

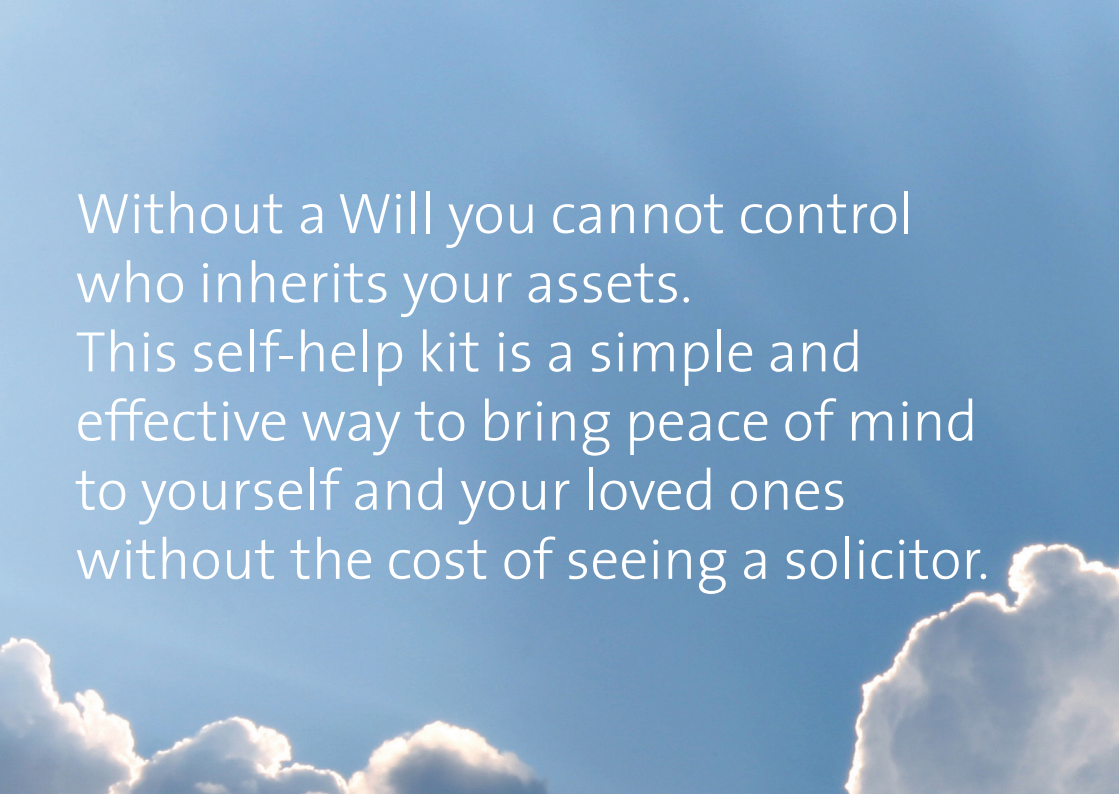


Legally  
Approved

# Plain English Legal Will Kit™

Includes all the easy to understand  
instructions and information you need  
to prepare your own Will, on the  
enclosed Will form, without a solicitor.






Without a Will you cannot control who inherits your assets. This self-help kit is a simple and effective way to bring peace of mind to yourself and your loved ones without the cost of seeing a solicitor.

**IMPORTANT DISCLAIMER:** This Will Kit is not a substitute for legal advice. None of the author, publisher or printer (either separately or together) is involved in the giving of financial or legal advice or the attempt to give financial or legal advice. This kit contains a simple Will, which does not cover complicated family or financial arrangements, such as divorce-related maintenance issues or trusts. If you are unsure about any of the matters raised in this kit, or should you have a complex family situation or asset portfolio, you should seek expert legal advice and accounting advice prior to completing the Will.

The author, publisher and printer do not accept responsibility or liability for any loss, damage, cost or expense that arises from anyone relying on the information provided in this Will Kit. This Will Kit is provided solely on the basis that you will be responsible for making your own assessment of the information within it.



# Plain English Legal Will Kit™

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## Section 1: Before you start

### What is a Will?

A Will is a legal document that contains your instructions on how you want your property (including assets such as your home, car and cash) to be distributed after you have died.

