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## YOUR WILL

### What is your Will?

Your Will is quite simply your means of distributing your assets and otherwise dealing with your affairs upon your death. Your Executor is responsible for ensuring that your wishes are carried into effect.

In your Will, you appoint an executor to distribute your assets to the beneficiaries (those you choose to receive your assets). Your choice of executor should be carefully considered as the role can be very demanding and often complex, requiring legal and financial knowledge.

Any person 18 years or older (or under 18 if married) and of sound mind can make a Will.

### What will happen if you don't make a Will?

"Intestacy" means dying without a Will. If you die without having made a Will, your assets will be distributed according to the "laws of intestacy". These laws may:

- > Force the sale of your home or your car so other beneficiaries can claim their share of your assets
- > Not provide future financial protection for your children or grandchildren
- > Leave incapacitated members of your family without adequate support
- > Give your assets to the government, if you have no relatives.

Furthermore, you will have no say in who administers your estate and who is appointed guardian of your children if they are under the age of 18.

### Preparation of your Will

Before making your Will, you should consider:

- > Who to appoint as executor
- > Who to appoint as the guardian of your children
- > What are your current assets and liabilities
- > Who should receive your assets
- > How you would like to provide for your children's future.

### How long will your Will last?

Once your Will is executed it will remain effective until altered or revoked. However, your Will cannot be changed informally. The Succession Act places specific requirements on the making of a Will. These are strictly enforced by the Courts and if these requirements are not complied with, your Will may be declared void.



## When should you change your Will?

You are free to alter your Will at any time and as often as you wish. When you make a new Will, your old Will is automatically revoked. If you marry, your Will is automatically revoked and totally ineffective, unless it was expressed to be made in contemplation of marriage. Divorce also has an effect on your Will where your spouse was named in the Will and we suggest that you reconsider your Will upon divorce or separation. Your divorced spouse is not entitled to any assets under your Will unless you specify otherwise.

## Other significant events

In fact, wherever a significant event occurs you should consider whether your Will still expresses your wishes. Such events may include:

- > Changes to your family
- > Changes to your assets
- > If you have children (including adopted or fostered children)
- > If you change your name or a person named in your Will changes their name
- > If an executor dies, becomes unwilling to act or becomes unsuitable due to age, health or other reason
- > If a beneficiary dies
- > If you dispose of property specifically left to a beneficiary under your Will
- > If you enter or end a de facto relationship.

## Preparing your own Will

You can prepare your own Will but you do so at the risk of causing emotional and costly legal battles amongst your relatives.

When preparing a Will, a number of legal requirements must be followed. Failure to do so can invalidate the Will. If this occurs, then the law may consider that you have no Will and the laws of intestacy will apply unless the invalidity is rectified by a Court process. This can be expensive.

If your Will is valid, but your words fail to express your wishes accurately, your Will may be interpreted by the Court in a way that may not reflect your wishes.

## Is there such a thing as a free Will?

The Public Trustee and trustee companies will prepare your will at no cost. However, they are then appointed as executor and after your death, are entitled to charge commission for administering your estate. This may be calculated as a percentage of the estate's value.

Remember that once you have signed your Will it remains valid until changed. If your Will no longer expresses your wishes or you have any other questions we invite you to contact us.