

Will Information Sheet

This instruction sheet has two parts.

The first part asks a series of questions that need to be answered before we can prepare an estate plan.

The second section is a general information and background on wills and powers of attorney and medical powers of attorney.

INSTRUCTION SHEET

Information we will need to know

Write not applicable to any questions that do not apply to you.

PLEASE PRINT IN BLOCK LETTERS

1. Personal Details of person making the will

Full name _____

Residential address _____

Telephone number (home) _____ (work) _____

Occupation _____

Email address _____

Date of birth _____

Partner's Personal Details

Full name _____

Residential address _____

Telephone number (home) _____ (work) _____

Occupation _____

Email address _____

Date of birth _____

2. Previous relationships

Have you been married before?

Do you have children from a prior relationship?

3. Have you made a Will before? If yes, where is it kept?

10. Do you intend to marry soon? Marriage automatically invalidates an earlier will.

11. Appointment of executors/trustees/guardians

This is the person responsible for carrying out your will. We recommend at least two in case one is unable to act on your behalf when required.

Most people appoint their partner as their executor and then another person as an alternate executor in case their partner has predeceased.

We also recommend that your alternate executor is younger than you. This avoids having to redo your will if an executor dies before you. Please give full name, address and occupation of each executor.

First Executor

Full name _____

Residential address _____

Relationship to you e.g. Husband /Wife / Sister / Brother etc.

Second Executor - if you choose to have one

Full name _____

Residential address _____

Relationship to you e.g. Husband / Wife / Sister / Brother etc.

12. Guardian for children

If both you and your spouse/partner die before one or more of your children attain the age of 18, do you wish to appoint a guardian? If yes, who will it be?

Full name _____

Residential address _____

Relationship to you e.g. Father /Mother / Sister/ Brother etc.

13. Specific Gifts

Do you wish to benefit any person or organisation with a gift e.g.?

(i) Personal property (etc. jewellery, furniture, car etc.)

(ii) Real property (etc. house, farm, land etc.)

(iii) A specific sum of money (etc. \$5,000)

Please give the full name, address and particulars of gift, for each beneficiary.

Specific gift

14. Residual Estate

Your Residuary Estate is the balance of your estate after the payment of all expenses, etc. funeral expenses and executor commissions, duties, liabilities and specific gifts.

How do you wish to distribute your residuary estate? For example

- (i) Give it to any one person or group of people etc. husband, wife, partner or children;
- (ii) Give it to a charitable organisation, or
- (iii) Divide it amongst a group of persons and/or charitable organisations;
- (iv) Hold it on trust to be invested for your family.

Please give the full name address and age of each beneficiary and specify the proportion of your residuary estate you wish the beneficiary to receive.

Who will inherit your residuary estate? Most people choose their partner

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc. _____

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc. _____

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc. _____

Default Beneficiaries first level

If the person(s) you have left your residuary estate to has predeceased you who will be the next in line to inherit e.g. your children.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

Default Beneficiaries second level

If the first level default beneficiaries have predeceased you, some people go one step further and leave their residuary estate to another group e.g. brothers, sisters, charities. Not everyone makes this decision.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

General Matters

1. Have you lent anyone any money or given a gift that you would like to be taken into account when your estate is distributed? If yes, please give details.

2. Is there any debt owing to you that you do not want repaid after your death? If yes, please give details.

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3. Is there anyone other than your spouse/partner or children whom you currently support or help to support?
If yes, please give full name, address, and relationship to you, occupation if known.

Full name _____

Residential address _____

If applicable their relationship to you e.g. Father/ Mother / Sister/ Brother etc.

4. Do you have a family trust or company? If so consideration will need to be given to the assets it holds.

5. Do you own Real Estate?

If so is it owned by you out right or with another person/company

If another person/company do you own as joint tenants or tenants in common

6. Do you have Life Insurance or Superannuation?

Have you made a nomination as to who will receive the proceeds of those policies?

Most people have a life insurance policy attached to their superannuation fund. The proceeds from these policies are not necessarily distributed in

accordance with your will. It is important that you advise us of any Superannuation Fund or Life Insurance policy you may have.