### Why do I need a Will?

You should make a Will as it is the only way that you can have a say in what happens to your assets. If you die without a valid Will your assets will be distributed according to the rules of intestacy set out in legislation in the relevant jurisdiction in your state. These rules apply to people who die without having made a valid Will. Although the rules may suit you, but they also may not.

- The legal procedures involved to distribute your assets under the rules of intestacy are complicated and may cause delays, expense, worry and even hardship to your family.
- Your Estate may be administered by an unfamiliar and unwelcome executor.
- Your property may not be divided as you would like.
- Your children may be placed with guardians not of your choosing.
- Your de facto spouse, step-children and friends may be overlooked.

- Your children, and other minors, may be given a lump sum payment at 18 years of age, although you may have intended for this to happen at a later age.

### Is this Will Kit “Legal”?

Yes. This kit has been legally reviewed and is approved for use throughout Australia at the time of printing. It's intended to help you prepare a simple Will for a relatively straightforward Estate. You should seek expert legal advice if you think someone may contest the terms of your Will or if you have a complicated family or financial situation or if you may want to:

- Learn more about capital gains tax which might result from provisions you intend to make in your Will.
- Give a person a right of occupancy (but not ownership) in a house/unit for the duration of their life or for some other set timeframe.
- Establish a trust.
- Provide for an ex-spouse who you are legally obliged to support by maintenance payments.
- Give gifts to an organisation that is not a registered charity.
- Give the residue of your Estate to a number of people.

Wills often include difficult and uncommon words.

Here's a list of words (and their meanings) that you should get to know before you start preparing your own Will.

**ATTESTATION CLAUSE:** The wording at the end of your Will which records that two witnesses saw you sign the Will in their presence.

**BENEFICIARY:** A person or entity who you want to receive rights or benefits under your Will. This could be a family member, a friend or an organisation such as your local hospital or school.

**BEQUEST:** A term used to describe an item left by you to a beneficiary in your Will.

**CAPITAL GAINS TAX/CGT:** Capital Gains Tax is the tax that is paid by either your executor or beneficiary on profits received by them from the sale of certain of your assets.

**CODICIL:** A legal document you would need to prepare to amend your Will. In most cases it will be simpler for you to draft a fresh Will than amend an old one.

**DE FACTO RELATIONSHIP:** Two people living together in an unmarried state. This includes same sex relationships.

**DEPENDANT(S):** A person (or people) who are reliant on you, this may include a partner or child including adult children, as well as any person whom the Testator had a responsibility to provide for.

**ESTATE:** Means all personal property and real estate owned by you (but excludes any property which you jointly own with another person). If you own an asset jointly with someone else rather than as a tenant in common, then the asset automatically becomes the survivor's asset. It does not form a part of your Estate.

**EXECUTION:** The act of signing and dating your Will and having it witnessed.

**EXECUTOR:** The person you have named in your Will to execute (or carry out) its directions. (You should speak to your chosen executor first before naming them in your Will).

**GUARDIAN:** The person you name in your Will to look after your children (if they are still minors) or any mentally impaired dependants. (You should speak to your chosen guardian first before naming them in your Will).

**INTESTATE/INTESTACY:** You are intestate if you die without leaving a valid Will or if your Will does not dispose entirely of your Estate.

**MINOR:** A person who is not yet 18 years old.

**PRE-DECEASE:** To die before someone else.

**PROBATE:** From the Latin word meaning "to prove". The process by which your executor will work with the Probate Office to help to "prove" that your Will is valid and that it is the last one you made.

**PROBATE OFFICE:** The Probate Office is the government department in your State or Territory that deals with all applications for grants of Probate. The Probate Office recognises your executor's authority to look after your Estate by issuing a Grant of Probate (commonly called Probate).

**RESIDUARY ESTATE:** Means the remainder or residue of your Estate after specific gifts, debts and testamentary and funeral expenses have been paid.

**REVOKED:** When you cancel a Will you are known as having revoked it.

**TESTATOR:** The Latin word for a person who creates a Will.

**TRUST:** An arrangement whereby a person (the trustee) holds property "in trust" for someone else (the beneficiary of the trust).

