

MAKING A WILL

INTRODUCTION

A will lets you say how you want your property dealt with when you die. Once you die, everything you own is called your estate. At Currie Lawyers we offer to prepare a free standard will for you.

MAKING A WILL

Your will contains your instructions about what you want done with your property when you die and how you want your dependants to be looked after. As far as you and your family are concerned it could be the most important paper you ever sign. A will can help relieve the financial and emotional stress on your family after your death and help minimise the likelihood of dispute about your estate. It is not just money that you need to think about but all of your property and possessions.

WHO CAN MAKE A WILL?

Anyone of sound mind who is at least 18 years old. A person under the age of 18 may make a will if they are (or have been) married or in a civil union or de facto relationship.

WHEN SHOULD I MAKE A WILL?

Now! Even if you do not own major assets, you can quite quickly build up possessions that can have monetary or sentimental value to you or others. You may have some money in bank accounts, a car, furniture and household items, a life insurance policy etc. A will allows you to decide what will go to whom, even if your possessions have sentimental value rather than financial value.

In particular, you should make a will when you marry or enter into a civil union or de facto relationship or if you have children. You should also revise your will if your circumstances change.

WHEN SHOULD I MAKE A WILL? (known as dying “intestate”)

If you die intestate, the Administration Act specifies how your property will be distributed – usually to a surviving spouse/ partner, immediate family, or to near living relatives in set proportions. This may not be what you would have wished or what your family wants, and it could involve them and your estate in the cost and effort of making a claim under one or more of the above acts.

If there are no relatives in the categories listed in the Administration Act, then your estate goes to the Government.

HOW DO I MAKE A WILL?

Because of the importance of your will, the law says it must be made in the prescribed manner. Do-it-yourself kits do not always cover all the aspects you need to consider.



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We can:

- Suggest how you can best and most fairly provide for your family and dependants;
- Express your wishes so they have the legal effect you intend, and ensure your will is properly drawn up and valid;
- Tell you about alternatives you must consider (including who may challenge your will and why – this can be very complex legally);
- Advise on the appointment of suitable executors;
- Advise on, and form trusts for your beneficiaries;
- Explain extra powers available to your executors and trustees that you might want to include in your will and advise on the appointment of certain people to take on these roles.

WHAT SHOULD MY WILL INCLUDE?

At least one named executor – a responsible person who will see that your wishes, as expressed in your will are carried out and who will administer your estate until it is properly distributed. An executor's role can include paying debts, selling property and finally distributing the estate in terms of the will.

An executor can be named as a beneficiary and you can direct your executor be paid for the work involved.

Your will should make adequate provisions for your dependants (as well as partners and children, this can include adult children not able to look after themselves, and, sometimes, parents).

You should also name preferred guardians for any infant children.

You can set out certain funeral arrangements that you want and state your wishes about being an organ donor.

You can give directions about how any business you own can be dealt with.

You can also include a bequest or a gift to charity.

WHO SHOULD I NAME AS BENEFICIARIES?

Beneficiaries are people who inherit your property – that is, they benefit from gifts in your will. You can name anyone and any organisation you like as beneficiaries but remember there are circumstances in which people can challenge your will.

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For instance, it is usual to provide for your spouse or partner, children, possibly grandchildren and, in some cases, parents. If you do not provide for these people they may be able to bring a claim under the Family Protection Act.

WHAT COULD MAKE A WILL INVALID?

1. If you have married, entered a civil union or ended a marriage or civil union since the will was made;
2. If it is not prepared, signed and witnessed correctly;
3. If there was some undue pressure or influence on you to dispose of your property in a certain way;
4. If you were not of sound mind or were under age when you made the will;
5. If it is not clear that you approved a gift to a witness (or spouse or partner or a witness).

CAN I CANCEL OR CHANGE MY WILL?

You can revoke (cancel) your will at any time (while you are still of sound mind) by making a new will that you revoke your existing will.

Your new will will have a clause revoking any prior wills.

You can change a clause or any part of your will by having a codicil (a supplementary amendment) prepared.

HOW OFTEN SHOULD I REVIEW MY WILL?

You should review your will regularly, say every five years or when your circumstances change, i.e. if you marry, enter into a civil union, have children, or if any beneficiary or trustee dies or if your assets change significantly.

*We have a will form that you can complete,
which is available from reception should you
wish to make a will.*