



Wills & Powers of Attorney

Client Guide

Client Guide to Wills and Powers of Attorney



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This guide will help you understand everything you need to know about making a Will or a Power of Attorney.

The guide is broken up into a number of different sections. If you are looking for an answer to a particular question you are sure to find it in the appropriate section. Alternatively, if you would like more general information about Wills or Powers of Attorney simply refer to the relevant section.

At the back of the guide is a Client Questionnaire. If you would like us to prepare or update your Will and/or Power of Attorney, simply fill in your details and contact us to make an appointment. This will help make the process easier and more cost effective for you.

Don't leave it until it is too late...

Many of us don't like to think about making a Will but there are many times throughout our lives when we do need to think about the future and about how our family would cope financially in the event of our death. Estate planning does not commence on death. In fact those who don't effectively plan their personal and financial affairs could leave their loved ones with an unpleasant legacy.

Why do I need a Will?

A Will is the cornerstone of an effective transfer of assets on death – it puts you in charge of important decisions now about what you want to happen to your affairs after you die. It is a legal document

which will ensure your intentions are carried out. You should take action now so that you can be assured that your assets will be given:

- > to the people you want;
- > to support your beneficiaries' needs;
- > in the way you want;
- > as quickly and simply as possible;
- > as tax-effectively as possible.

> Tom and Mary have three children. Tom did not make a Will because he assumed all his property would pass to Mary if he died. Tom was killed in an accident and Mary discovers that under Queensland law, she is only entitled to \$150,000, the household chattels and one third of the remainder. The three children are entitled to the other two thirds of the remainder of the estate.

What happens if I die without making a Will?

If you don't have a Will there is no guarantee that what you intend to happen will happen. This can cause hardship to those closest to you.

Your estate will be distributed under the rules of intestacy. These rules are very general and are unlikely to reflect your specific wishes.

For instance:

- your partner may not automatically be entitled to all of your estate;
- your partner may be forced to sell the family home or car so other beneficiaries can claim their share of your assets;
- the safety net you put in place to protect your children's future and inheritance may be lost;
- someone you may not have chosen could be appointed guardian of your children;
- someone you do not wish to benefit could become a beneficiary;
- your children could take control of their inheritance at 18 rather than a more mature age.

Having a Will makes the winding up of your estate less confusing, quicker and cheaper.

If I don't say where my property goes then who does?

Without a Will you have effectively left it up to the government to make your decisions for you.

What if we only have jointly owned property?

Some people recognise the importance of a Will but believe it is not necessary for them because they own all property jointly.

The usual position is for married couples to own property as "joint tenants" and this usually results in the right to such assets automatically passing to the survivor on the death of the other. However, there is likely to be some property which is owned as "tenants in common" and does not automatically pass to the survivor.

There may also be assets such as accrued holiday pay, long service leave, wages, gifts, inheritance, winnings, etc. which will not be jointly owned but in the name of one person.

You also need to decide what is to happen if you should die together.

- Bill decided to draft his own Will. His wife had died years before and he wanted to benefit his two children and four grandchildren. He wrote out a Will stating that he left 20% to each of his two children and 15% to each of his four grandchildren. Unfortunately one of his grandchildren died before Bill and because of the way the will was worded, his will did not dispose of 15% of his estate! He therefore died intestate as to that 15% share. He also did not appoint anyone as executor and his children had to apply to the court to be appointed administrator of his estate.

When should I make a Will?

The simple answer is now - even if you don't believe you have sufficient assets to consider it worth making a Will you still want to be sure that what little you have is passed on to those close to you.

Should I draw up my own Will?

Home made Wills can be a costly option! You could put your family's financial security at risk. Home made Wills are fraught with problems. The complexity of the laws relating to property, taxation, deceased estates, stamp duty, partnerships, companies, superannuation, contracts, insurance, trusts and the like make it essential that the Will be drawn by a solicitor.

Regardless of your circumstances it is important to obtain professional advice for the drafting of your Will. The cost of such advice will normally be repaid many times over in savings to your family.



Who takes care of my affairs after I'm gone?

The executor is the person chosen by you, to take charge of your estate. Their role is to collect all your assets (such as bank accounts, shares, insurance policies etc.), pay all your debts and distribute the balance to the beneficiaries in accordance with the directions laid down in your Will.

Who would be the best person to be my executor?

Naturally you should choose someone you trust completely to carry out such an important responsibility and who knows you well enough to be aware of your intentions or wishes.

You should also consider their age, health, location (they should not live too far away to effectively carry out their duties) and whether they would be willing to take on the responsibility.

How many executors should I appoint?

It is common to only appoint one executor - although we recommend that at least two be appointed. You may also consider the appointment of your adult children as executors.

Does my executor get paid?

An executor may apply to the court for commission for the time and trouble that must be devoted to the administration of the estate.

However, you can state in your Will whether you want your executor to receive a particular payment. If you do you should consider the taxation implications for your executor.

For example: if you appoint a friend, commission is taxable in your friend's hands and so is a gift of money expressed to be in lieu of commission. However a gift of money (without explanation) is unlikely to be liable to taxation.