**VALID:** A valid Will is one that has been accepted by a Court and put into effect by a grant of probate.

**WILL:** A legal document which lets you dispose of your Estate on your death.

**WITNESS/ATTESTING WITNESS:** The two adults who sign your Will to testify that it was validly signed, witnessed and declared to be your last Will. You must ensure that none of your beneficiaries or your executors (or any of their spouses) act as your witness as they could automatically lose their entitlements to your Estate.



# Frequently Asked Questions

## What is a valid Will?

A valid Will is one that has been accepted by a Court and put into effect by a grant of probate. To be valid your Will must be:

- **IN WRITING** – handwritten in permanent ink (not pencil), typed or printed;
- **SIGNED** – you must sign your Will on each page (including back and front);
- **WITNESSED** – two adult witnesses must be present together when you sign your Will and they, too, must sign in your presence each page (including back and front).

If your Will is not made in this manner it may be invalid.

## Can I make a Will myself?

Yes. You can draft a Will yourself. There is no legal requirement that a solicitor must do this for you. This kit will help you to take the steps you need to draft a simple Will for a relatively straightforward Estate.

## How old do I need to be to make a Will?

You must be 18 years of age or older.

## Am I free to distribute my assets as I please?

Yes. However, you should make proper provision for your partner, children, including ex-nuptial children and any dependants you may have. If you do not, they could take proceedings under legislation to obtain provision out of your Estate depending on their needs.

## What happens to property in joint names?

Property that you own as a “joint tenant” will, after you die, automatically pass to the other owner regardless of what is stated in your Will. Property that you own as a “tenant in common” will mean that your asset is broken into shares and can be passed onto your chosen beneficiary. You should get expert legal advice if you are not sure about the ownership structure of your assets.

## How can I make sure my wishes are carried out?

You should nominate a person in your Will called an executor to handle your affairs after you die. You can name more than one person to act as executor. You can choose anyone who is 18 years of age or older to be your executor. This could include: your partner, family member, a friend, your accountant or solicitor. However, you should first ask them if they are prepared to take on the task and confirm with them that they have been appointed.

Being an executor is a very responsible position and is a role that should only be entrusted to someone who you trust. The executor has to obtain probate of your Will and pay any taxes, debts or expenses before finally distributing the balance to the beneficiaries named in your Will. An executor who is not a beneficiary may apply to the court for payment for his or her work as executor.

## **Can I change my Will if I change my mind?**

Yes. You can change your Will at any time. If your circumstances change then you can and should amend your Will. However, you cannot simply make a change by, for instance, crossing something out on your original Will and writing in your new wishes. After your Will has been executed (that is, signed by you and the witnesses), you must not rub out, erase or in any other way alter your Will once it is completed. If your changes are minor, you can make a Codicil (a separate document in which you change a provision in your Will) but it is usually less complicated and easier to make an entirely new Will. Your new Will cancels any earlier Wills. Your last known Will is the only valid one.

## **How can my spouse and I ensure our Wills are consistent?**

You can each sign a separate Will that has been drafted in exactly the same terms. These “mirror Wills” mean that if there is an accident involving the both of you, your Wills are consistent.

## **What if I marry or divorce?**

If you made a Will before you married, it will automatically be revoked when you marry, unless it was made with a particular marriage in mind, (or was recorded as having been made “in contemplation of marriage”). So if you marry, it is more than likely you will need to make a new Will.

Any gift or appointment (e.g. as an executor or guardian) in favour of a former spouse in your Will is automatically revoked when a divorce decree becomes absolute or a decree of nullity is made. It is in your best interest to make a new Will if you are divorced or have been separated for an extended period.

## **What if I change my address?**

Your Will does not have to be updated if you (or any of your witnesses) change address. Address details are used to help identify you and your witnesses.

## **What happens to my superannuation?**

The rules regulating most superannuation funds state that the fund has the discretion to decide where it pays your accumulated superannuation benefits. This is because you will be deemed a “member” of your fund and not its “owner”. The owner of your superannuation fund is the trustee of the fund (and who you named as the beneficiary when you joined the fund).

