

Making a Will

A Will is a legal document that names the people who are to receive your property and possessions after you have passed away.

It is essential that you make a Will if you are concerned about who will receive your assets and belongings after you die. Assets and belongings include items such as your home, land, car, savings, insurance policies, shares, jewellery, furniture and household goods.

Who should have a Will?

All adults over the age of 18 should have a valid Will.

What happens if I do not have a Will?

If a person dies without a Will (or with an invalid Will) they die 'intestate'. An administrator will be appointed and the assets and belongings will be distributed according to The Administration and Probate Act 1919.

Spouses and children will usually receive the assets and belongings, however it is more complicated if there is a child, or children, who are still considered minors.

Without a Will you do not have any control over the distribution of your estate.

The rules for distributing your assets and belongings may not match what you would have wanted. Partners, stepchildren, friends or charities may miss out.

Without a Will you have no say in who will look after your (minor) children.

Your estate may be administered by someone that you would not have chosen, and you will not have the satisfaction of knowing your affairs are in order.

What happens upon marriage or divorce?

A Will that you made before your marriage will generally be revoked (cancelled).

If you get divorced, any gifts to your former spouse are automatically cancelled. If you had appointed your former spouse as your executor (the person who manages your estate after your death) this will also be cancelled.

However if you separate but do not divorce, your current Will remains valid until you update it. It is generally recommended that you amend your Will following a separation.

Ownership of assets

You can only leave assets in your Will that you own by yourself (that is, ownership of the asset is only in your name).

If you own an asset with another person, such as a spouse, there are two forms of ownership: joint tenants and tenants-in-common. If you own an asset as a joint tenant, the asset automatically passes to the other joint owner upon your death. If you own the asset as tenants-in-common, you can leave your share to whoever you choose in your Will, not necessarily the other owner.

When should I review my Will?

You should review your Will every two to five years or when your circumstances change. Life changing events, such as marriage, separation, divorce, children, major illness, retirement or unexpected wealth mean that your Will needs to be updated.

Your choice of an executor or a guardian for your children (minors) should also be reviewed as your, or your chosen guardians', circumstances change.

Simplifying access to aged care

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Superannuation and trusts

Many people have more wealth in superannuation and family trusts than in their own name. Ensuring that these assets go to the person, or persons, of your choice can get complicated.

Your Will does not necessarily control the distribution of your superannuation or assets held in a family trust. There are other important documents which may direct what happens with your superannuation or share in a family trust.

There are different strategies that your lawyer can talk to you about when it comes to superannuation and family trusts. For example, you can direct your superannuation death benefit payment to your estate through the use of Binding Death Benefit Nominations. By doing this, you can use your Will to nominate who will receive the benefit.

Other strategies involve different types of Trusts:

Creating a Testamentary Trust within your Will can sometimes be a better way of leaving assets to a person than making the gift directly. It can offer protection against wastage, divorce, bankruptcy or incapacity while also providing significant taxation advantages.

A special disability trust is a trust established to assist families plan for the future care and accommodation needs of a family member with a severe disability. If you have a family member with a severe disability you can set up the trust during your lifetime or, more commonly, as part of your Will.

This information guide prepared with the assistance of **Welden & Coluccio Lawyers**, The Estate Experts, www.welcolawyers.com.au

Important

This information sheet contains general information only and does not constitute legal advice. Your individual circumstances must be reviewed by a qualified and experienced lawyer.