



Will Guide

**Your will,
your way.**

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The information provided in this guide does not constitute legal advice. We recommend you consult a solicitor before acting upon any of the information provided.

This guide outlines essential information to help in the planning and creation of your will.

Your will lets you decide what happens to your money, property and possessions after your death. It can also provide instructions on other matters, such as selecting guardians for your children and your funeral arrangements.

Questions about wills

Why do I need a will?

Having a legal will ensures that your family's needs are met according to your wishes when you die. Each state has different laws which may determine the distribution of your assets in the absence of a legal will.

This distribution may not be in accordance with your wishes.

If you die without a legal will the court will appoint an administrator.

This can be a lengthy process and there is no guarantee that your dependents will receive what you may have intended.

If you have no family there are some circumstances where your estate may become government property.

How do I create a will?

There are many ways of creating a will. We recommend consulting a solicitor to help navigate the complexities of writing your will and to ensure its validity.

When should I make my will?

Any person over the age of 18 and of sound mind should prepare a will.

Your will should be revised regularly to ensure it reflects your current circumstances and wishes following significant changes in family, life or finances.

How do I change my will?

You can update your will at any time. When making changes to your will you have two options, you can either make a codicil to your existing will or make a new will.

A codicil is an appendix to your will. It is a useful option when you only have a few changes to your will. A codicil is prepared as a separate document and must be signed and witnessed. The witnesses do not need to be the same people who witnessed your original will.

In many cases it is easier to create a new will to ensure you consider all current circumstances instead of just focusing on the particular change you want to make.

What will be included in my estate?

Your estate will be made up of any property that you are entitled to and any liabilities owed by you at the time of death.

Any property of which you are the sole owner will form part of your estate. However it is important to be aware of the different ways you can share ownership of property with another person. For example, if you hold property as a joint tenant with another person, that property will usually not form part of your estate. On the other hand, if you hold the property as a tenant in common, your share will form part of your estate.

You should consider all your assets and liabilities as a first step before deciding how to distribute your estate. Where a property you wish to distribute has an outstanding mortgage, it is important that your will states what is to happen if the mortgage still exists at the time of death.

Should I prepare my own will?

If you prepare your will without legal advice your will may be misinterpreted or invalid. A will drafted by a professional will best achieve the desired distribution of your assets by clearly expressing your wishes in a form which meets specific legal requirements.

Can I give away my property in my will as I like?

The freedom to dispose of your property in your will is your legal right.

However this freedom is restricted by legislation providing the Supreme Court with the power to order provisions from the estate for the proper maintenance and support of any dependents of the deceased.

Legal advice when making your will is highly recommended.

Can I leave a gift in my will?

A bequest is a gift of money, personal property or real estate made through a will. After providing for loved ones, many people choose to make a gift to a favourite charity or community organisation.

What do I need to tell my solicitor?

Included in this guide is a wills checklist to cover the basic information that your solicitor will need before drafting your will.

Where can I get legal advice?

Even if you have limited assets you should consider obtaining legal advice about your will.

If you don't have an existing solicitor The Law Institute of Victoria has a list of accredited solicitors specialising in wills and estates. The list can be obtained free of charge from The Law Institute of Victoria by phoning 03 9607 9311.

You can also have your will prepared by a trustee company. They are listed in the Yellow Pages telephone directory or on the internet.



Terminology

When preparing your will you may come across some new terms. Below is a brief explanation of some common terms that may be used throughout your will.

Executor and Trustee

An executor and trustee is the person (or persons) who carry out the instructions you have included in your will. You should make sure that the person or persons you choose are competent and willing to perform the tasks.

Often members of the will maker's family, the main beneficiaries under the will, or close family friends are chosen as executors and trustees. It is wise to appoint a substitute executor and trustee to cover the possibility of your executor and trustee dying before you or during the course of administering the estate.

Some people choose trustee companies, certain professionals, such as solicitors or accountants, or the Public Trustee to be their executor and trustee. Before you make your will, find out from the prospective executor and trustee the costs and fees they will charge.

Guardian

A testamentary guardian is a person appointed by a will to have the care and control of a child of the will maker's (the testator) until the child becomes 18. Where a will maker believes he or she might leave a child under 18 years of age without a surviving parent they should consider nominating a testamentary guardian of the child. They should also consider doing so where there are Family Court custody orders in their favour.

Intestate

Intestate is the estate's name when a person dies without a valid will. The estate goes to administration rather than probate.

Probate

Probate is step one in the legal process of administering the estate of a deceased person. A probate court (surrogate court) decides the legal validity of a testator's will and grants its approval by granting probate to the executor. The probated will becomes a legal document that may be enforced by the executor in the law-courts if necessary. A probate also officially appoints the executor (or personal representative), generally named in the will, as having legal power to dispose of the testator's assets in the manner specified in the will.

Testator

The testator is the name of the person who makes the will, also called the will maker.

Mutual, joint and reciprocal wills?

Mutual wills are wills in which two or more people prepare separate wills benefiting each other under an enforceable agreement to do so. They also agree not to vary the will without the agreement of the others.

A joint will is one in which two or more persons have made their wills in the one document.

Reciprocal wills are separate wills, commonly made by spouses, which provide for reciprocal gifts to each but without any separate contract.

Beneficiaries and gifts

A beneficiary is a person or organisation that receives a gift under a will. A gift is an item of property, shares, or money which you dispose of in your will.

You can make a gift in many ways including:

- leaving the whole of your estate to a particular person or organisation
- leaving a percentage of your estate to a particular person or organisation
- leaving the residue (what is left over after other gifts have been made) to a particular person or organisation
- leaving specific items of property such as a house, car and jewellery (you need to consider what you want to happen in case you dispose of it or it no longer exists at the time of your death)
- leaving a certain sum of money to a particular person or organisation.



Your will checklist

The wills checklist covers most of the basic information your solicitor will need to know to prepare your will.

Your details (will maker):

- Full name
- Address
- Telephone
- Occupation
- Date of birth
- Are you married or do you have a de facto spouse?
- Do you have a mutual, reciprocal or joint will?

Spouse details:

- Mortgage details
- Personal loan information
- Credit card details
- Other liabilities

Liabilities:

- Full name
- Address
- Telephone
- Occupation
- Date of birth
- Relationship to you
- What gift do you wish to give

Beneficiaries:

- Full name
- Address
- Telephone
- Occupation
- Date of birth

Executor:

- Full names of guardian
- Address
- Telephone
- Occupation
- Date of birth

Guardian of minor children:

- Full name
- Address
- Telephone
- Occupation
- Date of birth
- Relationship to will maker

Dependents' details:

- Describe assets' details
- List bank accounts' details
- Bonds and share details
- Life insurance policy details
- Superannuation details
- Personal property listings
- Real estate details
- Money owing to you
- Other property or possessions

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