

Why you should have a Will

A person who dies without a will at law dies 'intestate'. When a person dies intestate the Wills Probate and Administration Act (NSW) determines how a person's property is distributed.

The Act sets out that the estate will be divided in specified shares between any surviving husband/wife or de facto and any children. Where there is no spouse and no children, then the Act provides that the estate passes to the parents in equal shares. If there are not parents then there is a list of classes who take in the specified order.

If there are no relatives then the estate passes to the State of New South Wales.

The major disadvantages of dying without a will are:

1. The law sets out how your assets are to be divided. If you die without a will and leave a wife and children and your assets exceed \$150,000.00, then the surviving partner could be restricted by the fact that half the assets over \$150,000.00 go to the children. Often it is more practical to leave the whole of your estate to your partner on the basis that they will look after the best interests of the children.
2. It can be much more costly to finalise the estate of a person who dies without a will as there are more formalities and paperwork. A relative would need to apply for 'Letters of Administration' and this can be a costly and a time consuming procedure.
3. You do not appoint your administrator who handles the estate. Under a will you can appoint your executor.

Your will can also include:

1. The appointment of guardians for the children
2. Often where children are involved the assets cannot be distributed until the children attain the age of majority (18). Should something happen to you and your spouse you can appoint by will a person of your choice to be the trustee to control the assets until your children reach 18
3. Directions regarding burial.
4. Directions that personal assets be divided in accordance with any list that may be prepared by the deceased.



A will is cancelled:

When a new will is made.

Upon the marriage or remarriage of a person.

Any gifts to a spouse or appointment of a spouse as executor is cancelled upon divorce.

Your will should be reviewed at least every five (5) years and possibly updated when your circumstances or asset holdings change.

This fact sheet is intended to be general information about the law in New South Wales. It is not substitute for legal or other professional advice. The Law Company does not accept responsibility for loss to any person, who either acts or does not act because of this fact sheet.



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