

WITH KRISTEN PORTER  
SOLICITOR FROM LEGAL MINDS

## DO YOU NEED TO MAKE A WILL?

Anyone over the age of 18 years needs to seriously consider making a will. Nearly everyone owns some form of property.

The peace of mind of knowing who will receive your personal effects, finances and memorabilia, whether it be family or friends, is always preferable over the possibility that your estate might be vested in the Public Trustee or be the subject of court proceedings which may have to be paid out of your estate. The proper drafting of a short will or will with a testamentary trust is the only way to ensure that your wishes are properly considered and may be given effect after your death.

It is not compulsory to make a will, but the consequences of not having a will can be complicated and costly. If you die intestate (without making a will), then your estate will be distributed according to a statutory chain of inheritance. This 'chain' makes the assumption that you would have intended to give your property to your next of kin.

So your spouse and children, if there are any, will be the primary beneficiaries. If the overall value of your estate is less than \$200,000, your surviving spouse or de facto is usually the primary beneficiary, unless contested.

If you die, have no spouse and no children, or grandchildren, then your estate will usually be distributed to other more remote members of your extended family. If you have no surviving relatives, then your estate will pass into the ownership of the state. Similarly, it is important to appoint an executor or trustee of your will or it may be administered, at a cost to your estate, by the Public Trustee.

To ensure that your property is passed on to the people you choose, you need to take the time to make a will.

### > Can I make a will myself?

You can make your own will if you so choose – a 'Will Kit' is available from newsagents and most Australia Post stores. A will kit, however, does not provide you with independent professional advice. To ensure proper estate planning, you should consider obtaining professional advice from your preferred accountant, financial adviser and solicitor.

It may not be in your best interests to draft a will yourself, as it is an important legal document. There have been many cases where self-made wills were either not properly drafted, were not clear, or caused an unwelcome tax liability. Some of these cases end up in court and have incurred significant expense to the deceased's estate and loss to beneficiaries.

Most solicitors are prepared to draft a will, and if required, a testamentary trust. Depending on the complexity of your requirements, the cost

of having your will drafted professionally is a responsible and sound investment.

Obtaining professional legal advice is particularly important if any of the following circumstances apply, especially if you:

- (a) have children to different marriages;
- (b) have step children who are or have been dependent on you;
- (c) have a disabled child;
- (d) have children who have died, leaving children of their own;
- (e) are still technically married but are separated and in another relationship; or
- (f) are in a de facto relationship.

If you have a large rural property from which you run a farming business, it is advisable that you discuss arrangements for succession planning with your solicitor, which might include drawing up a deed of family arrangement, considering a family trust or vesting the family property into a testamentary trust. There are many positive options available to provide for future generations.

### > What are the functions of an executor?

The person appointed to handle the estate after you die is called an executor or trustee. The executor ensures that your wishes are carried out. Anyone over the age of 18 who has the requisite capacity may be appointed as executor. You should ensure that the person concerned is willing to act and has the ability to deal with the estate matters which may arise. It is recommended that you appoint at least two executors, or an alternative executor.

If one executor is not able to act for some reason, then an alternative or joint executor can ensure your wishes are carried out. It is common for people to choose their spouse or adult child as an executor. It is also common for a solicitor to be appointed as one of the executors in certain cases, as they have the skills to administer the estate where other options to appoint are not available to you.

Another reason for choosing a solicitor, or a trusted person outside the family as executor, is that they may be impartial and objective in cases that may involve family disputes.

It is extremely important to ask the executor if they will accept the appointment and also to inform your family where your will is kept. You should ask your solicitor to arrange for the location of your last will to be registered with the NSW Registry of Births, Deaths and Marriages.

**Kristen Porter – Solicitor**  
**Legal Minds**

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From commercial, insurance and business transactions to family, employment and estate matters.

### Conveyancers

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