



WILLS

Making a Will is the only way you can ensure your assets will be distributed according to your wishes when you die. It is not compulsory to make a Will, however if you do not make a Will, you will die intestate (ie without a Will). A change in the law since 1 March 2010 means that your estate will be distributed in accordance with those intestacy laws. These changes are very significant and could result in your estate not passing as you would wish. If there are no relatives closer than cousins, your estate will pass into the ownership of the State. If you feel that one of your heirs is not entitled to anything from your estate – be warned, they can appeal the provision of the Will through the Family Provisions part of the Succession Act, to claim their entitlement of your estate.

Yes... you can also make allowance for the care of your pets in your Will, either through a legacy or trust, or to ensure that your aged pet is euthanased humanely. It is recommended to consult a solicitor or trustee company to make certain that the wording is valid.

If your circumstances change, and you wish to make changes to an existing Will, a **codicil** document can be drawn up which sets out the alterations. If the existing Will is relatively lengthy and the proposed alteration is not complex, a codicil may be appropriate. If however, the existing Will is quite short and uncomplicated, the drafting of a new Will may seem more appropriate. Historically, the concept of a codicil arose as a time saving exercise given the expectations that legal documents were to be completed in original ink in the same hand. With the electronic document production on computers nowadays, a new Will can be quite easily prepared and as such will in most cases be preferable to a codicil.

You can write a new Will as often as you see necessary. It is important to notify relevant people of the current Will and where it is located.

For a Will to be valid:

- ◆ A person needs to be over 18 years old.
- ◆ It must be a written document—it can be hand written, typed or printed. A spoken request from a dying person will not be recognised.
- ◆ It must be signed by the Will maker, and witnessed by 2 witnesses, being present together with the Will maker - a beneficiary or a spouse should not be a witness as it may cancel out their entitlement.
- ◆ A person must be seen to have the mental capacity to know what they are doing. They must know that they are making a Will and are distributing their property according to their own wishes. If there is any question of the person's capacity – a doctor may need to be a witness in case a medical opinion is later called for.

You should appoint a person or persons called an **Executor** in your Will to handle your affairs after you die, — it should be someone you trust. An Executor can also be a beneficiary in your Will. The Executor(s) will be responsible for the management and distribution of your estate assets to your beneficiaries.

(see our fact sheet on Executors & Probate for more information)

If I get married or divorced does that affect my Will?

If you marry after you have made a Will, the Will is automatically revoked or made invalid. However, there are exceptions and you should consult a solicitor.

If you divorce after you make your Will, it only revokes or cancels any gift to a former spouse. It also cancels your spouse's appointment as Executor, Trustee or Guardian in the Will. However, if the Court is satisfied that the Will-maker did not intend by divorce to revoke the gift or appointment to the former spouse, these will remain binding.

What if the original copy of the Will is lost?

If the Will was prepared by a solicitor, that legal firm may have an original copy of the Will. If you only have a photocopy in your possession the court will err on the side of caution. To obtain a Grant of Probate, the original signed and witnessed document is normally required, however it is possible in certain circumstances to prove a copy of a lost Will is valid. The Probate Registry may request the Executor to produce evidence that shows that the Will was not deliberately destroyed by the testator. If the original Will was held at a solicitors office, who accepts blame for the loss of the document, or they can confirm that it got lost in the post, or the office burned down etc etc, that would suffice to prove that the testator did not intentionally destroy the Will, and a copy could be accepted. However, if the original Will was in the possession of the testator, it may be difficult to prove to the court that it was not destroyed intentionally. In this case, most states treat the probate process as though the deceased died without leaving a Will, called intestate, and the state's intestacy laws take over.

Costs & Options for writing your Will

You can prepare a Will yourself. Will kits are for sale at most post offices and newsagents and these explain how to write one. You can also buy a kit with comprehensive instructions from 'Law Consumers Association' for \$30.00 Ph: (02) 9564 6933 <http://www.lawconsumers.org/> or "Legal Wills Made Easy". Ph: 1800 652 265, www.legalwills.com.au - \$34.95

However, the legal profession urges people to ensure that their Will is valid. To do this you can take your Will to your local solicitor, selected community legal centres or contact Law Access, 1300 888 529 www.lawaccess.nsw.gov.au

If your Will is complex (with a lot of assets and/or trusts), always contact a solicitor. There are solicitors who specialise in legal issues for the older person and it is an advantage to talk to one of these specialists.

The NSW Trustee and Guardian (TAG) offer a free Will making service, provided that they are appointed as the Administrator/ Executor, and will eventually handle the probate of the estate. All fees and charges will be applied to your estate after you die and a percentage of your estate will be paid to 'TAG'. It is important to confirm exactly how much this will be before making your choice. To enquire phone 'TAG' on **1300 364 103** <http://www.tag.nsw.gov.au/>

Solicitors' and private trustee companies' charges can start from around \$250 for drawing up a basic Will, that cost will increase depending on the complexity of the Will. During NSW Law Week (usually in March) many solicitors will write out Wills for free, contact solicitors in your local area to check their participation. If you do not have your own solicitor the community assistance service at Law Access can refer you to one. Ph:1300 888 529 www.lawaccess.nsw.gov.au

Or contact the Law Society and ask for a lawyer in your area, who specialises in legal matters for the older person. Ph: 9926 0300 www.lawsociety.com.au

TIPS: 1) Always ask lawyers/solicitors if they offer a discount for holders of the NSW Seniors Card. The Seniors Card Directory lists solicitors who offer cheaper services; www.seniorscard.nsw.gov.au ;13 77 88
2) Some people mistakenly believe that their funeral directions should be stipulated in their Will, but consider that the Will may not be read until several days after the funeral, hence in such an instance, it would be too late for your wishes to become known.

***Note:** <http://diy-probate.com.au/about-us.php> "The funeral arrangements are at the discretion of the executor, directions in the Will relating to the funeral or body of the deceased are not legally binding."