



URBAN FAMILY LAWYERS

WHAT YOU NEED TO KNOW BEFORE YOU MAKE A WILL



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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
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