



URBAN FAMILY LAWYERS

**WHAT YOU NEED TO  
KNOW BEFORE YOU  
MAKE A WILL  
POWER OF ATTORNEY  
&  
ENDURING GUARDIAN**



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WHAT YOU NEED TO KNOW

# The makings of a Will



## You need to appoint an Executor/s

An executor is nominated to administer the estate and carry out the Testator's wishes upon their death.

The primary duties of an executor include:-

- making funeral arrangements;
- paying funeral expenses and any debts of the estate;
- taking charge of and protecting the estate's assets;
- obtaining an authority to administer the estate in the form of a Grant of Probate from the Supreme Court;
- finalising income tax returns;
- calling in debts and selling or disposing of any assets in accordance with the will; and
- distributing the estate according to the terms of the Will.

Your executor should be trustworthy and reliable. It is sensible to appoint one or two executors along with a substitute executor to act in circumstances where the first appointed executor is unable to fulfil the role.

***Note:** In some circumstances it may be worth considering professional executors and trustees. There are private and public organisations that may be able to assist in this.*



## Your beneficiaries - Who are you leaving your assets to?

Start by gathering details of your beneficiaries, including the correct spelling of their full name and their current residential address.

It is not recommended to leave specific gifts or properties in your will, because your assets, including certain properties may change during your lifetime.

Gifts may be lost, destroyed or sold prior to your death. You may wish to leave a direction in your Will for your personal effects to be distributed in accordance with a signed list. Such a direction is not legally binding but can help your executor divide your personal items among family members as desired.

**TIP:** You should also consider what happens to the share of a beneficiary should they die before you....

*For example - if you leave your estate to your children in equal shares, if one dies before you - who do you want to take their share? Does it get divided between the remaining siblings or pass to any children they may leave behind?*

## → Guardian of infant children

You may appoint a guardian to care for any minor children after your death. This would be in circumstances where no other parent has survived.

# What else you need to consider

## → Challenge-proof your Will

The distribution of your estate may be challenged if you fail to make adequate provision for some family members. Eligible persons who may make such a claim include spouses, de-facto partners, children, grandchildren and parents who have been left without adequate provision from their estate for their maintenance, support, education or advancement.

If the Testator wishes to exclude or substantially limit an eligible applicant as a beneficiary of their Will (such as an estranged child), it is sensible for the Testator to prepare and sign a letter setting out their reasons for doing so. A separate letter is preferable to a statement in the Will as, once admitted to Probate, the Will becomes a public document.

*For example: One child may be estranged and may not be in communication with you for many years. Another child may have an alcohol or gambling dependency and you have provided them with funds in their lifetime that was wasted away. These situations are unique to you and you should ask for specific, expert legal advice in this regard.*

## → Marriage revokes existing Wills...

Are you currently in a relationship? Are you contemplating marriage? Wills made before marriage are revoked, unless specifically made in contemplation of the marriage.

*For example: You may have made a Will prior to meeting marrying your current partner. If it didn't specify that you were intending on marrying him/her in your last Will, then that Will is no longer valid. Where there is no valid test laws of intestacy come into play. That is, laws which decide who is to inherit any assets you leave behind, rather than by choice.*

## → Potential beneficiaries

Are any potential beneficiaries under 18? Any gift cannot be distributed to a child until they attain the age of 18. You can, however, also decide that you want the beneficiaries to be older than 18 when they inherit, for example upon turning 21.

What happens if one of your beneficiaries dies before you? You need to consider where their share goes to? If for example, does their share go back in the pool to be divided or is it passed down to any children of their own - providing they have any at the time of their death.

## → Assets and liabilities – what are they made of?

- How are your assets and liabilities held? If they are part of a family or trust structure they may not be able to be passed in a will.
- Ownership in real estate – assets owned by the Testator as sole owner will form part of their estate and distributed in accordance with their will.

NOTE: Property held as a joint tenant with others will pass to the surviving joint owner and not in accordance with your will. If you hold property as a tenant in common with others, then your share will form part of your estate and distributed in accordance with the terms of your will.

## → Personal loans

Do you have any unpaid loans owing to you from family or friends? If loans exist they should be formalised. What happens to these loans upon your death. Will they be “forgiven” or will such loan be deducted from that beneficiary’s gift/inheritance under your will.

*For example: You provided your daughter with \$150,000 to assist on the deposit of her first home. In an estate worth \$1,000,000, where she is to inherit a 50% share - do you want to forgive the loan and ensure that she receives \$500,000 without repaying the \$150,000 already loaned to her? Or do you want her to repay the \$150,000 to the estate, making the estate worth \$1,150,000, with her to receive half of that amount, being \$575,000 (or \$425,000, after retaining the \$150,000)?*

## → Digital assets

Digital assets are things such as email accounts, files stored on digital devices, photos, software licences, social media accounts, e-books and games that exist online. You should take care to pass information required to access and control these accounts to the appropriate person.

*Tip: Use password apps to store passwords and usernames which can be accessed with one password - such as the aptly named app 1password and the like. Then ensure that the “master password” is made available to your executor.*

Those of you who derive income from social media accounts such as Instagram, YouTube and FaceBook have limitations on family inheriting income from your media content upon passing. This is another example of the law not keeping up with technology. Speak to us to learn more.

