

Some handy information on making a Will

What is a Will?

A Will is a document that sets out the wishes of a person (known as the “Testator”) in relation to:

- the distribution and management of the Testator’s property after death (known as an “estate”); and
- the person or persons who the Testator wishes to carry out the administration of their estate (known as the “Executors”).

Who should make a Will?

Everyone over the age of 18 years who has superannuation or holds assets in their own name should make a Will.

How do I make a Will?

To make a Will a person needs to have the required mental capacity to understand its effect. There are strict rules about how Wills must be drafted and signed. You should engage a lawyer who specialises in estate planning to draft a Will for you. If you engage a lawyer the process usually involves:

- gathering all the relevant information about your family’s circumstances, your assets and liabilities and the way you own your assets (e.g. jointly, in a partnership, in a family trust)
- gathering documents that may affect the way your assets need to be dealt with upon your death (e.g. partnership agreements, trust deeds, shareholder agreements)
- meeting with a lawyer to provide the necessary information to them and to give your instructions about how you wish for your assets to be dealt with upon your death
- reviewing the Will drafted by the lawyer and approving its content
- signing and executing the Will with the lawyer

Should I draft my own Will or use a Will kit?

The short answer is no - and that is not because lawyers want more fees. Home-made Wills and Will kits can cause significant issues and the cost of fixing the issues almost always outweighs the cost of a properly drafted Will being executed in the first place.

Consequences of a person dying without a Will

If a person dies without a valid Will, he or she is deemed to have died “intestate” and the person’s assets are distributed according to the laws of intestacy set out in section 72 of the Administration and Probate Act 1919 (SA). That Act determines who will receive the estate assets, and they may not be who the deceased person wished to benefit from their assets.

The costs of administering an estate where there is no Will are often far greater than where there is a Will, the administration process is more difficult and unintended consequences arise. The death of a loved one is difficult enough to deal with without further issues created by dying without a Will.

Continue over leaf

What happens to a Will in the event of marriage?

Subject to specialised wording being included, a Will is automatically revoked by a person's marriage or re-marriage. So if you marry and do not later sign a new valid Will, your estate will be distributed according to the laws of intestacy as set out above. If you plan to marry at some stage in the future you can make a Will before marriage and it will remain valid after the marriage, provided it refers to the prospect of the marriage taking place in the future. However, the wording of that direction needs to be carefully drafted.

What happens to a Will in the event of separation or divorce?

A Will is not automatically revoked when a couple separates or divorces. So it is important to update a Will as soon as permanent separation occurs.

Why use Mellor Olsson to prepare your Will?

A well-drafted Will that correctly expresses your wishes is essential to facilitate the smooth succession of your assets. A Will must take into account your individual circumstances and correctly consider the way your assets are held. There are many trips and traps.

Our lawyers are experienced in ensuring that all relevant matters are carefully considered and the Will is drafted to properly implement your wishes. A Will is only part of the story and an entire estate plan should be developed at the same time that takes into account non-estate assets also. Our lawyers can guide you through all of these complex issues to ensure your family is protected after your death.

Mellor Olsson has experienced practitioners who can provide advice and prepare Wills to suit your individual circumstances.

To find out more about our services and experience visit www.molawyers.com.au