



DYING WITHOUT A WILL



Do you need a Will?



Yes, every person over the age of 18 years who holds assets in their name should have a valid Will in place. A Will ensures that your assets will be distributed in accordance with your wishes, and without delay following your death. It is strongly recommended that you update your Will at least once every three years or at such earlier intervals should your circumstances change (i.e. you separate, re-marry or divorce, you change your name, you have a child, or you purchase or sell assets that are specifically gifted in the Will).

What happens if you die without a Will?

If you die without having a valid Will in place, your assets will be distributed in accordance with the laws of Intestacy as outlined in the Succession Act (NSW) 2006. In short, this means that your estate will be divided amongst your immediate family members in a set order and in fixed proportions having no regard to what your wishes are.

This can often cause complications with distributions being made to persons that you may not have intended to benefit (i.e. former spouses, estranged children etc). It can also result in additional legal fees being incurred due to the additional complexities of the matter, and the delays that can be associated with Intestacy. The best way to avoid this situation is to have a valid Will in place that is current and reflects your current family circumstances.

What constitutes a valid Will?

For a Will to meet the formalities of the applicable succession legislation in New South Wales it needs to:

1. Be in writing.
2. Appoint an Executor.
3. Dispose of all of your assets capable of being disposed of in a Will.
4. Be made by a person with testamentary capacity.
5. Be signed by you (the person making the Will).
6. Be witnessed by two people over the age of 18 years that are not named in the Will or who are eligible to contest the Will.



What can happen if a Will does not comply with all legal requirements?

A poorly drafted Will can have devastating consequences. It can result in specific gifts lapsing and may result in a partial intestacy.

This situation often arises with “DIY” Will kits.

To avoid this situation from occurring, it is crucial to get legal advice prior to making a Will to ensure that the Will is in a format that is valid and adequately gifts all of your assets capable of being gifted in your Will.

Who can challenge a Will?

To challenge a Will, an individual must establish that they fall into a class of people known as “eligible persons” and that they have legal grounds to make the claim.

For a claim to succeed, an applicant must prove that adequate provision has not been provided for them either in the Will or during their lifetime. They must also establish what their needs are.

The success of the claim will also be dependent on the size of the Estate itself, and the competing needs and expectations of the other beneficiaries of the Estate.

Challenging a Will is a complex and often emotional process. Our team of professional and experienced Solicitors are here to guide you through the process, and advise you of your rights and responsibilities in relation to any potential claims against the Estate.



Are all Wills the same?

No, there are many different types of Wills. Wills are often referred to as 'simple' Wills or 'complex' Wills. Our team of experienced solicitors will be able to advise you on which type of Will best suits your circumstances upon you providing us with detailed instructions.

Amongst other factors, the type of Will you may require may be dependent on:

1. Your family structure.
2. The size and nature of your Estate.
3. The ownership structure of your assets.
4. The personal circumstances of your beneficiaries.
5. Tax consequences.

How do you know what type of Will is needed?

Our experienced Solicitors will be able to advise on the type of Will that is that suitable for you once they have obtained your detailed instructions.

Advantages of a simple Will

A simple Will:

- Is straightforward.
- Sets out with certainty the distribution of Estate assets.
- Is comparatively inexpensive.



Disadvantages of a simple Will

When a simple Will is used:

- The distribution of assets is inflexible as tax concessions available to testamentary trusts are not taken into consideration.
- If at the time of your death, beneficiaries are bankrupt, addicted to gambling or going through any matrimonial dispute, the beneficiaries' entitlements are put at risk.
- It will not be structured to prevent or minimise any possible claim against your Estate.

How can Estate Assets be protected?

Estate assets can be protected within a complex Will. A complex Will can contain flexible discretionary testamentary trusts, which allows the Estate assets to be distributed in a more controlled manner.

Advantages of a complex Will

A complex Will:

- Protects Estate assets.
- Provides a flexible structure for your Executor to make decisions as to the management of Estate assets.
- Maximises the tax concessions available for distribution of Estate income.
- Is able to deal with any possible claims against your Estate, and for a one-off fee establishes a structure that will not require substantial alteration unless your circumstances change.

Disadvantages of a complex Will

A complex Will:

- Is more expensive to draft and may have ongoing fees in relation to the management of the Will.
- May disadvantage your beneficiaries due to your limited knowledge and understanding of the complex structure.
- May have unintended tax consequences.

Campbelltown Office

Phone: 02 4627 3333

Fax: 02 4627 3167

Email: info@meehans.com.au

171 - 179 Queen Street,

Campbelltown NSW 2560

Ingleburn Office

Phone: 02 9829 3333

Fax: 02 9605 8667

Email: info@meehans.com.au

Cnr. Oxford Road & Carlisle St,

Ingleburn NSW 2565

Narellan Office

Phone: 02 4627 3333

Fax: 02 4627 3167

Email: info@meehans.com.au

Suite 6/22 Somerset Avenue,

Narellan NSW 2567