



# LAST WILL & TESTAMENT

A Will is probably the most important document that you will ever sign. It helps to relieve financial and emotional strain and provide guidance at a time when your family needs it the most. It provides certainty when dealing with complex arrangements — such as the existence of a family trust, a company, or blended families. Most importantly, it ensures that your wishes are carried out when you are no longer here.

## WHAT HAPPENS IF I DON'T HAVE A WILL?

To die without a Will means that you die 'intestate'. If this happens, your personal assets ('estate') will be distributed in accordance with the provisions on the Administration Act 1969 ('Act'). Many people mistakenly believe that this will result in all of their assets going to their spouse or partner. However, this is often not the case. For example:

- ◆ If you are survived by your spouse/partner and you have a child/children, then your spouse/partner will receive all of your personal chattels; \$155,000; and 1/3 of what is left. Your children will be entitled to the remaining 2/3; and
- ◆ If you are survived by your spouse/partner and you have parents who survive you, then your spouse/partner will receive all of your personal chattels; \$155,000; and 2/3 of what is left. Your parents will be entitled to the remaining 1/3.

## PROPERTY OWNERSHIP — JOINT TENANTS OR TENANTS IN COMMON

If you own land jointly with another person, you will either own it as joint tenants or as tenants in common as to specified shares. It is important that you know how your ownership has been recorded on the title, because this will affect the way property is dealt with on your death.

If a property is co-owned as joint tenants, then the property will automatically transfer to the surviving co-owner(s) irrespective of the provisions of the deceased co-owner's Will.

If a property is co-owned as tenants in common as to specified shares, then the share owned by the deceased co-owner will divest to the beneficiaries specified in their Will, who may or may not be the surviving co-owner(s) of the remaining share(s) in the property.

## WHAT IS A TESTAMENTARY GUARDIAN?

If you have a child or children under 18 years of age, then you will likely want to appoint a testamentary guardian in respect of those children. A testamentary guardian does not have a right to custody and nor will they necessarily be responsible for the day to day care of your children. However, they will be responsible for making key decisions in respect of the child's upbringing.

## HOW OFTEN SHOULD I REVIEW MY WILL?

We recommend that you review your Will every two years or so. In particular, if you have entered into marriage; you have had children; your relationship has dissolved; or your wishes have changed, then it is important that you update your Will. Alternatively, if your circumstances and wishes have not changed, then there should be no need to alter your Will but it is always good practice and in your best interests to review it.

It is worth noting that a Will is revoked if the testator marries. Similarly, any gifts made in a Will that benefit a former partner of the testator are invalid, but only if the existing relationship has been formally dissolved.

If you are unsure about anything/wish for clarification on certain elements of your Will or would like to make any amendments following a review, we recommend that you contact us.

## WHAT DO I NEED TO DO TO MAKE A VALID WILL?

There are strict requirements for creating a valid Will. A Will must be in writing, signed by the person making the Will ('**testator**'), dated and witnessed by two people who are not beneficiaries of the Will. The testator must be over 18 years old, of sound mind and free from undue influence. Your Will must include:

- ◆ Appointment of the person or people ('**executor(s)**') who will be responsible for distributing your estate as provided for in your Will; and
- ◆ Details of who is to benefit from your Will ('**beneficiaries**') and the manner in which they are to receive their entitlement.

If any of the above requirements are not met, or if the meaning of the Will is called into question, then the Will may be deemed invalid or its interpretation challenged. A Lawyer will be able to explain to you the circumstances in which a Will can be challenged and can advise you on how to minimise the risk. Seeking professional advice is strongly advised.

## HOW CAN A WILL BE CHALLENGED

Even if you have made a valid Will, it is still possible for it to be challenged. Some of the circumstances in which this may happen include:

- ◆ Someone whose care you have been responsible for does not feel that they have been adequately provided for in your Will;
- ◆ Stepchildren whose care you have been wholly or partially responsible for at the time of your death do not feel that they have been adequately provided for in your Will;
- ◆ You promised to leave an item or money to a particular person in exchange for a service and this has not been provided for in your Will (also known as a 'testamentary promise'); and
- ◆ By a spouse or partner under the Property (Relationships) Act 1976, where the presumed right to a half share of relationship property has not been provided for in your Will.

There are strict time limits in respect of any challenge that can be made to a Will. If you think you have a right to challenge a Will, then we recommend that you talk to us as soon as possible.

## MORE INFORMATION

If you're thinking about updating or creating a Will, need some advice or have any questions — give us a call or send us an email for more information.

### Wellington Office:

Level 2, Zephyr House, Te Aro, Wellington 6011

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**Disclaimer:** This information is intended as a guide only. We always recommend you speak with a lawyer regarding your specific situation and needs.

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