



MartinBullock
LAWYERS & ATTORNEYS

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Wills and Estates

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What is a Will?

A Will is a written document that sets out how the Willmaker (you) wants your estate (assets and personal property) distributed after your death. It provides for an orderly disposal of your possessions at a time when people are grieving for the loss of a loved one. It can be a document set out in general terms or contain detailed and specific instructions to allow for all situations.

Making a Will is a positive process of creating a legal document that forces a person to identify:

- The Beneficiaries - the people and/or organisations (e.g. charities) who matter to you and how you want to provide for them after your death.

Your assets and liabilities - money and property you have acquired and debts you might owe at time of death.

- The Executor(s) - the person(s) you trust to carry out your instructions.
- Other arrangements such as your funeral arrangements or organ donations.

At a time when you are physically and mentally capable of making lucid decisions it enables you to consider guardianship of minor children, provision for education of children or grandchildren, acknowledgment of help, of friendships and any other provisions that you would like.

A Will gives you a say in what will happen in the future.

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Why do you need a Will?

Making a Will is more than just signing a document. It is a process of organisation and forward planning to ensure all your possessions are disposed of in the way you want, to the people you want, after your death. It is a way of putting your life into focus for the present and the future. Some situations are complex and some are simple. Either way, you need to assemble information on yourself, your assets, your liabilities and perhaps your requirements at the time of death. Making a Will forces you to organise your affairs and gives you a basis from which to maintain that organisation.

Who makes a Will?

For the reasons listed above everyone over the age of 18 should make a Will no matter what their status or asset situation. It helps avoid unnecessary complications at a time of grief and lets you choose how you want your property to be distributed.

Marriage, Births, Divorce and Beneficiaries predeceasing you will affect your Will and would require a new Will to be made.

While de facto relationships are generally recognised by the law to be the same as a "marriage", it is important for people in such relationships who wish to specifically provide for a partner, to make a Will. If there is no Will the Courts will distribute your property to your next of kin. In New South Wales the qualification period before a partner is recognised as such is 2 years. Gay and lesbian relationships are subject to the same rule as de facto relationships. This may be different in other states.

A person must be capable of making a Will and anyone who is illiterate, has trouble speaking or reading English, or is visually impaired will need to seek further advice.

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The requirements of a valid Will

The formal requirements of a Will are contained in the Wills, Probate & Administration Act 1898. Wills that do not meet these requirements may be rendered invalid and ineffective. The requirements are as follows:

The Will must be in writing.

Procedures that should be followed in order to avoid problems are:

- The Will must be signed by the Will-maker (testator), preferably at the end. It is also prudent to initial the bottom of each page of the Will.
- The Will must give the appearance that the testator intended by their signature to give effect to the Will.
- The signature and initials must be witnessed by at least two people present with the testator at the time the testator signs or acknowledges the Will. It is recommended but not required that the witnesses are present at the same time.
- The witnesses should not be beneficiaries or spouses of beneficiaries of the Will, or their entitlement may be lost.
- The testator and witnesses should all use the same pen as evidence that they were all together when the Will was signed.
- The Will should be dated before it is signed.
- Any alterations to the Will should be initialled by the testator and witnesses.

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- Copies of the Will should be made and marked "Copy: Original kept at..." They should not be signed or they may be considered valid Wills.
- An attestation clause should record that the formal requirements of making a Will have been complied with.
- Ideally the Will should be in plain language rather than using legal jargon. It should however state that it is the Will of the testator, that previous Wills are revoked, and that the testator's property is to be distributed in a certain way upon his or her death.

Other important information:

- Documents that do not conform to the formal requirements may be accepted as a Will if the Court is satisfied that the deceased intended the document to constitute his or her Will. Informal Wills are not desirable because applications to the Court are costly and there is no guarantee of success.
- A Will made overseas will be accepted in NSW if it is valid according to the law of the country where it was made.