➤ John and Jane had run their family business for over 30 years. Their son Peter had helped manage the business for the last 10 years and they left him the business in their Will. They had a daughter Susan, who had a drug habit and had stolen money from them and who refused to have anything to do with them for the last 15 years. They therefore did not leave her anything in the Will. After they passed away, Susan made a claim against their estate and it took two years and over \$100,000 for Peter to resolve the claim. Had John and Jane seen an estate planning expert they could have implemented strategies to avoid a claim by Susan.

How do I decide who I leave my property to?

Before deciding what you want in your Will you should:

- make a list of the full names and addresses of all persons you wish to benefit from your estate;
- consider what your assets are and perhaps draw up a list of major assets to assist you in deciding on their disposal. In this regard bear in mind all insurance policies, superannuation entitlements etc.;
- consider any particular item you want to go to a particular person (for example a piece of jewellery to go to a daughter);

- consider the needs of your family or any other person dependent upon you;
- take advice on the benefits of a testamentary trust.

Who will look after my children?

Through your Will, you can appoint a guardian of your infant children on the death of both parents. Such an appointment is extremely important, particularly if you have specific views as to how you want your children educated, their religious faith and general upbringing.

The court can decide who has custody of your children and that decision is based upon what is in their best interests but would not necessarily be someone you may have chosen.

Can I say how I want my body disposed of?

Your Will may state whether you prefer to be buried or cremated or you have a desire that parts of your body be donated for medical purposes. While it is usual to express these wishes in your Will, (assuming you have complied with any relevant law) you should ensure you notify those likely to be involved in your funeral arrangements. A Will is often not read until after the funeral and it may be too late to comply with some of your wishes.

What if I want to leave a dependant out of my Will?

For whatever reason, if you decide you do not wish to leave any part of your estate to one of your dependants you are entitled to stipulate this in your Will. However, your children or your spouse and sometimes even your step-children, may dispute the terms of the Will on the basis that you have not made adequate provision for them.

It is very important you seek legal advice regarding this to ensure that your estate gets

distributed to those you intend and that finalisation is not dragged out by costly and unnecessary legal action. There are strategies that can be adopted to avoid challenges being made.

What if I have suffered any mental health issues?

If you have a concern that someone may after your death, suggest that you did not have the relevant testamentary capacity to make the Will at the time you did, there are things you can do about it. For example, if you make us aware of this potential problem, we can help you get the necessary evidence to prove, after you die, that at the time you made the Will, you had the capacity and therefore, prove that the Will is valid.

- Ted and Bill are partners in a professional services business and they signed a buy/sell agreement. Bill died and the agreement allowed Ted to exercise an option within 60 days of Bill's death to buy Bill's share of goodwill for \$500,000. Bill's wife also had 60 days to exercise an option to require Ted to buy Bill's share for \$500,000. Bill's wife however did not realise there was a 60 day period and Ted never told her about it. The option was not exercised and the time frame lapsed. Ted just decided to wind up the old firm and start a new firm on his own. Naturally the clients of the old firm became the clients of the new firm and Ted had no obligation to pay Bill's wife for the goodwill. Things might have been different if Bill's will drew his executor's attention to the buy/sell agreement and the need to exercise the option within the 60 days.



Can I pass onto someone else powers given to me?

In some instances you may be in a position to exercise a power upon your death, i.e. the appointment of a governing director of a private company or various powers under a family trust. If this is the case, careful consideration should be given as to whether to include this in your Will - again professional legal advice should be obtained.

What about the money that I have lent people?

Any money owed to you at your death is your asset and forms part of your estate. For example, if loans have been made to your children, then you can consider whether these loans are to be forgiven in your Will.

What will happen to my interest in my partnership business?

Usually your interest in a partnership is capable of being left to someone in your Will even though some of the partnership assets may be owned as joint tenants by the partners. You may need to ensure your surviving spouse is able to draw cheques from any business account on your death to meet the immediate debts and not have to wait until the estate is administered.

A proper business plan should plan for the death of a partner. A "buy/sell" agreement with appropriate insurance cover is an ideal method of planning for this.

For example: assume Ted and Bill are in partnership. They have signed a buy/sell agreement and have taken out life insurance on each of them. Bill dies and the agreement gives Ted the right to buy Bill's share and gives Bill's wife the right to force Ted to buy Bill's share. In either case the purchase price is paid from the insurance proceeds over Bill's life. Ted ends up owing the business and Bill's wife ends up with the cash.

We can assist you with organising a suitable buy/sell agreement in conjunction with your insurance broker and financial planner.

Are there other things I need to be aware of?

Under the present Succession Act in Queensland, where two or more people have died in circumstances where it is uncertain which survived the other then it is presumed the eldest died first.

For example: assume Tom is older than Sally, they are both killed in a car accident and they left their respective estates to each other with the provision that if one of them died before the other the estate would be left to their respective parents.

In such a case Tom is deemed to have died before Sally, his estate passes to Sally, then to Sally's parents via her Will. Tom's parents are not beneficiaries under Sally's Will. For this reason a further rule exists that says that unless the contrary intention appears in the Will, a gift to a beneficiary is of no effect if that beneficiary does not survive the person making the Will by thirty days.

Another important rule is that where any property is left (for example) by a father to his child and his child does not survive him by thirty days then, unless the contrary intention appears in the Will, the children of that deceased child (who in turn

survive their grandfather for thirty days) shall take the share their parent would have received had that person been alive at their father's death.

