

## Making a Will

A Will is a legal document that says what you would like to happen with your Estate when you pass away. Your estate is made up of your money, belongings and other assets.

Your Will names who you want to give your estate to (your beneficiaries) and who you would like to administer your estate when you pass away (your executor).

A Will also lets you:

- name one or more guardians for your children
- establish a trust to provide for your children or a person with a disability
- preserve your assets
- give money to charity and philanthropic organisations

## Why you need a Will

You need to plan for the future. Having a valid Will is the only reliable way to ensure that your estate goes to family or friends of your choice after you pass away.

Having a valid and up-to-date Will can help reduce stress for your family and friends, limit the costs to administer your estate, and lessen the possibility of disputes over your estate.

## What if I don't have a Will

If you pass away without a valid Will, you pass away 'intestate'. This means:

- your assets Will be distributed according to the Queensland laws of intestacy talked about in Part 3 of the *Succession Act 1981*
- there is no guarantee that your assets Will be distributed as you would like
- your family or friends may not be provided for as you wish
- it may take more time and money to finalise your estate.

## Who can make a Will

To make a valid Will, you must be at least 18 years old, and of sound mind, memory and understanding.

To be valid, your Will must be:

- in writing
- signed by you in front of 2 witnesses, both of whom must be over 18 years old, cannot be visually impaired and should not be included as beneficiaries in the Will.

The Supreme Court of Queensland can sometimes approve a Will being made for someone who cannot legally make a Will themselves.

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## When to update your Will

You can review your Will as often as you like. You should review your Will at least every 3–5 years to ensure it still reflects your wishes and circumstances.

You may need to update your Will if:

- you get married
- you start a de facto relationship
- you start a civil partnership (previously called a registered relationship)
- you get divorced or your marriage is annulled
- you end a de facto relationship
- you end a civil partnership (previously called a registered relationship) or it is voided
- your children or grandchildren or any other persons you want to include as beneficiaries in your Will are born
- your assets or financial circumstances change
- any person named as a beneficiary in your Will pass away
- any person named as an executor, trustee or guardian in your Will passes away or becomes unable or unwilling to act due to age, ill-health or any other reason
- you want to change your beneficiaries, executors, trustees or guardians named in your Will
- you retire
- you are affected by a natural disaster
- you make a valid arrangement with the trustee of your superannuation fund to pay the proceeds of your superannuation into your estate.

If you get married or start a civil partnership, your Will is officially cancelled by that marriage or civil partnership, except where it makes a gift to your spouse or civil partner or nominates them as an executor, trustee or guardian, unless your Will is shown to have been made with marriage or a civil partnership in mind.

Divorce does not officially cancel your Will, but it cancels any provision made in favour of your former spouse, as well as any appointment of that former spouse as an executor, trustee or guardian.

Ending your civil partnership or finding that your civil partnership is void does not officially cancel your Will, but it cancels any provision made in the Will in favour of your former civil partner, as well as any appointment of that former civil partner as an executor, trustee or guardian.

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## Choosing an executor

Your executor administers your estate after you pass away. It is an important job that requires a variety of skills.

The duties of your executor can include:

- locating your Will
- finding the beneficiaries named in your Will
- applying to the Supreme Court of Queensland for a grant of probate
- collecting, looking after and sale of your assets
- identifying and paying the debts of your estate
- preparing tax returns
- dealing with any court matters
- distributing your estate as you wished
- maintaining accurate records of the administration of your estate—if required, providing this on request.

## What to consider

Choosing the executor of your Will is almost as important as the Will itself. When deciding who to name as your executor consider whether:

- they have the necessary skills, and are Willing and able to administer your estate
- you Will be placing an extra burden on a friend or family member, at a time of stress, grief and loss, if you name them as your executor
- they Will be there when needed.

It is important to keep in mind that your executor could be personally responsible if something goes wrong with the administration of your estate. For example, if your executor forget to insure an asset of your estate, such as your house, and the asset is damaged or destroyed, then your executor could be ordered to compensate the beneficiaries of your estate for the loss out of their own pocket.

Your choice of executor could also cause conflict between them and your beneficiaries—the people you want to give your estate to. If so, you can appoint an independent executor.

## How we can help you

You can contact our office so make an appointment to have a valid Will drafted and executed. You can also appoint a solicitor as the executor to administer your estate.

A solicitor as your executor is able to provide independent impartial advice, have experience in administering deceased estates and help manage deceased estates during times of grief and family conflict.

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## Costs

Making a Will can be expensive. We have fixed fees for Wills and provide a discount for a Husband and Wife Will.

## Make sure you bring

- current proof of ID—such as your driver licence, passport or Australian proof of age card (formerly 18+ card)
- the names and addresses (if known) of your beneficiaries.
- details of your assets—such as addresses of property, bank account details or shares held
- documents that show or prove your ownership or interest in your assets
- you need to show your Will-maker **originals** of your identification documents as we cannot accept photocopies.

## Will Myths

**I do not need one – if I pass away everything will automatically go to my spouse/partner or my children.**

This is not always the case. If you pass away without a valid Will, you will be found to have died 'intestate'.

Under Queensland law, a formula applies for how your assets are divided without a Will. Your personal circumstances at the time of your passing could see your estate go to your:

- spouse or partner
- children
- grandchildren
- parents
- siblings (your brothers and sisters)
- nieces and nephews
- grandparents
- uncles and aunts
- cousins.

Making a valid Will is the only reliable way to ensure your estate goes to the family and friends you want it to after you pass away.

## I don't have any assets, so I don't need a Will

In Queensland your estate must be properly administered when you pass away. Even if you do not think your estate is worth much, you should make a Will. Having a valid and up-to-date Will is the only reliable way to ensure that your estate, whatever it might be worth, goes to those you have chosen.

Your estate might actually turn out to be worth more than you think.

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Most people have superannuation and superannuation funds often include life insurance which can turn out to be worth quite a bit of money. Your superannuation, including any life insurance, may be paid to your estate if you pass away. It would then have to be distributed.

### **I won't be around, so I don't need to think about it**

By taking time to make a Will (usually no more than an hour), you can save your family and friends uncertainty and stress.

You Will also save the extra legal costs that might have to be paid to finalise your estate.

### **I have already got one**

Significant life events can affect your Will. Events that can affect your Will include:

- marriage
- starting a de facto relationship or a civil partnership (previously called a registered relationship)
- separation and divorce, or the end of a de facto relationship or civil partnership (previously called a registered relationship)
- the birth of a child, grandchild or other person you wish to include as a beneficiary in your Will
- the death or incapacity of a family member or friend named as a beneficiary, executor, trustee or guardian in your Will
- retirement
- a change in assets or financial circumstances.

You should review your Will regularly (at least every 3–5 years), and update it when things change to make sure it is valid and continues to reflect your wishes.

### **I Will just write something myself**

Be cautious if you are using a do-it-yourself Will kit or writing your own Will. If you do not make your Will properly or do not have it witnessed correctly, a court decision might be needed to sort out the problem.

A note outlining your wishes may not be recognised as a legally valid Will (unless a court decides that it should be).

There can be additional costs, delay and stress for your family and friends dealing with incorrectly prepared Wills or notes outlining your wishes.

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