7. Do you wish to donate organs?

9. Do you wish to make your body available for research?

10. Do you wish to be buried or cremated?

11. Do you wish for Lord Commercial Lawyers to be solicitors for your estate?

12. Your will can be challenged by a person who believes you should have provided for them or left more to them. If there is anyone whom you are not including in your will that might challenge your will then we must discuss your decision.

WILLS PROBATE & POWERS OF ATTORNEY

Why make a Will?

By making a will you are exercising your legal right of directing to whom and in what manner your assets should be distributed on your death and who should look after your affairs.

What if there is no Will?

When there is no will or no valid will, you are said to die "intestate".

Your estate may not be divided according to your wishes because legislation sets out how your estate will be distributed.

If you die without leaving a will, your spouse will receive the first \$100,000, the personal chattels and one-third of the balance of your estate. Your children will receive the remaining two-thirds shared equally between them; your spouse will also have the option of buying your interest in the matrimonial home at its value at the date of your death.

If you are not married and have no children, your estate will pass to your parents if alive and, if not, then to your brothers and sisters, nieces and nephews, grandparents and, in some cases, cousins. If no relatives can be found after extensive searching the government will inherit your estate.

The disadvantages of not having a will are that:

- The rules; of intestacy, may not accord with your wishes;
- De facto spouses, step-children, friends and favourite charities may miss out;
- Your children or other minors in your care may not receive the protection you would have desired. Also you will not have the protection of appointing a guardian for them;
- Incapacitated members of your family and their own assets may be put at risk;
- Your estate may be administered by someone you would not want to appoint.

Who may make a Will?

Any person (married or single) over the age of 18 who has the mental capacity to understand what is being done may make a will.

Why should I revise my Will frequently?

A will should reflect your current domestic and financial situations. If either of these changes, you should revise your will.

If you marry, a will made prior to the marriage is no longer effective. If you separate, a will made prior to the separation will not be affected. If you divorce, any gifts to your divorced spouse and his or her appointment as executor will be automatically revoked.

If these consequences are not in accordance with your wishes, you must make a new will.

Your choice of an executor and a guardian should also be reviewed from time to time as circumstances change.

Why should I consult a Solicitor?

We will not only ensure that the will is properly drawn up correctly signed and witnessed, but will also discuss with you such matters as:

- the selection of an executor and the appropriate powers to be given to him or her;
- the selection of a guardian for your infant children and how funds available for the children's maintenance, education or benefit should be invested;
- what assets you can dispose of by your will and what assets you cannot, such as those owned by a family discretionary trust;
- minimising capital gains tax liability;
- what liabilities you need to provide for in your will and whether your life insurance is adequate in the circumstances;
- who could make a claim against the estate and how best to avoid a testator's family maintenance claim;
- the option for providing for a de facto spouse, for second marriages and blended families;
- the appropriate age for beneficiaries who are minors to take their share of the estate;
- funeral arrangements;
- where to keep your will, who should know where it is kept, and in what circumstances it should be reviewed;

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- the benefits of having a Power of Attorney.

Who should be my Executor?

You should appoint two adults (members of your family, friends or professional advisors) or a trustee company as your executors. There is nothing to prevent a beneficiary from being executor.

What is the role of an Executor?

Certain work must be done by an executor with the help of the estate solicitor and others. The work that must be done includes:

- attending to funeral arrangements;
- notifying any banks, insurance and other companies and other relevant organisations of the death;
- ascertaining and taking control of all assets;
- identifying the beneficiaries and their entitlements;
- obtaining the grant of probate or letters of administration;
- resolving all estate liabilities and disputes which will include settling final income tax liability and may also include waiting for the six month period after the grant during which time family claims against the estate can be started;
- distributing assets to beneficiaries either by transfer or by sale of assets and distributing moneys realised;
- investing funds or managing the assets of the estate on behalf of beneficiaries;
- keeping property held in trust (etc. for the life of beneficiaries) in good repair, insured and covered for rates and taxes;
- acting impartially and in the best interest of all beneficiaries.

Should an Executor be paid?