➤ Tom owns land worth \$500,000 and \$500,000 in cash. He wanted to benefit his two children in equal shares and decided to leave his son the land and his daughter the cash. If Tom would be liable to pay capital gains tax upon a sale of the land then his son would also be liable to pay tax upon sale by him. Tom's son is not therefore receiving an asset with a net after tax worth \$500,000.

Do I need to worry about Capital Gains Tax?

The potential impact of capital gains tax is a major consideration where you are leaving specific items of property to specific beneficiaries. If you would be liable for capital gains tax if a property was sold, then the person you leave the property to will also be liable for capital gains tax.

You should keep detailed records in relation to all property acquired after 19 September, 1985 (the date upon which capital gains tax was introduced).

What if I get married or divorced?

Unless your Will is worded in a particular fashion a marriage after the signing of a Will can revoke a Will. A gift to someone you are married to at the time of your death will not be affected. Separation after a marriage alone will not affect a Will. So, it is particularly important to review your estate plan if you are going through a separation. Conversely divorce does not automatically revoke a Will but does revoke any gift to the ex-spouse and any appointment of the ex-spouse as executor or trustee unless there is a contrary intention stated in the Will.

Can I sign the Will at home?

On occasion we are requested to send a Will out to be signed. We prefer not to do this as there are strict rules with respect to the signing of a Will which if not followed to the letter could invalidate the Will. If it is done in our office we can ensure everything is done correctly.

Can I change the Will at any time?

Once made, a Will can be revoked or changed at any time as long as you have the capacity to do so. It is really of no effect until you die. If a change is to be made we recommend you see us because if the amendment is incorrectly carried out, the delays and legal costs involved in later correcting this mistake can be expensive.

➤ James and Mary died having a basic Will leaving their estate to their two young children aged 14 and 16. As and when each child turned 18 they would become entitled to receive over \$1,000,000 each. Both children decided that they didn't need to study anymore and did not need jobs when they left school because they had more than enough money. When they did turn 18 they blew a large part of their inheritance on fast cars and other toys spending most of their time playing and partying. James and Mary could have structured their Wills so that a large part of the inheritance (if not all) was held in trust for the children until they reached a more mature age with power for the trustee to advance monies for their education and living expenses in the meantime.

Where is the best place to keep my Will?

We recommend you leave your Will with us, free of charge, in safe custody or with your bank to hold for you.



If your Will is lost or accidentally destroyed and cannot be found on your death then you may be presumed to have destroyed it with the intention of revoking it.

The laws relevant to intestacy then apply.

What if I already have a Will?

Your Will is not something that you do once and forget about. You should review your Will every two or three years.

Don't overlook changes that occur in your life such as marriage, divorce, de facto relationships, having children, buying and selling assets, starting or selling a business, changes to taxation laws and other changes in circumstances which can have a serious effect on your Will. When any of these events occur, reassess the contents of your Will so that it remains an accurate record of your wishes.

When I have made a Will is that all I need to do?

Having a Will is only part of your estate plan.

For example: in considering the needs of your family and dependants and **your** assets you may decide that there will be insufficient property to provide for them. In this situation, insurance cover can increase the level of your assets to make proper provision.

Protect your family's inheritance and save tax through a Testamentary Trust

Your family's inheritance can be diminished or lost through unforeseen future events. Through your Will you can prevent this from happening. For instance, your family assets could be held in trust for the future benefit of your beneficiaries and be protected should any one of them get caught up in a divorce, become bankrupt through other dealings or have a gambling problem.

➤ Karen's son Paul had a drug habit. She left her estate to him on her death hoping he would use the money to undertake the drug rehabilitation programs he always promised to do. Paul tried the program for a couple of days and then dropped out using the estate to feed his habit. Karen could have left her estate to a trusted friend to hold as trustee on behalf of Paul so that he did not have unsupervised access to the money but it would still be used to help him.

What is a testamentary trust?

A testamentary trust is in essence a trust contained in a Will. A trust is simply a relationship whereby a trustee (the manager of the trust) holds money and assets for the benefit of another person or persons (beneficiaries).

Often a person will leave his/her estate to his or her partner, or if he or she dies before him, then equally to their children. An alternative is for the estate to be left to a trustee named in the Will, to be held on trust for his or her partner, children and children's family. If desired, the trustee can be the same person that is intended to receive the inheritance, so that they are placed in control of the trust.

The trustee may be given discretion to apply, distribute, reinvest and generally deal with the assets of the estate and any income made from these. As distribution of income is at the discretion of the trustee, allocations can be made according to the circumstances at the time rather than based on the Will maker's direction at the time of making the Will.

The trustee is often the surviving spouse or adult child. Often someone is also nominated as "appointer" and that person has the power to remove a trustee and appoint someone else as trustee i.e. initially the surviving spouse could be the appointer, and after his/her death the child or children for whom the trust was originally intended.

➤ Mark's Will left his entire estate to his only son, Eugene. Eugene had been a partner in a business that had gone sour and was on the verge of bankruptcy. When Mark died his estate went to Eugene and shortly thereafter, Eugene went bankrupt. The trustee in bankruptcy used the estate assets to pay Eugene's creditors. Eugene didn't see a cent of it.

