

Will making is an essential part of estate planning. Your Will provides instructions on exactly how you want your estate assets distributed. In particular, a valid Will determines who will be in charge of the administration of your estate and how the assets of the estate are to be distributed after your death.

Your Will is an extremely important legal document and helps to prevent:

- your wishes not being carried out
- delays in probate
- family disputes
- forced asset sales
- unnecessary taxes

Intestacy is the term for dying without a valid Will. This situation arises for two reasons (i) never having prepared a Will or (ii) a Will becoming invalid due to a change in circumstances such as marriage. If you die without a valid Will your assets will be distributed in accordance with a Government formula set out in an Act of Parliament known as the intestacy rules. This may result in your wishes not being met and disputes arising. For this reason it is essential to ensure that your Will is current and up to date. The rules for intestacy vary from State to State.

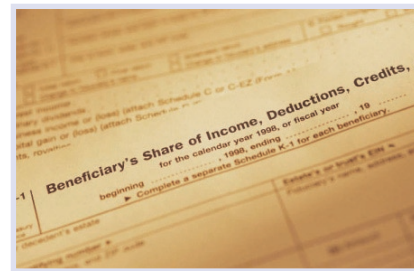
Also, your Will should have a residuary clause so it covers all remaining assets, as intestacy laws will cover any assets not covered under the Will.

We recommend Wills be reviewed with your Estate Planning Specialist, typically your solicitor every three years to ensure it remains appropriate to your circumstances.

The following issues should be carefully considered when preparing or reviewing your Will:

- beneficiaries
- executors

- guardians
- testamentary trusts
- identification of any impediments e.g. ability of hostile members to challenge the terms of the Will



Beneficiaries

Those who receive benefits under the Will are called beneficiaries.

Factors to consider when selecting your beneficiaries, include:

- their taxation status
- their ability to manage finances
- any disabilities
- potential family law problems

Your Will should remain flexible to cater for changes in the beneficiary's circumstances and unforeseeable situations (e.g. the beneficiary predeceases you).

It is important to be as specific as possible. Statements such as "I leave the contents of my house" may cause disputes over whether the intention was to include the car adjacent to the house or say, the share certificates in the desk drawer.

Executors

The executor is responsible for ensuring the wishes of the Will maker (as contained in the Will) are carried out. It is an important role and care needs to be exercised when selecting an executor.

The chosen executor should be competent, trustworthy and prepared to accept the task. The role is onerous and the executor may need to seek legal assistance (costs are met by the estate). More than one executor can be appointed and provision for a substitute executor should be made. Executors can be independent or a related party.

It is common for each spouse to become the other's executor.

Your executor and at least one beneficiary should know where your original Will is stored.

Guardians

The appointment of a guardian is usually included in a Will in the event that both parents die before their children are 18 years old. It is a responsible task and careful consideration is required when selecting the guardian(s).

It is the guardian's responsibility to make the important life decisions for the children. They must ensure the children are adequately housed, clothed and educated.

The appointment of a guardian also helps to avoid disputes between family members. The Court does have an overriding discretion to appoint or remove a guardian.

Testamentary Trust

A Testamentary Trust is a trust established by a Will that comes into effect upon the death of the maker of the Will. The primary purpose of a Testamentary Trust is to manage estate assets to provide asset protection and to maximise after tax income for beneficiaries.

For more detailed information please refer to our Fact Sheet on Testamentary Trusts.

Disclaimer

This Fact Sheet has been prepared for general information purposes only and not as specific advice to any particular person. We are financial planners and not qualified to give specialised legal advice in this complex area. Detailed legal advice should be sought from a qualified adviser.

We can assist you to prepare an outline of your estate plan for your legal adviser. Should you wish to seek advice in relation to Estate Planning we recommend you consult an Estate Planning Specialist.



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