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LAWYERS

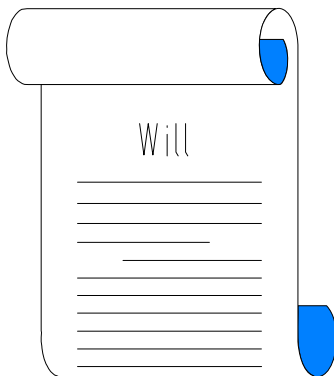
WILLS

What Is A Will?

A Will is a legal document. It names people who you have chosen to receive your belongings or "assets" upon your death as beneficiaries.

These assets include everything you own, from your house and car to your personal goods such as jewellery and furniture. The whole group of your assets on your death is called your "estate".

Making a Will is the only way you can ensure that your assets will be distributed according to your wishes when you die. A Will is therefore said to be an expression of your "testamentary wishes".



Who Can Make A Will?

As long as you are at least 18 years old and of sound mind, memory and understanding, you are capable of making a Will. However, there are some circumstances where it is possible to make a Will even if you are under the age of 18. These include being in the armed forces or navy.

Who Should Have A Will?

Everyone over the age of 18 (especially if married) should have a current Will as this is by far the best way to ensure your estate does (or does not) go to certain people.

What Criteria Are Needed To Make A Will?

To make a valid Will (that is, a Will that can be enforced in a court of law) it needs to be:

- * in writing — handwritten, typed or printed;
- * signed — by you at the end of the Will;



- * witnessed by two (2) persons who have been present in the same room when you signed the Will. A Witness must not be a beneficiary under the Will or a spouse of a beneficiary.

If your Will does not adhere to these criteria, a Court will not grant "probate", that is, it will refuse to confirm that your Will is valid, and your property will be disposed of as if you had not made a Will.

How Can I Be Sure My Wishes Will Be Carried Out?

When making your Will you should appoint a person called an "Executor" whose job will be to ensure that your wishes are carried out after you die.

It is important that you ask this person whether they would be prepared to be the Executor of your Will because it is often a big task to obtain probate of the Will, pay your debts, duties or expenses of your estate and to distribute your assets to the beneficiaries named in your Will.

Who Should I Appoint As An Executor?

You can appoint anyone over 18 to be an Executor. He/she can be a beneficiary under your Will, a trusted friend, a relative, a professional person (such as a lawyer or accountant), the Public Trustee or a private trustee company.

If you do not appoint an Executor in your Will (or if your nominated Executor is unable or unwilling to act), the court will appoint an administrator. This will usually be the person entitled to the largest share of your estate.

It is easier (although not compulsory) to have an Executor who lives in the same state as you.

How Many Executors Should I Have?

It is preferable to either appoint more than one Executor or to appoint a substitute Executor, in case your Executor dies before you or before completing the administration of your estate. If you do have more than one executor, try to ensure you choose people who are likely to get along, as disagreements will only slow down finalisation of your estate.



What Happens To My Property If I Don't Make A Will?

If you die and have not left a Will you are said to die "intestate".

The law provides a formula which sets out who is entitled to your property. However this prescribed

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formula may not give effect to your wishes and your assets may not be distributed in the way you want.

When you have no Will, the legal procedures are sometimes very complicated and time consuming in distributing your assets and they can be very worrying to your family.

Can I Leave My Assets To Whomever I Choose?

Whilst the whole purpose of making a Will is to allow you to choose which persons are to receive your assets when you die, the law allows certain persons to make claims on your estate if you do not make adequate provision for their proper maintenance, education and advancement in life. These persons include a de facto or former spouse, a child of yours (including illegitimate and adopted children) and certain other persons who have been members of your household and have been dependant on you at some point of time.

What Happens If I Get Married?



A Will made prior to marriage will be automatically revoked on marriage, unless it was expressed to be made with the particular marriage in mind.

What Happens If I Get Divorced?

A Will is not automatically revoked on divorce, but your former spouse is no longer entitled to receive as a beneficiary and any powers given to them as an Executor are revoked. Therefore it is best to make a new Will if you are seeking a divorce.

How Long Must I Be Living With Someone Before They Have A Claim On My Estate?

This depends on your personal circumstances. If you have a de facto spouse and a legal spouse, despite the fact that you are separated from your legal spouse he/she will receive most (if not all) of your estate unless there is a child from the relationship or you have

lived as man and wife with your de facto spouse for more than 2 years.

If you have a de facto spouse, but no legal spouse, it does not matter how long you have lived with this person. Even a short period is sufficient. Your de facto will be entitled to benefit from your estate unless you have children.

Can I Change My Will?

It is always possible to alter your Will if you change your mind or your circumstances change. But rather than crossing out something on your original Will, you can make a "codicil" to your Will, that is a list of the changes you want to make. However it is often best to make a new Will setting out your new wishes.

Who Can Prepare My Will?

Anyone can prepare his or her own Will so long as the criteria for Will making are strictly followed. However, it is not considered to be very sensible to prepare a Will yourself because the court reports are full of cases of "homemade" Wills which have not been held to be valid because they were not properly drawn or were unclear.

Therefore, it is best to consult with a solicitor when deciding you need a Will, because it is one of the most important legal documents you will ever make and it should be done professionally.

Can A Solicitor Help Make A Will?



Yes, your solicitor can draw up your Will and, by doing so, he or she can ensure that:

- * Your Will is valid, correctly drafted, signed and witnessed;
- * Your wishes are clearly expressed;

- * You have the correct advice for you to make adequate provisions for those who are entitled to be provided for;
- * You have the correct advice on how to arrange your affairs; and
- * Your Will is stored in a safe place.

What Do I Tell My Solicitor When I Want My Will Drafted?

Whilst drafting a Will for a client is a relatively simple task for a solicitor, the solicitor needs clear decisive instructions from you on the following:

- * Your name, address and occupation;
- * The name and address of those you choose to be the Executors of your Will;
- * The full names of your spouse, children and dependants and their respective addresses;
- * Which persons you would like to receive your assets and how long after you die are they to receive your assets;
- * Details of your assets including a precise description, nature of ownership, value and location of the assets;
- * The whereabouts of any existing Wills;
- * Where the liability for debts and funeral expenses or any other duties or taxes are to fall; and
- * Any Guardians of your children during minority.

Further Questions?

If you have any questions which go beyond the basics covered by this fact sheet, please do not hesitate to contact us. We will be only too happy to assist you and answer all your questions in this area.

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