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# DRAFTING A WILL

## The following document contains matters to be considered by you and information required to prepare your will. Please read carefully before filling the form on pages 4-12.

**Valid Will**

To be valid a Will must be in writing; signed and witnessed by two other adult persons not referred to in the Will.

**Executor**

You will need to appoint an executor who becomes the legal representative of your estate on your death. Their role is to carry out your wishes, pay your debts and gather in and distribute your assets. Often people who are married, or in a long-term relationship, appoint their partner as their executor (and leave everything to that person). However, even if this is the case you should also provide me with the details of an alternative executor(s) in the event your partner predeceases you or is otherwise unable or unwilling to accept the appointment. Similarly, you need to provide alternate bequests of your assets, in the event your partner predeceases you, or does not survive you. In Wills, I usually provide that a beneficiary survives the person making the Will for a period of 30 days, so that if they pass in the same event the estate is not subject to two probates.

If you decide to appoint more than one person as your executor, you need to advise me whether they are appointed jointly, which means they are both required to make decisions together and sign all relevant documentation, or severally which means either of them may do so.

**Guardian**

If you have children under 18, you need to consider the appointment of a guardian(s) to look after them until they are adults. Please also provide details for an alternative guardian or guardians should the first appointed guardian be unable to care for your children. In the case of a couple, the appointment of the guardian is in accordance with the Will of the last surviving parent. If a couple are involved in an accident together it is taken that the elder of the partners passed first.

**Effect of Subsequent Marriage**

Please note that your existing Will is revoked by a marriage subsequent to the making of the Will unless the Will was specifically drafted contemplating that marriage. A Mutual Will that is contractually binding is not effected in that way.

**Children from Different Relationships**

This is something to be considered very carefully. If you have children from a previous relationship and have concerns that your current partner may not look after their interests if you have passed, or to make sure those children know that you considered them during the process of making your Will, you must address the issue. This is also important if your spouse/partner was to remarry after you passed and have additional children.

You can ensure the interest of the various children by making specific bequests for those children or alternatively by both partners having Mutual Wills that contractually bind each of them to deal with their estate in a particular manner.

The term “Mutual Wills” is often used incorrectly to describe the situation where two parties have Wills that mirror each other. For example, the husband leaves everything to the wife and vice versa. If you actually want to leave the bulk of your estate to your partner but at the same time ensure your partner leaves the residual, or certain specific assets, to certain persons then you need Mutual Wills that are contractually binding. If this is the case, please make that clear to me and I will discuss all of the appropriate alternatives with you. These issues usually only arise with larger estates.

**Residuary Estate**

Most Wills provide that after the payment of all the deceased’s debts, death and testamentary expenses the rest of the estate, referred to as the “residuary estate” vests in the Executor to be distributed in accordance with the provisions of the Will.

**Superannuation or Life Policies**

If you have superannuation or a life insurance policy, in which you have nominated a specific person(s) as the beneficiary of that superannuation or insurance policy, then in the event of your death that policy may not form part of your estate. As you are considering your Will, it is a good time to check whether you have made any binding death benefit nominations in respect of any such policies. If not, or if you want to change the beneficiary or change the nomination to be in accordance with the terms of your Will, you should do that now.

**Testamentary Discretionary Trust**

If there are likely to be significant assets in the estate you should consider setting up a Testamentary Discretionary Trust which is done in the Will rather than making a simple Will. A Testamentary Discretionary Trust is a vehicle for the transmission of assets from one generation to the next. There are certain tax advantages available through a Testamentary Discretionary Trust making them an effective estate planning tool. They also allow the testator or testatrix a greater level of control over the distribution of the assets.

Testamentary trusts can be “protective” of the assets of the estate in the event of poor business decisions by a potential beneficiary or their spouse. They can also be used to protect the assets of an estate from the spouse of a beneficiary in a divorce. To be effective in this way, the primary beneficiary or beneficiaries cannot remove or appoint a trustee.

If you require more complex estate planning and wish to discuss Testamentary Trusts in more detail, please telephone meat your convenience.

**Other Considerations**

You also need to consider:

* a list of specific legacies (gifts of money or goods) unless the estate, after payment of debts, is to be transferred to one person;
* a list of devises (gifts of real property) unless the estate is to be transferred to one person. Remember, if you own property with another person as a joint tenant then on your death the surviving joint tenant is entitled to the property;
* to whom you wish to leave any intellectual property you have created which will form part of your estate for example books you have written, songs, software etc.
* if you have any other specific requirements such as creating a life estate in a property for a particular person before that property forms part of your estate;
* the beneficiaries of your estate, after payment of debts;
* at what age any beneficiaries who are minors are entitled to an interest in the estate; and
* whether you have any specific requests regarding your funeral for e.g. cremation, burial or donated for research.

