



## Preparation of Wills

*Some of the most commonly asked questions about Preparation of Wills are discussed on this page.*

### 1. Should I make a Will?

Generally everyone over the age of 18 years should make a Will.

If you do not make a Will, your assets will be distributed in accordance with a method set by law. This means that your assets are likely to be distributed in a way that you did not intend.

For example, you may be involved in a de facto relationship and intend to leave your assets to your partner. If you do not leave a Will, your partner must endure the burden of proving the relationship to the Supreme Court, at a time when they are grieving. It would be much easier to have a Will leaving the estate to your partner.

Also, it is usual for your beneficiaries to require access to your assets as soon after your death as possible, to avoid suffering financial hardship. Having a valid Will would ensure that your beneficiaries get access to your assets as early as possible, without having to prove to the Supreme Court that they are entitled to your estate.

### 2. Is a do-it-yourself Will Kit good enough?

It is not advisable to use a do-it-yourself Will kit as there is greater risk of mistakes being made, and good estate planning opportunities being lost.

Your Will must conform to strict legal requirements for it to be accepted by the Court for Probate, and anyone who is not legally qualified risks making a mistake which could cause your family substantial cost and delay in having the Court resolve any ambiguity or mistakes. A Will is an important legal document, and therefore it is important that you have your Will professionally drafted.

A Will is one of the most important documents you are likely to sign, and it is vital to ensure you seek professional advice about making your Will to ensure it is both valid and reflects your intentions.

### 3. How does marriage or divorce affect my Will?

If you marry after you make your Will, your Will is no longer valid. This is unless the Will specifically states that it was made in anticipation of the marriage.

If you divorce after you make your Will, any gift to your former spouse will be cancelled. If you appointed your spouse as your executor, trustee or guardian of your children, that appointment will also be cancelled.



Marriage and divorce raise complicated issues when it comes to the validity of Wills. It is very important to seek legal advice if you are getting married or divorced to ensure your Will operates as you intend.

#### 4. What is a Testamentary Trust?

The beauty of a Testamentary Trust is that it is discretionary, which means the timing and amounts of distributions may be controlled and co-ordinated to suit the needs of your beneficiaries for years to come.

A Testamentary Trust is designed to give an array of options when it comes to transferring your estate, so that your beneficiaries attain the maximum benefit from their inheritance.

Examples of the types of benefits that can come from having a Testamentary Trust include;

- After-death continuance of trusts, business assets or property
- Tax minimisation devices
- Protection of vulnerable beneficiaries (such as spendthrifts)
- On-going and controlled provision for disabled beneficiaries

#### 5. Who should my Executor be?

Every Will must appoint at least one executor. An executor is the person who will 'step into your shoes' and carry out your wishes as set out in your Will.

Some examples of an executor's responsibilities include:

- Locating the Will
- Arranging the funeral
- Making an application to the Supreme Court for Probate of the Will
- Collecting assets of the estate
- Insuring any insurable assets
- Paying outstanding bills/debts
- Identifying any tax liabilities
- Distributing the estate to the beneficiaries
- Defending any claims brought against the estate

As you can see, the responsibilities of an executor are important and sometimes burdensome. It is vital that you choose someone you can trust will carry out your wishes in the best interests of your beneficiaries. It is a good idea to speak to the person you have in mind before making your Will, to make sure they would be happy to act as your executor.



## 6. Where Should I keep my Will?

As part of our service to you, you may choose to leave your Will with us for safekeeping in our fire proof safe custody facility. We can hold your Will until it is needed, free of charge.

You will need to advise your executor of the location of the Will, or better still give them a copy (which we can provide you with). A Will is not of any use if it cannot be located when it is needed.

***If you would like further information, or require assistance, please contact us on (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.***