



FACTSHEET 9: WILLS

A LAWYER FROM PCLS CAN ASSIST YOU WITH MAKING A SIMPLE WILL .

What Is a Simple Will?

A simple will is a legally binding document that records the wishes of the Will maker or “testator”. The Will is a set of instructions regarding how his or her assets are to be distributed upon the testator’s death. The Will names an Executor, beneficiaries and includes the testators last testamentary intentions. A simple will can also be used to name a guardian for minor children as well as someone to handle the financial affairs of the children.

WHAT IS AN ‘ESTATE’

An Estate is a combination of all a person’s assets and liabilities at the date of that person’s death. It can often made up of money in the bank, a home, personal belongings, motor vehicles. All these items are able to be securely gifted after you pass by creating a valid Will.

WHY DO I NEED A WILL?

Any adult who has assets, children or family members should make a Will. Having a Will allows the Will maker to clearly show how they wish to provide for the people they leave behind. It is also a good way to reduce stress and confusion for the loved ones and family you leave behind upon your death.

We suggest appointing two or more executors or at least alternate executors in case one predeceases you or is unwilling or unable to act.

WHAT MAKES A VALID WILL?

APPOINTMENT OF EXECUTOR AND TRUSTEE

The Executor is responsible for managing your Estate and for carrying out the wishes expressed in your Will. Your Executor is usually also the Trustee of your Estate and responsible for the management of any Trusts created by your Will. The Executor should be someone who will act solely in the beneficiary’s interests.

An Executor Can Be

- ✓ One or more persons including your spouse.
- ✓ Adult children, relatives, friends or persons who have helped you in the past, such as an accountant or solicitor;
- ✓ Someone who will receive a gift under your Will
- ✓ A Professional Trustee/Executor such as the Public Trustee.

An Executor Must Be

- ✓ Someone that you trust completely to carry out your wishes and to act impartially in the best interests of the beneficiaries.
- ✓ Someone who has the ability to do the following:
 - Arrange your funeral;
 - Locate and sort through your documents;
 - Sort through and dispose of your personal items;
 - Deal with personal issues that might arise with beneficiaries, relatives or other persons;
 - Deal with your Superannuation Trustees.

For your Will to be valid, the will maker must sign his or her name in the presence of **two independent witnesses**- these witnesses must not stand to benefit in any way from any provision made in your will.

DISPOSAL OF YOUR REMAINS

Expressing these wishes are not essential in a Will however you may have a wish as to the form of your funeral. You may have a cultural obligation to be buried in a certain location. By noting this in your Will there can be no dispute as what is to happen with your remains.

Karratha Office
Phone: 08 9185 5899

South Hedland Office
Phone: 08 9140 1613

Roebourne Office
Phone: 08 6149 2031

Newman Office
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BENEFICIARIES

You should now consider the persons whom you wish to benefit under your Will. Your lawyer will need to properly describe this person, so it is clear who benefits. A beneficiary can be *anyone* and is not limited to your family. Your lawyer should be made aware of each beneficiaries' situation to ensure your gift reaches the intended person. For example, you need to tell your lawyer if an intended beneficiary has a problem with addiction, gambling or debt. Your lawyer will advise the best way to provide for a person who might be considered vulnerable in this way.

FAMILY MEETING

The importance of successfully structuring your Will to meet the needs of your intended beneficiaries, and properly provide for those who you are legally obliged to provide for should not be underestimated. Informing beneficiaries of your intentions now can help to uncover the existence of possible competing interests of those beneficiaries **once you've passed away**. You should, as far as possible, ensure that all beneficiaries and potential beneficiaries know of the reasons behind the drafting of your Will and other documents.

MARRIAGE/DIVORCE

If you marry, any Will that you have made prior to marriage is automatically revoked, subject to certain exemptions. If you plan to marry, a Will that states that it is made "in contemplation of the marriage" is not revoked by the subsequent marriage. If you separate and no longer wish your former partner to receive a benefit under your Will, you should make a new Will. A formal grant of Divorce made by a Court will cancel any provision in an existing Will.

GIFTS

Specific Items - You may wish to give specific items for example jewellery, paintings, family heirlooms and sporting goods, to beneficiaries.

Personal and Household Items - To avoid disputes about the distribution of such items, you may give your executor the power to distribute items equally as to the value of the item between the beneficiaries. If such a provision is not included in the Will, the executor may sell all of the items and distribute the sale proceeds.

FAMILY LOANS

You may wish to forgive a loan by your Will or you may require your Executor to take the existence of the loan into account when calculating a beneficiary's share or percentage of your Estate.

EXCLUDING A PERSON FROM YOUR WILL

A poorly drawn or ill-considered Will may result in a challenge by an excluded beneficiary. There are classes of people who are 'eligible' to claim against your estate if they have been left out or adequate provision has not been provided to them. Such a challenge will almost always result in significant legal costs being paid by your Estate as your Executor's legal costs will have to be met and Courts have awarded costs from Estate funds, even for unsuccessful claimants.

REASONS TO REVIEW YOUR WILL

- ✓ Your financial circumstances change
- ✓ Your Executor dies or is no longer the appropriate person to administer your Estate
- ✓ Separation from your partner
- ✓ One of your beneficiaries predeceases you
- ✓ The financial circumstances of one of your beneficiaries' changes
- ✓ Other potential beneficiaries may come into your life
- ✓ Retirement/superannuation