

Wills

"In this world nothing can be said to be certain except death and taxes".

Benjamin Franklin

Death may be certain, but for something so inevitable, the topic is disproportionately absent from many of our conversations - polite or otherwise. From a legal perspective, our reluctance to discuss and/or prepare for death can have serious consequences, one of which is that many people often pass away without having a valid, effective, up to date Will.

First things first: What is a Will?

In simple terms, a Will is a legal document that says how you would like your property to be distributed after you die.

Do I really need a Will?

Yes, you really do need a Will. Today.

Our clients regularly ask us if a Will is *really truly* necessary, expressing a certain amount of reluctance to delve into the process of creating one. We understand that this discussion can raise uncomfortable or confusing questions. However, by creating a Will today, you are lessening a great amount of pain and uncertainty for your family in the future.

Wills are important for both you and your family:

- **For you:** Creating a Will offers you comfort that your loved ones will be cared for after you've died. Your Will offers you the opportunity to clearly put down your wishes about how your property should be dealt with and divided after you die. In this way, you're able to exercise your right to decide what happens to the property that you built over an entire lifetime - whether that property is a multimillion dollar share portfolio or a beloved collection of family photos.
- **For your family:** After you've passed away, your Will offers guidance to your family during a time of grief and change, helping to ease the varied financial and emotional burdens associated with death. In a time where factors such as large blended families, family trusts and diverse financial interests are relatively common, this guidance is essential and often gratefully received.

Perhaps you're thinking that you're in a different situation to all those other people who need Wills. The reality is that a Will is a good idea whether you have many assets or whether you have very few, you have a big family or a small family, you're married or unmarried, you have children or don't have children, or you have simple affairs or complicated affairs. Anyone of "sound mind" who is at least 18 years old can and should make a Will.

What happens if I don't have a Will?

Although a “she’ll be right” attitude is a key part of our Kiwi consciousness, this can’t be guaranteed in the situation that you die without a will. Dying without a Will increases administrative steps (and costs), complicates matters surrounding division of property, and usually causes tension within a grieving family.

If you die without a valid will, someone in your family will need to apply to the High Court for authorisation to deal with your property and affairs. Then, this person is required to divide up your property based on the strict “rules of intestacy” that are set out in a statute called the Administration Act 1969. These rules determine who gets your property, and in what specific proportion. In many cases, the effect of the rules isn’t what you might expect. By not having a Will, you have no control over where your property goes and how it is divided.

Okay, so I’ll make a Will. Where do I start?

Because Wills are so important, the law requires them to be created and presented in a very specific way. For this reason, it’s crucial that you discuss your Will with your lawyer to make sure it is valid, binding and clearly reflects your wishes. In terms of the content of your Will, you should talk to your lawyer about the following things:

- **Executor:** This is a fancy word for the person (or people) you choose to deal with your affairs and property after your death. Ideally any executor would be a responsible person that you trust. Because being an executor can involve quite a lot of work, you want to make sure your executor is generally available (i.e., not living in a faraway land) and able to carry out their legal responsibilities without causing dramas.
- **Beneficiaries:** These are the people who will receive your assets and property after you die. You are able to name any person or any organisation as a beneficiary under your Will say what portion of your property will go to each beneficiary. However, it is important to be aware that, in some circumstances, the law gives certain people the opportunity to challenge your Will if they are unhappy with how your property is being divided. It is most common to hear of challenges from a surviving spouse/partner and immediate family members such as children. The law protects the position of certain family members if they have been unfairly left out of a Will, meaning that in some situations, your wishes may be overruled by a Court after your death. To minimise the risk that your Will is challenged and/or overruled, you should talk about this with your lawyer so you understand how your choices will play out.
- **Assets:** Certain facts about your assets will be relevant when creating your Will. For example, many married couples own property together as “joint tenants”. In general terms, this property isn’t an asset that is covered by a Will. Instead, the property directly passes to the surviving owner when one owner dies.
- **Guardians:** If you have children, you can name people who you would like to look after your children if you pass away.
- **Funeral arrangements:** If you have any specific request about your funeral or your body after you die, you may like to include this in your Will.

- **Other:** There are various other matters that you can cover in your Will. For example, you may wish to:
 - Gift specific items of your property to certain people (including charities);
 - Record your wishes as to organ/tissue donation; and
 - Record your wishes about how your business will be run.

I've made my Will! Am I done?

You've done the hard work to create a Will. Now you can put it in a bottom drawer and forget about it for the rest of your life, right?

Unfortunately not.

We suggest that you review your Will at least every 2 - 3 years, or at any time when your circumstances change, for example, if you get married, have a child, end a relationship or if your assets change significantly. In the case of a change of circumstances, it's a really good idea to talk to your lawyer about your Will and, if necessary, update it to make sure it reflects your current situation.

It is also good to know that you can cancel your Will at any time or amend it, provided that you are of sound mind. To do this, again, have a chat with your lawyer. This will ensure that any change of mind will be valid and binding.

Have a question about Wills? Inspired to create one? Or perhaps you just fancy a chat about how this applies to your situation? If so, we would love to help. You can give us a call or send us an email for more information.

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