Please note that in considering the penultimate bullet point you cannot “rule from the grave”. Therefore, you are unable to make stipulations such as you might have seen in movies like “my son shall not inherit unless he is married before he is 25”. That is an extreme case but the principle applies even to specifying the age at which a beneficiary, who is a minor, may inherit.

Many people include a provision in their Will that their children will not inherit until they are a certain age (i.e 30 years old). If the relevant child or children were to apply to a Court, this would be read down to 18. If you would prefer your children not to inherit until a specific age, please let me know and I can draft the clause as a testamentary trust. This can be challenged in Court but can make it more difficult to overturn than a simple clause to that effect.

If your business or family situation is complex, or your estate is likely to comprise of valuable real estate and be quite large and extensive, then it may be better for you to set up a testamentary trust in your Will rather than just having a Will. Testamentary Trusts can protect the assets of the estate from creditors or Family Law claims by spouses or partners of a beneficiary.

**Excluding a Certain Person or Persons from your Estate**

If you are not providing for your spouse, legal partner or any one or number of your children in your Will, your estate maybe susceptible to a claim by that person under the *Succession Act 2006 (NSW)*. This can also apply to a former spouse, whether or not there has been a legal property settlement with that person.

If you are excluding someone, it is best to state very clearly in your Will why they are excluded. It may be that you have provided for that person during their lifetime or a specific problem about or with that person. As it is becoming more and more difficult to exclude someone from an estate, please raise any concerns you have in this regard with me when instructing me to prepare your Will.

# Will Preparation Questions

## After considering the above please either telephone us to discuss your requirements or make an appointment with us to complete your questionnaire.

## 

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**For me to be able to prepare your Will(s) I will require the following information. One form per couple is sufficient if your Wills will be on the same terms, i.e. your whole estate to each other and then to your children and grandchildren etc:-**

1. Your;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Occupation |  |
| Date of Birth |  |
| Phone Number |  |

1. Your **spouse/partners**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Occupation |  |
| Date of Birth |  |
| Phone Number |  |

1. If you are in a de-facto relationship, is there an intention to become married at some point in the future? *If this is the case, the Wills can become invalid. However, I can include a specific clause stating that you intend the Wills to remain valid once you marry each other.*

Yes, I intend to marry my de-facto partner  No, this does not apply to me

1. Do you have a former spouse who is in difficult financial circumstances and who is likely to make a claim against your estate?

Yes, potentially  No, this does not apply to me

1. Your **executor**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Occupation |  |
| Relationship to You |  |
| Phone Number |  |
| Are they your sole executor? | Y/N  If No please complete 6. Details of joint executor |

1. Your joint **executor**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Occupation |  |
| Relationship to You |  |
| Phone Number |  |

Please choose at least one substitute executor. You can appoint your child or children once they are 18.

1. Your substitute **executor**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Occupation |  |
| Relationship to You |  |
| Phone Number |  |

1. Your further substitute **executor**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Occupation |  |
| Relationship to You |  |
| Phone Number |  |

1. Your **first beneficiary**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Relationship to You |  |
| Bequest/Share of Inheritance |  |
| Alternate Beneficiary in the Event of Death |  |

1. Your **second beneficiary**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Relationship to You |  |
| Bequest/Share of Inheritance |  |
| Alternate Beneficiary in the Event of Death |  |

1. Your **third beneficiary**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Relationship to You |  |
| Bequest/Share of Inheritance |  |
| Alternate Beneficiary in the Event of Death |  |

1. Your **fourth beneficiary**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Relationship to You |  |
| Bequest/Share of Inheritance |  |
| Alternate Beneficiary in the Event of Death |  |

1. Your **fifth beneficiary**;

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Relationship to You |  |
| Bequest/Share of Inheritance |  |
| Alternate Beneficiary in the Event of Death |  |

1. Do you want to make any specific gifts to anyone? E.g. sentimental items, motor vehicle, jewellery, artwork etc.

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Relationship to You |  |
| Specific Gift |  |
| Alternate Beneficiary in the Event of Death |  |

|  |  |
| --- | --- |
| Full Name |  |
| Full Residential Address |  |
| Relationship to You |  |
| Specific Gift |  |
| Alternate Beneficiary in the Event of Death |  |

1. Whether you have any children under the age of 18 and if so, details of the proposed guardian(s) for those children and an alternate guardian(s).

