



Wills

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About Wills

A Will is a document made by a person to:

- Appoint someone of their choice as Executor to administer their Estate after death;
- Dispose of all of their real and personal property after death

There are formal legal requirements for a Will:

- The person making the Will must be over 18 years of age;
- The person must be of sound mind;
- The Will must be documented;
- The Will must be signed by the person making the Will in the presence of two witnesses who are over 18 years of age and who are not beneficiaries.

You can include in your Wills details of your funeral or cremation, whether you want to donate your organs and you can appoint a guardian for your infant children.

A document not executed in accordance with the above requirements might still be accepted as a person's Will, but this might involve added costs to the estate to provide that document as a Will, so it is recommended to have your Will done properly.

Why Make a Will?

When you make a Will, you decide who benefits from your Estate when you die and who you would like to make as the Executor to carry out your wishes.

If a person dies without a Will, this is called "intestate" and statutory law decides who your beneficiaries are. Your family have no say in the matter. The entitlements depend on which family members survive you, and the value of your Estate.

Without a Will, the Public Trustee may become the Administrator of your Estate, instead of the person you would prefer.

When Should You Update a Will?

You should review your Will every three to five years or when there is a change in your personal or financial situation, such as separation or acquiring or selling assets.

If your Will still reflects your wishes, nothing needs to be done at the time.

In the Northern Territory, unless expressed to be made in contemplation of marriage, a Will becomes invalid when you marry. When you divorce, your Will might also be affected, as many provisions relating to your former spouse becoming invalid. Different states have different laws as the effect of divorce on your Will and your Will might be totally or partially invalid dependent upon your circumstances at your date of death. Separation currently does not affect it. In all such cases it is advisable to make a new Will.

The Executor

This person must be over 18 years of age to act as an Executor.

An Executor's role is important as he or she is entrusted to carry out the provisions of the Will. It is advisable to check with the person to make sure he/she is willing to be your executor.

More than one Executor can be appointed and you can provide for substitute Executors if your first choice is not able to act.

An Executor can also be a beneficiary.

Why Pay a Lawyer to Draw up your Will?

The Will is prepared to reflect your instructions and choice of Executor. For this service you pay the Lawyer's normal fee.

If the Public Trustee or private trustee company draw up your Will there is usually no or a low upfront fee, but you are usually required to appoint them as your Executor.

When you die the trustee company administers your Estate and is paid a commission to do so at the expense of your beneficiaries. The commission is usually calculated as a percentage of the gross value of your Estate, regardless of how simple the administration of your Estate might be.

Even if your nominated Executor seeks assistance from a Lawyer to administer your Estate, the fees charge relate directly to the actual work required, and not a percentage of the value of the Estate. Fees will usually be considerably less than the amount a trustee company would take as commission.

Also, it is the Executor's choice whether or not to engage a Lawyer.

Many people use Will Forms or Kits to draw up their own Will. Whilst this may seem to be less costly, if the Will isn't properly prepared, it could lead to increased costs, delay and anxiety of family members to remedy the problems.

Having a Will prepared by an experienced lawyer will give you peace of mind that your family will not have unnecessary problems with your Estate after you die.

Our Fees

We charge a fixed fee for a basic Will which includes taking instructions, preparing the Will and providing instructions for signing your Will.

For multiple basic Wills which make matching provisions, or where we are instructed to also prepare an Advance Personal Plan, we will provide a discount in accordance with our schedule (depending upon the number and type of documents prepared) (excluding disbursements).

An example of a basic Will is when you leave everything to your spouse but if your spouse dies before you, to your children.

With more complicated Wills, we will quote you a fixed fee based upon the requirements of your Will.

Disbursements and Office costs are charged as they arise.

For information on an Advance Personal Plan please see our other brochure about these documents.