

Estate Planning

WILLS

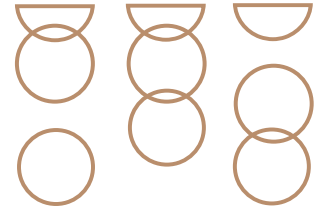
Knowing that your financial and personal affairs will be handled according to your wishes upon your passing, having a legally recognised Will brings a sense of tranquility.



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Disclaimer: The information in this document is of a general nature and does not take into account your own financial objectives, circumstances or needs. You should consider your own personal situation and requirements before making a decision.

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Benefits

- Speedier and smoother estate administration as your intentions are clear.
- Enhanced likelihood of assets reaching your intended beneficiaries.
- Minimised potential for family disagreements.
- The chance to proactively address tax considerations and minimise beneficiary expenses.
- The opportunity to designate a suitable guardian for your minor children.

How it works

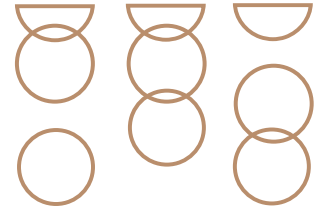
A Will serves as a legally binding document that outlines the distribution of your assets upon your demise. To create a Will, you must be of legal age (over 18) and possess the mental capacity to make decisions. When composing your Will, there are several critical considerations to address, including:

1. Determining the beneficiaries of your estate.
2. Deciding if specific assets should be bequeathed to particular individuals as special bequests.
3. Selecting the executor(s) responsible for managing your estate. This role can be fulfilled by more than one person, provided they are willing and capable of carrying out the responsibilities.
4. Providing instructions for your burial or cremation.

Additionally, you may contemplate whether to leave assets directly to your beneficiaries or establish provisions such as a testamentary trust, life interest, or a Guardianship clause:

Testamentary Trust: This trust proves valuable when beneficiaries are young, face disability, potential legal disputes, or financial management issues. Assets are transferred into the trust, where they can be safeguarded if necessary, and may also enjoy favourable tax treatment under specific circumstances.

Life Interest: A Life Interest can be utilised when you intend for someone to have the right to use an asset during their lifetime while ultimately transferring ownership to another beneficiary. It is commonly employed to allow a surviving spouse to reside in a home, with ownership passing to the children upon their passing.



Guardianship: If you have minor or disabled children, your Will can include the nomination of a preferred guardian for them. It's important to note that your guardianship nomination is an expression of your intentions and can be overridden by a court if it is deemed not in the best interest of the child.

Estate and non-estate assets

Assets subject to distribution through your Will are referred to as 'estate' assets. Examples of estate assets, which can be covered by your Will, include:

- Assets held solely in your name.
- Your portion of assets held as tenants-in-common with another individual.
- Superannuation and life insurance policies in specific circumstances.

Assets not governed by your Will are categorised as 'non-estate' assets. These assets directly pass to your designated beneficiary, and any provisions in your Will concerning non-estate assets are considered invalid. Your non-estate assets encompass:

- Assets owned jointly with another person.
- Superannuation accounts if the fund's trustee pays the balance directly to a nominated beneficiary (via binding nomination or trustee discretion).
- Life insurance policies with valid beneficiaries.

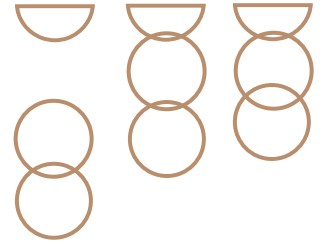
Challenging a Will

Following your passing, there may be situations where your Will is contested. Examples of these scenarios include:

- The Will was not your most recent Will, or it was not executed correctly.
- You lacked the mental capacity when signing the Will.
- You were coerced or pressured into creating the Will.
- A person with whom you had a responsibility to provide for believes they did not receive a fair share of your assets.

To ensure certain individuals are adequately provided for after your death, family provision legislation exists. The list of individuals eligible to challenge a Will on these grounds may vary by state but typically includes your spouse, former spouse, children, step-children, and can extend to other family members or individuals.

Engaging a solicitor to draft your Will can reduce the likelihood of it being contested.



Key Considerations

- Once established, periodically review your Will, especially when your circumstances change.
- Dying without a valid Will (intestate) means that the distribution of your assets will be determined by your state or territory's legislation.
- Assess the tax and Centrelink implications of leaving assets to specific beneficiaries.
- Despite superannuation and life insurance often not being estate assets, it is crucial to include provisions for their distribution in case they end up in your estate.
- Ensure that your executor and/or family members know where to locate a copy of your most recent Will and other important documents.

References

You may wish to refer to the following websites for further information about a transition wills:

- www.moneysmart.gov.au
- www.ato.gov.au
- www.serviceaustralia.gov.au