

Sladen drives
Legal results

Wills and estate planning

A will is a legal document that names the people who you want to receive the property and possessions you own at the time of your death. These people are your beneficiaries. This brochure outlines the importance of making a will and the vital factors that need to be considered regarding estate planning.

Why make a will?

It is essential that you make a will if you are concerned about who will receive your assets and belongings after you die. Assets and belongings can include, but are not limited to your:

- home;
- land;
- car;
- money in bank accounts;
- insurance policies;
- shares;
- jewellery;
- paintings; and
- furniture and household goods.

Who may make a will?

If you are over the age of 18 years, you may make a will provided that you have 'testamentary capacity'. This means that you:

- know what assets you have and have some idea of how much they are worth;
- are able to decide who should fairly receive your assets; and
- understand what you are doing in making a will.

What if I do not make a will?

When you die without a will you are said to die 'intestate'. Legislation sets out how your assets will be distributed.

If you die leaving a partner (a spouse or a de facto partner, irrespective of gender, with whom you have been living for at least two years, or for a lesser time where there is a child of the relationship) and a child or children:

- your partner will receive the first \$100,000, your personal belongings and one-third of the balance of your estate;
- your children will receive the remaining two-thirds shared equally between them; and
- your partner will also have the option of buying your interest in your shared home at its value as at the date of your death if you own the house or have a separate interest in it.



The disadvantages of not having a will:

If you do not have a will:

- you do not have any control over the distribution of your estate;
- the rules for distribution of your estate may not accord with your wishes and may produce an unfair result;
- partners, stepchildren, friends and your favourite charities may miss out or receive an insufficient share;
- your children or other minors in your care may not receive the protection you desire and you will not have the opportunity to propose a guardian for them;
- any incapacitated members of your family and their own assets may be put at risk;
- your estate may be administered by someone you would not want to appoint to do this; and
- you do not have the satisfaction of knowing your affairs are in order and your estate is going to the people to whom you choose it to go.

What if I marry or divorce?

If you make a will before you marry, it will be revoked when you marry, unless the will states that it is made in contemplation of marriage. If you divorce, any gift or appointment as an executor in favour of a former spouse is automatically revoked.

If you are married but separated, the terms of your existing will continue to apply until a divorce. It is therefore prudent that, following a separation, you review your will.

To whom can I leave my assets?

You can leave your assets to whoever you choose, including charities and not-for-profit organisations. It is important, however, that you leave sufficient assets to anyone who the law considers you to have a responsibility to make provision for. If you do not provide for these people, they may be able to take legal action to obtain a share or larger share of your estate.

What about my home or assets owned with another person?

If ownership of your home is registered in only your name, you can gift it in your will. If you own it with another person, such as your husband, wife or partner, there are two alternative ways that you may own the home:

- as joint proprietors - this is the most common way of owning property for couples where they do not own separate shares; or
- as tenants-in-common - this is the most common way of owning property for business partners, each owner having individual ownership of a specified share in a single property.

If you own your home as a joint proprietor, the home automatically passes to the other joint proprietor upon your death. Your will is irrelevant in relation to any jointly owned asset as no part of the asset forms part of your estate. If you own your home as tenants-in-common, you can leave your share of your home to whoever you choose in your will, not necessarily the other owner.

When should I review my will?

You should review your will every two to five years or upon a change in your circumstances. A will should reflect your current domestic and financial situation. Life changing events such as marriage, separation, divorce, births and deaths in the family, major illness, retirement and a change in financial circumstances often require a review of your will. Your choice of an executor or a guardian for your infant children should also be reviewed as circumstances change.

Superannuation and trusts

Considerable wealth is now held in family trusts and superannuation funds. These assets are not necessarily controlled by a will and require special treatment. Sometimes a person's will is not as important as other documents which control superannuation and trusts because the will only applies to personally owned assets. Many people have more wealth in superannuation and family trusts than in their own name. Future control of these other assets can be the real challenge of estate planning.



Why consult Sladen Legal?

Having Sladen Legal draw up your will is in your best interests because we:

- make sure your will is valid - that is, properly drawn, signed and witnessed;
- make sure your wishes are clearly expressed;
- advise you regarding adequate provision for your spouse/partner and children, and any other dependants; and
- advise you of any possible liability for capital gains tax which might result from provisions you intend to make in your will.

We will also discuss with you:

- the selection of an executor;
- the selection of a guardian for your infant children;
- assets that can be disposed of in your will and those which cannot, such as those owned by a family discretionary trust, and how to deal with those other assets;
- what liabilities you need to provide for in your will;
- where to keep your will and who should know where it is kept;
- superannuation and what happens to these benefits which are often not controlled by your will;
- asset protection for your partner and children;
- estate planning beyond your will; and
- the use and benefits of making powers of attorney for financial matters and medical treatment.

Contact us

If you require additional information about Sladen Legal's services or would like to arrange an appointment, please contact us.

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