

Sadly, every year, thousands of people die without a legal Will.

Absence of a Will can often cause additional heartache and distress those who are left behind.

Caldwell Martin Cox has been preparing Wills and managing estates for many years. Our experienced lawyers, led by an Accredited Specialist in Wills and Estates, can assist you prepare a valid Will that will ensure the people you love the most benefit from your estate after your death.

This guide provides basic information in relation to preparing a Will.

What is a Will?

Put simply, a Will is a legal document which outlines your wishes following your death.

These wishes can be anything from making sure your family receives the proceeds of your estate, to what music you would like played at your funeral.

At the end of day, however, the primary objective of a Will is to make sure that all your assets are distributed according to your wishes.

Why make a Will?

Not making a Will is irresponsible, especially if you have dependants.

By making a Will, you can:

- make sure your spouse (or de facto), and children benefit the most from your assets
- choose your own executor - someone you trust to manage and distribute the assets from your estate
- spare your loved ones the additional grief and distress that may result from the uncertainty of not having a Will and quite often, additional time and expense in administering your estate.

Preparing a Will

Preparing a Will does not have to be difficult.

A basic Will consists of these sections:

Name and address of the person making the Will

Name of your appointed executor

You should name someone you trust and ask them if they would be willing to be your executor. Executors must be over the age of 18 years. They have certain responsibilities such as making your funeral arrangements, paying your debts, distributing assets to your beneficiaries, including selling your assets when necessary. If you have children who are under the age 18 years, the executor will also act as a trustee until they are able to manage their share (usually when they turn 18 or at an age stipulated by you). The executor will also act as a trustee for dependants who are disabled or not mentally fit to manage their share of the estate. An executor can also be a beneficiary.

Directions for disposal of your body

You may wish to direct your funeral arrangements and how you want your body to be disposed. There are many options available and you need to think clearly about what you would like done, the practicalities of your wishes and the likely cost. Remember, funerals are expensive and you should allow enough money to cover the costs. You should communicate your wishes to your next of kin, or your executor, as soon as you have made the Will - sometimes the Will is not read until after the funeral is over.

Beneficiaries

Beneficiaries are people that you have selected to receive a share of your estate after your death. You can select anyone you like and more than one person can share your estate. Beneficiaries usually include your spouse, de facto, children, parents, other relatives, close friends and charitable organisations.

You can be as detailed as you like in your gifts or, in some circumstances, you can choose to give your entire estate to one person (for example your spouse or de facto who, following your death, will have sole responsibility for your children).

You need to be careful about dependants or close relatives that you choose to exclude from your estate. They may sue your estate after your death asking for the Will to be revised. Unfortunately, legal costs associated with such disputes will generally be taken from your estate.

Guardians

Guardians are people that you have selected to care for any children under the age of 18. If you have minor children, this will be the most important part of your Will. A guardian will have long term responsibility for care of your children and has the powers, rights and duties of natural parents. You can select anyone you like to be your children's guardians - they do not have to be close relatives. Selecting the right guardian is a difficult task: you need to be sure that the guardian has the emotional, physical and financial capacity (even though they may receive money from your estate) to care for your children until they are 18 years old.

Trust for minors

The shares of any beneficiaries under the age of 18 years will be held in trust and managed by the executor. In this section, you can specify how you want the money to be managed. For example, you may wish that a specific lump sum be available to the guardians to care for your children and that your children not access the assets until they are 21 years old.

Making a valid Will

To make a Will valid, it must be in writing and witnessed by two persons over the age of 18 years who are not beneficiaries in your Will. Both you and the two witnesses need to be present when you all sign the Will.

Updating your Will

Your Will will become invalid if you marry, divorce, re-marry or it is physically destroyed, and you will need to create a new one.

There are many circumstances in which updating your Will becomes essential or highly desirable such as when:

- you start having children
- you separate from your partner/spouse and you think it will be permanent
- you purchase a significant asset/investment (for example a house)
- you become involved in a new business - you are liable for its liabilities and share its assets
- you change your name or one of the persons in your Will changes their name
- one of your beneficiaries or executor dies and you have not made arrangements for their replacement.

For further information and assistance, please call any member of our Wills and estates team on

02 4677 1292.

Wills and estates

Preparing a Will



About Caldwell Martin Cox

Caldwell Martin Cox is a law firm established for over 40 years in Narellan, Camden, Picton and Tahmoor.

Our specialist lawyers advise clients on Wills and estates, Family Law, the purchase and sale of property, criminal and traffic law, litigation and dispute resolution, commercial law and business law.

We have over ten lawyers who practise in Wills and estates, who operate from all four offices and serve clients across a broad region.