

Do I need a will?

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A will is an important legal document that sets out how you wish your assets to be distributed when you pass away. When someone dies without a will, they are referred to as dying 'intestate' and the Court appoints an administrator who distributes the estate according to set rules of intestacy. This means your assets may not go to who you would like them to, and can put unnecessary strain on your loved ones at what is already a difficult time.

When do I need a will?

Anyone over the age of 18 can make a will. Although it may not be necessary for all young people to make a will, it becomes increasingly important as you start accumulating assets or building a family.

If you are married but you do not have a will, your spouse will likely inherit your assets. However, even if this is what you want, when you die without a will the Court has the power to determine a different distribution of your assets after your death. Furthermore, if you wish to benefit anyone other than your spouse such as your parents, siblings, or children, you must do so using a will.

If you have children you will likely have a view on as to whether or not you would like them to inherit anything as well as what age they will be entitled to it. As a result, it is important that you have a will in place that reflects your wishes. This is even more important if you have children from multiple relationships. Additionally, if your children are under 18 years old, you will also need to appoint a guardian who will care for them in the event of your passing. By setting this out in your will, you can be sure that your children will be raised by someone you trust.

A will allows you to account for a number of other factors, such as bequests to charities or organisations, or pets that may need looking after. It is also important to note that you can only make a binding superannuation nomination of your spouse or dependants, and therefore if you wish your superannuation to pass to any other loved ones such as your siblings or parents, you must provide for this in your will.

What happens if I am unmarried and do not have children? Do I still need a will?

Even if you are unmarried and do not have children, if you have a positive net worth you should consider making a will. You may want to distribute your wealth or assets to your parents, your siblings, or to friends. A will is crucial to ensuring this takes place when you are not around to do so yourself.

What happens if my assets are relatively minor?

It is still good practice to have a will in place. Often, people will make a will and leave it unchanged for a lengthy period of time, during which time the person would accumulate further assets. Having a will already in place will allow for the assets you accumulate after making the will to be dealt with in accordance with your wishes.

Some institutions, such as banks, may require that Probate be obtained to distribute any assets you hold in your bank account. Having a will in place will allow your appointed executor to apply for Probate in a simpler manner, rather than having to follow the rules of intestacy.

How can a solicitor help?

When it comes to making your will, a number of significant decisions must be made and formalities complied with in order for it to be valid. Your solicitor can assist with both of these aspects, including more specifically:

1. Ensuring your will is properly drafted, signed and witnessed;
2. Advising you how to best provide for your spouse, children, or other dependants;
3. Advising you how to protect your assets and minimise capital gains tax; and
4. Providing you with information that will help you decide how to choose the executor of your estate.

What if I already have a will, but it no longer reflects my circumstances?

It is very important to update your will when you have a change of circumstance, such as a relationship breakdown or the death of a family member. You **must** update your will if you get married after making it, as the marriage will invalidate your current will unless it was made in contemplation of that marriage. You should also regularly review your will to ensure your assets are still being distributed in accordance with your current wishes and that all important assets are dealt with.

If you would like to make an appointment to discuss the preparation of a will, or any other legal matters, please contact us at **CLS Legal** on **(02) 9279 0919** – we focus on the outcomes.

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