



Factsheet:

Wills

What is a Will?

A Will is a legal document that clearly sets out your wishes for the distribution of your assets after your death. It allows you to provide for the people or causes that you care about and to appoint a person you trust to carry out the instructions in your Will.

Do I need a Will?

If you die without making a valid Will, or your Will does not effectively deal with all or part of your property, you leave what is known as an intestacy. This means that your estate will be distributed according to a formula determined by legislation, commonly known as the Intestacy Rules. Under the Intestacy Rules your parents, siblings, grandparents and even aunts, uncles and cousins may benefit from your estate. This may mean that your assets do not end up with the people you would have chosen. If you die intestate and have no surviving relatives, the State Government is entitled to receive your whole estate!

Can I prepare my own Will or use a Will-kit?

A Will must conform to strict legal requirements or the Courts may decide it is not valid. Anyone who is not legally qualified to draft a Will risks making mistakes or creating uncertainty as to what they intend.

A Will is an important legal document and it is therefore advisable to have your Will drafted by a legal professional.

If I already have a Will, do I need a new one?

Even if you already have a Will you should review it regularly to make sure it suits your current circumstances. Situations where

you may want to update your Will include: when you buy or sell a major asset, marriage, separation or divorce, death of a spouse, start of a de-facto relationship, birth of a child or grandchild, death of an executor or a beneficiary named in your Will or retirement. It is generally recommended that you review your Will whenever you have significant changes to your circumstances or at least every few years. It is important to note that you cannot simply amend a Will by making amendments to the original document. Writing on the Will after it has been signed may invalidate it. Any amendments must be either by way of a Codicil document or by the making of a new Will.

Where should I store my Will?

Your Will is an important legal document and you should therefore ensure that it is stored in a safe facility where it will not be lost or damaged. It is also vitally important that it is stored somewhere where your executors will be able to find it because otherwise your executors may have to assume that you died without a Will.

Atkinson Vinden offers a professional, secure document storage service. Once you have finalised and signed your Will, you will be given a copy for your records. The original can then be securely stored in our strong room and accessed whenever your documents are required. We follow strict privacy regulations and don't allow anyone, apart from you or someone authorised by you, to access your Will. Your executor will only have access to it upon your death. Our clients also store other important documents with their Wills such as title deeds, share certificates, insurance policies, birth certificates and marriage certificates. We do not charge for this ongoing document storage service.

What is an Executor?

An executor is the person appointed by the will-maker to

administer the estate in accordance with the Will. The main duties of an executor are to collect the assets of an estate, to apply to the Supreme Court for a Grant of Probate, paying debts, paying legacies under the Will, distributing the assets to the beneficiaries, preparation and management of accounts, preparing and lodging of tax returns.

Are you an Executor?

It is best to seek legal advice before you begin the process of administering an estate, to make sure you minimise any personal risk. Some areas of concern include: being held liable as an executor for any damage to estate property which has not been secured or insured, beneficiaries may have a right to pursue a claim against an executor personally to recover the shortfall if assets are not sold for a fair price, an executor can be personally liable for the payment of money to the tax office if all the assets of the estate have already been distributed to the beneficiaries.

What about Superannuation?

While your superannuation is an asset that generally does not fall into your estate, it is still important to consider your superannuation carefully as part of your estate planning. If you make a non-binding nomination, the trustee of the fund will make a decision about who to pay your death benefit to, but it has to determine who your dependants are and any other relevant considerations at the time of your death. Your benefit will be paid to those considered to be financially dependent on you and this may not be the person or people you originally nominated.

If your superfund allows you to make a binding nomination, then when you die, the trustee of the fund is required to pay your benefit to the person or people you nominated. Your binding

nomination must be valid at the time of your death (since binding nominations generally only remain valid for three years). Your binding nomination may be to your Legal Personal Representative which would result in a payment to your estate.

How does marriage affect my Will?

Marriage after you have made a Will generally results in the Will being automatically revoked, unless it was made in "anticipation of marriage" and contains clauses in the Will that state this. There are however, several circumstances under which a Will is not revoked because of a marriage, such as when the Will contains a legacy for the person you marry or when your Will states that the person you marry is to be appointed as either trustee, executor or guardian. It is important to obtain specific legal advice regarding your particular circumstances before you get married.

How does separation and divorce affect my Will?

Separation does not have any effect on a current Will, so you need to consider whether the arrangements in that Will, particularly in regard to your current spouse, are still as you require. Your spouse will receive whatever your Will provides if you die during the period of separation and before divorce. You may have appointed your spouse as your executor, and that may no longer be as you wish.

Divorce affects your Will differently in each state and territory and possibly not in the way that you might intend. In New South Wales any appointment of your spouse as your executor or gift to him/her as beneficiary in your Will is revoked on the day your divorce becomes final but the remainder of the Will is not affected. So, if you have not made provision in your Will regarding alternate beneficiaries, your Will may not have any effect.

What should I do now?

- **Contact our Estates team on (02) 9411 4466 or email@avlayers.com.au** to request an initial consultation during which we will discuss your personal circumstances;
- **At your meeting with one of our experienced estate lawyers,** we will discuss your circumstances, family relationships, finances and any other important factors to consider. You will

be provided with various options to consider.

- **Following your consultation,** we will provide you with a formal cost disclosure detailing our anticipated costs based on the work you require us to do;
- **If required, we will consult** with your accountant or financial planner before preparing draft documents;
- **We will then draft your estate planning documents based on your instructions** and provide you with the draft to consider;
- **Once you are satisfied with your documents,** we will arrange for a further meeting to have you sign

the documents, ensuring they are appropriately witnessed;

- **We will then arrange for copies to be provided to you** before securely storing your original documents in our safe storage system.

Wills and Estates

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