

# InfoSheet: Wills

## **A well-written Will simplifies your estate administration.**

**A Will:** is a document that sets out how you want your assets to be distributed after your death. To be valid your Will must be properly prepared and witnessed.

**An executor:** is the person appointed in your Will to be responsible for the administration of your estate after your death. The executor should be trustworthy, capable and available. Often the executor will be one of the major beneficiaries of your Will.

**A beneficiary:** is a person who receives a gift under your Will.

### **Gifts**

You can leave specific gifts in your Will (e.g. '\$1,000 to each of my grandchildren' or '*my jewellery to my daughters*' or '\$500 to the RSPCA').

### **Bequests**

You can simply leave '*the whole of my estate to my spouse and if he/she predeceases me, the whole of my estate to my children*'.

Some assets cannot be 'gifted' under your Will:

- property owned jointly with another person (real estate owned as joint tenants; joint bank accounts)
- most superannuation and life insurance proceeds (unless your fund or policy enables you to nominate your 'estate' under a binding nomination).

## **Tragedy**

Sadly, sometimes tragedy happens. You can make provision for what happens to your assets if you die leaving no spouse, child or grandchild surviving you.

### **Minor / infant / disabled beneficiaries**

You can stipulate the age that your children or grandchildren will inherit from you (e.g. 25 years old). In this event it is the executor's duty to invest that child's funds until he/she attains the required age. Kells The Lawyers can assist with specialist advice.

Similarly, if your beneficiary is disabled, you can make provision in your Will for the continued financial support of that person.

Our Wills also contain a provision for establishing a special disability trust which safeguards Centrelink benefits for a beneficiary who becomes severely disabled after you make your Will.

### **Empower your executor to deal with cyber or 'digitalised self' issues**

Our Wills give your executor authority to deal with 'digitalised material' (Facebook, Hotmail accounts, etc).

### **How do I deal with loans made by me to others:**

You can state in your Will what will happen to monies owed to you by family members (e.g. loan is to be repaid to your estate; loan is to be 'forgiven' on your death).

## How will marriage or divorce affect my existing Will?

Marriage invalidates an existing Will. Divorce can affect an existing Will and usually invalidates it.

## When should I review my Will?

We recommend you review your Will if your personal and/or financial circumstances have changed, or every 5 years.

## Intestacy

If you do not have a Will you die 'intestate'. Your assets will be distributed in a specific order according to 'statutory' or 'intestacy' rules. The statutory order may not be what you want. If you have no surviving relatives closer than cousins, your estate passes to the State of NSW.

The lack of a Will can incur a significant increase in the cost of administration of your estate.

**Estate planning:** is a complete review of your personal and business circumstances including:

- how you currently hold your assets
- superannuation nominations
- life insurance policies
- pensions and other entitlements
- capital gains tax implications
- consideration of the financial, taxation and personal position of your beneficiaries.

As a result of this review, your lawyer may recommend you consider other estate planning documents in addition to your Will, such as a Testamentary Trust Will, Power of Attorney, Appointment of Enduring Guardian or Advance Health Care Directive.

## Testamentary Trust Wills

A Testamentary Trust Will can allow your beneficiaries to inherit from you by holding the assets in a discretionary trust.

That trust allows your beneficiaries to benefit from taxation savings and can protect the assets in the event of bankruptcy, spendthrifts, gambling or, (in some circumstances) Family Law claims.

Testamentary Trust Wills can:

- protect family assets from being 'wasted away'
- limit access to your assets to ensure the family wealth lasts more than one generation
- limit access to the income from an asset, not the asset itself
- high income beneficiaries can 'stream' income from the trust to their children and grandchildren so that the income is taxed at lower rates.

## Contact Kells the Lawyers Wills & Succession Planning Team

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