



Wills & Testamentary Documents Information Pack

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Wills

Every adult should have a Will and the process doesn't have to be difficult. So stop putting it off!

Wills and testamentary documents are not just for "old" people. Whilst elderly people definitely should have Wills, all adults really should have one. If you leave it until you are "old", it might be too late! We never know when an accident might happen or when a cognitive impairment like dementia might creep up on you.

You need a Will if you have any asset, have any debt, own real estate or have children. Even if you think your estate is small - you still need a Will.

If you die without a Will, it can be expensive and stressful for your loved ones, and your assets may not be divided in accordance with your wishes.

Even if you already have a Will, you should revise it every few years or if your circumstances change. If you get married, separate from a partner, have children or your assets change, let us review your current Will. Reviewing your Will should be a regular occurrence - like having a regular doctor checkup - at least every five or so years.

We see so many families torn apart due to poor estate planning. Don't leave your loved ones with an expensive mess. A Will is one of the most important documents you will ever draft.



*About 50% of Aussie's
don't have a valid
Will.*



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FAQs about Wills



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What is an Executor?

An Executor is the person appointed by a will maker to handle the estate when they die. An Executor's role involves making sure the deceased's debts are paid and their assets and possessions are collected and distributed according to the terms of the Will. Executors are often assisted by Solicitors and Accountants to fulfil their role.

Who should you appoint as an Executor?

- Someone who is willing and wants to fulfil the role (it is best to ask the person if they will be your executor)
- Someone who is aware of your assets and has a decent idea of where you bank, what assets you have and what business you are conducting during your lifetime
- Someone who is able to manage money and who is capable of liaising with solicitors, accountants, banks or real estate agents to fulfil the role.
- We recommend that you appoint a substitute executor, in case your first choice cannot fulfil the role. You can appoint 2-3 executors. Any more than this, and it becomes too onerous to administer the Estate.
- Most people appoint their partner and then some or all of their children (or a relative) to be their executors
- If you wish to appoint a "professional" such as an accountant or solicitor as your executor, ask them about what executor fees they would charge.
- If you are expecting some unrest in your family when you die, consider appointing a person who will be able to handle the conflict and emotion. It can be stressful if family members are upset and arguing over your estate.

How should I gift my Estate?

However you want! You can give your Estate to anyone, any organisation or charity. Commonly, people give their Estate to their partner and then their children equally. But you can gift your estate to anyone and we will help you draft a Will that suits your wishes and is personalised to you.

We will give you advice on who might be able to make a claim on your Estate under the Succession Act and will make suggestions on how to minimise conflicts. If you have a blended family, or are not providing for an "eligible person" under the Succession Act, it is important to get a good Solicitor to draft your Will and give you advice to minimise estate disputes and protect your assets.

Based on your instructions, we will help you draft a Will that reflects your wishes but is legally binding. We are experts in complex and simple Wills.

The details and words matter!



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A poorly drafted home-made Will or “post office” Will can do more damage than good!

Words have legal meaning and can be interpreted differently to how you may have intended.

Each word and sentence we draft is carefully considered, based on our knowledge of the Succession Act and case law of the Supreme Court.

It is very common to see home-made Wills that are poorly drafted and vague. If a Will is not well drafted it may result in the Supreme Court rejecting all or parts of your Will or your estate being subjected to lengthy and expensive questioning by the Supreme Court to prove the validity of the Will.

We are experts in estate planning and can advise you on the benefits of intergenerational transfers, tell you if a testamentary trust might be appropriate and can spot problems that you likely have not considered. So don't try to do a Will yourself - leave it to the professionals.

We now offer an online intake form that lets you start the process and think about your estate planning in your own time. Head to our website to start an intake form.

The intake form helps us be prepared for your initial appointment by gathering information such as your family tree and assets.

The intake form is helpful but not compulsory. If you wish to simply book an appointment, then you can call, email or book online.


We do appointments at any of our offices, over the phone or via video conferencing. We can also attend upon you at hospital or your home if necessary.

Alternatively if you are thinking about making a Will, we have created a Checklist on the next page of useful things to think about and information that you should show your Solicitor when attending an appointment to draft a Will.



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Will Preparation Checklist

TASK	
Create an Inventory of your Assets & Liabilities (You can use the table on the next page)	
Are you sure who owns property or assets? We will likely need to do title searches for real property to check and we may need to talk with your accountant. If you own a business, company or have a Trust, bring recent Financial Statements and any company constitutions or Trust Deeds to your appointment, with the contact details for your accountant.	
If you have super or life insurance - check if you have a <i>Binding Death Nomination (bdm)</i> & bring any nomination to your appointment . If you do not have a bdnm - you should consider making one and should discuss this with your Solicitor and financial adviser.	
Get financial advise before you make a Will. Sometimes it is beneficial to move assets or dispose of them before your death and getting a Will might only be one of the steps that you need to take.	
Think about who could be an Executor (and discuss it with them). Get the address and contact details for your proposed Executors	
Think about what items or gifts you want to give and make a list. Make sure you have the full and correct names for each of your beneficiaries.	
Think about your family tree. It is helpful to show your Solicitor a family tree (a hand drawn one is fine) so they can assess who the "eligible persons" are and address any possible claims on your estate.	
Think about who might be willing and able to care for any young children, if you die. Ask these people before appointing them as guardians. Think about whether you would allow guardians to access your estate funds to pay for accommodation, food or utilities whilst your child/ren are in their care. How old do your children need to be before they can access their inheritance? Your Solicitor will give you ideas and options but it's good to start thinking about the practical realities and costs of caring for your child/ren.	
Think about how easy it will be for your Executors to find and access your assets. <i>Previously, Executors would check the deceased's postal mail and would be able to work out from the mail, who you banked with and what shares you owned etc. But most people now receive their statements and financial info via email and your executor might not have access to your email after you die. If you have crypto or digital assets, consider where the keys and codes to access the accounts should be stored - no one can access your crypto if the key is lost.</i>	
Think about your funeral and wishes for your body after you die. It is a great idea to make sure your family and loved ones know your wishes.	



