

Planning Ahead

Wills

Many of us don't consider what might happen to us as we grow older or become unwell. However, planning ahead and getting legal help while you are fit and healthy, allows you to choose who makes decisions for you well into the future.



As you get older, you will need to prepare legal documents for:

- **Legal and financial decisions** (e.g. paying your bills, managing your bank accounts)
- **Health and lifestyle decisions** (e.g. where you live, medical treatment you receive)
- How you want **your property** to be divided after you pass away.

What is Will?

A Will is a legal document stating how you want your property to be divided after you pass away.

- The person making the Will is the **Testator**.
- The property owned by the Testator at the time of their death is called the **Estate** (e.g. the deceased's house, car, jewellery etc.) Some property may not be included. See page 4 "What else do I need to think about when Planning Ahead?"
- A person or organisation (e.g. a charity) who receives a gift or benefit under the Will is called a **Beneficiary**.
- The person or organisation (e.g. NSW Trustee and Guardian) appointed by the Testator to carry out the directions in their Will is called the **Executor**.

Other factsheets to help you plan ahead:

- Planning Ahead: **Enduring Power of Attorney**
- Planning Ahead: **Enduring Guardian**
- Planning Ahead: **Advance Care Directives**

justicesupportcentre.org.au/free-services/factsheets-and-resources/

There are many things to consider when making a Will. It is always best to get legal advice before you make or change your Will.

Disclaimer: This factsheet gives general information only. It is not legal advice. If you have a legal problem, always get advice from a lawyer. This information only applies in New South Wales. Information accurate as of Jan 2023.

How do I make a valid (legal) Will?



It must be in writing



You must understand what you are doing (i.e. have capacity)



It must be clear that you intend for the document to be your Will



You must sign the Will in the presence of two witnesses



Witnesses must sign the Will in front of you and each other

What if a person dies without a valid Will?

If a person dies without a valid will, it means they have died **'intestate'**. Who receives the Estate and how much they receive is unknown until the person's death. Making a Will is a personal decision, but it does allow you to express your wishes.

In cases of intestacy, the Estate will be divided according to the law. Who and how much each person receives depends upon the nearest relatives at the time of the person's death.

Example:

Rashid passed away and did not have a Will. He leaves behind his wife (second marriage) and his child from his first marriage. According to the law, his estate will be divided as follows:

- a. His wife will get:
 - his personal effects (for example, his clothes, photos and car)
 - a minimum value of the estate, called a statutory legacy (currently \$476,000)
 - half the remainder of the estate.
- b. The remaining half of the estate will go to his child from his first marriage.

What if my document does not meet all the requirements for a valid Will?

This type of document is usually called an **'informal Will'**. An informal Will may still be valid if the Court believes that you intended for that document to be your Will. For example, if someone writes their Will urgently in hospital but no one witnesses their signature.

There is no guarantee that a Court will decide that an informal Will is valid. Each case is different. Going to court can be very expensive. It is always best to get legal advice and make a Will that meets all the requirements.

Can I change my Will?

You can cancel (revoke) your Will at any time before you die **and** while you still have mental capacity.

A Will may be cancelled in a number of ways:

- By making a new Will.
- An action that clearly shows you want to cancel it, for example, you burn it or tear it up.
- Marriage cancels a Will. Divorce does not cancel a Will but can cancel certain things in a Will.

You should review your Will if there has been a significant change in your circumstances.

What about do-it-yourself Will kits?

You do not need a lawyer to make a Will. Do-it-yourself Will kits may be an easy, cheap and simple option for you. However, they usually are basic and may not address all of your needs.

A Will that is unclear may cause disputes. Your executor or beneficiaries may need to apply to the Court to interpret it. This can cause long delays and can be very expensive.

If any part of the Will fails, the intestacy rules may apply (see page 2). This can result in part of your estate going to someone you did not intend to receive it.

Where should I keep my Will?

You should keep your Will in a safe place where nobody can access it without your permission. For example, a safe-deposit box or have your lawyer keep it. The NSW Trustee and Guardian can also store your Will in their ['Will Safe' facility](#).

You should tell your Executor where your original Will is and how to access it. The Supreme Court of New South Wales needs the **original Will** to grant Probate. **"Probate"** is a Court order declaring that the Will is valid. It means the executor has legal authority to distribute the estate.



Checklist

- Who do I want to be my executor?
- Who are my beneficiaries?
- Do I have a list of all my assets and details about how I own them?
- Are there any specific gifts I want to make?

What else do I need to think about when Planning Ahead?

- Wills do not cover decisions while you are alive, including medical and lifestyle wishes. For these, you should consider a **Power of Attorney, Enduring Guardian** or **Advanced Care Directives**. [Download factsheets on these topics.](#)
- **Superannuation & life insurance** proceeds are not automatically included as part of your estate. You should speak to your super fund about your binding death nomination.
- **Assets that are owned jointly with someone else** are usually not included as part of your Estate. You should get legal advice about your situation.

Who can help?

Justice Support Centre

We can support you with free legal advice over the phone.

When to call:

If you call at the following times and give your details, a lawyer will aim to call you back within 7 working days:

Tuesday: 11.30 am – 1.30 pm

Thursday: 11.30 am – 1.30 pm

Phone: (02) 9601 7777

Email: info@justicesupportcentre.org.au

Seniors Rights Service

1800 424 079 | 02 9281 3600

NSW Trustee and Guardian

02 8688 2600

You can also contact **LawAccess** for legal help in NSW: 1300 888 529

You can contact the **NSW Law Society** for referrals to private solicitors: 9926 0300