



Wills



Central Highlands
Community
Legal Centre

Striving for Community Justice

What is a Will?

A will is a legal document which sets out the wishes of a person for the distribution of his or her property upon their death. It is important that these wishes are your own personal wishes, and not made at the request or insistence of others. A will allows you to nominate a person to handle your affairs and how your body will be handled after your death.

Do I need a Will?

While it is not compulsory for people to have a will, it is advisable so that their property can be distributed as they wish. A will can also be a way of maintaining family harmony after your death, and nominating who will look after your estate.

How do I make a Will?

No formal language or legal jargon is required, however a will must be written down. There are important formalities to witnessing a will. You may use a "do-it-yourself kit" however extreme care needs to be taken.

The law of wills has many pitfalls and although a will doesn't need to be drawn up by a solicitor it is highly desirable to obtain legal advice, particularly if complex issues are involved, such as trusts.

Can I amend my Will at a later date?

The original will continues until you amend or revoke the existing will. It is recommended that you periodically review your will every 5 years or upon the happening of a significant event in the persons life e.g. marriage. Wills should be regularly reviewed to ensure they reflect the current wishes of the maker. Over time things change, such as the amount of property you may have or who you wish to benefit from your will. You can subsequently amend or revoke your will, basically by following the same procedure that is required to make a will.

Who should I nominate to look after things after I am gone?

It is extremely important that care and consideration go into the appointment of an Executor.

The will should name a person, preferably two people as executors in case one person cannot undertake the responsibilities. At least one of the executors should be of such an age and state of health that he or she is likely to out live you.

Whilst an executor must act impartially and in the best interests of beneficiaries, they should be someone who is reliable, honest and possess some commercial sense, and who will be most likely to harmonise family relationships

How should I keep the Will?

Once written and signed the will should be kept in a safe place e.g. solicitors, bank safety deposit box, and the executors should be told where the will can be found.

Can a Will be challenged?

Whilst you are free to leave your property any way you like, the Courts do have some power to award a portion of your estate to those you were responsible for, such as a spouse or child.

What if I die without a Will?

If you do not have a will then your property may be distributed according to a Government Formula, which may not be the way you want.