## **How is my life insurance affected?**

The payout on an insurance policy that you own at the time of your death normally forms part of your Estate. It will be subject to your Will unless there is a specific person (or persons) nominated on your policy as your beneficiary. If there is a specific nomination, then the money will be paid directly to that person. You will not need a Will to distribute those funds for you.

## **What if my Will is lost or destroyed?**

You must immediately write a new Will if your existing one is destroyed or lost. This is because your Will must be in writing to be valid.

## **Does my Will need to be written in English to be valid in Australia?**

No, your Will doesn't need to be written in English. A Court will still uphold it as valid if your executor obtains an authorised translation and can show that you knew and approved of the contents of your Will.

## **What if I have a visual impairment or disability that stops me reading or writing properly?**

You should still make a Will to ensure your assets are distributed according to your specific wishes. However, you should seek expert legal advice to ensure that your Will is put together in a legally binding way – that is, properly drawn, signed and witnessed in light of your impairment or disability.



**GETTING IT DONE – STEP BY STEP:** You now need to think about what to put in your own Will. The easiest way to do this is to get a pen and some blank paper and to work your way through the following steps.

Do not fill out your Will until you have followed steps 1 to 7 below. You should get expert legal advice if you get confused or are unsure of what is required at any stage.

## Section 2: Putting pen to paper

### Step 1 - Make a list of your assets and debts

- It's important to make sure that your Will accurately reflects what you have to give away. This means you should first take some time to identify all of your assets and debts. Your debts will not die with you. Your executor will still have to pay for them out of the assets you leave behind. These debts might be small (such as your electricity bill) or large (like your mortgage).

### Step 2 - Choose your executor(s)

- You can choose any person (who is 18 years of age or older), a lawyer or a trustee company to act as your executor. The fees charged by the last two options are usually very high. Most people prefer to avoid these costs by appointing one (or more) of their beneficiaries instead. Often your principal beneficiary such as your spouse or one of your adult children would be suitable.
- You should choose someone who you can trust to look after things responsibly for you when you die. It is always best to choose someone who is willing to take on the responsibility. You should not appoint someone who is likely to die before you do.
- Your Will has been clearly drafted to allow you to nominate an alternative executor if your preferred executor(s) die before you do.

### Step 3 - Choose your guardian(s)

- If you presently have any minor children (who are under 18 years of age) or if it is likely that you may have minor children in the future, you must choose someone to take responsibility for them should you and their other natural parent both die. Natural parents usually have custody of their own children.

This means that if one parent dies then the other will usually carry on custody by default. If you are separated or divorced from the other natural parent, and you die, the other natural parent will ordinarily receive automatic guardianship (even if you nominate your current spouse as guardian in your Will).

- You should carefully ensure that the person(s) you nominate both want the responsibility and have the capability. You should also consider your children's wishes.
- Your Will has been clearly drafted to allow you to nominate an alternative guardian if your preferred guardian(s) die before you do.

### Step 4 - Give your funeral directions and any organ donation request

- You can use your Will to state your preferred funeral arrangements and to give any other instructions. This can relieve your family members or others from making a decision as to whether you are buried, cremated or to have your body organs donated. However, your executor will have the final say in the event of a dispute.
- The organ donation part of your Will is strictly optional. It enables you to consider organ donation for transplantation and research. If you want to do this then you should discuss your decision with your family and your executor at the time you make your Will. They must be involved to ensure that your wishes are carried out. Arrangements need to be made as soon as you die to ensure that your organs can be used.



## Step 5 - Make a list of your beneficiaries and any specific gifts

- You need to decide which beneficiaries will get specific gifts (if you intend to make any) and which will share in your residuary Estate.
- You should obtain expert legal advice if you wish to leave any dependants or close family members out of your Will (or if you wish to leave them less than they are likely to expect to receive from you). This is because they could bring a Court challenge to have your Will varied.
- To help your executor locate beneficiaries you should describe them as fully as possible in your Will. You should try to include details such as their full name and address; relationship to you (eg son/next door neighbour); date of birth and occupation.
- Your Will has been clearly drafted to allow you to nominate an alternative beneficiary if your preferred beneficiary(/ies) die before you do.