Why should I set up a trust?

Establishing a testamentary trust can provide your beneficiaries with significant benefits:

Protect your beneficiaries - secure their future

If you do not have confidence that a beneficiary will use the inheritance properly or may be too young - you can ensure they have the benefit of the inheritance without letting them have control over it.

A testamentary trust will ensure that the trustees have the power to apply the estate for the benefit of the individual, having regard to changing circumstances and laws.

If you wish, you may decide to specify an age at which that child can take control of their own inheritance or you can leave it to the discretion of the trustee.

Protecting your assets - keeping your beneficiaries' inheritance safe in bankruptcy and divorce

If you have a beneficiary, such as a spouse or child, who is or may become bankrupt and you leave your estate to that beneficiary - the estate will go to the beneficiary and, in turn, into the hands of the Trustee in Bankruptcy - effectively the creditors will benefit from your estate.

A testamentary trust protects your estate as it will not be passed directly to the beneficiary but instead to your nominated trustees. The trustees will have the power to apply the benefit of the income and capital from the trust fund for the beneficiary, with the beneficiary retaining the power to change trustees from time to time. Once the threat of bankruptcy is removed the beneficiary can call for the distribution of the estate to him/her if he/she then wishes.

A testamentary trust also provides protection where the beneficiary carries a commercial risk such as ownership of a small business where there is always a risk of loss.

Divorce and relationship breakdowns are often unexpected and can result in a person losing a big chunk of their inheritance to their ex-spouse. However, a carefully drafted testamentary trust can assist to protect the inheritance. Family law is not straight forward and the property orders will depend on a number of factors including when the inheritance was received and what contributions (both financial and non-financial) each party has brought to the relationship.



Although a trust may be regarded as a financial resource of the relationship and may have some effect on a property settlement, a Testamentary Trust can at least prevent the assets being disbursed by a Court and offers more protection than simply leaving the inheritance to the beneficial in their own name.

Taxation advantages - why make your family pay more tax than necessary?

Taxation is one of the major potential advantages of a testamentary trust, allowing the trustee to split any income amongst your beneficiaries providing them with tax savings - money saved on taxes will be better used by your beneficiaries.

Normally, children can only receive \$416 tax free (as at June 2013) with no access to the low income earners offset. Then, the sum over \$416 and up \$1307 is taxed at 66% with the balance of the income over \$1307 taxed at 45%.

However, income received by children under 18 from a testamentary trust is exempt from the penal tax rates which are normally applied to inheritance income in the hands of children under 18. Children can receive income as a beneficiary of a testamentary trust and be taxed as if the child were an adult (who currently have a \$18,200 tax free threshold and the progressive marginal tax rates thereafter).

The net effect is that through a testamentary trust a child can receive \$20,542 (including the low income earners' offset or even more depending on future federal budgets) income without having to pay any tax at all.

The substantial tax savings you can make by using a testamentary trust can be seen from the following example:

Rob's Will left his entire estate to his grandson, Richard. Richard earns \$100,000 per year in income from his employment. Upon receiving Rob's entire estate of \$500,000 Richard invests his inheritance and earns \$48,000 per year from this investment (on top of his salary of \$100,000). Richard has to pay tax at 37% on the earnings that he makes from his inheritance from Rob. This equates to \$18,980 tax per year (including any flood levy and Medicare levy) (plus the income tax he would pay in respect of his salary).

If Richard's inheritance was received through a testamentary trust, the trustee of Richard's trust could distribute \$20,542 of the inheritance income each year to each of Richard's two children (who are 6 and 8 years old) and the remaining \$6,916 to his wife who does not earn any income, but looks after the children. After taking advantage of the tax free thresholds the tax bill with respect to the earnings made from the inheritance can be totally eliminated!

\$18,980 tax (including and flood levy and Medicare levy) on earnings from inheritance vs \$0 tax on earnings on inheritance through a testamentary trust.

The potential tax savings would not only occur for one year but year after year depending on the age and circumstances of the children - making a significant difference to the future disposable income available to a family.

Note: Figures current as at November 2013. Please note that changes to the federal budget will alter taxation calculations and may render the above information inaccurate. For up-to-date advice on taxation calculations, please ask us or seek advice from your accountant.

How much do I need to make a testamentary trust worthwhile?

You do not have to be wealthy to have your family benefit from a testamentary trust. The greatest tax savings are obtained at the bottom end of the rates of tax. Generally, if you use a Testamentary Trust, the first \$18,200 of income for each beneficiary (adult or child) is tax-free.

What if I put a testamentary trust in my Will but circumstances change?

It is possible to prepare the Will so that your executor has a discretion as to whether or not to establish a testamentary trust and if one is established then to decide what property goes into the trust and what property should go directly to a beneficiary. This provides maximum flexibility and helps to ensure all avenues of asset protection and effective tax planning are utilised.

If you would like further information about Wills please fill in the questionnaire at the back of this brochure and call us.

Don't forget, that a Will can only deal with what happens after you die. If you are unable to make decisions whilst still alive e.g. stroke, car accident or simply overseas, you need to have a Power of Attorney.

