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MAKING A WILL

Your Will may be one of the most important documents you will ever sign. A badly written Will often leads to delays and disputes.

Where possible, it is best to obtain the services of a solicitor rather than drafting your own Will.

Why make a Will?

The most important reason for making your Will is to make sure that after your death, your property is distributed in the way you would have wished it to be.

If you do not leave a Will, there are laws that cover how your property will be distributed.

Another important reason for making your Will is to appoint your ‘Executor’ who is the person named in your Will to make sure that all of your requests are carried out.

Making your Will

Most newsagents sell Will forms. This standard form is useful because it helps you to remember the essential points to be included.

A valid Will must be in writing and must be signed and witnessed correctly.

The document should say that it is the Will of the person making it the ‘Testator’ or, if it is a woman, the ‘Testatrix’ and should give their address and occupation.

Clearly dating the document is important because the most recent Will automatically cancels and replaces any earlier Will.

It is not essential for you to include your marital status.

Think carefully about whom to leave things to in your Will. These people are called “beneficiaries”.

If the Will does not properly look after a person that you had a duty to provide for, that person can apply to the Supreme Court. In some cases, the Supreme Court can vary the distribution of your property after your death.

For more information about the power of the Supreme Court and when it can be exercised, get legal advice.

Property

In your Will, you may leave specific items of personal property or real estate or specific sums of money to particular people.

While it is not necessary to list every item, your Will should deal with *all* your property. The best way to do this is to use expressions such as “all of my property of whatever kind” or “all my remaining property of whatever kind”. Even if you do not list specific items, these expressions will cover everything.

If your Will fails to deal with all your property, the part that is not dealt with will be divided among your relatives according to the law.

The executor

The executor has a very important role. It is not necessary for an executor to have any special qualifications, but they must be:

- a responsible person;
- over the age of 18 years; *and*
- someone you believe will carry out his/her duties properly.

You should get the consent of the person you wish to appoint as executor because they do not have to accept the position.

Make sure that an alternative executor is available and refer to this person in your Will. This is in case the first executor refuses to accept the appointment after your death.

Other considerations

You may wish to make special arrangements for a number of things, for example:

- disposal of your body or organ transplants;

- payment of your executor;
- the occupation of your home;
- the release of a debt owing to you; *or*
- a gift to charity.

You can generally write these things in ordinary language so that they can be understood.

If you are in any doubt you should see a lawyer.

If you have specific wishes as to burial or cremation you should make your wishes clear prior to your death.

If you wish to be an organ donor, it is recommended that prior to your death you make your intentions clear. After death your relatives and/or executor may find the subject difficult to deal with.

If you are the parent of a child, you may wish to appoint someone to be the guardian of that child after your death. You can include this but not all appointments are effective. Get legal advice.

Signatures on your Will

When making your Will, you must sign it in the actual presence of at least two witnesses who:

- must sign and add their complete name, address and occupation; *or*
- must not sign unless they have actually seen you sign the Will.

The maker of the Will and the witnesses must all remain together during the signing of the Will.

Recent amendments to the law now permit a range of people, who are over the age of eighteen, to witness your Will. Legal Aid WA strongly recommends that

- beneficiaries; *and*
- spouses or de facto partners of beneficiaries;

do not witness your Will.

You must sign the Will in front of all the witnesses and they must sign the Will in front of you and in front of each other.

It is important for the Will to include a statement saying:

- that the Testator/Testatrix signed in the presence of two or more witnesses; *and*
- the witnesses signed in his/her presence.

Without this special statement called an ‘attestation clause’ the Will is still valid, but the job of the executor becomes difficult and time consuming.

Wills should be signed at the end. It is best to sign immediately at the end of the wording, leaving no room for additions.

Where there is more than one page, you and each of the witnesses should sign at the bottom of each page. Unless this is done, there may be problems in proving the Will.

Alterations can be made any time after the Will is written and **before it is signed**. You and your witnesses should sign each alteration.

Blind people are not able to witness the signature of the Will.

Check list

Remember to:

- state your full name, address and occupation on your Will;
- ensure the Will is clearly dated;
- state the full name and address/s of your executor/s;
- add the attestation clause;
- never attach or pin anything to a Will;
- never erase any part of a Will; *and*
- keep your Will in a safe place and ensure your executor knows where that is.

Persons unable to sign their Will

The law makes special provision for persons who are unable to sign a Will. If you are such a person, you should consult a lawyer before making a Will.

Codicils

A codicil is a legal document that is used to alter something in an earlier Will. People may use a codicil instead of making a new Will. A codicil must comply with all the legal formalities of a Will.

Codicils can cause problems. Legal Aid WA does not recommend the use of codicils. Get legal advice.

Storage of your Will

Your Will must be kept in a safe place such as with your bank or your lawyer. You should tell your executor where your Will is kept.

Marriage of Testator/Testatrix

If you marry after you have made a Will, your marriage may have the effect of cancelling your Will. This could result in a legal argument over your estate that could end up in the courts.

If when you make your Will you are about to get married, a statement should be inserted stating that the Will has been made in contemplation of your marriage and naming the person you intend to marry. If you then marry that person your Will is not revoked.

People who have married after making their Will should seek legal advice about its validity and should consider making a new Will to cover their changed circumstances.

Divorce does not cancel your Will. You may wish to consider making a new Will after you are divorced.

Complex Wills

Drafting of your Will becomes more complicated as more situations are covered.

Any Will more complicated than a simple Will should be given to a lawyer to draft.

Examples of matters that may make a Will more complicated are:

- The estate is large;
- A business partnership, company or family trust is involved;
- Transfer of property other than the family home;
- Remarriage;
- Children from more than one relationship;
- People involved live overseas; *or*
- Property is located overseas.

Review of your Will

It is recommended that you review your will periodically. This is to ensure that your Will continues to reflect your wishes in light of any changes that may have occurred in your financial or family circumstances.

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