Make a Will: A Fact Sheet

A will is a legal document that sets out what you want to happen to your things after you die. It's a complex document, and if you make a mistake it could mean that your wishes don't get carried out. It's a good idea to get legal advice and make sure your will is correctly prepared.

What is a will?

A will is a legal document that outlines how the will maker wants their assets (the things they own) to be distributed after they die. A will must be in writing, witnessed by two independent witnesses, and the will maker must be of sound mind when they make and sign it.

I don't have a will. What happens to all the things I own if I die?

If you die without a will, then your assets are distributed according to state law. Your property would be distributed to your spouse/de facto partner and your children; or, if you're not married or in a de facto relationship and have no children, to immediate family members like your parents and siblings. If you have none of these people, then your assets would be distributed to extended family members such as uncles/aunts, nephews/nieces, and cousins. If the administrator of your estate can't find any living relative legally entitled to your property, it goes to the government. However if you die without leaving a will, your assets may not be distributed according to your wishes. It also makes things quite complicated and costly for those relatives you leave behind.

What are the basic requirements to make a valid will?

To make a valid will, the will maker must be at least 18 years old and of sound mind. They must be acting of their own free will, not under undue influence (pressured by a more powerful person) or duress (persuaded by threats or violence) from others.

The will itself should preferably be typed and computer printed, although handwritten wills are acceptable. You must have appointed someone to carry out your wishes on your behalf (your "executor") and stated how you want your property to be distributed after you die.

What does being "of sound mind" mean?

For a will maker to be "of sound mind" means they understand:

- they are making a will and know what a will is
- their relationship to those mentioned in their will and
- what types of property they own, how much of it they own, and how they want to distribute that property.

What kinds of things do I need to think about if I want to make a will?

Some of the main things to think about when you're preparing to make a will are:

- Who will be your executor to carry out your wishes. It's advisable to appoint more than one executor in case one can't act.
- What assets you have and who you're going to leave them to. Think about if you want to give specific gifts, for example items with sentimental value, or who will get major assets like your house. You should then think about who will get the rest of what you own.
- What would happen if the person you are leaving your things to were to pass away before you. That can happen and it's helpful to say in your will who else you would want that property to go to.
- If you have children: think about appointing a guardian for any aged under 18, although the Family Court makes the final decision about that.
- Your dying wishes, such as whether you want to be buried or cremated.

Who is an executor?

An executor is the person you appoint in your will to carry out your wishes after you die. They deal with your estate, paying your debts and distributing your assets to beneficiaries as set out in your will. An executor is sometimes also called a "personal representative".

Who is a beneficiary?

A beneficiary is a person named in your will to receive a share of your estate.

Who can be my executor?

An executor can be anyone over 18 who is trustworthy. They could be someone like your spouse/de facto partner or child.

What does an executor do?

When you die, your executor:

- organises your funeral and burial
- applies for probate if it's required
- is responsible for managing your estate and accounting for all of your property (including all money)
- collects the assets of your estate, paying any debts and taxes and distributing assets according to the will and
- looks after the financial well-being of any minor beneficiaries (aged under 18).

Can an executor distribute a will maker's assets in a manner not set out by the will?

No, an executor can't decide how your things get distributed as they see fit. They have to do what you've asked for in your will.

Is there a limit to the number of executors I can appoint?

You can appoint one or more executors. We always advise you appoint more than one executor in case one of them is unable to act for any reason.

Do I need to ask someone for their permission before appointing them as executor of my will?

Yes, you do need to get their permission. The executor has to agree to being appointed by you – they aren't obligated to accept and can choose to refuse the appointment. It's a good idea to speak to the person you want to appoint before starting your will and make sure they're willing to act as your executor.

What is the difference between appointing executors jointly as opposed to jointly and severally?

If you appoint two or more people as joint executors, they must all act together. If one of the executors dies or is unable to act, the remaining executors can't act without them. If you appoint two or more executors jointly **and** severally, then they can either all act together **or** if one can't act, the remaining executor(s) can act by themselves.

Are there any assets that don't form part of my estate?

Yes, there are some assets that can't be distributed in a will. These include:

- Assets you own jointly with another person, such as a house, shares, or a bank account. These automatically pass to the other owner who is alive.
- Superannuation and insurance policies, if you've already nominated a beneficiary for your policy. If you haven't made a nomination then these assets can be distributed in a will.
- Property held in a trust.

We recommend seeking legal advice if any of these apply to you.

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What do I have to do before meeting with my lawyer to make a will?