Read on to find out more about the benefits and importance of making sure you have a Power of Attorney sorted out.

Power of Attorney

Unfortunately in the fast paced world we live in, accidents, serious illness, long term physical or brain injuries are all too common. Can you afford to be one of those people who think "it will never happen to me"? A Will operates on your death. An Enduring Power of Attorney operates during your life, where you or your partner are injured or become too ill to make financial and health decisions for yourself or your children.

What is a power of attorney?

By signing a power of attorney you may grant someone (your attorney) the legal power for that person to sign or to take some action on your behalf.

Why give someone your power of attorney?

In some circumstances you may be unable to sign documents yourself; you may be overseas and wish someone to have power to manage your affairs in your absence; you may be selling a house but be unavailable and want someone to sign the transfer papers on your behalf and/or you may become incapable and need someone to manage your affairs.

What is an "enduring" power of attorney?

An ordinary power of attorney is useless if you lose your ability to make decisions for yourself because your attorney must act on instructions from you, which you are no longer able to give. This also means that you cannot use an ordinary power of attorney to appoint someone to make decisions about your health.

An enduring power of attorney between you and your partner and/or a trusted relative or friend will give someone of your choice the power to act on your behalf - even if you lose capacity to act for yourself. The power "endures" throughout the period of your incapacity.



➤ Tom and Sally own their own two story home. Tom suffered a stroke and lost capacity to make decisions for himself. Sally decided they need to sell the two story home and buy a ground level home without stairs to make it easier to move Tom around in his wheelchair. Because Tom had not given Sally an enduring power of attorney Sally had to convince the Public Trustee (who was now looking after Tom's financial affairs) to agree to the sale and to then use Tom's share of the proceeds towards buying the new home in joint names rather than just in Sally's name. Had a suitable power of attorney been signed Sally could have sold the old home and purchased the new one without having to ask for permission from someone else.

What happens if I don't have an Enduring Power of Attorney?

The Guardianship and Administration Tribunal was established to appoint administrators and/or guardians to make decisions on your behalf if something happens and you don't have an enduring power of attorney in place. There is a fee for this service.

What types of decisions can an attorney make?

Under an enduring power of attorney you may give your attorney power to make decisions regarding your financial, personal and health matters, such as:

- how your property should be invested;
- dealing with your bank accounts, land and other financial matters;
- where and with whom you live;
- whether you work or undertake education or training;
- whether you apply for a licence or permit;
- day-to-day issues like diet and dress;
- whether to consent, refuse to consent or withdraw consent to particular types of health care for you (i.e. an operation).

What limits are placed upon the attorney's powers?

You cannot give your attorney power to make decisions about:

- special personal matters such as a decision about your Will, appointing someone as your attorney, voting at elections, or consenting to adoption or marriage;
- special health matters, such as donation of body tissue, sterilisation, pregnancy termination, research or experimental health care, or certain psychiatric or other health care as specified in the regulations.

➤ Craig had two children who did not see eye to eye and who were always fighting. Because his daughter lived nearby, Craig appointed her as his financial attorney. In his will he left his beach house to his son and his home and the rest of his estate to his daughter. Craig lost capacity due to his ailing health and his daughter used the power as attorney to sell the beach house before he died. Under the Will, the beach house was no longer owned by Craig on his death and so the gift of the beach house to his son failed. His son inherited nothing. His daughter inherited the whole of his estate including the proceeds of the sale of the beach house.

Can I limit my attorney's powers further than this?

Yes, you can specify decisions that you do not want your attorney to make. You can also include particular instructions about what you would like your attorney to do. Your attorney must act in accordance with your instructions.

Can I appoint more than one attorney?

Several options are provided for in the relevant legislation. For example, you may appoint two or more attorneys to act jointly, as a majority, severally or successively.

If you choose two or more attorneys to make decisions jointly, they have equal authority and can act only with the agreement of them all. If one attorney dies, the remaining attorney/s exercise the power. It is important that your intentions be expressed clearly.

Whom should I appoint as my attorney?

You should appoint someone you trust. Many people choose their spouse or an adult child, but you may prefer to appoint another family member or friend with expertise in the area.

Your attorney must be at least eighteen years of age, must not be your current paid carer or health-care provider (such as your nurse or your doctor), and (for financial matters) must not be bankrupt or insolvent.

When does the attorney's power begin?

With personal/health matters, your attorney's power to make decisions does not begin until (if ever) you are incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision.

With financial matters, you may nominate when your attorney's power is to begin such as when you go overseas or only when you become incapable. If you do not name a date or an occasion, it begins immediately. On the other hand, if you lose the capacity to make such decisions before the date or occasion you name, the power begins at that point.

How much control will my attorney have?

Once the power to make a decision begins, your attorney will have full control over that decision unless you have explicitly limited that power in the enduring power of attorney.

How long does the power continue?

For personal/health matters, it continues so long as you are incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision. With financial matters, it continues until it is revoked.

How can I be sure that my attorney will act in my interests?

While you are unable to oversee your attorney's decisions, the Adult Guardian and the Court have the power to protect your interests. Your attorney may be required to produce a summary of receipts and expenditure or more detailed accounts, and these may be audited. An attorney who does not adequately protect your interests can be removed or changed.