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Assets & Liabilities Schedule

	Assets	Value Balance
Real Property	Address	
1		
2		
Bank Accounts	Financial Institution & type of account (do not put your BSB or Account numbers)	
1		
2		
3		
4		
Shares	Share holding details including number of shares and company	value
1		
2		
3		
Furniture, collectables, jewellery	Description	value
1		
2		
3		



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Assets & Liabilities Schedule

	Assets	Value Balance
Superannuation & life Insurance	Fund and type of fund	
1		
2		
Vehicles	Vehicle description & rego number	
1		
2		
Company or Business	Details of your interest in business, company or partnership	value
1		
2		
Stock, plant or equipment	Description	value
1		
2		
3		
Other Assets	Description	
1		
2		

Will Preparation Checklist

	Liabilities	Value Balance
Mortgage	Financial institution & property secured	
1		
2		
Credit Cards	Financial Institution	Balance
1		
2		
Personal Loans	Share holding	
1		
2		
Other liabilities		
1		
2		
3		
4		
5		

What should I bring to an appointment with my Solicitor?



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After you book your appointment or contact us, we will send you a link to our online intake form (or you can access the intake form through our website).

The online intake is optional but doing it will allow us to have a great idea of your circumstances before your appointment.

The intake will ask you lots of questions and prompt you to bring or provide us with documents.

As a general rule you should bring :-

- Identification
- Detailed list of assets and liabilities
- Trust Deeds
- Deed for any Self-Managed Super Funds
- Financial statements & assets and liability statements for any businesses, companies or partnerships
- Super statement and your binding death nomination
- Court Orders from previous family law property settlements



Things to mention to your Solicitor

- If you have a blended family and want to provide for your biological children only - ask about asset protection, testamentary trusts and changing joint tenancy to tenants in common.
- If you have crypto or digital assets, consider where the keys and codes to access the accounts should be stored - no one can access your crypto if the key is lost.
- If you know that your children are going to argue over your estate - talk to us as soon as possible - we can discuss estate planning strategies to distribute your estate while you are alive to prevent an estate dispute or we can assist with pre-death Family Agreements which allow you and your family to mediate during your lifetime.
- If you are concerned about giving beneficiaries lump sums of cash due to a disability or poor lifestyle choices, such as gambling or addiction, tell us - we can draft trusts or draft appropriate clauses in your Will.
- Your ex-partners may be entitled to your estate if you have not had a formal property settlement - even if you separated a long time ago. Tell us about your ex-partners, so we can advise you.



Enduring Power of Attorney

A Enduring Power of Attorney enables the person(s) appointed by you to act for you or assist you whilst you are still alive for financial or legal matters.

The "enduring" part of the document means that the document will be effective even after you lose capacity (due to accident or cognitive decline).

This is an essential documents for all adults - not just the elderly.

If you have a car accident or accident at work and are in a coma for a period - you will need someone to be able to pay your bills or access funds to pay for your children's needs. Even if you have a partner, they wont be able to access your individual bank accounts or deal with your legal affairs unless they have authority as your Power of Attorney to do so.

This document is essential for those who are elderly or have a family history of cognitive decline, such as dementia. You will need someone to assist you with your legal and financial affairs if you lose capacity but are still alive.

You must trust the person you appoint absolutely. This document allows someone to access your assets and finances. We only recommend appointing someone you trust to act in your best interests and who will not be tempted to use your funds for themselves.



Enduring Guardian

The purpose of an Enduring Guardian is to enable the person or persons appointed to make decisions about medical issues and living arrangements, in the event that you are unable to make those decisions yourself.

The document allows you to set out your specific wishes for your care and advise who should make decisions for you.

We see that this document helps your loved ones follow your wishes and can actually prevent them from feeling the burden or guilt of making a decision. For example, it can be a huge burden for a loved one to make the decision to turn off life support. It will make the decision easier to make - if they know that you prepared a document that specifically directs them to do this.

Having this document can also prevent arguments. We often see disagreements between children or between children and your new partner, about how you should be cared for and who should make the decisions. Having this document, that sets out your exact wishes, can prevent any disagreements between your loved ones.

Most aged care facilities will now insist that you have this document, as it enables them to identify which person(s) have legal authority to make decisions for you.

Do not put this document off. If you wait until you are unwell or elderly to draft an Enduring Guardian, it may be too late. Solicitors can only draft this document if they are sure that you have full cognitive capacity.



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