



WILLS AND ESTATES

1. Why you should have a Will

Everyone over the age of 18 should have a will. Without a properly drawn and up to date will, your assets could go to the wrong person or to creditors or the IRD. This is even more important for people with family trusts, companies, businesses or blended families.

A well drawn will will also lessen the risk of claims on your estate and reduce the risk of family disagreements occurring.

It is essential if you have more complex affairs that your will reflects these. For instance, where you have a family trust, your will should forgive any outstanding loans owed by the trust to you on your death. It might also cover who is to replace you as settlor of the trust. It is also possible to have your will leave assets to a family trust rather than to an individual beneficiary to protect the money from creditors or acquisitive partners.

An experienced will drafter can assist you in making the right decisions and give your will the best chance of standing up in court.

Some of the things which you need to consider when making a will are:

1. Who your executor or executors will be. It is important this person is trustworthy and capable of dealing with your affairs.
2. Testamentary guardians. For those people with young children, testamentary guardians have legal say in the way that the children are raised. The guardian does not necessarily have custody of the children.
3. What specific gifts do you wish to make to people, e.g. jewellery, money, etc.

4. How do you want the balance of your estate divided.

We are more than happy to talk through with you the various options available to you.

2. When should I review my Will?

You should review your will whenever the following occur:

- **Marriage** – an existing will is automatically cancelled by marriage, unless the will states it was made in contemplation of marriage
- If you become separated from your current spouse or partner. While the will is not invalidated, it may no longer express your intentions
- **Dissolution of marriage (divorce)** – cancels any gift to, or appointment in favour of, your former spouse
- **New relationships** – if you are entering a new relationship you should review your will taking into consideration the provisions of the Property (Relationships) Act 1976. You may wish to take steps to protect your assets to avoid the application of the Act
- **Change of property** – if you have sold, given away or lost items specifically bequeathed in your will
- **Change of executor** – if your executor or trustee dies, you no longer wish them to act or is otherwise unable to fulfil their responsibilities
- **Guardianship changes** – if your guardian dies, is no longer able to act or is no longer required.

Once you make a will with us, we will contact you approximately every five years to discuss your will and any changes that may be required.

3. What happens if I die without a Will?

This is called dying intestate. If you die without a will, your estate will be distributed according to the rules laid out in the Administration Act 1969. De facto and same sex relationships are now treated the same as married couples. The rules are:

- If your spouse/partner survives but there are no children or parents, your spouse/partner receives everything
- If children survive but there is no spouse/partner, the children receive everything
- If your spouse/partner survives and children are also living, the spouse/partner receives all personal chattels, \$121,500.00 and 1/3 of the remainder and the children receive the remaining 2/3
- If your parents are living but no spouse/partner or children, your parents receive everything

- If your spouse/partner and parents are living but no children, your spouse receives all personal chattels, \$121,500.00 and 2/3 of the remainder and your parents receive the remaining 1/3
- If you have no spouse/partner or living children or parents but brothers and sisters, everything goes to them or to their children
- If you have no brothers and sisters but grandparents, half your estate passes to you maternal grandparents and half to your paternal grandparents. In their absence, to maternal and paternal aunts and uncles
- If there is no spouse/partner, children, grandparents or parents surviving, everything goes to certain blood relatives. If none can be located, then as a final resort, the estate goes to the government

This distribution may not be the way you want your estate divided. Making a will reduces the time and cost required to administer your estate and will make it clear who will administer it.

4. Frequently Asked Questions and Definitions

Executors

The executor is the person(s) you appoint in your will to administer your estate.

The executor's duties include obtaining the High Court's permission to finalise your estate (called obtaining probate), locating, protecting and valuing your assets, assessing and paying your debts, locating beneficiaries, filing your final tax return and distributing the assets in accordance with your will.

Joint Assets

Any assets that are in joint names pass automatically to the surviving owner(s). This includes land owned as joint tenants. These assets do not form part of your estate and cannot be left in your will.

Property (Relationships) Act

With the introduction of the Property (Relationships) Act on 1 February 2002, the surviving spouse/partner has the right to:

- Elect to contest the will and have their half share of the relationship property paid to them in accordance with the Act (Option A). This is done via an application to the court.
- Elect to take the provision that is made for them under the will or intestacy (Option B).
- Elections must be made within 6 months of death or grant of administration otherwise the options default to B.
- The survivor must obtain legal advice before making an election.

