

MAKING A WILL

A Will is a legal statement by which you name the people you want to receive your property and possessions when you die. A valid Will ensures that your financial and family affairs are managed in accordance with your wishes and can prevent confusion and save your beneficiaries time, effort and money. A valid Will is one that will be accepted by a Court and is able to be put into effect. To be valid your Will must be in writing, signed, and witnessed by two witnesses who are present when you sign the Will.

If your Will is not made in this way it may not be enforceable and your property may be disposed of as if you had not made a Will. The Court has a discretion to grant or not grant probate (confirm that the Will is valid) if your Will is not made in this way. The Court needs to be satisfied that the document represents your testamentary intentions. We have all heard about the problems that can be caused because there is no will or someone doesn't agree with the existing will. You should make a will even if your estate is very small or all your assets are in joint names.

Intestate

Dying without a will (intestate) can be costly and cause distress for your beneficiaries because your property will be distributed according to a rigid formula. The formula may not distribute your property in the way you would have wanted. Your children, or other minors in your care, may not receive the protection you would have desired

Executors

To ensure that your wishes are carried out you need to appoint an Executor to handle your estate after you die and to administer the distribution of your property. Any adult person can act as an Executor - your spouse, child, friend or lawyer. This person needs to be competent, trustworthy and prepared to accept the task. A beneficiary can also be an Executor. Usually the Executor manages and distributes the estate with the assistance of a lawyer.

Altering a Will

You are free to alter a Will at any time. It is in your interest to review your Will every two or three years or whenever a major event occurs in your family, your assets or the taxation laws to make sure the Will is up to date and still what you want. If the alterations are minor you can make a Codicil which is a separate document in which you change a provision of your Will. A Codicil must be signed in the presence of two witnesses in the same way as when you make your Will.

Marriage

If you made a Will before you married it will automatically be revoked when you marry, unless it was expressly made in contemplation of the particular marriage, not just marriage in general.

Divorce

Any gift or appointment in favour of a former spouse in your Will is automatically revoked when a divorce decree becomes absolute, but this is not the case if you are only separated. It is in your best interest to make a new Will if you are separated.

Challenges to a Will

Close members of the deceased's family and his/her dependants who are left without adequate provision in a Will may apply to the Court for further provision out of the estate.

Safe Custody of your Will

Your Will should be kept in a safe, secure place, such as with your lawyer or bank. You should keep a copy of your Will at home and note on it where the original is kept. It is also advisable to tell your Executor where the Will is kept.

Legal help in writing a Will

It is worth paying a lawyer to assist you in writing your Will especially if it is complex or you want to exclude certain family members from becoming beneficiaries. This would also be the case if you are in a same sex relationship or have step children, as the law is very unclear in these situations.

This article contains general information only and is not provided as legal advice. Professional advice should be taken before any course of action is pursued, or any information here is relied upon.

For advice about making a Will contact Sharon McRae, Caroline Symington or Anna Vadaketh on 9890 3321.



701 Station Street, Box Hill, Victoria 3128
Tel : 03 9890 3321 Fax : 03 9898 4266

email : legal@robinsongill.com.au
www.robinsongill.com.au