*Disclaimer: Do not rely on this information without seeking personalised legal advice that is right for you..*

Make an appointment today at  
[reception@urbanfamilylawyers.com.au](mailto:reception@urbanfamilylawyers.com.au)

# Other important documents

## What is an Enduring Power of Attorney?

An Enduring Power of Attorney grants your appointed attorney the authority to handle your financial and legal matters, such as:

- Managing bank accounts
- Paying bills
- Handling investments
- Buying or selling property (subject to registering the document)
- Conducting legal proceedings

You can specify when the attorney's powers begin, either immediately or only if you lose capacity.

## Benefits of an Enduring Power of Attorney

1. **Continuity of Financial Management:** Ensures that your financial affairs are managed seamlessly without interruption, even if you become incapacitated.
2. **Control and Choice:** Allows you to choose a trusted person to manage your affairs, giving you peace of mind that your interests are protected.
3. **Avoiding Guardianship:** Prevents the need for a court-appointed guardian or financial manager, which can be a lengthy and costly process.
4. **Flexibility:** You can tailor the document to suit your needs, specifying the extent of your attorney's powers and any conditions or limitations.
5. **Safeguards in Place:** NSW law includes measures to protect against misuse, such as requiring the attorney to act in your best interests and keep accurate records.

## Why You Should Consider an Enduring Power of Attorney

1. **Preparation for the Future:** Life is unpredictable, and having an EPOA ensures that your financial and legal matters are in safe hands if something happens to you.
2. **Protecting Your Assets:** An EPOA helps safeguard your assets by ensuring they are managed according to your wishes, even if you cannot oversee them yourself.
3. **Peace of Mind for Loved Ones:** Reduces the burden on family members by clearly outlining your preferences and appointing a dedicated person to manage your affairs.

An Enduring Power of Attorney is a crucial tool for managing your financial and legal affairs, providing security and peace of mind for both you and your loved ones. By planning ahead, you can ensure that your interests are protected and your wishes are respected, no matter what the future holds.

# Other important documents

## What is an Enduring Guardian?

Understanding the Benefits of an Enduring Guardian Document in NSW

An Enduring Guardian document is a legal instrument that allows you to appoint someone to make personal, lifestyle, and healthcare decisions on your behalf if you become incapable of making those decisions yourself due to illness, injury, or incapacity. In New South Wales (NSW), this document ensures that your preferences for personal care and medical treatment are respected, even if you lose the ability to communicate or make decisions.

## What is an Enduring Guardian?

An Enduring Guardian is a person you appoint to make decisions about your health and lifestyle, such as:

- Medical treatment decisions
- Consent to medical and dental treatment
- Decisions about living arrangements
- Access to services and support
- 

## Benefits of an Enduring Guardian

1. Personalised Care: Ensures that your healthcare and personal care preferences are followed, reflecting your values and wishes.
2. Trust and Assurance: Allows you to choose someone you trust to make important decisions on your behalf, providing peace of mind.
3. Avoiding Legal Complications: Prevents the need for court-appointed guardianship, which can be a complex, time-consuming, and expensive process.
4. Continuity of Care: Guarantees that decisions about your care are made consistently, even if you cannot make them yourself.
5. Specific Instructions: You can provide specific instructions and limitations on the powers of your guardian, tailoring the document to your needs.
6. Legal Recognition: The document is legally recognised, ensuring that your appointed guardian's decisions are respected by healthcare providers and other institutions.

## Why You Should Consider an Enduring Guardian

- Future Planning: An Enduring Guardian document is an important part of planning for your future, ensuring your personal care and medical treatment align with your wishes.
- Reducing Family Burden: Clearly outlines your preferences, reducing the emotional and logistical burden on family members during stressful times.
- Control Over Care: Maintains your control over important personal decisions, even if you become unable to communicate them yourself.

# Checklist

## Your Will

- Details of beneficiaries (include full name and contact details)
- Summary of Assets (including property, shares, mortgages, superannuation and investments)
- Summary of Liabilities (mortgages, personal loans, credit card debts)
- Are there any loans made to or owed to and from family or friends
- Have you excluded anyone and why?

## Your Power of Attorney

- Who would you like to make legal and financial decisions for you?
- If more than one - do they carry out their duty together or can they do it individually?
- When does it start?
- Do you want to place any limits or restrictions on it

## Your Appointment of Enduring Guardian

- Who do you want to appoint as your enduring guardian to make health and lifestyle decisions for you (like nursing home care)
- Do you want any advanced care directives like discontinuing life-support?
- If more than one - do they carry out their duty together or can they do it individually?
- Do you want to place any limits or restrictions on it

## Updating your Will

If you already have a Will, think about whether it is time to update it so it reflects your current circumstances. Situations where you may want to update your Will include:

- buying a house
- marriage
- separation or divorce
- big travel plans
- welcoming a child
- retirement
- health concerns
- change of beneficiary/executor
- death of a loved one/coming into inheritance

## Why Choose Urban Family Lawyers?



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### Book today

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