|  |  |
| --- | --- |
| Child(ren) name(s) and DOBs |  |
| Proposed Guardian(s) |  |
| Relationship to You |  |
| Full Residential Address |  |

|  |  |
| --- | --- |
| Alternate Guardian(s) |  |
| Relationship to You |  |

1. Please provide details of any adult children who are living with you, or have been dependent on you as adults AND you are NOT including as a beneficiary under your Will.

|  |  |
| --- | --- |
| Child(ren) name(s) |  |

1. Please provide details of any grandchildren who are, or who have ever been, fully or partly dependant on you financially AND who will NOT be included as a beneficiary under your Will.

|  |  |
| --- | --- |
| Child(ren) name(s) |  |

1. If you own any property or properties jointly with any other person or entity other than your spouse. If so, please provide me with the details of those properties.

|  |  |
| --- | --- |
| Joint owner(s) |  |
| Percentage Ownership |  |
| Full Residential Address |  |

1. Details of any intellectual property or copyrighted works that may form part of your estate.

|  |  |
| --- | --- |
| Intellectual Property Details |  |

1. If you own a business or shares in a private company what is your intention for that business in the event of your death? If the business or company involves other persons, it is not uncommon for an agreement to be entered into which is referred to as a “buy/sell agreement” where the other persons involved can buy out your interest on your death for a specific amount or in accordance with a formula. These agreements often involve the business maintaining life insurance on each of the key parties so that the cost to buy out a person’s interest on their death, from their estate is covered by that insurance.

|  |  |
| --- | --- |
| Details of Intentions |  |

1. Have you made any binding death nominations in a superannuation or death policy? If not, or in case the nomination was to fail, do you want to make a specific bequest in your Will in this regard? *Please indicate if have you nominated that the benefits under the policy be dealt with in accordance with the terms of your Will.*

|  |  |
| --- | --- |
| Details of Nominations |  |

OR

|  |  |
| --- | --- |
| Superannuation/Death Policy Bequest |  |

1. Do you have any bank accounts held jointly with any other person or entity?

|  |  |
| --- | --- |
| Joint Bank Account Details |  |

1. Do you have any life policies or superannuation policies which include a life policy?

|  |  |
| --- | --- |
| Superannuation Life Policy Details |  |

1. Do you have any specific funeral or burial wishes?

|  |  |
| --- | --- |
| Funeral or Burial Wishes |  |

1. Do you wish to be an organ donor?

YES NO

1. Are you part of a blended family, do you have an ex-partner or step-children or other dependent or are there any other details that might affect your Will?

|  |  |
| --- | --- |
| Blended Family Details |  |

**Please attach or email a photo of you and your spouse’s Driver’s Licences for Verification of Identity.**

**In addition to your Will, we also prepare other estate documents detailed below.**

**If you are instructing us to prepare the additional documents below, please provide:-**

1. Enduring Power of Attorney & Guardianship

Protects you if you are ever unable to make financial, financial and property decisions for yourself (for example if you were unconscious so your spouse can access any accounts that are not held jointly)

|  |  |
| --- | --- |
| Full Name of Attorney/s you wish  to be appointed if you ever lack capacity |  |
| Address, Phone and Email of Attorney/s |  |
| An Alternative Attorney/s  should your Attorney be unable to act; and |  |
| Address of Alternative Attorney/s |  |
| If you would like your Attorney to be  authorised to give gifts on yourbehalf and to whom |  |

1. Enduring Guardianship

Appointing one or more persons to make medical decisions on your behalf in the event you ever lack capacity to do so (for example if you were unconscious so your spouse can make medical decisions on your behalf in case there may be disagreements with other family members regarding treatment options); or

|  |  |
| --- | --- |
| Full Name of Guardian/s you wish  to be appointed if you ever lack capacity |  |
| Address of Guardian/s |  |
| Phone Number and Email of Guardians/s |  |
| Occupation of Guardian/s |  |
| An Alternative Guardian/s should your attorney be unable to act |  |
| Address of Alternative Guardian/s |  |
| Phone Number of Alternative Guardians/s |  |
| Occupation of Alternative Guardian/s |  |
| Any specific terms of your wishes in respect  of your future medical treatment,  e.g. artificial feeding, ventilation, life support, organ donation. If no specific wishes, your guardian can decide based on medical advice. |  |

1. Advanced Care Directive

A separate document which is written record of your wishes regarding any medical treatment you do or do not wish to receive in certain circumstances (artificial feeding, ventilation, life support etc). It is binding on medical treatment providers and recommended if you are receiving regular medical treatment.

Your Directives

**If you have not already done so, please attach a photo of you and your spouse’s Driver’s Licences for Verification of Identity.**