

# Making a Will.



## Chamberlains. Law Firm

### What is a Will?

A Will is a formal written document that records your wishes and disposes of your assets following your death. It is an important document to have as it protects your assets and addresses other significant issues, such as guardianship of minors and the disposal of your body.

Your Will allows you to appoint an executor/s and decide how your estate is to be divided. An executor is responsible for the administration of your estate and to ensure your wishes are met. Your Will does not come into effect until after your death.

Everyone should have a Will. If you die without a Will, you die 'intestate' and your estate will be divided according to a formula governed by the relevant intestacy law of each State or Territory which do not take into account your individual wishes or circumstances. The following are some of the main issues you should consider when making a Will.

### Formal Requirements of a Will

Not all written documents disposing of assets are Wills. Relevant legislation in each State and Territory dictates a number of requirements for a document to constitute a Will. A document failing to meet these requirements may not be a Will, leaving you with an intestate or partial intestate estate at the time of your death. This can have significant implications for the distribution of your estate including potential disputes as to the validity of the document.

### Who can make a Will?

A Will can be made by anyone over 18 years of age and of sound mind. This is called 'Testamentary Capacity'. To have testamentary capacity you must be able to demonstrate that at the time the Will was prepared you understand the nature and effect of the Will. The test of capacity is a legal test and estate planning solicitors are trained to identify if a person does not have testamentary capacity.

If a person requires a Will but does not have 'capacity' a special application can be made to the Supreme Court asking the Court to make a Will for that person. These are called 'court' made Wills.

### Do I need a Will?

Making a Will is the only way to ensure your wishes are followed and to prevent potential disputes regarding your Estate and affairs. It also provides security for loved ones and can help avoid unnecessary and costly complications at the time of your death.

You may think that you do not have substantial assets to justify the cost of getting a Will, however if you have superannuation, it is likely that you will have a life insurance policy attached to your superannuation account and your Estate may be worth considerably more after your death.

### Distribution of property

In your Will, you can only dispose of assets that you own in your sole name. Additional or alternative estate planning mechanisms dictate how 'non-estate assets' will pass.

#### ***Estate assets include:***

- real estate and personal possessions including your household contents;
- shares or interests in companies; and
- other investments and/or bank accounts.

#### ***Non-estate assets include:***

- property owned jointly (joint tenancy) – your share passes automatically to the other joint tenant;
- assets held inside a trust;
- superannuation;
- life insurance policies.

## Making a Will - Continued.

Your property can be left as a specific gift to a particular beneficiary or generally divided between one or more beneficiaries as part of the residue of your estate. You can give your estate to your beneficiaries absolutely or in a Trust. Please refer to our 'Discretionary Testamentary Trust' brochure for more details about gifting your estate via a Trust.

## Regularly review your Will

A will is drawn to cover your current situation and in anticipation of certain events that may or may not happen in the future.

Changes in your life and the law can significantly change the interpretation or application of your Will. In some instances, your Will can even become ineffective or invalid. We recommend that you review your Will every three to five years to ensure that it will still give effect to your wishes. If any of the following events have occurred in your life you should make a will or update your Will.

- Have you gotten married? Or separated from your partner?
- Have you had any children? Or have any of your children turned 18 since you signed your last Will?
- Is the person you named as executor still alive and well enough to do the job?
- Have the circumstances of any beneficiaries changed to make you reconsider your wishes, or have any of them died?

- Have you nominated any specific gifts that are no longer valid or you no longer have, for example, have you sold a property that you had left to someone in the Will?
- Have you acquired any new assets that you would want to make specific plans for in your Will?

## Conclusion

It is important is to consider your circumstances at every major personal milestone in your life Any Will you have that is more than five years old should be reviewed.

At Chamberlains Law Firm we will review your current Will for free and if you do not need to update your will we will tell you!



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