

## What is a Will?

A Will is the document which sets out a person's directions regarding the distribution of their assets on their death.

A Will enables the Will-maker to appoint the person who is to administer their estate (called an executor).

A Will may be revoked at any time by destroying the document or by making a new Will. If a new Will is made it is wise to destroy all previous Wills.

In most cases a Will is automatically revoked upon marriage unless the Will specifically states that it was made in contemplation of the marriage.

Divorce (but not separation), revokes any gift made in the Will to, and any appointment of, that spouse as an executor.

It is imperative after divorce, separation, or upon marriage, a new Will is prepared.

## Formalities

There are formal requirements for the making of a Will. If those requirements are not complied with the Will, or parts of the Will, may not be effective.

If a Will is not carefully prepared it can have unintended consequences which may result in the wrong persons benefiting from the estate.

## Intestacy and partial intestacy

Intestacy occurs when a person dies without leaving a valid Will.

Partial intestacy occurs when a person dies and leaves a Will but the Will does not dispose of all of his or her property.

The laws in each State in Australia define who is entitled to benefit under an intestacy or partial intestacy (called 'the intestacy rules').

This may be inappropriate as persons who you do not want to benefit from your estate may be entitled to benefit under the formula set by legislation.

Administration of the estate can also take more time and can be expensive if there is no Will.

## Executors / administrators — Grants of representation

A deceased person's estate is administered by that person's legal personal representatives, who are either that person's executors (named in a Will) or that person's administrators (on intestacy).

A Grant of Probate is a court order which certifies an executor's appointment under a Will.

In the case of intestacy, the court issues a Grant of Letters of Administration to a person (usually a close relative), which gives the administrator the authority to deal with that estate.

*A person's last actions require careful thought and planning.*

*That thought and planning then requires proper implementation through a carefully drafted Will and Power of Attorney documents.*

*When property is held in a family discretionary trust, careful consideration and, if necessary, a restructure of that arrangement, should be considered.*

*Proper estate planning requires more than just the preparation of a Will and power of attorney documents.*

*The estate planning process can result in very real and substantial savings, benefits and protection for beneficiaries.*



## Choice of executors

These appointments require careful thought having regard to personal relationships, the complexity of the testator's estate, conflict or the need for independence and how the distribution of the estate will impact the beneficiaries.

It is preferable to appoint more than one executor and an alternative executor in case for some reason the original executor is unable or unwilling to act as executor.

## Choice of trustees

If your Will establishes testamentary trusts or a minor beneficiary's entitlement is to be held on trust until that beneficiary reaches a certain age, that trust must have a trustee.

It is the responsibility of the trustee to administer the trust by managing the investments, deciding (where it has discretion) how much income and capital should be distributed and who it should be distributed to, keeping accounts and lodging taxation returns.

These appointments require careful consideration, particularly if there are asset protection requirements for the beneficiary.

The trustee(s) may be the same person as the executor(s).

## Guardians

A guardian is someone appointed in a Will to exercise parental responsibility for a child who is under the age of 18 years.

A guardian has the same responsibilities for their care, control, maintenance and education as the parent

## Beneficiaries

Beneficiaries are those who benefit under a Will or under the intestacy rules from a deceased estate.

## Jointly held property

Jointly held assets do not form an asset of your estate to be dealt with by your Will.

When property is owned by two (or more) people it can be owned jointly or as tenants in common.

If property is owned jointly, on the death of one of the owners that property passes to the survivor owner(s) automatically.

If property is held as tenants in common, on the death of one of the owners their share is dealt with either as instructed by the deceased in a Will or in accordance with the intestacy rules.

## Updating Wills

We recommend that your Will be reviewed once every year. It is often convenient to review the Will when preparing the year's tax return.

We also recommend that everyone should review his/her Will at each important stage in life, for example, on birth of a child, on death of a relative, after marriage, after separation or divorce or retirement or a substantial change to a person's financial position or relationships.



## Family discretionary trusts

Assets held by a family trust do not form an asset of your Will.

A Will may not have any effect on the succession of a family trust.

If any assets are held in a family discretionary trust it is vital to examine the trust deed and corporate structure when estate planning.

It may be necessary to take appropriate steps to ensure that the succession of the trust points to the persons who you intend to control that trust.

Shares in a corporate trustee company form an asset of your estate to be dealt with by your Will.

Planning the succession of the trust assets must be done carefully to avoid any unintended taxes e.g. stamp duties or capital gains tax or the incorrect persons being in control.

## Powers of Attorney

As a Will does not have effect until death, you should consider granting a Power of Attorney to allow someone to manage your legal, financial and medical affairs if you are unable to do so. All forms of Power of Attorney cease to have effect on death.

