ask for a mediation to occur before it goes any further. Usually most will settle at mediation.

Kate: Yeah, and I can imagine some of this... I don't know if you've dealt with any in the court that get really nasty. It probably splits families forever.

Marlee: Exactly. Yeah, totally. I have always said that money and death do really horrible things to people unfortunately and often in a time of great stress for individuals. Yeah, it can get super, super nasty, so that's again why obtaining advice before going ahead and writing someone out of your will is invaluable really.

Kate: Yeah. Right now, you know you want to leave x person out of your will for whatever reason. Is there a process you can go about to make that really clear and indisputable after that?

Marlee: There's no way to make it undisputable because if the person is eligible then they can make a claim but I personally like to put a clause in my will to say that they have given that a lot of thought and they still want to leave that person out. And I also get my clients to prepare basically like a letter of wishes for their executor to really set out the reasons why and go into a lot of detail about that because you won't be around to tell the court why you've chosen to leave x person out of your will and I guess that is a little bit of evidence that could support your argument in the event of a claim.

Kate: Okay, so really being able to demonstrate that you know what you are doing. You weren't just pressured into it by another family member.

Marlee: Yeah. Not just saying things like I've left out my daughter because she was rude to me on Christmas 2019. But, you know, maybe, I haven't spoken to my daughter in 15 years and I reached out to her and haven't had any contact with her, and really set out the breakdown of the relationship there and why you think you don't have a moral obligation to provide for that person and also why you think they don't have a financial need.

Sometimes I have clients that come to me looking to provide children with a lesser share, and it's not because of any ill affection. It could be just because, oh, child A is a millionaire, and child B is struggling and I just want to even it out a little bit.

Kate: So you can do that? You can leave different amounts, different kids and similar processes.

Marlee: Yeah, totally. But we would just still do that. That letter of wishes to make it clear so that child A doesn't come along and think that it was done in a negative way.

Kate: Yeah, you always took granny to the lawyer a month before her death and...

Marlee: Lots of that. Yeah.

Kate: When we're still alive some of the documents that we can use, powers of attorney, medical and personal, would you go talk a little bit about what they are and when someone might need them?

Marlee: Totally. So the will is what comes to effect after you've passed away and then you can then arrange powers of attorneys that come into effect while you're alive but you may no longer have capacity to make decisions for yourself. In Victoria, the ones that we have are the medical treatment decision maker, so that's who actually makes medical treatment decisions on your behalf if you can't.

It could be because you're in an accident, or you're elderly, or maybe you have dementia or something like that, or you're terminally ill. And then we've got the other document which is a financial and personal power of attorney, and that's wrapped up in one document in Victoria.

And that's where we say things like who will make financial decisions like selling property, or paying for just your everyday expenses with your money, and personal decisions, things like where you live, who you live with, what services you have access to so that could be moving into age care or Meals on Wheels coming around to help you out. All of those sort of things. So there's the two documents that we have... collectively we call that an estate plan.

Kate: You probably wouldn't need them when you're young. Would you?

Marlee: Well, a thing that a lot of people say, but I tend to disagree especially if you're someone that likes to travel a lot. Imagine getting stuck overseas or something like that. Having a power of attorney back home even if it's just mom and dad who are able to get on the phone and deal with things on your behalf. It's super important.

Even things like medical treatment decision making, you might have a really strict thing about what you want to happen if you would get into an accident like do not resuscitate or whatever your wish might be. If you don't have that document it goes to your next of kin. But if your next of kin's position on those types of things doesn't align with yours, that's not a great way to have everything end up.

Kate: Okay, it actually could be something really beneficial for someone younger. It's not just for elderly people to put into place to ensure that your wishes are carried out while you're still alive as well.

Marlee: Yeah, absolutely. Those power of attorney documents are also useful for making sure that your children could be maintained if you're alive but you lost capacity like a permanent disability or something like that.

Kate: Definitely a few different things to think about there which we probably don't. We talk them even less than wills and those kinds of things.

Marlee: They are almost more important I think because you are actually alive so appointing people in those positions is so important because that's affecting your day to day life.

Kate: Yeah, absolutely. I probably need one.

Marlee: I know a good lawyer.

Kate: Yeah, I'll give you a call. And the last thing I really want to dive into, and it's been in the news a lot recently, is about those binding death nominations in super and who gets the money when you pass away. So can you talk a little bit about what those binding/non-binding death nominations are in your super fund, and who can leave it to, and how often you should review it?

Marlee: Yes. Super is so important, especially if you think you've got no assets. You could have something tied up with your super. It has been in the news a lot lately. I'm sure you know what we're referring to there. With super you can nominate a beneficiary just like you can through your will so it could be your spouse, it could be your children. There are also nominations that can be invalid.

