

# MAKING A WILL INFORMATION BROCHURE

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## What is a Will?

A will is a legal document that sets out your instructions for the distribution of your assets after your death. Having a clear, legally valid, and up to date will is the best way to ensure that your assets are protected and distributed according to your wishes.

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## What Happens if You Die Without a Valid Will?

If you die without a valid will, your assets may not go where you would like. A standard formula is used to distribute your property and possessions, which may not reflect your wishes, especially in complex family situations (e.g. blended families, separated partners, or no immediate family). Only family members can usually inherit under this formula, so a valid will is vital if you wish to leave gifts to friends or charities.

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## Changing Your Will

You can change your will at any time, provided you have mental capacity. Changes must be made by preparing a new will or a codicil (a separate document amending your will), both of which must be signed and witnessed correctly. Simply crossing out or writing over your will is not valid.

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## Marriage, Divorce, and Your Will

- **Marriage:** Generally, revokes any previous will, unless made in contemplation of marriage.
  - **Divorce:** Cancels gifts to your former spouse and their appointment as executor, trustee, or guardian (except as trustee for property left to children).
  - **Separation:** Does not automatically revoke your will. You should always make a new will if you marry, divorce, or separate.
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## Estate Assets vs. Non-Estate Assets

Not all assets are “estate” assets that can be distributed by your will. Only assets owned in your sole name are estate assets. Examples of non-estate assets include:

- **Jointly Owned Assets:** Such as real estate held as joint tenants or joint bank accounts, which pass automatically to the surviving owner.

- **Family Trusts:** Assets held in a trust are controlled by the trust deed, not your will. You should provide a copy of the trust deed for review.
  - **Superannuation and Life Insurance:** These are usually paid to nominated beneficiaries and may not form part of your estate. Binding nominations are required to ensure your wishes are followed. If no nomination is made, the trustee of the fund decides who receives the benefit, which may not align with your intentions. Tax implications may also apply, depending on the beneficiary.
  - Shares in private companies or interests in partnerships may be subject to separate agreements (e.g. buy-sell or shareholder agreements). These should be reviewed as part of your estate planning.
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### Superannuation and Life Assurance Policies

- **Nominations:** Check with your super fund or insurer whether you have made a binding or non-binding nomination. Binding nominations ensure your wishes are followed; non-binding nominations are only a guide.
  - **Self-Managed Super Funds (SMSFs):** Provide a copy of the fund deed and details of trustees and members. SMSFs are separate legal entities and may continue after your death.
  - **Taxation:** Superannuation death benefits may be taxed differently depending on the recipient (e.g. adult children may pay tax, while spouses generally do not).
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### Family Trusts and Business Interests

- **Trust Assets:** Your will cannot directly deal with assets held in a family or unit trust. Succession planning for trusts requires review of the trust deed and may involve appointing new controllers or beneficiaries.
  - **Business Succession:** If you are involved in a business, consider whether a partnership or shareholder agreement is needed to address what happens to your interest on death.
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### Assets and Liabilities

All assets and liabilities need to be considered, including:

- Assets in your own name, jointly owned assets, trust assets, company shares, and partnership interests.
- Liabilities such as mortgages, loans, and guarantees.

- We may need to conduct searches to verify ownership.
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### Appointment of Executors and Trustees

- **Role:** Executors collect assets, pay debts, and distribute the estate. Trustees manage any trusts created by your will (e.g. for minor children).
  - **Choosing Executors/Trustees:** Select trusted individuals with time, business sense, and willingness to act. Consider appointing two executors/trustees for flexibility.
  - **Professional Executors:** You may appoint a professional (e.g. solicitor or trustee company), but fees may apply.
  - **Overseas Executors:** There may be practical and legal complications if an executor resides overseas.
  - **Commission:** Executors may be entitled to commission for their work, but this should be specified in the will.
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### Beneficiaries and Excluding Relatives

- **Beneficiaries:** List full names and addresses of all intended beneficiaries.
  - **Excluding Relatives:** If you wish to exclude a close relative, your will may be challenged under the Succession Act. We recommend preparing a statement of reasons for exclusion to reduce the risk of a successful claim.
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### Family Provision Claims

Certain relatives (e.g. spouse, children, stepchildren, dependants) can make a claim against your estate if they believe they have not been adequately provided for. We can advise on strategies to minimise the risk of a successful challenge.

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### Types of Gifts

- **Specific Gifts:** Particular items (e.g. jewellery, real estate, shares).
  - **Cash Gifts:** Specific sums of money.
  - **General Gifts:** E.g. "all my household chattels".
  - **Life Interests:** Allowing someone to use an asset during their lifetime.
  - **Residue:** The remainder of your estate after specific gifts.
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## Testamentary Trusts

A testamentary trust is a discretionary trust established by your will. Benefits include:

- **Asset Protection:** Protects assets from creditors or family law claims.
  - **Tax Advantages:** Income can be distributed tax-effectively among beneficiaries.
  - **Flexibility:** Trustees can decide how and when to distribute assets.
  - **Complexity:** Testamentary trusts require careful planning and ongoing administration.
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## Minor Children

- **Appointing Guardians:** You can nominate guardians for your children under 18. The court will consider your wishes but is not bound by them.
  - **Financial Provision:** Consider how guardians will be supported financially.
  - **Minor Beneficiaries:** You can specify the age at which minor beneficiaries receive their inheritance and appoint trustees to manage funds for them until that age.
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## Organ and Body Donation

- **Wishes in Your Will:** You can state your wishes regarding organ or body donation, but registering with the Australian Organ Donor Register is recommended for certainty.
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## Taxation and Duties

- **Capital Gains Tax (CGT):** May apply to the transfer of certain assets. We can advise on the implications for your estate.
  - **Other Taxes:** Consider income tax on estate income and any stamp duty issues.
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## Other Matters to Consider

- **Funeral Arrangements:** You may express wishes regarding your funeral or burial, but these are not legally binding.
- **Extended Powers for Executors/Trustees:** E.g. to continue running a business.
- **Contracts to Leave Property:** Agreements not to revoke a will or to leave property to a particular person.
- **Release of Debts:** You may wish to forgive debts owed to you.

- **Digital Assets:** Consider your digital assets (such as online accounts, social media, and cryptocurrencies) and provide instructions for their management or access.
- **International Considerations:** If you hold assets overseas, you may need a separate will in each jurisdiction to avoid conflicts of law or unintended consequences.
- **Regular Review:** Review and update your will regularly, especially after major life events such as marriage, divorce, the birth of children, or significant changes in your assets.

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### Complex Circumstances

If you have a blended family, international assets, digital assets, or other complex circumstances, please let us know so we can provide tailored advice.

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