

Will  
Trusts

## Estate Planning & Trusts

# Will FAQs

Some Common Queries



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## **WHAT IS A WILL?**

A Will, often called a 'last will and testament', is a document written by an individual (the 'Testator') who states what will happen to their monies, property and other assets (collectively called 'the Estate') when they die.

In the Will, the Testator will appoint an 'Executor', usually a family member or friend, to carry out the wishes stated in the Will.

## **WHAT HAPPENS IF I DON'T HAVE A WILL?**

If you die without leaving a valid Will you are said to have died 'intestate'. In such circumstances your Estate will be distributed according to the 'Rules of Intestacy'. These rules set out strict provisions governing which people benefit from your Estate.

The rules provide for spouses and blood relatives but make no provision for de facto relationships, cohabitants, friends or charities.

## **WHEN SHOULD I MAKE A WILL?**

One of life's certainties is that life is uncertain and for that reason every person of adult age should have a current Will in place.

The whole point of having a Will is to be prepared – not for yourself, but for friends and loved ones. It is not a decision that should be influenced by how much or how little you have. What is important is that you put in place a structure which ensures that your assets are controlled and distributed according to your wishes.

## **CAN I WRITE MY OWN WILL?**

Many people attempt a 'homemade' Will or use a 'do-it-yourself' Will kit both of which appear to offer a low-hassle/low-cost alternative to having a professionally drafted document.

Invariably such documents result in additional legal costs following the death of a Testator. For example, imprecise or ambiguous wording can result in very expensive disputes between beneficiaries named in the Will and those who would benefit should the Will be held to be invalid.

By instructing a solicitor who specialises in Will drafting and succession law you will be able to create a Will that reflects your personal needs, clearly states your intentions and minimises the risk of the Will being challenged following your death.

## **SHOULD I REVIEW MY WILL?**

You should review your Will on a regular basis to make sure it reflects your current financial and personal circumstances. If your circumstances change, for example, marriage, separation, divorce, remarriage, employment or redundancy, buying or selling a home or business, the birth or the death of loved ones, changes in your children's circumstances or changes to estate laws, it is important that your Will is updated to reflect this.



## WHAT IS THE ROLE OF AN EXECUTOR?

An Executor is the person appointed in your Will to carry out the terms of the Will.

It is advisable to check with your proposed Executor to ensure they are happy to act when the time comes as the duties and responsibilities of an Executor can be time consuming. It is not simply a case of collecting in the assets and then distributing any entitlements under the terms of your Will, amongst other obligations your Executor's duties will include:

- (a) obtaining a Grant of Probate from the Supreme Court;
- (b) keeping accounts of every expense incurred in disposing of your Estate;
- (c) ensuring that the condition of the your assets are maintained;
- (d) deciding the best way to dispose of an asset, in the best interests of the beneficiaries;
- (e) placing a notice of distribution;
- (f) determining if, as Executor, they are entitled to some form of payment.

You can appoint your spouse, partner, children (providing they are over 18), other family members or friends. Even a beneficiary can be an Executor in the Will. Alternatively you may wish to appoint a professional Executor, which may be useful if your estate is complicated or if you wish to have ongoing independent trustees to deal with difficult family circumstances.

## HOW CAN TEECE HODGSON & WARD ASSIST?

If you require further information or advice concerning the above please contact Richard Neal, Deborah Linwood or John Maitland using the following contact details.

✉ [mail@teece.com.au](mailto:mail@teece.com.au)

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This Information sheet is intended to provide general information about current law relating to Wills. It is not intended to be comprehensive or to provide any specific legal and / or tax advice and should not be acted or relied upon as doing so. Professional advice appropriate to a specific situation should always be obtained.

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