An Enduring Power of Attorney appoints a person to act when a person is declared to be incapable of handling his or her own affairs or in the case of a financial attorney, upon such other specified event.

If an Enduring Power of Attorney is not granted, when a person is declared to be incapable of handling his or her own affairs an independent person may be appointed to handle that person's affairs.

## Estate planning

Today, tax laws are complex and many people plan and structure their affairs during their lifetime to minimise the taxes they are required to pay.

Estate planning is the process where people plan and structure their Estates to minimise, for their surviving families, the taxes they will be required to pay on the transfer of assets upon death.

Estate planning involves much more than merely preparing a Will. If, for example, a person's estate includes substantial superannuation or life insurance or other assets which produce substantial income, the creation (in that person's Will) of a testamentary trust as compared to merely gifting the surviving spouse the whole of the estate, could result in very substantial annual income tax savings for that person's surviving family. [For further information please refer to our pamphlet, 'Testamentary Trusts – Saving tax and protecting assets']

As with any planning, a considerable amount of detailed information needs to be gathered before the planning process is started, and when started that process involves careful consideration of the facts, the effects of any desired actions and, finally, the best way to implement those actions, given the likely effects.



**Personal information**

<b>Full name(s) of person(s) making the Will(s)</b>	
<b>Nicknames / aliases</b> (name by which you are known or in which you hold assets)	
<b>Address(es)</b> (residential)	
<b>Email address(es)</b>	
<b>Telephone(s)</b>	
<b>Occupation(s)</b>	
<b>Date(s) of birth</b>	
<b>Marital status</b> (married, single, divorced or separated)	
<b>Full name of spouse</b> (if not both providing instructions)	



**Family details**

Members of your family (e.g. spouse/ partner (if not also providing us with instructions on this form), children, etc). Also include other members which you may include in your Will (e.g. de facto partner, friends, etc).

Full name	Age	Address	Relationship

Are any of the abovenamed persons under a disability or have special needs?

Are any of the abovenamed family members, including yourself, currently or upon retirement eligible for a means tested pension?

Are any of the abovenamed family members, including yourself, moving to a nursing home?

To the best of your knowledge are any of the abovenamed family members susceptible to insolvency by virtue of employment or business activities?

To the best of your knowledge are any of the abovenamed family members currently acting as personal guarantors?

To the best of your knowledge are any of the abovenamed family members required to provide child support (maintenance) obligations? (Provide details and copies of. Trust Deeds for concessionally taxed child support trusts, if any)







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**Family company/companies**

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Name(s) of family company/companies in which you are a Director and/or Shareholder (you should provide a copy of the company constitution with your instructions)

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Names of other Directors

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Membership of shareholding and ownership of shares

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Details of any succession objectives

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Details of any non-family company/companies in which you are a Director and/or Shareholder

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**Trusts**

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Name of any trusts (e.g. Family Discretionary, Trusts, Unit Trusts, Discretionary and Hybrid Unit Trusts) of which you are a Guardian or Appointor (You should provide a copy of the Trust Deed with these instructions)

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If Unit Trust, details of current unit holdings

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Details of how future control is to pass

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**Insurance**

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Details of insurance policies (if any)

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Nature and value of cover (e.g. life, trauma, etc)

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**Superannuation**

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If a member of private superannuation fund, provide a copy of Deed and full details of Trustee(s) and Members

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If a member of public fund, details of how the trustee exercises its discretion in relation to death benefits

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Details of any dependents (for superannuation purposes) other than family members already mentioned (e.g. ex-spouse (legal or defacto), step-child, foster child)

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Have you made any nominations? (You should provide copies of the nominations with these instructions)

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**Executors**

**Proposed executors**

Full name	Address	Relationship to Willmaker(s)

**Substitute (or Alternative) executors**

Full name	Address	Relationship to Willmaker(s)



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**Distribution of estate**

**Specific bequests**

(e.g. "my tools of trade", "my sapphire and diamond cluster engagement ring" or specific items of money")

Item to be given under Will	Beneficiary name	Address	Relationship to Willmaker(s)

**Residuary estate**

(i.e. everything else not specifically given in the Will to my spouse/children, if spouse not alive)

Beneficiary Name	Address	Share or Proportion (e.g. whole/one half)	Relationship to Willmaker(s)

