



## Wills and Estates

### Do I need a Will?

The answer to this question is generally “Yes”. Any person wishing to give away property after their death should make a will. The making of a will acts to ensure that property owned by you is dealt with according to your wishes and not subject to an arbitrary list of persons established by the Government or after what could be potentially costly court proceedings.

### What is a Will?

A will is a written document that sets out what you want to happen to your possessions (your ‘estate’) after you pass away. Your estate includes any goods you own at the time of death, including cash, savings, property and investments. A will can be made by anyone aged over 18, as long as they have the mental capacity to understand what they are doing. A person under 18 can only make a will if they are married or get a court order to authorise making a will.

### What can I include in a Will?

There are a range of different things that can be included in a will, these include assets such as houses, cars, money, shares, cash, rights and powers (such as the right to appoint the trustee of a family trust), specific belongings such as jewellery, books, photos and other belongings that you would like to mention.

### What makes a Will official?

For a will to be official it must; be in writing, signed by two witnesses who were present when the will-maker signs the will and using the same pen, dated at the time of signing and made of the persons own free will, without pressure from anyone else.

### Can I change or cancel my Will later?

A will can be changed or cancelled at any time and the best way for you to do this is to simply make another one. Some reasons you may want to change or cancel your will include;

- Marriage/De Facto Relationship
- Divorce / Separation
- Involved in new business company or trusts
- Purchasing significant asset/ investment
- Executor becomes ill or has passed away
- Death of Spouse/Partner

### What is an executor and what do they do?

An executor is a person (or sometimes more than one person) named in a will to carry out the wishes of the will-maker after their death. Often solicitors or specialist trustee companies are named as executors.

The Executor may have to;

- collect all the assets and have them valued, if needed
- find out what debts are owed and pay them from the money made by selling the assets
- pass on the assets to beneficiaries

[www.adamslawyers.com.au](http://www.adamslawyers.com.au)

#### **Sydney**

Level 21, 133 Castlereagh St  
Sydney NSW 2000

P: +61 2 8089 3118  
F: +61 2 4722 8955

#### **Parramatta**

Suite 4, L1, 27 Hunter St  
Parramatta NSW 2150

P: +61 2 9635 3404  
F: +61 2 9689 1622

#### **Penrith**

443 High St  
Penrith NSW 2750

P: +61 2 4721 6200  
F: +61 2 4722 8955

#### **Campbelltown**

Suite 2, 10 Main Street  
Mount Annan NSW 2567

P: 1300 856 232  
F: +61 2 4722 8955

- arrange tax returns
- claim life insurance
- arrange the funeral (if required)
- distribute the estate according to Will
- take or defend legal action on behalf of the estate.

### What if no executor is named in the Will?

If the will-maker does not appoint an executor, usually the major beneficiary of the will is appointed to administer (deal with) the estate.

This person who takes on the responsibility of administration is called the administrator. An administrator has the same responsibilities as the executor.

However, they must apply to the Probate Office of the Supreme Court for 'letters of administration', not grant of probate.

### What happens if someone passes away without a Will?

If you pass away without a will the law decides who gets your assets. This is called 'dying intestate'.

Assets will usually pass to your surviving spouse/partner and children, and then next-of-kin.

These rules apply to everyone and do not take into account an individual's wishes or situation.

The estate does not pass to the government unless the deceased has no living relatives.

If there is no valid will an application must be made to the Supreme Court for 'letters of administration'.



### When can a Will be challenged?

Your will can be challenged after you pass away if:

- you did not have the testamentary capacity to make a will at the time you signed it
- you made the will under the influence of others
- a person you had a 'responsibility' to provide for, believes you haven't left them a fair share of your assets.

Any person who can show that the will-maker had a 'responsibility' to provide for them can challenge a will by commencing proceedings in the Supreme Court.

The Court will look at:

- whether the person who passed away had a responsibility to provide for the applicant
- whether adequate provision was made for the applicant
- if not, what provision should be made
- the physical, mental or intellectual disability of the applicant and any other beneficiary.

At Adams & Partners Lawyers, we value our clients.

We work hard for our clients and we are committed to ensuring we obtain the best results for you.

Contact us today for any legal assistance you may need.

[www.adamslawyers.com.au](http://www.adamslawyers.com.au)

#### Sydney

Level 21, 133 Castlereagh St  
Sydney NSW 2000

P: +61 2 8089 3118  
F: +61 2 4722 8955

#### Parramatta

Suite 4, L1, 27 Hunter St  
Parramatta NSW 2150

P: +61 2 9635 3404  
F: +61 2 9689 1622

#### Penrith

443 High St  
Penrith NSW 2750

P: +61 2 4721 6200  
F: +61 2 4722 8955

#### Campbelltown

Suite 2, 10 Main Street  
Mount Annan NSW 2567

P: 1300 856 232  
F: +61 2 4722 8955