Nominating someone that actually isn't a financial dependent of yours could be invalid which is why we recommend people to nominate their estate or their legal personal representative instead. In that way, your superannuation and any associated benefits with that can actually form part of your asset pool and flow through your will in however you like your will to be structured. By doing a binding nomination your super fund is bound by whoever is appointed.

And if you do a non-binding nomination basically what happens in that case is the super fund has a little bit of legal room. You might have appointed one child but they might choose to pay it to your spouse instead so they are not bound by your decisions. By having no nomination the super fund has to basically do a fact finding exercise to look at who all the potential beneficiaries are, and then the trustee of that super fund needs to make a decision. And that's a very, very time consuming period of a people's family to go through.

Kate: It doesn't just automatically flow into the estate if you have nothing there?

Marlee: No, because if there is someone that's dependent on you that actually should receive it then the super fund would rather pay it to that person than your estate. Yeah, definitely. And with the super nominations they often lapse. Depending on your super fund they can lapse every three years. So every three years you'll find you might get a letter from your super fund saying, "Please update." So you definitely do that. Or, if possible, you can sometimes tick a box to say non-lapsing. But, again, all super funds are different.

Kate: And you'd have to do this for every single one of your super funds if you've got a few that you haven't consolidated.

Marlee: Exactly. Yeah, definitely.

Kate: I think I even had some misconceptions about this. I thought you could leave your binding death nomination to whoever you wanted but recent events have shown me otherwise.

Marlee: Exactly. Exactly.

Kate: Which is a little scary that super funds have their own decision making process when it comes to the money after death.

Marlee: Yeah. It's completely different to your will unless you say, I want my super to go into my estate. It's completely separate. I find it super actually causes a lot of headache for a lot of clients if there is no nomination on there. So that's something I definitely recommend. Again, if you can't afford to get a will done. It's free to print off your binding death benefit form on your superannuation funds website.

Kate: Yeah. Is it the superannuation fund legal team that does their research process and decides who the money goes to?

Kate: Yeah. It is like a death claim team and the trustee of the super fund makes the final decision. They have, again, depending on the fund, monthly meetings so they'll review every case and then ask for more information. That's why it can take so long because they trickle feed you what they need. In a lot of circumstances if you don't have a nomination... If you've got a nomination that's quite easy, you fill out some forms, provide some ID and usually it's all fine. But if there is no nomination they might say, "Okay, well, I want birth certificates of all of your children and just all kinds of different things."

Kate: Yeah, I could imagine it would be quite difficult.

Marlee: Yeah, yeah.

Kate: Yeah. And so, once you've sort of considered all these different things, I mean, what would be your sort of top tips for someone who is thinking about getting some legal protection and what thinking about everything? What should they sort of think about this?

Marlee: They should first think about the people that they'd like to appoint in the different places, the different positions. The role of the executor is so important, and also think about what their assets and liabilities are. What can be included in a will, what can't, joint assets, for example, so a husband and wife owning a property jointly. You can't give that in a will because it's not your sole asset. Again, another common misconception. Those are the main things I think about – who you want to run the show so to speak and who you'd like to leave everything to.

Kate: Awesome. Just before you wrap up, what are some of the biggest issues you see with people with wills after people die? What are the main contentious points?

Marlee: The main things that have given me a headache over the last few months are ones where people, the homemade wills. They're really making me hard to deal with. That's a big one. Other misconceptions of people just thinking that their situation is simple. If someone says, "I've got a simple situation", on the phone. It's a red flag. You know it's not simple. So those are the main things. But those homemade wills are a bit scary. They provide a... there's a lot of work in the background that goes toward getting a grant of probate when that happens.

Kate: Awesome. Is there anything else you want to say before we wrap up here?

Marlee: I guess I'd just like to say, again, to reiterate, having a will, having an estate plan in place is the kindest thing you can do for the people that you leave behind. Things are so much more simple and streamlined for your loved ones which I think is really important.

Kate: Awesome. Well, I think that's a good way to end. And if people want to learn a bit more about you, Marlee, and Nest Legal and potentially want to discuss getting a will, or power of attorney or something else sorted, where should they go?

Marlee: Yes, so our website nestlegal.com.au. We have a book chat function on there so you can book a free chat, 10-minute chat with a lawyer to talk about any estate planning needs that you might have. At Nest we do wills and estate, conveyancing, family law. Everything you need to start your nest. Our main thing is to make things as easy for clients as possible so definitely feel free to give me a call if you want to chat further.

Kate: Awesome. I think if everyone is as friendly as you there, there's nothing to stop people going and having a chat.

Marlee: Thanks!

Kate: Alright. Well, Marlee, thank you so much for joining me on the podcast today. I hope all of our listeners got something out of this and have a few things to think about after this.

Marlee: Well, awesome. Thanks, Kate. Thanks for having me.