

MAKING A WILL: Why should I make one? When should I make a new one?

If you are over 18 years of age and have the capacity to make a Will, it is recommended that you make one regardless of the current value or complexity of your estate.

What is a Will and what can it do?

A Will is a legal document made by a person about the administration and distribution of his or her estate after death. You make a Will during your lifetime, but it does not take effect until you die. During your lifetime you can revoke an existing Will and make a new Will.

In your Will, you can:

- Appoint the person or persons that you would like to be responsible for the administration of your estate after you die. A person appointed in a Will to administer an estate is called an Executor.
- Provide instructions about how your assets are to be dealt with and who they are to be given to after your remaining debts have been paid. A person who receives a gift or benefit under your Will is called a Beneficiary. An Executor does not have to be a Beneficiary, but they can be if you so desire.
- Appoint the person or persons that you would like to be the guardian of any young children you may have
- Establish a trust and appoint a person to look after a trust to provide for your children or other person with a disability
- Make a bequest to a charity or philanthropic organisation.

What happens if I do not have a Will?

If you do not have a valid Will when you die, then the person who administers your estate and the beneficiaries of your estate will be determined by intestacy rules set out in legislation. In these circumstances, your estate is referred to as an intestate estate.

The intestacy rules do not take account of circumstances affecting how well you may or may not get on with your relatives or whether there are people, other than the categories of the relatives listed in the rules, who are significant to you.

If there are no surviving immediate relatives closer than a first cousin, then an intestate estate is distributed to the State. In-laws and step-parents are not recognised as people who may benefit from an intestate estate.

A de facto partner is entitled to the same distribution from an intestate estate, as a spouse

Why should I make a Will?

Having a Will in place can make the process of dealing with your affairs easier, for your grieving family, in the event of your death. For your family and anyone else with an interest in your affairs (such as your employer, banks, government agencies, funeral directors), it identifies who you have chosen as the Executor. It immediately provides your Executor with a legal document to show they have the power and responsibility to deal with assets, debts and affairs in your name.

If you have a valid Will you can leave particular items to specific people. You can also choose who receives a gift or benefit from your estate and in what proportions. You can include anyone as a beneficiary; for instance particular relatives, friends or charities. You avoid the rigid and restrictive categories of relatives and apportionments set out in the intestacy rules.

If, in the unfortunate circumstances you die leaving young children, you can choose who is to be their guardian, to take care of them.

What is testamentary capacity?

To make a Will, you must be over 18 years old and have the mental capacity to make a Will, called testamentary capacity. Testamentary capacity is a test set out in law. Testamentary capacity of the Will maker is one factor affecting the validity of a Will.

When should I review my Will and make a new Will?

You can and should review your Will and make a new Will from time to time to take account of:

- the type and value of your assets and liabilities
- your relationships
- significant life changes.

What is the benefit of having Swanwick Murray Roche assist me to make a Will?

The benefits of having a one of our professional team members assist you to make a Will include:

- Ensure your Will is valid and drafted, signed and witnessed properly to take effect
- Ensure that old Wills and testamentary documents are effectively revoked
- We provide free safe third-party storage of your Will
- Provide advice on options and consequences so you can decide the best way to arrange your estate and achieving your testamentary wishes
- Provide advice about responsibilities to certain classes of relatives, such as spouses and children, and help you assess and mitigate the risks of your Will being contested
- Assist you to understand if your superannuation death benefits may come into your estate to be distributed according to your Will or whether they will be distributed separately
- Consider the capital gains tax consequences associated with the distribution of certain assets after your death
- Consider whether an intended gift may have an indirect or unintended consequence for a potential beneficiary, such as whether it may adversely impact on a potential beneficiary who receives a pension or similar asset tested entitlement.

Consequences associated with capital gains tax, superannuation death benefits and the indirect impacts on beneficiaries cannot be taken into account under the intestacy rules if you do not make a Will.

Require further information or advice?

For further general information about related topics, browse the range of other information sheets, tools for clients and information updates available on the 'Resources' page of our website.

If you would like:

- to make a Will or power of attorney document
- to review the affect and effectiveness of a current Will
- assistance with the administration of a deceased estate (with a valid Will or intestate)
- advice about your rights and entitlements to a deceased estate

Swanwick Murray Roche can provide timely tailored advice about your circumstances. We have extensive experience in making Wills, succession planning, estate administration and resolving disputes about contested estates.

Please do not hesitate to contact us by phone on 4931 1888, email at enquiries@smrlaw.com.au, via our online enquiry form or by any of the other means detailed on our website www.smrlaw.com.au.