\*strike out whichever is applicable



<p>*Yes / No</p>	<p>Do any of the beneficiaries listed above require their interest to be held on a testamentary trust (i.e. because they require asset protection or are vulnerable) (see brochure on Testamentary Trusts for an explanation)?</p>
<p>*Yes / No</p>	<p>If any of the beneficiaries listed above ("Primary Beneficiary") has children whom you would like to take the share of the Primary Beneficiary if the Primary Beneficiary pre-deceases you, please specify this below:</p>
<p>*Yes / No</p>	<p>I would like the children of the Primary Beneficiaries to take the share of the Primary Beneficiaries if the Primary Beneficiaries pre-decease me.</p>
	<p>Indicate at what age the Primary Beneficiary is to take control of his or her Trust or become entitled to his or her share eg.</p> <p><input type="checkbox"/> 18 years / <input type="checkbox"/> 21 years / <input type="checkbox"/> 25 years /</p> <p><input type="checkbox"/> Other: please specify _____</p>



**Optional Information**

Do you have specific instructions regarding :

Burial or Cremation \*

Yes / No (please specify)

(\* strike out whichever is not applicable)

Organ Donation:

Yes / No (please specify)

Do you have specific instructions regarding your funeral service? If so, please specify.

Have you made loans to any individuals, trusts or companies?

Do you require repayment of monies loaned? On what terms?

Do you wish to remunerate your legal personal representatives for the work they perform as your executors and trustees in administering your estate?

\*Yes / No

If so, do you wish to specify a set amount or a percentage of your estate?



**Enduring Power of Attorney (Financial)**

I would like to appoint the following person/people as my attorney(s):

Full name	Residential address	Relationship to you

Date of Effect:  Immediate    On Defined Event    On Incapacity only

Restrictions (if any, e.g. to apply only in respect of a specific business): \_\_\_\_\_

If more than one, they are appointed:  Jointly OR  Jointly and Severally   OR  by majority

Express power to confirm superannuation fund binding nominations:  Yes  Not required

Instructions (if any, eg to give priority to a particular type of investment): \_\_\_\_\_





I would like to appoint the following person/people as my alternate attorney(s):

Full name	Residential address	Relationship to you

Date of Effect:  If primary attorney is unable to act  On other Defined Event  On Incapacity only

Restrictions (if any, eg to apply only in respect of a specific business): \_\_\_\_\_

If more than one, they are appointed:  Jointly OR  Jointly and Severally OR  by majority

Express power to confirm superannuation fund binding nominations:  Yes  Not required

Instructions (if any, eg to give priority to a particular type of investment): \_\_\_\_\_



**Enduring Power of Attorney (personal/guardianship)**

I would like to appoint the following person/people as my attorney(s):

Full name	Residential address	Relationship to you

Date of Effect:  Immediate     On Defined Event     On Incapacity only

Restrictions (if any, e.g. to apply only in respect of a specific business): \_\_\_\_\_

If more than one, they are appointed:  Jointly OR  Jointly and Severally    OR  by majority

Instructions (if any): \_\_\_\_\_



I would like to appoint the following person/people as my alternate attorney(s):

Full name	Residential address	Relationship to you

Date of Effect:  If primary attorney is unable to act  On other Defined Event  On Incapacity only

Restrictions (if any, eg to apply only in respect of a specific business): \_\_\_\_\_

If more than one, they are appointed:  Jointly OR  Jointly and Severally OR  by majority

Express power to confirm superannuation fund binding nominations:  Yes  Not required

Instructions (if any, eg to give priority to a particular type of investment): \_\_\_\_\_



**Enduring Power of Attorney (Medical Treatment)**

I would like to appoint the following person as my initial agent:

Full name	Residential address	Relationship to you

Restrictions (if any): \_\_\_\_\_

I would like to appoint the following person as my alternate agent:

Full name	Residential address	Relationship to you

Restrictions (if any): \_\_\_\_\_



## Attachments

### Please attach (where applicable):

1. A list of your personal material assets and material liabilities showing whether those assets are held solely or jointly.
2. A structure diagram for each of your personal and corporate/group interests if one has been prepared (e.g. by your accountant).
3. Copies of all Trust Deeds for any family trusts in which you have an interest including any deeds of variation or deeds of appointment, together with the most recent balance sheet.
4. Copies of the Constitutions for any corporate interests/holdings.
5. Company extract showing directors, secretaries and shareholders for all companies in which you have an interest.
6. Copies of Trust Deeds for any self-managed superannuation fund of which you are a member, including any Deeds of Variation or Deeds of Appointment.
7. Copies of your member statements for each of your superannuation funds (including retail or industry funds or self-managed funds of which you are a member).
8. Details of any loan accounts between any of the entities and you or your immediate family members.
9. A schedule of your life insurance policies.
10. A copy of any previous Will or Powers of Attorney in existence.

You may wish to provide this list to your accountant or financial planner as they may be able to assist you to collate the information/documentation requested.

