

What is a Will?

Your Will directs who is to receive your Estate when you pass away.

Your 'Estate' comprises assets which are owned personally by you. For example:

- jointly owned assets automatically pass to the surviving joint owner (or owners) and will not form part of your Estate. This applies to all assets owned jointly, including real estate, bank accounts, furniture and the like;
- trust assets will pass to or be held for the beneficiaries according to the terms of the trust. If the trust is to continue after your death, it is important to pass control of the trust in accordance with your wishes;
- company assets are owned by the shareholders. Subject to any restrictions in the company's constitution or any overarching agreements, your shares will form an asset of your Estate and can be gifted in your Will. Shareholders appoint directors of companies;
- your superannuation benefits can only be gifted under your Will if you sign a valid nomination in favour of your Estate; and
- life insurance benefits can only be gifted under your Will if you are the owner of the policy and have not nominated a beneficiary under your policy.

A Will may be revoked at any time by destroying the document or by making a new Will.

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.

Executors / administrators — Grants of representation

When a person dies, their Estate is administered by that person's legal personal representatives, who are either the appointed executors (named in a Will) or that person's administrators (if there is an invalid Will or no Will – i.e. intestacy).

A Grant of Representation is a court order which authorises the legal personal representative to administer the Estate in accordance with the Will or laws of intestacy (if there is no Will).

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.

Proper estate planning requires more than just the preparation of documents.

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



Choice of executors and trustees

Your Executor is the person you choose to carry out your wishes as directed in your Will. Their duties can include:

- funeral arrangements (if not done by a family member);
- obtaining a Grant of Representation from the Supreme Court to 'prove' your Will; and
- administering your Estate by collecting your assets, paying your debts and distributing the balance as directed by your Will and in accordance with applicable laws.

A trustee is often the same person as the executor. Their role is to hold Estate property on trust for the beneficiaries.

Ideally, your executor and trustee should have:

- common sense;
- the ability to make decisions;
- sound judgment;
- respect for your wishes;
- an understanding of your immediate family;
- financial responsibility; and
- trustworthiness.

Where assets are to be held on trust for a beneficiary (especially your children) we recommend that you appoint at least two persons to provide greater protection.

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.

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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 your Will is reviewed 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.

Estate planning

Today, tax laws are complex and many people plan and structure their affairs during their lifetime to minimise the taxes they will be required to pay on the transfer of assets upon death or minimise the taxes beneficiaries will incur when they derive income from those assets.

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.



Trusts

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

If any assets are held in a trust it is vital to examine the trust deed and corporate structure when considering your estate plan.

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

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

Enduring Powers of Attorney

As a Will does not have effect until death, you should consider what is to occur while you are alive, but unable to make decisions for yourself.

Enduring Powers of Attorney allow you to appoint another person (or people) to make decisions for you regarding:

- financial and legal matters relating to your financial or property affairs, including for example making investments, accessing your bank accounts, paying your debts and real estate transactions; and
- personal matters relating to your personal and lifestyle affairs, including for example where and with whom you live, your daily activities and other similar parent-like decisions.

You can also appoint another person (or people) to make medical treatment decisions for you, such as surgery, care and dental treatment.

The decision-making powers will commence:

- for financial and legal and personal matters, either immediately, when you cease to have decision making capacity (usually evidenced by a medical certificate) or another time, circumstance or occasion; and
- for medical treatment, only if you are unable to make decisions for yourself (either permanently or temporarily).



Personal information

Full name(s) of person(s) making the Will(s)	
Nicknames / aliases (name by which you are known or in which you hold assets)	
Address(es) (residential)	
Email address(es)	
Telephone(s)	
Occupation(s)	
Date(s) of birth	
Marital status (married, single, divorced or separated)	
Full name of spouse (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.

Full name	Age	Address	Relationship

Details of any other person who may be dependent on you for financial / other support other than those already mentioned (e.g. ex-spouse (legal or de facto), step-child, foster child):

Is any person under a disability or have special needs?

Is any person, including yourself, currently or upon retirement eligible for a means tested pension?

Is any person, including yourself, moving to a nursing home?

To the best of your knowledge, is any person susceptible to insolvency by virtue of employment or business activities?

To the best of your knowledge, is any person currently acting as personal guarantors?



Family company/companies

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):

Names of other Directors:

Membership of shareholding and ownership of shares:

Details of any succession objectives:



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

Trusts

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):

If Unit Trust, details of current unit holdings:

Details of how future control is to pass:



Life Insurance

Details of insurance policies (if any):

Amount of cover:

Superannuation

If a member of a self-managed superannuation fund, provide a copy of Deed and full details of Trustee(s) and Members.

If a member of public / industry fund, provide a copy of your most recent member statement(s).

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



Executors

Proposed executors

Full name	Address	Relationship to Willmaker(s)

Substitute (or Alternative) executors

Full name	Address	Relationship to Willmaker(s)



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 want the tax benefits, require asset protection or are vulnerable) -see brochure on Testamentary Trusts for an explanation?</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"/> 25 years / <input type="checkbox"/> 30 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 (for financial and legal matters)

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

Full name	Residential address	Relationship to you

I would like to appoint the following person/people as my alternate 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): _____



Enduring Power of Attorney (for personal matters)

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

Full name	Residential address	Relationship to you

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): _____



Appointment of Medical Treatment Decision-Maker

I would like to appoint the following person(s) as my medical treatment decision makers:

Note: You should list the persons in order of preference.

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.