Can I change or revoke this power of attorney?

You may change or revoke a power of attorney at any time. As long as you have the capacity to make an enduring power of attorney, you also have the capacity to change or revoke it.

Wills and Powers of Attorney Client Questionnaire

You want to make a Will but don't know where to start...

To make the process as easy and as cost - effective as possible we have developed a Wills and Powers of Attorney Client Questionnaire for completion by clients wishing to prepare or edit their Will and/or Enduring Power of Attorney. Simply complete the questionnaire, give us a call and ask to speak to someone about your Will. We will be only too happy to arrange a time to see you and discuss your specific requirements personally.

We recommend you complete this questionnaire and bring it with you to your appointment to save you time and money associated with obtaining professional advice and assistance in relation to estate planning. We have also left space for your Solicitor to make notes when discussing your Will. Please also make notes about any questions you may have as you go through the questionnaire. There are notes pages at the end of the questionnaire for you to use. If you are uncertain about how to answer any question just leave the answer blank. If you are completing the questionnaire with your partner - where both answers are the same make a note at that question "same as (partner's name) response".

Personal details

Your full name:

Your partner's full name:

Do you own any property registered in any other name (such as your maiden name)? Yes No

If so, which name?

You:

Your partner:

Your residential address:

P W

E M

Occupation:

Date of birth:

Your partner's residential address:

P W

E M

Occupation:

Date of birth:

It is important that we understand our clients needs. What in particular made you choose McKays?

Marriage details

Are you married?

Yes No

If you are not married do you want the Will to be made in contemplation of the marriage?

Yes No

If so is the Will to take effect even if you do not get married?

Yes No

Are you divorced or in the process of getting divorced?

You Yes No Your Partner Yes No

If yes, has the property settlement been completed?

You Yes No Your Partner Yes No

Are you currently paying spouse or child maintenance? If so, please provide details.

You:

Your partner:

Are you currently involved in a claim from a previous relationship or is there any prospect of such a claim?

You:

Your partner:

Solicitor's notes:

Children and dependants

What are the full name/s, address/es and age/s of all your children? Please indicate if they are living with you or not and/or if any are not your biological children (eg. adoptive or foster children).

You:

Your partner:

Specify if any of your children have died and have left children. If so, do you wish to benefit them in your Will? What are the full name/s address/es and age/s and the name of your child and their children?

You:

Your partner:

Are there any other persons who are financially dependant upon you in any way or who you intend to benefit in your Will or who you feel may expect to receive a benefit out of your Will?

You:

Your partner:

Should the Will allow for further children?

Yes No

Solicitor's notes:

Family details

Provision is often made in Wills for property to pass to your parents or brothers and sisters should your immediate family die before you. If relevant please provide the full name/s and address/es of your family. (Please indicate if any of these persons are not the biological parents, brothers or sisters of you, eg adoptive parents or step brother or sister).

Your father:

Mother:

Brother/s and sister/s:

Your partner's father:

Mother:

Brother/s and sister/s:

Accountant/financial planner

Accountant's name and contact details:

You:

Your partner:

Name and contact details of your financial planner (if any):

You:

Your partner:

Do you wish a copy of your Will or Power of Attorney that we prepare for you, to go to your financial planner?

You Yes No Your Partner Yes No

Solicitor's notes:

Information for Wills

Existing Wills

Do you have an existing will?

You Yes No Your Partner Yes No

If so, where is it stored?

You:

Your partner:

Executor/s

You should appoint an executor to look after your estate. They should be person/s who you know and trust to be responsible. You can choose up to four person and they can be your spouse or children if they are of age.

Do you want your partner to be your sole executor in the first instance?

You Yes No Your Partner Yes No

If no - please provide full name/s and address/es of your preferred executor/s:

You:

Your partner:

If your first choice cannot act as executor what is/are the full name/s and address/es of your alternate executor/s?

You:

Your partner:

Is the executor to be compensated for acting as executor by way of gift, payment or commission?

Please include details of any amount of money or other gift you have in mind.

You:

Your partner:

Solicitor's notes:

Assets and liabilities

Detail your assets and liabilities - providing a general indication of the value of each and the extent of any liability (approximation are sufficient).

Home (Address):

Approx Value: \$

Approx Debt: \$

Who is the owner? If joint ownership please indicate if it is owned as joint tenants or tenants in common (*if known*):

Real Estate Investment: Do you own any other real estate?

You Yes No Your Partner Yes No

Please provide details of the address/es, the nature of the property (i.e. beach house or investment purposes), the current value, the liabilities secured by mortgages.

You:

Address:

Approx Value: \$

Approx Debt: \$

In whose name is the property held? *If more than one please indicate whether it is held as joint tenants or tenants in common.*

Your partner:

Address:

Approx Value: \$

Approx Debt: \$

In whose name is the property held? *If more than one please indicate whether it is held as joint tenants or tenants in common.*

Solicitor's notes:

SHARE PORTFOLIO

Do you hold shares/units/options etc in companies listed on the stock exchange? In whose name are they held and what is their approximate value? Please indicate any debts that are owed in relation to the portfolio.