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List of assets and liabilities

Making a Will is part of the process of organising your affairs. Before you sit down to write a Will you should make a list of your assets and liabilities so you can identify what is available to distribute to your Beneficiaries. This document should form part of your personal papers to help the Executor locate assets and debts when the time comes.

The items and possible setting out follow. Obviously the more assets you have in each category, the longer the list.

- Bank accounts – including bank, branch, account number, date and amount held.
- Term deposits and bonds showing maturity date.
- Real estate details including address, title details tenancy, property manager, mortgage details, and location of title.
- Shareholdings showing company name, type of share, number, date acquired and location of share certificate.
- Safe deposit box – similar details for bank accounts.
- Motor vehicles, boats, caravans, etc. showing registration details, make and model of item, date purchased, approximate value and date and any loans outstanding.
- Personal property – jewellery, antiques, collections, etc.

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- Insurance policies including policy number, amount, date, premium, type of policy and value.
- Superannuation – similar details as for insurance policies.
- Other documents and where these documents are located should also be included, as well as details of company registrations, business names, stamps etc.

Even though debts such as mortgages and loans are included with the relevant assets, a separate list of all liabilities could be set out as follows:

- Mortgage showing property details, amount, lending institution and relevant account number.
- Credit cards including institution, account number, expiry date, amount outstanding.
- Personal loans on cars, etc. showing lender, loan number, amount, payout date.
- Personal guarantees, details of the amount, for whom, the institution it is lodged with.
- Leases that will incur ongoing expenditure showing amount, item, expiry date.
- Taxes including company, personal, land or provisional.

We would be happy to speak with you regarding making a Will.

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Glossary of Terms

<i>Assets</i>	Total property, real and personal, belonging to the Willmaker
<i>Beneficiary</i>	A person who receives a gift or property from a Will
<i>Beneficiary Listing</i>	A table of beneficiaries and gifts bequeathed
<i>Bequests</i>	Gifts or allocation of property under a Will and can be Specific (particular item) or General (category of goods)
<i>Codicil</i>	An alteration or addition made to a Will in a separate document and executed in the same way as a Will
<i>Estate</i>	A person's assets and liabilities existing at time of death
<i>Executor</i>	A person appointed by a Willmaker to administer his/her Will
<i>Grant of Probate</i>	A Certificate allowing the Executor/Executrix to proceed with the requirements of a Will
<i>Guardian</i>	A person appointed to look after (have legal custody of) your minor children
<i>Intestate</i>	Not having made a valid Will before death
<i>Letters of Administration</i>	Where a person dies intestate, a document issued by the Courts allowing an administrator to distribute the intestate person's estate

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Glossary of Terms

<i>Liabilities</i>	Debts or monies owing
<i>Personal Property</i>	Property of a personal nature such as cars, jewellery, etc., that can be moved
<i>Probate</i>	Certificate 'proving' that an Executor holds a valid Will and can proceed to distribute the Willmaker's estate
<i>Real Property</i>	Land or buildings
<i>Residual Estate</i>	All of a person's estate left after Specific or General Bequests
<i>Testator/Testatrix</i>	A person making a Will – the Willmaker
<i>Trustee</i>	A person managing property or assets on behalf of other persons (usually minors) and for their benefit
<i>Will</i>	Document detailing distribution of a person's property after their death
<i>Willmaker</i>	Testator/Testatrix – a person making a Will
<i>Witnesses</i>	Two persons (adults) testifying that the Will was validly made and signed by the Willmaker

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Greg Martin - Solicitor



Greg is the principal of the firm and a senior solicitor of 33 years' experience. He has practiced in litigation for the whole of his career, including commercial law, family law, wills and estate litigation, extensive commercial litigation, criminal law and personal injury litigation. He was an Accredited Specialist with the Law Society of NSW. Greg also lectures at Western Sydney University in criminal law, advanced torts, contracts and alternative dispute resolution, and has done so for 8 years.

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