An executor is entitled to claim all costs and expenses incurred in administering the estate. He/she can apply to the Supreme Court for an executor's commission of up to 5% of the value of the estate if the administration is particularly complex and time consuming. He/she cannot claim for time unless

authorised by the will but he/she is entitled to claim an “executor’s commission”. A commission is rarely charged when the executor is a family member.

Trustee companies usually charge on a special scale with various levels of up to 5% of the capital value if the estate for administering the estate and up to 6% on all income received by the estate.

What rights do Beneficiaries have?

If you are entitled only to a specific gift of land, money or goods you are not entitled to general information about the estate. You are entitled to expect reasonable diligence from the executors and if a gift has not been transferred within a year after death, then some explanation should be provided.

If you are entitled to share in residuary estate (i.e. in the estate left after specific gifts) you are entitled to:

- a copy of the statement of assets and liabilities;
- a copy of annual accounts;
- inspect share certificates, bank books, land titles, art works, jewellery etc.. and to see any valuation for these things;
- a copy of the will.

If you request copies of these documents you must be prepared to pay the costs involved for the estate in providing this information.

If you are entitled to a cash gift the estate must pay interest on this gift at the rate of 8% per annum commencing one year after death.

Beneficiaries who have particular wishes in relation to funeral arrangements ought to consult with the executor at an early stage to establish whether there are any specific directions in the deceased’s will.

A gift of income-earning property (such as rented land or shares) carries with it the income earned from the date of death. Likewise, the beneficiaries must bear all costs of maintaining the assets after the date of death.

What claims can be made against the Estate?

Anyone who was owed money by the deceased while he/she was alive may pursue a claim against the estate.

In addition, the law gives certain people who the deceased had the responsibility to provide for the right to claim a share or greater share in the estate.

To succeed in such a claim the applicant must convince the court that the estate has not made adequate provisions for that person. All such applications must be started within six months after the date of the grant of probate or the letters of administration.

What costs are involved?

Income tax will be payable on income earned by the estate until all the assets have been distributed. Executor's commission may be payable depending on the circumstances. Solicitor's costs in assisting the executor will be payable in accordance with the scale. These costs will depend on the size of the estate and whether or not a grant of probate is required to distribute the assets.

POWERS OF ATTORNEY

What is a Power of Attorney?

A power of attorney is a document authorising a person to act on behalf of another person.

If, for example, you were going overseas or required hospitalisation, signing a power of attorney would allow someone you trust to act on your behalf in your absence.

You can give a person power to act on your behalf in limited circumstances: for example, to sell your house or purchase a house, for a specific figure, to operate your bank account or to act on your behalf for a limited period of time.

Alternatively, you can give a person control of all your business affairs by giving him/her the authority to do anything on your behalf.

Power of Attorney (Medical Treatment)

An Enduring Power of Attorney (Medical Treatment) gives the person you appoint the authority to make decisions about medical treatment on your behalf if you become incompetent through ageing, physical or mental illness or injury. An Enduring Power of Attorney (Medical Treatment) must be made in the prescribed form of the legislation and witnessed by two adult witnesses, one of whom must be a person authorised to take statutory declarations (such as a solicitor). The authority only becomes effective if you become legally incompetent i.e. unable to make decisions on your own behalf. This document only gives the person whom you have given the authority power to refuse medical treatment if he/she believes that it would cause you undue distress, or if he/she believes you would have thought the treatment was unwarranted. Such person cannot authorise administration of particular treatment.

If anyone with a special interest in your affairs believes that your agent is not acting in your best interests, an application can be made to the Guardianship and Administration Board for a review of the situation.

All power of attorney documents should include the specimen signature of the Attorney.

How can a Power of Attorney be withdrawn?

If you wish to revoke a power of attorney, you should sign a document called a "Revocation of Power of Attorney".

The fact that a power of attorney has been revoked must be communicated to the attorney. If not, the actions of the attorney whilst under the belief that the power of attorney is still valid are effective and binding on you, regardless of the revocation.

If possible you should ask the person to whom you gave the power to give you back the document creating the power when you revoke it and provide that person with a copy of the revocation.