You:

Approx Value: \$

Approx Debt: \$

Your partner:

Approx Value: \$

Approx Debt: \$

FINANCIAL INVESTMENTS

Do you have any investments with a bank, building society, credit union or other financial institution and in whose name are the investments? If joint ownership please indicate if it is owned as joint tenants or tenants in common (*if known*).

You:

Approx Value: \$

Approx Debt: \$

Your partner:

Approx Value: \$

Approx Debt: \$

Solicitor's notes:

BUSINESS

Do you own or have a share in a business?

You Yes No Your Partner Yes No

Describe the business and your interest in it. If you are in partnership or have an interest in a company or trust that owns the business describe the business structure if known. If readily available can you supply a copy of the partnership agreement, constitution of the company or trust deed (to check if these documents contain any agreements that need to be taken into account in your Will).

You:

Approx Value: \$

Approx Debt: \$

Your partner:

Approx Value: \$

Approx Debt: \$

If a partnership, company or trust structure exists, has a "buy/sell" agreement or a "put/call" option agreement been entered into? If so, please provide details.

BUSINESS/INVESTMENT STRUCTURES

Do you have a family trust?

You Yes No Your Partner Yes No

If yes, please provide a copy of the trust deed and balance sheet so that we can obtain details of the trustee and appointer and advise as to the best method of passing on control of the trust to the intended beneficiary. You should bear in mind that property of the trust is not your property and cannot ordinarily be disposed of in your Will although monies owed to you by the trust do form part of your assets.

You:

Approx. value of Trust assets: \$

Approx. debt owed by Trust: \$

Your partner:

Approx. value of Trust assets: \$

Approx. debt owed by Trust: \$

Do you have any interest in a partnership, joint venture, proprietary limited company, unit trust or other business structure that has not already been described above?

You Yes No Your Partner Yes No

If yes, describe the extent of the interest naming the person/s in whose name the property is, the approximate value of the property and the approximate liability attached to it.

You:

Approx Value: \$

Approx Debt: \$

Your partner:

Approx Value: \$

Approx Debt: \$

Solicitor's notes:

MONIES OWED TO YOU

Is there any debt owed to you that needs to be forgiven or otherwise specifically dealt with in your Will?

(Consider any monies that may be owed to you by a child, partnership, trust, company or other business/investment entity.)

You:

Your partner:

OVERSEAS PROPERTY

Do you have any property overseas?

You Yes No Your Partner Yes No

If so, please describe what the property is and its approximate value.

You:

Approx Value: \$

Approx Debt: \$

Your partner:

Approx Value: \$

Approx Debt: \$

LIFE INSURANCE

What life insurance policies do you have? Provide the name of the insurer, level of cover, name of the insured person and name of the person/s nominated on the policy as the owner/s. *(i.e. to whom the monies will be paid on your death)*

You:

Your partner:

RIGHTS OF ACTION

Do you have the right to action for personal injuries or other matters? If so, has action been commenced?

You:

Your partner:

SUPERANNUATION AND EMPLOYEE ENTITLEMENTS

Provide details of your superannuation fund (if any). Have you nominated someone as the beneficiary and if so, what type of nomination have you made (preferential/non-binding nomination; binding nomination; or non-lapsing binding nomination?)

Are you receiving a pension? Have you nominated a reversionary beneficiary?

You:

Your partner:

If there is a life policy attached to the fund provide details of the level of cover and whether any life policies mentioned above are actually owned by the trustee of the superannuation fund.

You:

Your partner:

Solicitor's notes:

If it is a self managed superannuation fund, who are the trustees?

If you have a copy of the deed readily available please supply a copy.

You:

Your partner:

Are there any workplace entitlements that need to be taken into account?

You Yes No Your Partner Yes No

If so, please describe:

MISCELLANEOUS

What other assets or liabilities need to be taken into account? (Consider live stock, crops, farming implements, furniture, vehicles, pictures, jewellery or tools which you may wish to leave to a specific beneficiary.)

You:

Your partner:

Do you control any assets that are not owned by you in your own right? (For example, are you executor of any estate, trustee of any trust, permanent governing director of any company etc?)

You:

Your partner:

Disposing of your estate

SPECIFIC GIFTS

Are there specific items of property or money you wish to give to particular beneficiaries such as a holiday home, items of jewellery or family heirlooms?

You:

Your partner:

Are the gifts of specific property to be made subject to payment of any debt secured by mortgage or charge on the property or is the estate to pay out the debt?

You:

Your partner:

Solicitor's notes:

GIFTS OF THE REST OF YOUR PROPERTY

Provide full names and addresses of all beneficiaries to whom you wish to leave your property after making allowance for the gifts above?

Please specify the order of priority in the event that your first choice of beneficiary dies before you (*For example: "All to my spouse then in equal shares to my children then one half share split equally between my parents or brothers and sisters and one half share split equally between the parents or brothers and sisters of my spouse"*).

Please provide full names and addresses of any beneficiaries whose details have not been given elsewhere in this booklet.

You:

Your partner:

Solicitor's notes:

BENEFICIARIES WITH SOME FORM OF INCAPACITY - AGE, PHYSICAL OR FINANCIAL

At what age do you want any infant beneficiaries to take control of their inheritance?

You:

Your partner:

Who do you want to look after the inheritance until those children reach that age - the executor or someone else?

