

WILLS

Why do I need a will?

If you are over 18 and have assets (even if it is just superannuation), you should have a will. If you die without a will, you are said to have died intestate and your assets will be distributed in accordance with arbitrary rules set out in the Succession Act. The persons named in this Act may not be those you wish to benefit. In addition, particularly with superannuation, your next-of-kin may have to obtain a grant of Letters of Administration from the Supreme Court in circumstances where if you had a will, no such application would need to be made.

How often do I need to change my will?

Major life changes such as entering into marriage or a de facto relationship, separating, divorcing or retiring may all necessitate changes to your existing will. Marriage always cancels any previous will unless that will states that it is made in contemplation of the marriage. Separation or divorce does not, although divorce will, in most circumstances, cancel part of your will. There is no need to change your will simply because you change your address, although you should notify whoever is holding your original will of your new address.

Should I see a professional to make my will?

Yes. Do-it-yourself will kits are not recommended. If the wording of your will is not clear (and bear in mind this is a very technical area where the words you use may be interpreted by a court to mean something other than what you actually intended), it could cost your estate thousands of dollars in legal fees to obtain a ruling from the Court on the true meaning of the will. Often attachments to a do-it-yourself will kit will also result in considerable additional costs to an estate.

In addition, some of your assets may not fall into your estate on your death and your will may not reflect your true intent. Joint assets, assets in a family or discretionary trust, life interests, pensions, annuities and superannuation may not form part of your estate (depending on circumstances). A solicitor experienced in estate planning will be able to give you advice on which assets will fall into your estate. They may also be able to suggest ways of:-

- changing ownership or assets during your lifetime so that your executors will not need a grant of probate,
- structuring your will in order to protect your beneficiaries from potential creditors,
- structuring your will in order to minimise tax paid by beneficiaries on the income they earn from their inheritance, and
- ensuring that your superannuation is distributed in accordance with your wishes.

Who do I see to make a will?

Either a solicitor or trustee company.

What is the difference?

Both will charge a fee to prepare your Will but a solicitor, unlike a trustee company, will not be entitled to a percentage of your estate on your death.

What sort of percentage does a trustee company charge?

Up to 4-6% of your gross estate, plus legal fees. On an estate with a gross value of \$500,000, this would mean commission on the gross estate in excess of \$16,000, plus court fees and expenses. There is additional commission of 5.5% charged on income received by the estate.

If I do not have a trustee company as my executor, who do I appoint?

You can appoint members of your family or your partner (beneficiaries can also be executors), or your accountant or solicitor. If your executors are not familiar with estates they will usually engage a solicitor to assist them.

Can you give me a practical example of what happens if I die without a will?

If you are married with children, your spouse may not receive all your estate upon your death. Your spouse will receive the first \$120,000.00 of your estate and one half of the balance. Your children will receive the other half. If the children are under 18, their entitlement to the estate must be paid to Public Trustee to manage until each child turns 18. This may cause your spouse financial difficulties. In addition, Public Trustee will charge commission on the assets they managing.

If you are living in a domestic partner relationship, your partner may have to make a costly and time-consuming application to the Supreme Court to prove that they were your domestic partner at the time of your death, so it is particularly important that each of you has a will.

What would my family do if I died without a will?

Depending on the assets in your estate, your closest family member may have to obtain what is called a Grant of Letters of Administration from the Supreme Court. This would enable them to deal with the assets in your estate and distribute them in accordance with the intestacy rules. A report must also be made to Public Trustee on finalisation of your estate, together with payment of a fee. A solicitor can advise your family regarding the procedure to be followed. If Public Trustee applies for the Grant of Administration on your behalf, Public Trustee would be entitled to charge its usual commission based on the value of the assets in the estate.

Can anyone challenge my will?

The Succession Act sets out who can challenge your will. Basically this is limited to your spouse (including a domestic partner), children, former spouse and stepchildren and grandchildren. Parents and siblings can also challenge in certain circumstances.

This is a technical area and your solicitor can advise you further if you are contemplating leaving someone out of your will who could later challenge your will. Sometimes strategies can be put into place to remove or minimise this possibility.

What will a solicitor charge to help administer my estate?

A solicitor will charge for what they do. Most estates are simple and quick to finalise and a fee of about \$4,000-\$6,000 is common where probate is obtained and you want the solicitor to assist in getting in the assets and distribute them.

What will a solicitor charge to prepare my will?

Please see our fee schedule.

For further information, please contact Sedsman Legal:

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