

Do you have a Will?

Having a Will is important, no matter how old you are. Writing a Will can be complicated. This factsheet is designed to answer some frequently asked questions about Wills. It is information only and is not a substitute for legal advice.

Please note that Legal Aid ACT does not draft Wills.

What is a Will?

A Will is a written document which states how you want your property and assets to be distributed when you die. Having a Will is the only way to make sure that your wishes can be followed when you pass away.

Why should I make a Will?

If you do not have a valid Will when you die, an administrator will be appointed by a court to distribute your property to your next of kin (your relative). How this is done is determined by the laws of intestacy.

This means that an administrator is appointed by a court to distribute your property to your next of kin (your relatives). If you do not have any relatives then your property goes to the ACT Government.

Making a Will can also avoid unnecessary trauma and disputes between your loved ones about your property and wishes when you die.

It is very important to make a Will if you have young children. A Will allows you to appoint a guardian to look after your children if anything happens to you before they reach the age of 18.

How do I make a valid Will?

To make a valid Will you must be over 18. The Will must be in writing and must be signed by you and two witnesses. You also must have “testamentary capacity”.

What is “testamentary capacity”?

This means the person understands what they are doing when writing the Will. The person must know what will happen to their property and assets.

What happens if I don't have a Will or my Will is not valid?

There are rules that decide how your property is distributed if you do not have a Will. Generally, your property will be distributed to your partner, children or other relatives. However, this might not be in accordance with your wishes.

If you have no relatives, your property will be given to the Government.

What if I have young children?

Making a Will allows you to nominate a guardian for your children if they are under 18 when you die.

Can I make a Will by myself?

You should not make a Will by yourself, even if you do not have much property. There is a risk that your Will might be invalid if it doesn't meet the legal requirements.

Do you have a Will?

What should I do with my Will?

If your Will is written by a solicitor, they will keep the Will at their office. You should keep a copy of your Will in a safe and secure place and give copies to your executors.

What is an executor?

An executor is sometimes known as a 'personal representative'. They are the person responsible for carrying out the instructions in your Will.

Who should I appoint as the executor?

It is best to appoint a trusted family member or friend as your executor. You can appoint a person who is inheriting property as your executor. You are also allowed to have two people as executors.

If you have no-one else, you can appoint a solicitor as your executor. If you appoint a solicitor, it is important that you talk about the cost of this with the law firm.

What happens if I get married or divorced?

If you marry or divorce after making your Will, parts of your Will may no longer be valid. It is also possible that the entire Will may be invalid. If you get married or divorced, you should consider writing a new Will.

Can I prevent relatives from inheriting my property?

When you make your Will you have the right to choose who is to inherit your property. However, a family member might decide to challenge this decision. If you want to leave a family member out of a Will, you should talk about this with a solicitor.

Can I change or revoke my Will?

There are ways in which you can change a Will. However, you can't make changes to your Will simply by writing on it. You can also revoke your Will by destroying it or replacing it with another valid Will. If you want to change or replace your will, you should talk about this with a solicitor.

What happens when I die?

The person you appointed as executor will organise the funeral and administer your estate. If you own land, shares or a substantial sum of money, the executor will need to apply to the Supreme Court for "a grant of probate". This will confirm that the executor is allowed to handle the deceased person's assets.

If you did not have a Will, the court will appoint an administrator. This person will then administer your estate. The administrator will need to apply for a "grant of letters of administration". This will also confirm that the administrator is allowed to handle the assets of the deceased person.

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Where can I go to get a Will?

You can go to the ACT Law Society who can provide you with the contact details of private lawyers who specialise in Wills and estates.

ACT Law Society
www.actlawsociety.asn.au
Phone: **6274 0300**

You can also go to the Public Trustee and Guardian, who can prepare your Will for a fee and will require you to name them as your executor.

Public Trustee and Guardian ACT
www.ptg.act.gov.au
Phone: **6204 9800**

Helpful Legal Terms

- *Administrator* – a person appointed by the court to administer your estate because no executor was appointed or you did not have a Will
- *Beneficiary* – a person who is entitled to your property in accordance with your Will
- *Codicil* – a document which supplements your Will. It usually amends, rather than replaces, your Will.
- *Estate* – the property (including all assets and debts) of a person when they die
- *Executor* – a person appointed by you in your Will who is responsible for carrying out your wishes when you die
- *Grant of administration* – recognition by the Court of the administrator's right to administer the deceased's estate
- *Grant of probate* – recognition by the Court of the executor's right to administer the estate
- *Testator* – a person who makes a Will