When preparing to see a lawyer about your will, it helps to have ready:

- A list of all people in your immediate family, including their full names and contact information, their relationship to you, and the ages of all your children (including stepchildren).
- Who you want to appoint as your executor. It's advisable you have a substitute executor in mind too.
- The names and addresses of any other people or organisations you want to give bequests (gifts of property) from your estate to.
- A list of all your assets such as your home, car, investments, and items of significant or sentimental value. It's also important you describe how you own any property (for example if you own it alone or jointly with someone else).
- Details of any superannuation and insurance policies you own and any nominated beneficiaries on them.
- If you have children under 18, who you want to be their guardian.

I've finished drafting my will. What do I do now to validly execute it?

There are a few things you need to do to make sure your will is validly executed. First, you should be present with two witnesses and identify to them that the document is your Last Will and Testament. You and the witnesses must sign at the bottom of every page of the will and sign and date the last page at the end of all the text. The witnesses should see you sign the will and then sign it themselves. You and your two witnesses need to be together when you sign the will and it's important that **all three of you use the same pen to sign**.

If you make any changes or amendments to the will after it has been witnessed and signed, such as crossing out people's names or adding clauses, then you and your two witnesses need to initial those changes. However it's advisable not to make any changes to your will because you risk making the whole document invalid.

Who can be a witness to my will?

A witness to a will can be anyone who is over 18 and of sound mind. It's best if they're independent and not a beneficiary to your will or a beneficiary's spouse. It's also advisable to have people you know as your witnesses. This is to help the executor when they apply for probate and have to provide the witnesses' current residential addresses.

How do I store my will safely once I've made it?

Once you've made your will, it's very important that you keep the original in a safe place. That could be in a safe at home or a safety deposit box in a bank. You can also store your will with the Public Trustee at their Will Bank. This service is free if you take the will there yourself (but it incurs a charge if someone else delivers it for you).

It's advisable that you tell the executor where the will is. You can also give copies to the executor and beneficiaries if you wish to.

Can I change my will?

If you want to make a change to your will, there are a few options. One is using a codicil, a legal document that amends your will and can be used for making specific minor changes such as adding or deleting a beneficiary. However codicils need to be signed and witnessed following the same formal procedures as wills and they can cause problems. It's usually easier and more reliable to make an entirely new will. This automatically cancels out your old will and makes your new will with its changes your only valid one.

Can I revoke my will?

Yes, you can revoke your will at any time, either by making a new will (as long as you're of sound mind at the time) **and/or** by intentionally destroying your old will. If you destroy your will accidentally, it won't be revoked.

There are also some circumstances that automatically revoke a will. If you marry, get an annulment, divorce, or remarry then your will is revoked, unless you wrote the will in contemplation of marriage or divorce. Separation from a spouse does not revoke a will.

When should I make a new will?

There are some key times when you should think about making a new will. These include when:

- you marry, get an annulment, divorce, or remarry if your will wasn't made in contemplation of marriage or divorce
- you start a new de facto relationship
- you want to change your executor
- you want to change your beneficiary or any bequests you've made
- your beneficiary dies and you haven't specified who the property should go to if this happened
- your financial circumstances change or
- you have new children and haven't made provision for them.

What happens if I make a new will and then decide that I like my old will better?

Making a new will revokes all prior wills, permanently. Once the old will has been revoked it is invalid and can't be revived. If you make a new will and then want to go back to your old one, you need to make another entirely new will that replaces the former new one and is the same as the old one.

Can I leave some of my relatives out of my will?

It is your will and you can distribute your assets to anyone you want to. However keep in mind that people with certain relationships to you can challenge your will if they are left out of it. These are your:

- spouse/de facto partner
- children
- parents
- in some cases, grandchildren and stepchildren

People with other relationships to you such as siblings, extended family members, and friends can't challenge your will if they are left out. Again, it's always best to seek legal advice when making a will.

Is there a time limit for challenging a will?

Yes, there is. If you want to challenge a will you have a six month period starting from the date of probate being granted to file documents to start proceedings in the Supreme Court of Western Australia. In certain circumstances you may be able to apply after the time limit has passed. You should get legal advice if this applies to you.

Need Legal Advice?

Contact Citizens Advice Bureau to make a low-cost appointment at our Perth office, or for details of how to make an appointment at your nearest branch or by telephone.

(08) 9221 5711 (Lines open Mon-Fri 9:30am-4:00pm)

Level 1, 25 Barrack Street, Perth WA 6000

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