

Wills

We are looking at why it is important to have a Will, and important things you need to know about making Wills.

Glossary of relevant terms

Will – A Will is a document stating what a person wants to happen with all their things when they die.

Could be money, or their personal possessions,

- Kiwisaver,
- clothes,
- car,
- record collection.
- house,
- songs,
- books they have written, or
- who is going to look after any children you have

Executor – Person dead, (deceased) says the EXECUTOR in their Will is to do 1 to 3:

- 1) Close the bank accounts
- 2) Pay the bills for owner of Will
- 3) Left over money is paid to the Beneficiaries

Probate – Permission from the High Court gives authority (yes) to the EXECUTOR to do 1 to 3.

Estate – (property). Estate is the money and possessions after all the bills and debts are paid off. This part is given to people (Beneficiaries) listed in the Will.

Intestate – (no Will). The dead person has no Will.

Beneficiary – (get). A person who gets something from the Will. The executor can also be a Beneficiary of the Will.

Trustee – (person responsible). A Trustee is the person to look after property on behalf of a Beneficiary who is too young to be given their part of the estate.

Why do you need a Will?

What happens to your things when you die?

- Who do you want your things to go to?
- Are there any special things that you want to go one (or more) persons?
- Do you have children that you look after. Who do you want them to look after when you die?

If you die...

- Are there people that you do not want to give anything to?
- Are there people you don't want to control your things or your children?
- If you don't have any children or dependents and you own less than \$15,000 you may not need a Will.

Who can make a Will?

- 1) If you marry or are in a civil union
- 2) then you can make a Will at any time from 16 years old,

Or

- 3) If you are in the Army or in the Navy, and
- 4) you are going on operational service,
- 5) or joining a ship as a seafarer.

Or

- 6) Asking to make a Will - If you don't have testamentary capacity or are subject to an order made under the Protection of Personal and Property Rights Act 1988 you may need to ask the Court to allow you to make a will.
- 7) the Family Court will want to make sure you have the understanding (testamentary capacity) to make a will properly, before they give permission.

Or

If you have the permission of the Family Court to make a Will – if you don't have testamentary capacity or you are subject to an order made under the Protection of Personal and Property Rights Act 1988 you may need to ask the Court to allow you to marry.

the Family Court will want to make sure you have the understanding (testamentary capacity) to make a Will properly, before they give permission.

Making a Will

To make a Will TRUE (authorised/valid):

You write the Will (type or write). It needs to be written down.

Then it needs to be signed by the person making the Will.

Two people (Witnesses) need to see you sign the Will.

The witnesses need to be people who get nothing from the Will.

Who signs the will?

1. Person who writes the Will (you write the Will)
2. Witness 1
3. Witness 2

This means your Will is valid.

Things to think about when making a Will

What property do you have?

- money, Kiwisaver, shares
- land, house,
- car,
- personal belongings,
- copyrights
- royalty rights from music
- old photos and films.

You choose who gets these things. You decide to give to who?

BUT

- If you have people in your life that you have a responsibility for, and you leave them out of your Will or treat differently
- You may have a duty to provide more for a disabled dependent child/adult
- You should write your reasons for excluding someone or giving different treatment (e.g., you leave all your estate to a second partner, BUT you have children from a 1st relationship),
- Then your Will may be challenged (argued against)
- Courts may say that your estate to be divided differently.

ADDITIONAL

- Do you want to make some special gifts for certain people? or
- Give your money to charities?

Who will be the Executor? – (person who is in charge of your property when you die).

- Right person
- Executor role is hard (difficult). Have you talked and checked the person to be Executor?
- Trust this person?
- Good idea to plan ahead.
- You may need a trustee.
- What you want for your funeral?
- You have any special asks or plans?

Suggestions

- Keep copies of your instructions in two/three separate places or tell other people.
- Good idea to make your family know your arrangements.
- Update your Will e.g. if you start new relationship and don't divorce, your old Will stays valid.
- If you live with someone for more than 3 years, you must provide for them. The Court uses a formula to calculate how much.

Guardianship (look after) of children

If I die, who will look after my children?

Eg, other parent who will take over their care?

If not, who?

In your Will, you can say who you want to look after your children.

The person who looks after your children is: Testamentary Guardian (TG).

- TG do not provide day to day care just because they have been named Testamentary Guardian in your Will.
- TG will have to go to the Family Court to get APPROVAL from the court.
- TG still can help make important decisions about your child's life.
- Children can inherit what you give them when at the right age.
- You can say in your Will, how old? Age 18, 20, 25?
- Children will inherit when aged 18 unless you say different in your Will.

Until then,

- their money / property can go to a Trust.
- Trust also goes into your Will.

What if there is no Will?

Intestate. This means no Will

- The estate is handled as directed by the law –

The Administration Act (1969)

Who? Someone (family member) applies to the High Court to be appointed Administrator of the estate.

- The Administrator does everything the Executor would do,
- must give away the estate following a formula in the Administration Act.

Must follow formula even if you think not right/not agree.

- This may mean that the estate goes to people other than who you might want
- Takes a long time.
- Bad if you have children or partner who need funds that are part of the Estate.

Help to make a Will

- You can make a Will yourself – if you have complex family situation/property - ask a lawyer to check for you.
- Private lawyers can do it for you – for a fee.
- Some Community Law centres can help with Wills. But you need to check with your local CLC first.
- The Public Trust is online and ‘face to face’ to make Wills

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