

FAQ REGARDING WILLS

It is essential that you make a Will if you care about who will receive your assets and belongings after you die. It is even more important if you have a family or other dependants to consider. Making a will is important at any stage of your life, and is critical to ensure that when you die, your estate is handled the way you planned it.

Q: What is a Will?

A: A Will is a legal document that states the persons to whom you wish to give your property and possessions and the person responsible for making sure that your wishes are fulfilled.

Q: What happens if I don't make a Will?

A: Your estate will be shared amongst your family according to the rules set out in the Administration Act 1903 (WA). Generally speaking, the persons who are entitled to share in your estate are also the persons who can apply for the right to administer your estate. The Administration Act does not reflect most people's wishes and for that reason it is important that you make a Will so that your estate is handled according to your wishes.

Q: Do Wills have to follow any rules?

A: Yes, there are strict legal requirements to make a legally valid Will. If a Will has not met all of the requirements as to form, then it may be possible to prove the Will as an "informal Will". That is a more difficult process than the usual application for Probate, so it is best to make sure that the Will is done correctly.

Q: Can I change my Will?

A: Yes, you can change your Will at any time. But do not simply cross out or make any alterations to your signed Will. To make sure that your Will is legal and valid and to minimise any problems for your family, you should make a new Will or a codicil to record the changes you wish to make. We suggest that you contact this office to discuss your options.



Q: Who do I choose to be executor?

A: Close family members are often appropriate because they know your family and friends and understand your wishes. However, estate administration can be complicated. And if there is any dispute in the family, it can be very stressful.

Sometimes accountants, financial advisors and lawyers are appointed as executors. They have the expertise to administer the estate correctly and will be less affected by any acrimony. However, they may wish to charge professional fees for the services they provide.

There is not a single correct solution. In all instances, it is very important to discuss the issue with anyone you are considering appointing as an executor.

Q: What happens if I get married?

A: Unless your Will made proper provision for your marriage, then your Will is not valid after a marriage. You should consult a solicitor in order to make a new Will that properly provides for your spouse and any children.

Q: What happens if I get divorced?

A: A Will made before divorce is not valid after the divorce. You should consult a solicitor to make a new Will as soon as possible, particularly if you have children or another partner to consider.

Q: What if I don't want to give anything to one of my children?

A: There is nothing wrong in omitting a family member from a Will. You may have very good reasons for doing so. However, they may be able to make a claim for greater provision from your estate pursuant to the Inheritance (Family and Dependents Provision) Act 1972 (WA). In this instance, suggest that you to contact this office so that you can receive full advice on the legal situation.

Q: What if I am trustee of a family trust?

A: Your Will cannot give anything that is owned by a trust. Depending upon the terms of the trust deed, it may be appropriate for your Will to nominate another trustee. You should show a copy of your trust deed to the solicitor who makes your Will, to make sure that the appropriate mechanisms are in place.



Q: My grandfather was in hospital when he signed his Will.

A: A Will is not valid if the maker did not have “testamentary capacity” at the time they signed the Will. If they were in hospital, then the hospital may have confirmed testamentary capacity at the time the Will was signed.

Q: What is testamentary capacity?

A: It is a person’s ability to appreciate the meaning and effect of making a Will, know in general terms what assets they own, understand the claims that partners and other family members may have upon them and not be suffering from any mental illness or other delusion which affects their decisions.

Q: What happens if someone doesn’t have testamentary capacity?

A: They cannot make a valid Will. There is a procedure under the Wills Act 1970 (WA) to apply to the Supreme Court for the making of a “statutory will”. We suggest that you contact this office for legal advice regarding this process.

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