

WILLS & POWER OF ATTORNEY

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Preparing for your family's future

We understand that no-one wants to think about death in the prime of life, however, it is important to decide what will happen to your assets when you die.

In this paper we cover how you can give instructions to your family about your legal and medical preferences should you fall ill or lose the capacity to make those decisions yourself.

Topics covered:

1. **Estate plans**
2. **Wills**
3. **Testamentary trusts**
4. **Power of attorney**
5. **Legal and financial check list**

"It's estimated that nearly half of all Australians die without a will, or 'intestate'."

1. Estate Plans

An estate plan includes your will as well as any other directions on how you want your assets distributed after your death. It includes documents that govern how you will be cared for, medically and financially if you become unable to make your own decisions in the future.

You must be over 18 and mentally competent when you draw up the legal agreements that form your estate plan. Key documents might include:

- Will
- Superannuation death nomination
- Testamentary trust
- Powers of attorney
- Power of guardianship
- Anticipatory direction

If you have made a binding nomination in your super or insurance policies, the beneficiaries named in those policies will override anyone mentioned in your will. If you have a family trust, the trust continues and its assets will also be distributed according to the trust deed, no matter what is written in your will.

You should ask a **legal professional** to check your estate plan. A good estate plan should minimise the tax paid by your heirs, and help avoid any family squabbles.

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Confused about your Estate planning. Contact us for friendly professional advice.

2. Wills

A will comes into effect when you die and may cover things like how your assets will be shared, who will look after your children if they are still young, what trusts you want established, how much money you'd like donated to charities and even instructions about your funeral.

Your will can be written and updated by private trustees and/or solicitors, who usually charge a fee and you can also buy will kits online. It is a good idea to seek advice from a solicitor to review your will to make sure everything is in order. If a will isn't signed and witnessed properly, it will be invalid.

It is wise to keep your will valid and up-to-date as your legal rights change, specifically if you marry, divorce or separate; have children or grandchildren; if your spouse or beneficiaries die; or if you have a significant change in financial circumstances.

If you do not have a will when you die (intestate) or your will is invalid, an administrator appointed by the court pays your bills and taxes from your assets, then distributes the remainder, based on a pre-determined formula. If you die intestate and don't have any living relatives, your estate is paid to the state government.

“A good will and estate plan can help make sure your wishes are carried out after you die, or if you are no longer able to make your own decisions.”

3. Testamentary Trusts

A testamentary trust is a trust set out in a will that only takes effect when the person who has created the will, dies. Testamentary trusts are usually set up to protect assets.

Here are some reasons why you would create a testamentary trust:

- The beneficiaries are minors (under 18 - 21 years old)
- The beneficiaries have diminished mental capacity
- You do not trust the beneficiary to use their inheritance wisely
- You do not want family assets split as part of a divorce settlement
- You do not want family assets to become part of bankruptcy proceedings

A trust will be administered by a trustee who is usually appointed in the will. That trustee must look after the assets for the benefit of the beneficiaries until the trust expires.

The expiry date of a trust will be a specific date such as when a minor reaches a certain age or a beneficiary achieves a certain goal or milestone, like getting married or attaining a specific qualification.

4. Power of attorney

Appointing someone as your power of attorney gives them the legal authority to look after your affairs on your behalf. Power of attorney depend on which state or territory you are in: they can refer to just financial powers, or they might include broader guardianship powers.

Generally speaking, there are different types of power of attorney:

- A **general power of attorney** is where you appoint someone to make financial and legal decisions for you, usually for a specified period of time. For example, if you're overseas and unable to manage your legal affairs at home. This person's appointment becomes invalid if you lose the capacity to make decisions for yourself.
- An **enduring power of attorney** is where you appoint a person to make financial and legal decisions for you if you lose the capacity to make your own decisions.
- A **medical power of attorney** can make only medical decisions on your behalf if you become unable to do so yourself.

5. Legal and financial housekeeping

Once your paperwork is in order, it will help your executor and family if you list the legal documents you have and where they are kept. Keeping a record of your personal information and notes on how your legal documents, assets and investments are arranged can also help you.

Here is a list of key documents to keep:

- Birth certificate
- Marriage certificate
- Will
- Enduring power of attorney
- Advance healthcare directive (also called a living will)
- Personal insurance policies
- House deeds
- Home and contents insurance
- Deeds and insurance policies for any other real estate you own
- Bank account details
- Superannuation papers
- Investment documents (securities, share certificates, bonds)
- Medicare card
- Medical insurance details
- Pensioner concession card
- Any pre-payments of funeral investments