

# MAKING A WILL

## SOME THINGS THAT YOU SHOULD KNOW



paul gallagher legal

## **SOME GENERAL POINTS ABOUT WILLS THAT YOU SHOULD KNOW**

Your Will is probably the most important document you will ever sign. It gives you and your family peace of mind and will ensure that your affairs and personal details are dealt with the way you want after your death.

Here are some of the general things you should either consider or be aware of:

- A Will in simple terms amounts to a formal written instruction about what you wish to have done with your property and your possessions, and also how your spouse, children, partner, etc are to be looked after and provided for.
- Wills need to be drafted in clear and unambiguous terms and there are strict requirements as to how they must be signed and witnessed. For that reason, we always recommend that your Will be professionally prepared because we have seen too many individuals come unstuck over the years by either thinking that they can do it themselves or by trying to save a few dollars here and there.
- In order to make a valid Will you must be aged 18 years or older or if you are married and under the age of 16 then you can make a valid Will also. In some circumstances a person aged between 16 and 18 years of age can make a Will but this has to be approved by a Judge of the Public Trustee.
- The cost of making the average Will is very small indeed and should not be a factor for either putting off making one or for upgrading or updating your existing will.

- If you die without a Will (referred to as dying “intestate”) then your property and possessions will be distributed in accordance with the provisions of the Administration Act 1969. This means that your surviving spouse and children will inherit your estate in set proportions which will almost invariably not be what you want and may also cause difficulties and hardship for those left behind.
- Generally speaking, a de facto partner has had no automatic right to a share in your estate if you die intestate. However, you need to be aware that this is changing under the new Property Relationships Act.
- Also, if you die intestate, it usually takes significantly longer and often costs more, than when you have a valid Will.
- If you marry or remarry your old Will will be automatically revoked unless you have expressly made your Will in contemplation of your marriage or remarriage.
- When your marriage is dissolved, your Will will be revoked only to the extent that any appointment or gift is in favour of your former spouse. You should always review your Will situation when you separate from your spouse.
- If you make a Will yourself and upon your death it is subsequently found to be invalid then you will be treated as having died intestate.
- The making of a Will does not affect anything that you do during your lifetime and you are free to change it at any time as your circumstances or needs alter. Your Will is in effect “in abeyance” during your lifetime and only takes effect when you die.
- You can sell, mortgage, give away or buy anything you like dur-

ing your lifetime without any problems whatsoever. However, if you have specific provisions in your Will which may be affected by any dealings with your assets, then you will need to revisit your Will and make any alterations or changes which may be needed to take into account the changed circumstances.

- We advocate making a Will to last for as long as possible having taken into account all matters that can be reasonably foreseen. Despite this, however, we have a policy of contacting clients who have Wills with us approximately every five years just to check that their Wills are still relevant to their needs. We regard this as good housekeeping—and we write to you to jog your memory!



## WHAT YOU SHOULD CONSIDER BEFORE MAKING A WILL

1. Firstly, list **all** of your assets that you are able to dispose of by Will (this will exclude for example, any assets which are owned by a family trust). This list will include loans to family members or trusts, land, company shares, bank accounts, Superannuation, insurance policies and the like. This process is necessary because you may not be able to dispose of all of your assets by Will. Do you have a family trust or trusts? If you have a loan to family members or to a family trust, do you wish to forgive that debt under your Will?

2. Next, list **all** of your debts. Give some thought to how you wish them to be repaid. For example, do you wish the mortgage on your property to be repaid from the proceeds of life insurance policies?
3. Consider how you wish your estate to be distributed.
4. Do you want to leave any specific items such as motor vehicles, antiques, personal jewellery or sums of money to a particular person or persons?
5. Who do you wish to appoint as executors to administer your estate? You will need to choose at least one person (and often preferably two) who will be able to administer your estate (check that they are prepared to take on the job!). Generally, it is wise to avoid appointing people who reside overseas permanently. Depending on the size and complexity of your asset base you may wish to consider appointing a professional executor such as your Solicitor or Accountant together with perhaps a trusted family member. However, please make sure that these people are willing!
6. Make a list of all of your family members including children from first, second (and third, etc!!!) marriages. Underline those you wish to provide for under your Will. If there are any members you do not wish to provide for then please list the reasons why you wish to exclude them. List all persons who may be legally entitled to claim a share of your estate and give some consideration as to how best to avoid any possible challenges to your Will.
7. If you have been separated from your spouse, did you sign a matrimonial/relationship property agreement in order to settle any property issue with your former spouse? Please consider bringing a copy with you when instructing us.
8. Consider what powers and directions you wish to give to your ex-

ecutor/s. We recommend that you advise your executor/s of the whereabouts of your Will and give him/her/them a copy of it in a sealed envelope.

9. If you have minor children, who do you wish to appoint as their legal guardians? You will need to check that these people are in fact prepared to take on this important responsibility. This appointment gives the appointed person or persons the right to make the major decisions in the children's life, e.g. their education and religious upbringing. Once again this should be a trusted family member/s or friend/s who know/s the children and is not only prepared to take on the job but has/have the facilities and financial resources in order to do it. Consider some method of providing funds to the guardian/s to assist with the cost of looking after the children.
10. If you have minor children who may take a share under your Will it is likely this share should be held in trust until they reach a certain age. What age do you think that should be? Do you want the legal guardian/s to receive moneys from that share to provide for their maintenance, education and advancement in life? Who would you like to be a trustee of the fund? Usually this is the same person/s who are the executors. Remember that often people want to leave their property to their spouses first but if that person is not living at the date of death they wish to leave it to their children or grandchildren. This is referred to as a "gift over."
11. Consider whether or not you wish to leave any of your body parts for use by others upon your death and ensure that all relevant parties are aware of your wishes.
12. Do you have a preference for burial or cremation or specific funeral arrangements?
13. Always seek legal advice about the formalities of making a valid Will. Do not rely on your own judgment or the advice of others even if you respect their view—getting it wrong is potentially catastrophic.

trophic! The cost is not great compared to the peace of mind that having a professionally prepared Will will give you and your loved ones. Do not try and save a few dollars and use “do it yourself” kits—the risk is too great.

14. Do prepare a specific list of questions to ask your Solicitor so that you don't lose track of the issues that are concerning you during your discussions.

15. If your Will no longer complies with your wishes seek legal advice as to whether you should make a codicil or a new Will.

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*For further information and the best of professional help contact the friendly team at Paul Gallagher Legal.*

*Phone (09) 415 9321  
Fax (09) 415 6407  
E mail [info@lawfirm.co.nz](mailto:info@lawfirm.co.nz)*

*Or visit us on the Web at [www.lawfirm.co.nz](http://www.lawfirm.co.nz)*

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