



Can I stop my children receiving inheritance at 18?

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A common request from people [making their Wills](#) is to provide that their children (or grandchildren) not be entitled to their share of the estate until they reach an age of maturity later than 18 years of age. Frequently, the ages suggested are 21 years, 25 years, 28 years or even more. This blog looks at two options for delaying the age at which your children receive a share of your estate.

Delaying distribution of your estate to your children can be difficult

The difficulty with a provision of this nature is the precedent Court case known as *Saunders v Vautier* (1841). That case, which remains relevant today, states that:

- if a beneficiary is legally competent (meaning not [suffering any legal incapacity](#) such as a mental disability); and
- has a vested interest in a share in your estate (meaning that he or she is entitled to, for example, a one-third equal share of the assets of the estate along with his or her two siblings),

then that beneficiary may call on the Trustee to pay the beneficiary their interest. This is the case even though the Trust (or, in the case of *Saunders v Vautier*, the trust created in the Will) provides that it is not to be paid until a later date.

This means that once a child (or grandchild) attains the age of 18 years, then provided they are not suffering any legal incapacity (such as a mental disability), they can require the Trustee to pay to them their share of the estate even though they have not attained the required age shown in the Will.

Two options to delay the distribution

There are two options for dealing with the issue created by this Court case:

1. Take the risk

It is quite possible that your child or grandchild will accept the terms of your Will without challenge, and they will honour your intention not to take their interest in your estate until the nominated age.

If your child or grandchild does not accept the terms of your Will, then the Court may or may not decide to distribute their share in your estate early and before the nominated age.

Whether or not your child or grandchild, as a beneficiary, has a vested interest in a share of your estate is a technical area of law with minute distinctions. Therefore, if you would like certainty that your child or grandchild cannot obtain their interest until the nominated age, you would require the second option discussed below.

1. Use a Discretionary Trust (known as a Discretionary Testamentary Trust when used in a Will)

If your child or grandchild is only entitled as one of a number of potential beneficiaries under your Will, then the second component of the principle, namely, having a vested interest in a share of your estate, is not satisfied.

In other words, your child or grandchild has no direct interest in the assets held on trust under your Will, other than when the Trustee determines to give a share of those assets (or the income from the assets) to your child or grandchild. You can read more about this in our blog, [“A guide to Testamentary Discretionary Trusts”](#).

Get help from a Wills and estates lawyer

Creating a Testamentary Discretionary Trust can be complex, certainly more complex than a simple Will. Seeking advice and assistance from a lawyer experienced in Wills and estate planning is crucial. Our estate planning team has significant expertise in this area of law and will be able to guide you on the best options for your unique circumstances.

Contacting a family lawyer

For more information or to arrange a consultation with a lawyer, you can call or email us.

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