

Perth Office
8th Floor
231 Adelaide Terrace
PERTH WA 6000
t (08) 9323 3900
f (08) 9323 3999

Willetton Branch Office
24 Augusta Street
Willetton WA 6155
t (08) 9354 2219

For All Correspondence
GPO BOX S1354
PERTH WA 6001
e info@bpclawyers.com
ABN 83 592 497 199

DO YOU NEED A WILL OR DOES YOUR WILL NEED UPDATING?

BACKGROUND

If you have legal capacity to make a Will you should do so to ensure that after your death your property is distributed in a way you wish it to be.

If you die without a Will, Section 14 of the *Administration Act 1903* provides a set formula for the distribution of your estate. This formula will apply (unless contested) regardless of:

- ❖ the quality of your relationship with this person;
- ❖ the recipient's personal circumstances and status; and
- ❖ whether there are more deserving people who you would rather have nominated to share in your estate.

HOW DO I MAKE SURE MY WILL IS VALID?

The laws governing the legal requirements for preparing a valid legal Will vary from State to State. All States however require you to:

- Have testamentary capacity - this means you must be over 18 years old and understand what you are doing;
- Commit your wishes to writing; and
- Sign the Will in the presence of **two independent witnesses** who should not be beneficiaries of the Will.

WHAT SHOULD YOU DO WITH YOUR ASSETS IN YOUR WILL?

You may leave specific items of personal property, real estate or specific sums of money to particular people. Although it is not necessary to list specific items of your property you should ensure that you dispose of all of your property. If you are unsure, we are happy to discuss this with you to assist you in disposing all of your property.

WHO SHOULD YOU CHOOSE AS YOUR EXECUTOR?

An Executor does not have to have professional qualifications. You should however be careful to choose a suitable Executor or Executors (more than one Executor can be appointed) and obtain the prior agreement and consent of the person or persons you wish to appoint as your Executor because he or she does not have to accept the position.

After you die, the Executor will need to provide your solicitor with information about your estate including bank account details, share registry details, property details and beneficiary details.

Choosing a person you think will be capable of handling this responsibility is important. That person should:

1. have a basic understanding of your finances (or at least where you keep this information);

2. be someone with sufficient time to carry out the duties required of an Executor;
3. be someone you trust to handle the importance of this role.

If you are unsure about who to choose, we are happy to discuss this with you to ensure the most appropriate person or persons are appointed.

WHY SHOULD YOU REGULARLY REVIEW AND UPDATE YOUR WILL?

There are many changes in life that can impact on your Will's suitability or validity. For example:

- your financial situation has changed significantly;
- you are newly married (marriage revokes a Will);
- you are divorced (divorce revokes a Will);
- you have remarried;
- children have been born;
- an executor or beneficiary named in your Will has died;
- a property mentioned in your Will has been sold;
- you have received a significant inheritance;
- grandchildren have been born;
- you may wish to include your favourite charity.

It is therefore important that you regularly review your Will to ensure that it reflects changes in your circumstances.

KEEP YOUR WILL SAFE

A Will is an important document and should be kept in a safe place. We can hold your Will in our safe custody for safekeeping on your behalf at no cost to you.

You should tell your Executor where the original Will is kept so it can be easily located. It is also advisable to give the Executor a copy of the Will in a sealed envelope.

WHY HAVE A LAWYER PREPARE YOUR WILL?

There are many issues that can be relevant in making your Will. Only a lawyer with experience in this area can give you the best possible advice. If you buy a "Will Kit" you are relying entirely upon your own skill and knowledge.

Unfortunately, if you make a mistake, it is unlikely that the mistake will be discovered until after you have died and this tends to cause a considerable amount of distress to the people that you wish to benefit from your Will and may result in considerable expenses being incurred by your estate to resolve the mistake.

A lawyer can:

- ensure compliance with legal requirements so your Will is properly drawn up, correctly signed and witnessed;
- ensure beneficiaries are adequately provided for;
- ensure your wishes are clearly expressed in the Will and the Will suits your current circumstances;
- advise on whether a current or old Will should be changed to reflect new circumstances.
- advise on what circumstances your Will could be contested and how you can prevent or reduce the chances of this occurring.