

What is a Will and why do I need one?

Every adult should have a Will. As you accumulate assets it is a good idea to make sure that they pass to the people you want them to. If you don't have a Will, an 'Intestacy' occurs, and your assets may pass to people you don't want them to. A Will also provides you with the opportunity to name guardians for your children, establish a trust or donate to a charity.

What is an Executor?

An Executor is the person you appoint in your will to administer your estate. Usually, this person would be your spouse, de facto, partner or a close family member or friend. You can have more than one executor. Sometimes people appoint a professional person such as a solicitor or an accountant or a professional trust company. We can speak to you about the appropriate person for you.

Who sells the Estate Property?

The executor consults with the beneficiaries and seeks their instructions about the sale of property. Beneficiaries may take a transfer of the property or they may request the executors to sell or auction the property. In some instances though, the deceased may have set out in their Will that they require the sale of assets prior to distribution to beneficiaries. Executors may also need to apply for Probate of the Will before funds in the estate can be accessed and distributed.

What is the difference between assets held jointly or as tenants-in-common?

Jointly owned assets don't form part of your estate. They pass 'by survivorship' to the surviving spouse or co-owner. Assets held by you as a tenant-in-common pass under your Will to your nominated beneficiaries.

Where should I keep my Will?

A Will should be kept in a safe place. We offer a free storage service to our clients and recommend our clients leave their original Will in our fire-proof safe and to tell someone you have done this.

How often should my Will be revised or updated?

Making or altering your Will is particularly important when life circumstances change. It's a good idea to review your Will every 3-5 years to ensure that it reflects your wishes. You definitely need to review and possibly change your Will if you: get married, divorced or separate, enter into a de facto relationship, children or grandchildren are born, a beneficiary dies or your executor dies, there is a change in your financial circumstances.

What happens to any debts I owe if I have a Will?

Funeral and estate administration costs must be paid first. All other debts are then paid. Then distribution of the remaining estate can be made. If there isn't enough money in the estate to pay debts, they are paid proportionately from the available funds. Debts are not passed onto families or beneficiaries.

Who can contest my Will?

A spouse, a de facto, a child (biological, step-child or adopted) or a personal financially dependent on the deceased may contest a Will.

Can people contest my Will if I leave them a Bequest?

Yes, they may still have the right to contest the Will if they feel they are entitled to a larger share of the Estate. These disputes often require an application to the Supreme or District Court for determination. Specific matters must be proved for applications to succeed.

Will getting Married or Divorced affect my Will?

Your Will is revoked or cancelled if you get married - unless your Will states that it is specifically made in contemplation of marriage. Divorce revokes any provisions in the Will in favour of your former spouse including appointments as an executor or guardian, but other provisions for example, for children, may still apply.

Why have O'Shea Dyer Solicitors prepare your Will?

We have experienced lawyers who can advise and draft your Will and all other estate planning documents. We make the process as simple and affordable as possible.
