

Wills

We keep the tough topics simple.



What is a Will and why do you need one?

A Will is a legal document that specifies who is to receive your assets when you die. It may also appoint a guardian for any children you have who are under 18 years of age. It operates only upon death.

If you do not have a Will, your assets will be distributed according to the formula set out in the law and you will not get to choose who is responsible for managing your assets after your death or to whom your assets are distributed. This may cause anguish among family and friends at an already emotional time.

Appointing an executor / trustee

An executor/trustee is the person who you want to appoint, who will upon your death carry out your wishes and directions as set out in your Will.

An executor/trustee is responsible for the administration of your Estate within the terms of your Will and the relevant laws until the final distribution of your assets is made to your beneficiaries. From the time that you pass away until that final distribution, your executor controls all of your assets.

Therefore, the person you choose should be someone:

- + You can trust (*or is professionally bound to act in your interest, such as your lawyer*);
- + Is honest, fair and organised;
- + Has (*or knows how to obtain*) knowledge of your financial affairs; and
- + Has the skill to deal with financial matters.

Most people also nominate an alternative person to be their executor/trustee in case the first named person(s) is/are unable or unwilling to act as executor (commonly called the substitute executor/trustee).

We recommend that you nominate a substitute executor/trustee.

If you do not have a substitute executor/trustee, the law will determine the order of the persons who could be appointed as administrator of your estate and sometimes that order of priority would not be in accordance with your wishes.

How might a standard Will distribute my estate?

We recommend keeping your Will as simple as possible by dealing with your assets as a whole.

This has the following advantages:

- + Your Will can remain relevant and effective, even if your circumstances change;
- + It allows you to buy and sell assets without having to amend your Will;
- + It allows you to have more children, without having to amend your Will; and
- + Your Will will be simpler to understand by your family

Whilst there are many advantages, there are naturally some disadvantages. These include:

- + Items of significance may not go to the person who you wish; and
- + If not drafted properly, there may be some confusion as to what forms “the whole of your estate”.

Our Standard Will Package provides for your estate to be distributed as a whole in the following manner:

- + To your spouse/partner;
 - + In the event that your spouse/partner passes away before you, to your children in equal shares;
 - + If one of your children passes away and leaves children (i.e. your grandchildren), then your child’s share would be divided equally amongst their child/children.
 - + If you do not have a surviving spouse, partner, children, you may nominate who your estate is to be distributed to and in what proportion.
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Specific gifts

Some people like to give specific items to certain people.

There are a number of difficulties that can arise in gifting specific items.

These difficulties include:

- + The specific item to be gifted must be described in the Will with sufficient precision;
- + You may not be the legal owner of the specific item (for example, it may be held in a trust), and therefore, not capable of gifting something that is not yours; and
- + The specific item may no longer belong to you at the time of your death.

Any of the above 3 scenarios may create uncertainty in your Will and create the possibility of your intended beneficiary with little or no share in your estate. This may give rise to a potential challenge to the validity of your Will.

The decision is entirely yours to make.

If you wish to leave specific items to particular people in your Will, this will incur an additional charge as this is outside our Standard Will package.

Our solicitor will talk to you before commencing any work on drafting those provisions as to what the likely cost will be for them. We will not draft those clauses unless you are happy for us to do so.

Directions for disposal of body

Some people prefer to express their wish to their executor/trustee as to how they would like to be buried, cremated and/or if their body can be used for scientific purposes or organ donation.

When should I update my Will?

We recommend having your Will reviewed upon any major life event (such as getting married, the birth of a child, or a separation) – or otherwise once every 5 years.

Call us on (08) 7001 6135 if you need assistance with the preparation of a Will, or the review of an existing Will.