

WILLS

1. Introduction

- ◆ To make a Will is to ensure your assets are dealt with in accordance with your wishes when you die. If you wish to leave certain personal items to certain family members, your relatives and friends need to know and drawing up a Will is the simplest and clearest way to convey your wishes to them.

2. Why Should I Make A Will?

- ◆ A Will allows you to decide who gets your property when you die. There might be specific people who you wish to benefit from your estate and by having a Will you can ensure that the people you wish to benefit under your estate receive the gifts which you wish them to receive.
- ◆ If you die without a Will then your property will be divided according to set formula as determined by the government. Under the current formula your immediate family members will inherit your property. This is important as it may conflict with how you want your property to be disposed of and as such your wishes may become irrelevant. A prime illustration of this is a de facto spouse who has no automatic claim to a share of your property unless this is specified in your Will.
- ◆ Should you not make a Will then the administration of your estate may take longer and may incur extra expense which can result in further stress and additional delay on family members and friends
- ◆ Everybody, whether they have much or little property, should have a Will.

3. Who Can Make A Will?

- ◆ Any person over 18 years of age.
- ◆ Anyone who is or has been married.

4. What Should I Include In My Will?

- ◆ You can use your Will to express clearly what you want in the way of a funeral, or other observance, in the event of your death, including whether you want to be buried or cremated.
- ◆ If you have young children you can include guardianship provision in your Will to ensure that a person is appointed to take care of your young children either in addition to your spouse, or in the unfortunate circumstance that your spouse dies with you.

5. How Long Is My Will Valid For?

Your Will will be valid until you:

- ◆ Make a new Will
- ◆ Destroy your Will
- ◆ Get married or remarried.

This means that if your circumstances change it is very important to take account of the changes in the new Will.

6. When Should I Make A New Will?

- ◆ On marriage
- ◆ On entering a de facto relationship
- ◆ On divorce
- ◆ On separation
- ◆ On the birth of children, grandchildren or other people who you wish to include in your Will (unless already covered)
- ◆ When you decide you want to change who gets your property under your Will.

7. How Do I Change The Provisions Of My Will?

- ◆ Once you sign a Will you do not lose the freedom to change your mind at a later date.
- ◆ You may revoke, amend or add to your Will at any time and it does not need to be a stressful exercise.
- ◆ A codicil is often a convenient means of making a minor alteration to a Will, however, if you want to make a number of alterations to your Will it is often easier and cheaper if a new Will is made.

8. Who Should Prepare My Will?

- ◆ Wills are different from most other documents in that in the event of doubt as to your intentions you will not be there to assist. It is important that there are no doubts or misunderstandings and also that the signing formalities (required before a Will can be valid) are strictly observed. For these reasons we strongly urge that a solicitor be retained.

9. Who Do I Need To Provide For In My Will?

- ◆ Before you instruct your lawyer to draft your Will it is important to keep in mind the existence of such pieces of legislation as the Family Protection Act 1955, the Testamentary Promises Act 1949 and the Matrimonial Property Act 1976.
- ◆ The Family Protection Act 1955 will be used by the Court to repair any breach of your moral duty to provide for your children or your spouse on your death. The conduct of the claimant is a relevant factor and for example, the fact that you have not had any contact with one particular child for many years will be taken into account.
- ◆ A claim under The Testamentary Promises Act 1949 can be made if you promised to reward someone, when you died, for work or services they performed for you during your lifetime, and this did not occur. The circumstances in which the promise was made, the value of the services and the value of the promise are relevant factors.

10. Who Will Administer My Estate?

- ◆ When you come to draw up your Will, you will need to appoint an executor or executors who will administer your estate on your death and ensure that the provisions of your Will are adhered to.
- ◆ There are a number of factors you should consider when considering who to name as your executor or executors, and it is always recommended that you discuss the matter with them to confirm that they are in a position to take on that role.
- ◆ An executor who is unwilling to act may renounce probate or apply to have the Public Trustee or a trustee company appointed as a substitute executor. Either of these procedures may cause delay and difficulty in the administration of your estate.
- ◆ The people most often appointed as executors are spouses, children, relatives, professional advisors such as lawyers and accountants, and business associates.
- ◆ If you would like certain assets to be placed in trust for someone until they reach a certain age or until a specified condition is satisfied, you will also need to appoint a trustee to administer the trust. Your trustee will hold the assets, or keep the nominated funds invested, according to the terms of your Will.
- ◆ It is common practise for people to appoint the same person as their executor and trustee and it is usually preferable to appoint someone in the area or town in which most of your assets are situated.

11. What Details Will My Solicitor Need To Make A Will For Me?

- ◆ Your name, address, occupation and date of birth.

- ◆ The names, addresses and occupation of any family and friends that you wish to include in your Will.
- ◆ The name of any charities that you wish to benefit.
- ◆ The name, address and occupation of any guardian for your children that you wish to appoint.
- ◆ A list of your major assets and liabilities, including whether or not any assets are jointly owned with another person.
- ◆ Any directions for your funeral that you would like to include.
- ◆ You should also have an idea of how you want your property distributed. For example you could leave it all to your husband or wife, but if they die before you, to your children in equal shares.

The above information is of a very general nature only and you should contact our firm regarding specific advice relating to the general information above.