



Avoiding the 'L' Shaped Inheritance®

by Ann Janssen

We have all heard of something going 'pear' shaped. Inheritances face a real risk of going 'L' shaped, and almost everyone I meet has a story of a friend or relative who has had the misfortune to experience this.

An 'L' shaped Inheritance® is one that was meant to go to certain people in the Will, but ended up in the hands of someone else.

Here is an example:

John and Sally are in their 40s and have two teenage children, David and Samantha. Unfortunately Sally dies leaving all of her estate to John. Her estate comprises her half share in the family home, shares and cash that she inherited from her own parents of \$500,000.00 and superannuation and life insurance valued at \$200,000.00. Her total estate is worth \$1M. John has assets of \$600,000. Five years later John meets Shirley and they marry. Shirley has three children of her own from her former marriage. Shirley comes into the marriage with assets totalling \$300,000.00. John and Shirley make Wills leaving everything to each other and then to the five children in equal shares. John dies ten years later. Seven years later Shirley is at my office wanting to change her Will to leave all of her estate to her three children.



In a nutshell, Sally's \$1M inheritance which she would have wished to go to her own two children has effectively gone to people that she did not even know, namely Shirley and ultimately Shirley's own three children. Sally's parents inheritance of \$500,000 has also gone 'L' shaped. While Sally's children can bring a family provision claim to call back some of this lost inheritance, they will spend a lot of money in legal fees trying and even if successful, they are likely to get a much smaller portion of their mother's and father's estate.

Does this story sound familiar? The cases coming before the Courts are full of stories like this. The situation becomes even more likely when dealing with blended families. It has been estimated that 70% of inheritances will not reach your grandchildren, having gone 'L' shaped somewhere in between.

The rise in blended families, divorce and the increase in the size of estates (due to increased property prices and superannuation) have all conspired to make 'L' shaped Inheritances® a more common occurrence than ever before.

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Note: The strategies below have been particularly formulated for persons domiciled in Qld. For persons resident in NSW or with property in NSW, some of these strategies may not be effective, given the concept of 'notional estate' which applies in NSW.

How can we avoid our inheritances going 'L' shaped? Estate First Lawyers have a number of strategies that we use to minimise significantly the risk of this taking place. Not all of these strategies will suit all of our clients, and we need to select the combination of tactics used carefully depending on your particular situation:

Placing Assets in Joint Names

Placing assets in joint names can be a cost effective planning tool, as joint assets do not pass into the Estate, but to the surviving joint owner. For property, the asset must be stated to be held 'as joint tenants'. This means that a person who has missed out on inheriting the asset cannot make a claim for it in a Family Provision Application, for more information see our article on [Family Provision Applications](#). Assets that fall into a deceased person's estate can be attacked by certain dependants (such as spouse, children and stepchildren) in a family provision application in Queensland. Assets held in joint names do not fall into the estate where they can be attacked in this way. Care should be taken when adopting this strategy, as transferring assets out of your sole name into joint names means that you are giving away rights to part of your property now. It also does not solve the problem once the joint owner dies, and may result in an 'L' shaped Inheritance® at that time.

Binding Nominations and Superannuation

Superannuation balances these days can be very high, particularly if there is life insurance within the superannuation policy. Most people do not realise that your Will does not determine who your super will go to. It is the super fund trustees who make this decisions and they have the discretion as to who to pay the superannuation to from a selection of superannuation dependants (determined under super legislation including spouse, children and stepchildren) or to pay it into the estate (where it would then be governed by your Will, but would also be open to attack by someone making a family provision application).

You can take this discretion away from the trustees if the fund offers binding death benefit nominations (BDBNs). A BDBN can be made in favour of a superannuation dependant direct, thereby avoiding payment into the estate where it can be attacked in a family provision claim. Be careful however because many BDBNs that are offered lapse after three years and must be renewed to remain effective.

Use of Testamentary Trusts

The use of a testamentary trust in a Will, where drafted appropriately, can ensure that the trust fund passes down the generational line to those beneficiaries that you wish it to go to. A trust fund is controlled by a trustee but that trustee does not own the assets. The trustee holds the income and capital of the fund on trust for the beneficiaries, which can for example, be your children and grandchildren. In that example, if a child dies, the trust assets do not pass under their Will (for instance to their spouse) but remain as a trust for the grandchildren. Testamentary trusts have the added benefit of offering some asset protection against divorce and bankruptcy – other culprits that lead to 'L' shaped Inheritances®.

See our article on [Testamentary Trusts](#) for more information.

Use of Family Trusts

Assets held in family trusts do not form part of your estate and are therefore not open to attack in the family provision application after your death in Queensland. You can set up a family trust while you are living and place assets into it (as opposed to a testamentary trust, which is established in your Will and does not become available for use until you pass away). You can then pass control of the family trust to the persons you wish to be the trustees of the trust after your death. Care has to be taken before establishing a family trust to be aware of the tax and stamp duty consequences of transferring certain assets into it and whether you wish to maintain the trust during your lifetime.

Other Estate Planning strategies

An estate planning lawyer understands the nature and risks of family provision claims, because they work with the cases on a daily basis. They can best advise you, for instance as to the appropriate percentages to leave to various dependants that will discourage a claim being made by them after your death. Many clients want to provide for each of their dependants, for instance, their second spouse and their children from a previous relationship, but get the percentages ‘wrong’ in terms of not providing adequately for them, thereby increasing the risk of a family provision claim after their death.

Use of Mutual Will contracts have also become very popular with our clients, whether they are in one marriage situations or blended families. These agreements place an obligation on the partners to ensure that they provide an inheritance to certain people when the surviving partner dies, such as to the children of the first partner to die.

The consequences of getting it wrong

Had Sally, in our example above, adopted some of the strategies above, her inheritance would not have gone ‘L’ shaped, and her children and grandchildren would have enjoyed their inheritance from their mother.

Family provision claims are very expensive and they are often funded from Estate assets. They are also very damaging to ongoing relationships between your loved ones after your death. They are to be avoided at all costs.

In our increasingly complex financial and relational world, there is no substitute for good estate planning now to avoid a later ‘L’ shaped Inheritance® happening to your family.

Please **contact us** to discuss how we can help you do this.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation. To find out more or to make an appointment, phone us on 1300 132 567 or email us info@estatefirst.com.au



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