You:

Your partner:

If a beneficiary dies before you do you want the beneficiary's children to take their share of your estate?

(If no provide details)

You Yes No Your Partner Yes No

You:

Your partner:

Solicitor's notes:

Capacity issues

Are you a bankrupt or at risk of going bankrupt? *(If yes, provide details)*

Yes No Your Partner Yes No

You:

Your partner:

Are any of the proposed beneficiaries bankrupt or at risk of bankruptcy?

(if yes, provide details)

Yes No Your Partner Yes No

Have you ever suffered any mental illness and are concerned that someone may challenge your capacity to make a Will?

(If yes, provide details)

Yes No Your Partner Yes No

You:

Your partner:

Are any of the proposed beneficiaries mentally incapable, financially unstable or drug or alcohol dependent?

(If yes, provide details)

Yes No Your Partner Yes No

You:

Your partner:

Do any of the beneficiaries receive pensions? *(If yes, provide details)*

Yes No Your Partner Yes No

You:

Your partner:

Solicitor's notes:

Family provision claims

Are there any family members or other persons who may make a claim against your estate because they may feel inadequate provision was made for them in the Will? Note that potential claimants can include the children of a *de facto* spouse living with you. *(If yes, provide details)*

Yes No Your Partner Yes No

You:

Your partner: _____

Inheritances

Are you likely to receive an inheritance from your parents or any other person?

(If yes, provide details)

Yes No Your Partner Yes No

You: _____

Your partner: _____

Testamentary Guardians

If you have infant children, what are the full names and addresses of the person/s you wish to appoint as testamentary guardians?

You: _____

Your partner: _____

Do you have any particular wishes regarding upbringing of children?

You: _____

Your partner: _____

Solicitor's notes: _____

Funeral/Disposal of Body

Do you have particular wishes regarding the donation of body parts, body for scientific purposes, burial or cremations?

You: _____

Your partner: _____

Additional details

Is there any other information you believe may be relevant for us to advise you properly about your Will?

You:

Your partner:

Solicitor's notes:

Information for an Enduring Power of Attorney

Please complete this section if you wish us to prepare an Enduring Power of Attorney

Do you have an existing power of attorney? (If yes, where is it stored?)

Yes No Your Partner Yes No

You:

What type is it?

General power of attorney Limited power of attorney Enduring power of attorney

Your partner:

What type is it?

General power of attorney Limited power of attorney Enduring power of attorney

ATTORNEY/S

Your attorney should be a person/s who you know and trust to be responsible. You can choose more than one person and they can be your spouse, adult children, other family members or a friend provided they are aged eighteen years or older, are not your current paid carer or health-care provider (such as your nurse or your doctor). For financial matters they must not be bankrupt or insolvent.

Is your partner to be your sole attorney in the first instance?

Yes No Your Partner Yes No

If not, what is/are the full name/s and address/es of your preferred attorneys?

You:

Your partner:

If your first choice of attorney cannot act, who would you like, what is/are the full name/s and address/es of your second choice attorneys?

You:

Your partner:

Solicitor's notes:

You can give your attorney power to make decisions regarding personal/health matters or financial matters or both. You can also give one or more attorneys power to act on personal/health matters and a different person or persons to act on financial matters. Please specify below whether an attorney is to act for you in relation to:

You:

financial matters only personal/health matters only both financial and personal/health matters

If you are appointing more than one attorney, how do you want your attorney/s to make decisions?

- Severally (any one of them may decide); or
 Jointly (unanimously); or
 As a majority (e.g. two-thirds majority); or
 Other (e.g. any two of three attorneys or successively in the order named):
-
-

Your partner:

financial matters only personal/health matters only both financial and personal/health matters

If you are appointing more than one attorney, how do you want your attorney/s to make decisions?

- Severally (any one of them may decide); or
 Jointly (unanimously); or
 As a majority (e.g. two-thirds majority); or
 Other (e.g. any two of the three attorneys or successively in order named):
-
-

LIMITATIONS ON POWER

Do you want to set any terms for the enduring power of attorney (e.g. limit the power of your attorney) or to give specific information about your wishes?

Yes No Your Partner Yes No

If Yes - What are the terms?

You:

Your partner:

When do you want the power for your attorney to act as your attorney for financial matters to begin?

You:

Immediately On this date On this occasion

Your partner:

Immediately On this date On this occasion

Solicitor's notes:

Your signature/s

If you can't answer some of the above questions please do not be concerned - just leave the question unanswered and bring this questionnaire to your appointment.

Date:

Signed:

You:

Your partner:

Make an appointment now!

Please call to make an appointment today on 07 4963 0888 or email mackay@mckayslaw.com.

Appointment date:

Appointment time:

Name of solicitor:

Authority re: Wills and Other Documents

To:

I hereby request that you forward to McKays the following documents you hold on my behalf in safe custody:

- my Will/s;
- my Powers of Attorney;
- my Advanced Health Directive/s;
- the Trust Deed for the trust known as;
- the company records for the company named;
- the Partnership Agreement for the partnership known as;
- the Deed for the superannuation Fund known as;
- other documents you may hold on my behalf.

Please tick appropriate boxes and complete details

Signed this _____ day of _____, 20

Signature _____ Full Name _____

