

# WILLS EXPLAINED

## What is a Will?

A Will is a legal document which allows you to choose who receives your belongings and assets after you die. It allows you to nominate who will be responsible for managing your estate (the Executor(s)) and can also be used to appoint a guardian to look after children in their minority.

## Why Should I Make One?

It is important to have an updated Will so that you can direct how your affairs are to be managed, and determine how assets are to be distributed, irrespective of your net worth. A Will is the only legal way you can tell others how you want your assets to be distributed upon your death.

## What is Intestacy?

If you die without a Will you are said to have died intestate, your affairs will be dealt with according to a formula contained in the relevant States Administration and Probate Act. These rules apply to everyone and do not take account of your individual circumstances or what you may want.

## Reviewing Your Will

A Will prepared some years ago may not be appropriate for one's current personal, business and financial circumstances. The revision of a Will is often overlooked even though a person's circumstances have significantly changed. Generally, your new Will replaces your old Will.

## Requirements

You must be of sound mind and over the age of 18 to make a Will. There are other legal requirements relating to the execution of a Will by the Will maker and witnesses.

## Free Wills

Trustee Companies (including the Public Trustee and Banks) offer free Wills appointing themselves as your executor. When you die they administer your estate and deduct a substantial fee, usually as a percentage based on the gross value of your assets.

## Revocation

In most States, a Will is immediately revoked upon the marriage or divorce of the Will maker unless made in contemplation of that divorce or marriage.

## Family Disputes

Wills provide for clarity and may prevent future family feuds.

## Family Trusts

Assets held in trusts do not form part of your estate and are not dealt with by your Will. The crucial issue is to identify who is to control the trust when you die. There are several ways in which the terms of your Will can deal with the issue of control.

## Social Security or Pension Benefits

If you leave all your assets to your spouse, this may affect pension or social security benefits that your spouse is receiving at the time of your death.

### **Financial Circumstances of a Beneficiary**

If any of your intended beneficiaries are bankrupt or on the verge of bankruptcy, the Trustee in bankruptcy may take their share to pay out that beneficiary's creditors. Rather than exclude from benefiting under your Will, a trust may be considered to quarantine assets from creditors.

### **Business Arrangements**

If you carry on your business with other persons it is vital to have business succession arrangements in place, of which a Will may form a part.

### **Superannuation or Life Insurance**

Superannuation and Life Insurance proceeds do not automatically become part of your estate - you may specify on such policies who the beneficiaries will be. Alternatively, you may not nominate, or nominate yourself, and have the benefits paid to your estate and dealt with under the provisions of your Will.

### **Guardians**

If you have children under 18 years, you may nominate someone to look after your children should neither parent survive (Guardian(s)). Guardians are responsible for the upbringing of minor beneficiaries, such as school arrangements, while the Executor(s) are responsible for management of funds bequeathed to them.

### **Taxation**

The way your assets are bequeathed may have taxation consequences, about which you should consult your accountant.

So, you are a company director, or thinking of becoming one? Know your responsibilities.

*DISCLAIMER:* This White Paper is provided as a broad overview and should not be relied upon as a substitute for legal advice.

If you require further advice in relation to the above or Estate Planning generally, please contact us.

### **More Information?**

**E:** [legal@mcplegal.com.au](mailto:legal@mcplegal.com.au)

**P:** (03) 9620 2001

**W:** [www.mcplegal.com.au](http://www.mcplegal.com.au)