



PLAIN ENGLISH GUIDE

MAKING A WILL

Making a Will is the most important legal document that a person will sign during their lifetime. Briefly, a Will names your executor, who is the person responsible for looking after your affairs once you are dead. It also names your beneficiaries who are the people entitled to your assets upon your death.

What happens if I don't have a Will?

A person who dies without a Will dies "intestate". When a person dies "intestate" the law determines how a person's property is distributed. The rules concerning how your Estate is to be distributed will not necessarily reflect your wishes and may pass in an unintended way. If there are no close relatives then your Estate may pass to the government.

One of the disadvantages of dying without a Will is that your Estate will be distributed in accordance with a predetermined formula. Often this is not practical and it may not be tax effective.

Another of the major disadvantages is that it can be much more costly to finalise the Estate of the person who dies without a Will. There are more formalities and it can be a more time consuming and costly process. You could avoid the expense and worry to your family by making a Will.

Your Will could also include:

- The appointment of Guardians for the children.
- Often where children are involved the assets cannot be distributed until the children attain the age of eighteen (or later if you choose). Should something happen to you and your spouse, you can appoint by Will a person of choice to be Trustee to control the assets until your children reach 18. You may also give some specific directions about how some of the capital and income can be used for the benefit of the children prior to them turning 18.
- Directions regarding burial.
- Directions that personal assets be divided in a particular way.

When should you make a Will?

All adults, that is people over the age of 18, should have a Will.

It is particularly important to review your Will on a regular basis. We suggest that you review your Will at least every five years and whenever your circumstances change. For example if you enter into a new relationship, get married or separate then you need to reconsider your Will.

Keep in mind that Marriage revokes a Will. Divorce also revokes a Will to the extent that it refers to your ex-spouse.

Other circumstances where you need to update your Will include:

- When you acquire property or dispose of property
- If one of your Executors becomes unsuitable or unable to act as Executor because of a change in your relationship, their age or their health.
- A beneficiary dies.
- You would like to change your Executors, for example, if your children become adults you may wish for them to act as your Executors.



Home Made Wills

It is possible to make your own Will by purchasing a Home-made Will Kit or a Newsagents Will. However a Will is an important legal document and it is in your best interests to have one professionally drafted.

Commins Hendriks have encountered a number of problems with home-made Wills which have unintentionally contained errors and as a result a considerable amount of time and costs was spent in rectifying the problem with the Will.

It is important that Wills are signed properly. The law is very detailed and complex concerning the signature and witnessing of Wills. If the Will is not signed properly it will cause problems in the administration of your Estate. There are also a number of technical rules concerning the clauses contained in a Will.

It is for these reasons, worthwhile for a Solicitor to prepare the Will for you. Can your Estate afford the lengthy delay and court cases over a Will which is not drawn properly? It may cost thousands of dollars to rectify an unintended mistake. The cost of getting the Will professionally drawn would be a fraction of these costs.

What items to include in your Will

Your Will must deal with all of your assets. It needs to deal with:

- Any land, houses or commercial property that you own. It is important to keep in mind that property may be held as Joint Tenants or Tenants in Common. If a property is held as Joint Tenants then on your death your share will automatically be passed to the surviving Joint Tenants without reference to your Will or without reference to your Estate.
- Shares in Private or Public Companies
- Monies held in bank accounts and term deposits
- Other investments
- Some life insurance policies
- Employment entitlements
- Personal effects

What items are not included in your Will

- Superannuation. You should consider a Binding Death Benefit Nomination to your superannuation fund to direct the Trustee of your superannuation fund to distribute your superannuation in a specific way.
- Some Insurance Policies.
- Any property held as Joint Tenants.
- Family Businesses conducted through companies, family trusts or partnership. You will need to consider in conjunction with your Accountant and your solicitor the succession to the business.

What you should bring with you to your appointment at Commins Hendriks?

- Consider who would be your Executors and who would be your backup Executors if the original were deceased, unable or unwilling to act as your Executor.
- What assets do you have to leave.
- Who will be the beneficiaries in your Will? Are any of the beneficiaries minors?
- Have you considered the implications of the Family Provisions Act and whether you have a responsibility to consider one of your relatives and or dependents?