## Step 6 - Select your witnesses

- You must sign and date your Will in the presence of two witnesses who are each aged 18 years or older. Their role is to be contacted (if needed) after you die to confirm they saw you sign your Will. Your witnesses do not need to know what is written in your Will. You are not obliged to show its contents to them. You should choose witnesses who are likely to live longer than you and who are likely to reside in the same place for some time. This will make it easier for your executor to find them, if required.
- Your witnesses must sign the Will in each other's presence and in your own presence.
- You and your witnesses should each ensure that you sign each page of your Will including the front cover page and back page.

## Step 7 - Consider the simultaneous death clause

- Your Will includes a simultaneous death clause to protect your Estate from being passed to another deceased Estate should any of your beneficiaries die, either with you or, within a set period afterwards. The usual period is 30 days. This clause will help your executor avoid unnecessary legal costs and delays in administering your Estate.
- You must enter a time period in your Will to give effect to the simultaneous death clause. Alternatively, you can cross out this section if

you do not wish for it to apply to you. Note that this cross out must be initialed by you and each of your witnesses at the time you sign and date your Will.

## Step 8 - Draft your Will

- Name yourself as the Will maker.
- Revoke any earlier Wills.
- Name an executor.
- Specify gifts in detail. Gifts may be a monetary amount or may be a particular item which should be clearly and accurately described.
- Nominate who is to get your residuary Estate.
- Name a guardian for your children (or delete this section if it doesn't apply to you).
- Nominate a trust age for any minor beneficiaries (or delete this section if it doesn't apply to you).
- Note your preferred funeral directions and any 'special instructions' including body organ donation.
- Nominate a time period in the simultaneous death clause (or delete this section if you do not wish it to apply to you).

## Step 9 - Sign your Will

- Sign and date the Will on the same day in front of two witnesses who watch you while you sign.
- You and your witnesses must sign at (or near the foot) of each separate page of your Will.
- You and your witnesses should use the same pen (do not use pencil as this can be erased and so can invalidate your Will).
- If you make any cross-outs, alterations or additions in your Will then write your initials in the margin near the change and ask your witnesses to write their initials as well.
- If there are any blank areas on your Will then rule a diagonal line through them to prevent anyone writing in the space later. You should then initial the diagonal rules.
- Do not pin or staple or clip anything to your Will (as these could leave marks on the Will suggesting that there were once further pages attached to it and make it harder for your executor(s) to obtain probate).
- Your witnesses must print their full names, address and occupation below their signature.
- Your witnesses must not be your beneficiaries or related by birth or business to any of your beneficiaries.
- Your witnesses must not be your executors or related by birth or business to any of your executors.

## Trust for Minors

The share of any beneficiary(/ies) who is/are under the age of 18 years shall be held in trust and is to be administered by the trustee for the purpose of the minor beneficiary's/beneficiaries' maintenance, education, advancement and otherwise until he/she/they reach the age of .....

## Funeral Directions

I want to be buried/cremated and my remains placed at .....

I want a ..... service

to be held at .....

Other instructions .....

## Body Organ Donation

My body is/is not available for any medical or scientific purposes.

## Simultaneous Death Clause

If any beneficiary(/ies) should die at the same time as I should die or within ..... days of my death, then he/she/they will be deemed to have predeceased me.

## Execution and Attestation

Dated .....

Signed .....



We the undersigned were both present at the same time and saw the Testator sign this Will and then we signed it ourselves in the Testator's presence:

Signature of 1st Witness

(Print) Full name of 1st Witness

Address

Occupation

Signature of 2nd Witness

(Print) Full name of 2nd Witness

Address

Occupation

# LAST WILL AND TESTAMENT

This is the last Will and Testament of me \_\_\_\_\_  
of \_\_\_\_\_

## Revocation of former Wills

I hereby revoke all former testamentary documents previously made by me.

## Executor

I appoint as the executor(s) of my Will and trustee(s) of my Estate \_\_\_\_\_  
of \_\_\_\_\_  
and if he/she/they fail to survive me or are unable or unwilling to act for any reason,  
then I appoint \_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_ to act as my Executor and Trustee.

