



GENERAL INFORMATION ON MAKING A WILL

A Will is a legal document that appoints your personal legal representative (your “Executor”) upon your death and names the people that you want to receive the property and possessions you own at the date of your death. It is the only way to ensure that your assets pass to the people that you choose.

This Plain English Guide answers some of the more commonly asked questions about making a will, but remember that your solicitor is available to answer any other questions or provide advice when you need it.

What happens if you don't have a Will?

If you die without a valid Will (this is referred to as dying “Intestate”), your estate will be distributed according to a formula set down by the government (called the “Law of Intestacy”). The Law of Intestacy will in all probability not reflect your wishes, particularly where you have infant children or if your circumstances are in any way unusual.

If you have no close family and you die without a valid Will your estate may pass to the State Government.

The legal procedures on intestacy are more complicated and time consuming than if you have a Will and the situation may cause expense, worry and hardship to your family and friends. Of course this expense and worry can be avoided by seeing one of our solicitors to make a valid Will.

At what time in your life should you make a Will, or review an existing Will?

Everyone over the age of 18 should make a Will. However it is particularly important to make a Will, or update your existing will if;

- you have a new child/children;
- you are in a de-facto relationship;
- you divorce or remarry after the date of your will (marriage will revoke your original Will);
- your family situation otherwise changes;
- you have acquired property or other assets, or if you dispose of an asset or an asset changes its nature;
- your executor dies or becomes unsuitable to act in the role due to a change in your relationship, age or ill health;
- you have more than one executor, if those executors are arguing or their relationship is strained;
- a beneficiary dies;
- your children have turned 18 and you would now like them to be your executor/s.



Can I make a Will at home?

You can make a Will yourself if you wish, however a Will is a very important legal document and it is not in your best interests to draft one yourself if you want to make things as easy as possible for your beneficiaries.

There are several rules that should be followed to ensure that a Will is properly signed. If one of these rules is broken, it may create problems in the administration of your estate.

There are also a number of technical rules relating to the wording of Wills. If you are not familiar with these rules it is quite possible that your Will may be interpreted in a way which you did not intend.

Lengthy delays and court cases over Wills often occur because a person's Will has been drawn without professional advice. Often the expense saved in preparing a Will at home can translate to many hundreds or thousands of dollars in costs to your estate if there are problems with your Will.

What items are usually covered in your Will?

- your home and/or investment properties - If you own a house or land with another person, whether or not this asset will pass under the terms of your Will may depend upon whether you hold that property as "joint tenants" or "tenants in common".)
- shares in private and public companies
- loan accounts in private companies
- money held in bank accounts and term deposits
- other investments such as bonds and trusts
- cash and payouts from employers
- jewellery, furniture, appliances, antiques, cars, clothing and paintings.

What items may not be covered by your Will?

- superannuation
- insurance policies
- property held as joint tenants
- your family business may not be directly covered by your Will.

Many family businesses are conducted through companies, family trusts or partnerships and it is important to remember that the business itself cannot be left by a Will. The only asset that can be directly passed on by a Will is your interest in the company, trust or partnership. Your solicitor will be able to advise you as to the best method of ensuring that your business succession intentions are carried out.



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How can a solicitor help you?

A solicitor can simplify the process of making a Will. The advantages include;

- look at your estate in detail, and how you would like to divide it, making sure that you understand the implications of your wishes;
- Where necessary we can work with your specialist financial or taxation advisors;
- You receive efficient, reliable and prompt service at all times with plain English explanations and advice;
- We can review your Will and estate plan at the various stages in your life to make sure that you and your family and friends are covered;
- We can advise you in relation to making a Will to address special circumstances such as providing for a disabled beneficiary, establishing trusts in your Will, managing your business after your death, or structuring your Will to provide tax minimisation and asset protection benefits for your beneficiaries;
- We may be able to act as an executor of your Will if you wish and look after the administration of your estate;
- Your Will can be held by the firm in our safe custody.

What should you consider prior to making an appointment to see your solicitor?

Before going to see a solicitor please consider;

- Who will be your executor?
- Would you like to appoint more than one executor or an alternative executor in the event that your first choice is unwilling or unable to act as your executor?
- Who will be the beneficiaries of your Will?
- Prepare a list of your major assets and liabilities.
- Is there any person who is likely to be angered by your Will or who is likely to challenge it? If so be sure to raise this with your solicitor.

Useful Links:

<http://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/why-make-a-will>

<http://www.australia.gov.au/topics/law-and-justice/wills-and-powers-of-attorney>

<https://www.moneysmart.gov.au/life-events-and-you/over-55s/wills-and-power-of-attorney>