

## Fact Sheet: Wills – What you need to know

### What is a Will?

A Will is a legal document that outlines your wishes about the distribution of your property and assets and the care of any minor children, adults with disabilities you care for, or other family members after your death.

### What happens if I die without a Will?

Having a legal, written Will is the only way to guarantee that people will receive the items you want them to. Your wishes with regards to the distribution of your property and assets, and the care of any minor children may not be followed if you die without one. Those left behind may make those decisions for you, or there may be a government agency appointed to decide what happens to your estate. Your family, or those you would have wanted to give property to may face additional time, costs and emotional torment trying to settle your affairs once you've gone. Your loved ones you intended to provide for may be left without such financial support.

### What would my Will include?

Wills are very personal, but a Will generally outlines:

- Who you want to receive your assets and property, including identification of names as well as amounts;
- An indication of who you do not want to get assets or property;
- Who you wish to care for your children;
- The person or people you would like to manage your estate distribution, ie the Executor;

It also includes:

- Clearly identifiable information about you including any other names you're known by;
- Legal terminology to make it clear that this is your Will, usually referred to as Testamentary Intent.

### What should not be included in a Will?

- Your funeral arrangements as a Will is often read well after your death.
- Personal derogatory comments about other people.
- Assets and property you do not own or have legal control over.
- Illegal gifts and requests.
- Assets with named beneficiaries.

### Who can be a beneficiary?

The beneficiary of a will can be a family member, partner, friend, charity, business, or even a trust. It's also wise to include a contingent beneficiary in your will, who will receive the assets when the primary beneficiary is dead or unable to receive it.

## DEFINITIONS

The following are some common words used when we talk about Wills and Estates.

**Will** - a written legal declaration of a person's wishes regarding the disposal of his or her property or estate after death.

**Beneficiary** - a person who gains something from the Will.

**Probate** – is the process of a Court establishing that a Will is valid and represents the final testamentary intentions of the Testator.

**Executor** - a person or institution appointed by the maker of a Will to carry out the terms of the Will.

**Intestate** – without a legal Will.

**Testate** - having made a valid Will before one dies. A person who has died leaving a valid Will.

**Testator** - a person who has made a will or given a legacy.

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Elise Thomson, Principal Lawyer

## DIY WILLS

Although there are options available for do-it-yourself wills, they are not generally recommended, particularly if you have family or a range of assets.

There are risks if the document is not properly prepared. Some of the risks include:

- Multiple people writing Wills can result in questions about the validity of the Will, particularly if different handwriting or pens are included.
- Signing of the Will not meeting legal requirements.
- Overlooking important assets, or including assets which are not legally yours to include, can threaten the validity of the entire Will.
- High costs to your loved ones associated with sorting out your estate because your Will was not clear.
- There is usually no legal recourse on those who provide templates or assist with do-it-yourself Wills if something goes wrong.

### Who can be an Executor?

An Executor is the person who carries out the terms of your Will and manages your other affairs after you die, including settling unpaid debts, notifying relevant people about your death and even filing a final tax return. You can name a family member, friend or even a lawyer to serve as Executor of your estate. Your Will can also state how much they are to be paid for the service, and this fee comes out of your estate. If you don't name an Executor someone will need to apply to the Court to act as your personal representative or, if no-one applies, the Court will name an administrator. Although it's not essential, it's a good idea to ask the person you're naming as Executor if they are willing to take on the role.

### Who can sign a Will?

Your Will must be signed by you in the company of two adult witnesses. The witnesses sign indicating that they can verify your identity and mental capacity to create a will. These witnesses should preferably not be beneficiaries or Executors of your estate. They must also be present in the room at the time you sign the Will.

### What can make a Will invalid?

There are a number of reasons a Will can become invalid and we recommend you always seek professional legal advice on your Will and Estate matters. The following are just some instances that would make the Will not valid:

- You make another Will,
- You lacked the mental capacity to make the Will,
- Someone used undue influence or pressure to force you to make the Will,
- The Will isn't signed and dated by you and two adult witnesses,
- Your personal circumstances change, such as a marriage or divorce,
- It includes assets which are not yours to bequeath.

### What is the role of an Executor?

The Executor is essentially the representative for you after you die. Their main role is to finalise your personal, financial and legal affairs.

The main responsibilities of an executor are to:

- apply for a grant of probate if necessary,
- preserve the assets for distribution,
- identify and gather the estate assets,
- pay any liabilities,
- defend the estate during any legal proceedings,
- manage your tax affairs after your death, and
- distribute the assets.

## NEED MORE HELP?

At **Thomson & Associates** we offer a caring and understanding approach to our Will and Estate services. We know it can often be an emotional time, and that no-one wants to consider the prospect of dying.

You can book an appointment directly through:

**Website:** [thomsonandassociates.com.au](http://thomsonandassociates.com.au)

**Phone:** (08) 7082 3728

**Email:** [reception@thomsonandassociates.com.au](mailto:reception@thomsonandassociates.com.au)