



Legal and Taxation Services

SHOULD I MAKE A WILL?

Yes. It is essential to make a Will if you are concerned about who will receive your assets and belongings after you die. It is particularly important to make a Will if you have a family or other dependants.

Even if you are married with dependants you need a Will. If husband and wife are killed together, for instance in a motor accident, the older person is presumed to have died first. If you were the younger person, you might have inherited assets from your spouse - even though you were by then dead - but if you had not made a Will your assets would be distributed under a rigid formula regardless of what you might wish.

What is a Will?

A Will is a legal document that names the people you want to receive the property and possessions you own at the date of your death. These people are known as your beneficiaries. Your property and possessions include everything you own: your home, land, car, money in bank accounts, insurance policies, shares, jewellery, pictures, furniture, and so on. Making a Will is the only way you can ensure your assets will be distributed in the way you want after your die.

What is a "valid" Will?

A valid Will is one accepted by a court and put into effect by a grant of probate. To be valid your Will must be:

- In writing - handwritten, typed or printed;
- Signed - ideally your signature should be at the end of the Will;
- Witnessed - two witnesses must be present when you sign your Will or acknowledge it and they, too, must sign in your presence, but they do not have to be present together at the time they sign.

If your Will is not made in this manner it may not be enforceable; the court has a discretion to grant or not grant probate (confirm that the Will is valid) and your property could be disposed of as if you had not made a Will. In exercising its discretion, the court needs to be satisfied that the document sets out how you want your assets to be distributed.

Can I make a Will myself?

You can make a Will yourself if you wish; printed Will forms are available from stationers. There is not a legal requirement that a Solicitor draft a Will. However, it is not in your best interests to draft your Will yourself. There have been very many cases where homemade Wills were either unclear, not properly drawn up or caused an unwanted tax liability. Many of these cases end up in court and carry on for years, causing distress and perhaps hardship to the family of the deceased. In general, Solicitors do not charge a large fee for making a Will, and since it is one of the most important legal documents you will ever make, it is false economy to try to do it without skilled professional advice.

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How can I make sure my wishes are carried out?

You should appoint in your Will a person called an executor to handle your affairs after you die. If you wish, you can name more than one person to act as executor. You can choose anyone to be your executor - your spouse, relative, a friend, your Solicitor - but you should first ask them if they are prepared to take on the task and confirm with them that they have been appointed.

Being an executor is a very responsible position. The executor has to obtain probate of the Will and pay any taxes, debts or expenses before finally distributing the balance to the beneficiaries named in your Will. An executor who is not a beneficiary may apply to the court for payment for his or her work as executor.

What happens if I don't make a Will?

The legal procedures are more complicated and time consuming and may cause expense, worry and even hardship for your family.

The law provides a formula which sets out who is entitled to the property of the deceased person who does not leave a Will. The formula may not distribute your assets in the way you would have wanted.

It is not true that the Government takes a deceased person's property if there is no Will. This can happen only in exceptional cases where there are no close relatives or persons in a family relationship surviving the deceased.

Can I alter my Will if I change my mind?

Yes. You are free to alter your Will at any time. If your circumstances change in any way, you can and should alter your Will. However, you cannot make an alteration by, for instance, crossing something out on the original Will and writing in your new wishes.

If the alterations are minor, you can make a codicil (this is a separate document in which you change a provision in your Will) but it is usually better to make an entirely new Will unless the change is a very simple one. A codicil must be signed in the presence of two witnesses, in the same way as when you make your Will.

What if I marry or divorce?

If you made a Will before you married, it will automatically be revoked when you marry, unless it was made with a particular marriage in mind, or stated in general terms that it was made in contemplation of marriage. So if you marry, it is more than likely you will need to make a new Will.

Any gift or appointment (e.g. as an executor or guardian) in favour of a former spouse in your Will is automatically revoked when a divorce decree becomes absolute or a decree of nullity is made. It is in your best interest to make a new Will or codicil if you are divorced or have been separated for an extended period.

Can I leave my assets to anyone I please?

Yes, but you should make proper provision for your spouse and children, including ex-nuptial children. If you do not, they could take proceedings to obtain provision depending on their needs.

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Where should I keep my Will?

Keep your Will in a safe place. Solicitors, banks and trustee companies hold Wills on behalf of people, often at no charge. You should keep a copy of your Will and note on it where the original is kept.

It is advisable to tell your executor where your Will is kept. If you want to give your executor personal instructions that you do not want to appear in your Will, you can leave your executor a letter of instructions.

How will a solicitor help me?

Having a Solicitor draw up your Will is in your interest because he or she will:

- Make sure your Will is valid - that is, properly drawn, signed and witnessed;
- Make sure your wishes are clearly expressed in the Will;
- Advise you regarding adequate provision for your spouse and children, or for any former spouse or any dependants;
- Advise you as to any possible liability for capital gains tax which might result from provisions you intend to make in your Will;
- Advise you on choosing an executor and on the executor's right to be paid for his or her time and trouble in administering your estate;
- Advise you on the best way to arrange your affairs;
- Keep the Will in a safe place, usually without charge.

To arrange an appointment to discuss your personal needs, call us on **02 9602 8488**.

Download more helpful fact sheets from our website:

What you need to know about your Will

Purchasing a Property

Selling a Property

Appointing a Guardian

Giving a Power of Attorney

www.mgfarrugia.com.au/services

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