

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?

A valid Will needs to:

- Be in writing
- Appoint an Executor (also called a trustee)
- All Estate assets outlined
- Be witnessed in accordance with strict legal requirements

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

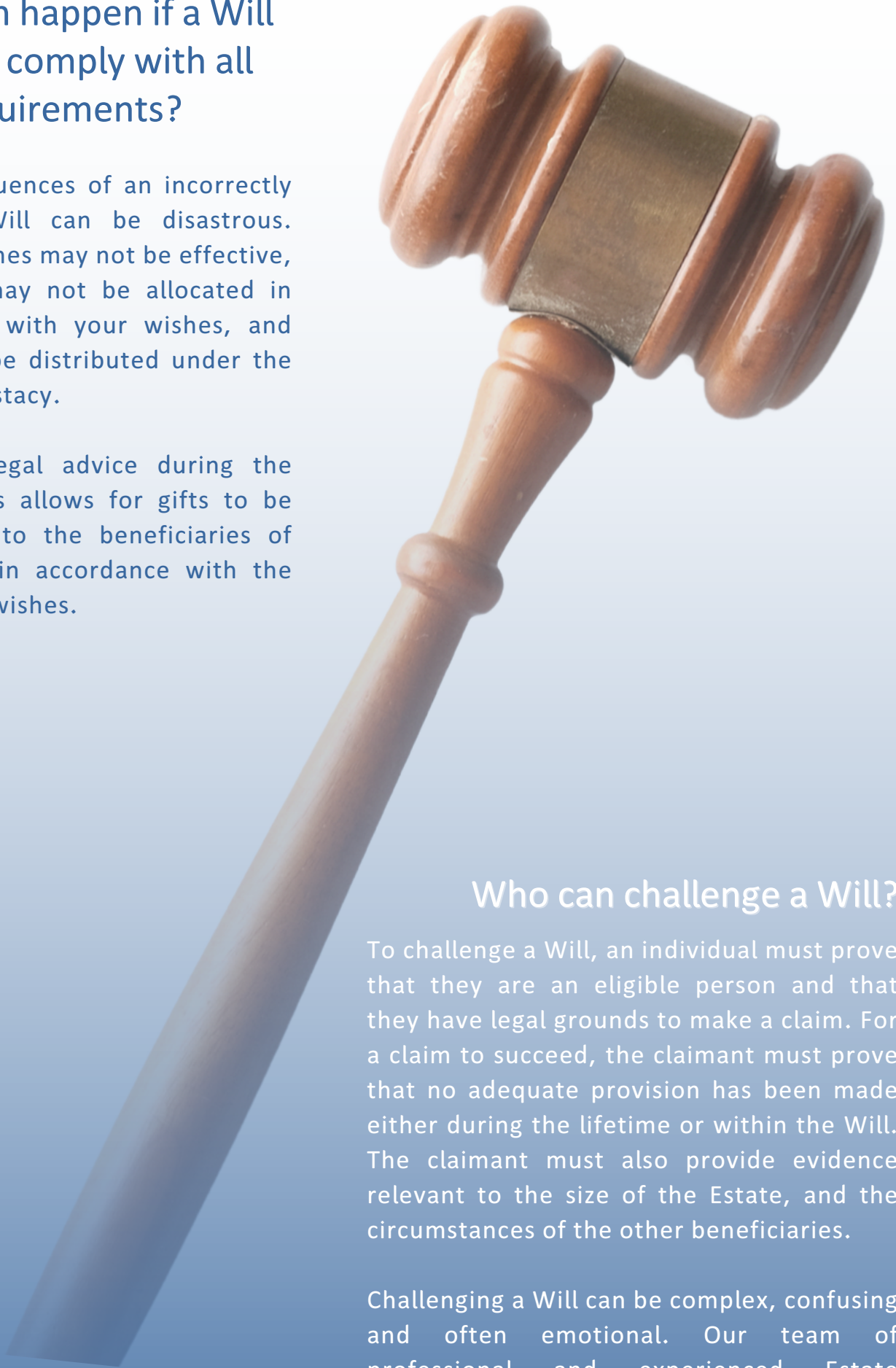
The consequences of an incorrectly prepared Will can be disastrous. Specific wishes may not be effective, as assets may not be allocated in accordance with your wishes, and parts may be distributed under the laws of intestacy.

Receiving legal advice during the Will process allows for gifts to be distributed to the beneficiaries of the Estate in accordance with the deceased's wishes.

Who can challenge a Will?

To challenge a Will, an individual must prove that they are an eligible person and that they have legal grounds to make a claim. For a claim to succeed, the claimant must prove that no adequate provision has been made either during the lifetime or within the Will. The claimant must also provide evidence relevant to the size of the Estate, and the circumstances of the other beneficiaries.

Challenging a Will can be complex, confusing and often emotional. Our team of professional and experienced Estate Solicitors will be able to advise you of your legal rights and any potential claims against the Estate.





Are there different types of Wills?

There are four types of Wills including, simple, mutual, statutory and complex Wills.

How do you know what type of Will is needed?

Our Estate and Planning Solicitors will be able to advise on the type of Will that is suitable for you.

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 Estate Assets.
- Maximises the tax concessions available for distribution of Estate income.
- Be able to deal with any possible claims against your Estate
- 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 Estate.
- Beneficiaries may be disadvantaged due to your or their limited knowledge and understanding of the complex structure.
- May have unintended tax consequences.

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