After the payment of my just debts, funeral and testamentary expenses and taxes I direct my Estate to be distributed in the following manner:

## Gifts

I give, devise and bequeath the following gifts \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Residuary Estate

And I give the residue of my real and personal Estate to \_\_\_\_\_  
of \_\_\_\_\_  
provided \_\_\_\_\_ survive(s) me by more than 30 days,  
and if \_\_\_\_\_ does/do not then I give the residue of my real and personal  
Estate to \_\_\_\_\_  
of \_\_\_\_\_

## Guardian

I appoint \_\_\_\_\_  
of \_\_\_\_\_  
to be the Guardian of my minor children during their respective minorities.



# Section 3: What now?

## How do I store my Will?

Keep your Will in a safe place. It is preferable not to keep the Will yourself in case it is lost, accidentally damaged or intentionally destroyed by anyone who might disagree with your intentions. If your Will is lost, it may be presumed to have been revoked (or cancelled).

If you have a solicitor or other trusted adviser, you could ask them to store it for you. You should take care to find the option that is best for you as these options can be expensive.

You should keep a copy of your Will and clearly note on it where the original is kept. You should tell your executor where you have stored your Will and that it can be easily released to them after you die. You can leave your executor a letter of instructions with the Will to ensure that any personal matters (you don't want noted in your Will) are considered by them when administering your Estate.

## When should I review and update my Will?

You should review your Will regularly and update it as your family and financial circumstances change. Relevant examples of these types of events include:

- Your marriage / remarriage / divorce.
- The end of your de-facto relationship.
- Arrival of new children.
- Your purchase of a major financial asset (such as a home or investment property).
- The death of your executor(s) and beneficiary(/ies).
- Your decision to change your executor(s) or beneficiary(/ies).

## Capital City Probate Offices

### ACT

Registrar of Probates  
Supreme Court of the ACT  
4-6 Knowles Place  
Canberra City ACT 2601  
02 6205 0000  
[www.courts.act.gov.au/supreme](http://www.courts.act.gov.au/supreme)

### NSW

Probate Division  
Supreme Court of NSW  
Law Courts Building  
184 Phillip Street  
Sydney NSW 2000  
1300 679 272  
[www.supremecourt.justice.nsw.gov.au](http://www.supremecourt.justice.nsw.gov.au)

### VIC

Probate Office  
Supreme Court of Victoria  
450 Little Bourke Street  
Melbourne VIC 3000  
03 8600 2006  
[www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au)

### SA

Probate Registry  
Higher Courts Registry  
Sir Samuel Way Building  
241-259 Victoria Square Adelaide  
South Australia 5000  
08 8204 2444  
[www.courts.sa.gov.au/civil-cases/probate/](http://www.courts.sa.gov.au/civil-cases/probate/)

### NT

Registry Office  
Supreme Court of the NT  
State Square  
Darwin NT 0800  
08 8999 6562  
[www.supremecourt.nt.gov.au/about/registry/wills-and-probate](http://www.supremecourt.nt.gov.au/about/registry/wills-and-probate)

### TAS

Probate Registry  
Supreme Court of TAS  
5 Salamanca Place  
Hobart TAS 7000  
1300 664 608  
[www.supremecourt.tas.gov.au](http://www.supremecourt.tas.gov.au)

### WA

Supreme Court Registry  
and Central Office  
David Malcolm Justice Centre  
Level 11, 28 Barrack Street  
Perth WA 6000  
08 9421 5333  
[www.supremecourt.wa.gov.au](http://www.supremecourt.wa.gov.au)







## Why you should make your own Will

### **Appoint trustees and executors of your Estate**

You decide who has control over your assets and possessions and who administers your spouse's and/or your children's funds.

### **Appoint guardians over your minor children**

You decide who looks after the welfare and education of your children.

### **Make funeral arrangements**

You decide whether and where you would like to be buried or cremated.

### **Make gifts of your assets to loved ones and friends**

You decide which of your possessions you would like to gift and to whom.

### **Make a donation to charity**

You can decide to make a donation to support your favorite charity.

### **Create a trust for your children**

You can create a trust for your children to take care of their welfare and education.