



# Your guide to preparing a will

**A will is an important legal document stating who you wish to receive your assets when you die.**

## Why should I make a will?

A will allows you to dispose of your assets after payment of your liabilities (your estate) as you think fit. Having a will can give you the confidence that the people you care about will be taken care of, and any items with special or sentimental value will go to someone who will appreciate them.

If you don't have a will, the law sets out who will receive your estate, which may not match your wishes. If you have no qualifying family, your assets could go to the Crown.

Your will can also include various other matters, for example:

- guardianship of your children,
- conditions on which a beneficiary is to receive their entitlement, and
- establishing trusts for the financial support of children or others.

## Who can make a will?

- Anyone aged 18 and over.
- Anyone aged under 18 who:
  - is or has been married, in a civil union or a de facto relationship;

- is about to marry or enter a civil union and wishes to make a will which takes effect after the marriage or civil union;
- has joined the armed forces and is (or is about to be) deployed; or
- has a ruling from the Family Court that they have the ability to make decisions about what should happen after they die.

## How long is my will valid for?

Your will is valid until you:

- get married\* or enter into a civil union;
- make a new will; or
- destroy your will.

\* unless your will contemplates the marriage taking place

## What to think about when making your will

### Executor

The executor is responsible for identifying and gathering your property, selling assets if necessary, paying your debts and other liabilities such as tax, and then distributing the remaining assets to the beneficiaries of your will.

You should choose someone with the skills and experience to competently manage your estate, and deal with your beneficiaries impartially. You should also ask whoever you wish to appoint as executor whether they're willing to do so, because they may not want to accept the role.

You can name more than one executor. Also, you can name back-up executors to take their place, if your first choice is not willing or able to act when the time comes.

### Financial requirements

You should consider who is dependent on you and what their financial requirements are. The law says you have a moral duty to provide for close family members (including adult children) in your will, and if you don't include them then they have the right to challenge it (see the Family Protection Act for more information).

You might want to gift specific amounts of money to family members or other people who rely on you, or you can provide for their financial needs in other ways. For example, if someone is living in a house you own, you might state in your will that they have the right to continue to live there (either for a specific period, or for the rest of their life).

If you have loaned money to someone and this does not need to be repaid after your death, you might want to state the debt is forgiven.

### Guardianship

If you have children under 18 years of age, it's important to appoint someone you trust to represent your children's best interests as their guardian.

You can only appoint one guardian. If your children have another surviving parent or guardian, the guardian you choose will share the guardianship duties with the other guardian(s).

When choosing a guardian, you might want to think about factors such as their other commitments, how well they know your children, whether they share your values and beliefs, and their age and health. You should also talk to them and the rest of your family about why you want to choose them.

### Enduring Powers of Attorney

In addition to your will, you should consider whether to prepare an enduring power of attorney (**EPA**). An EPA takes effect when you are still alive if you lose the ability to make your own decisions. This can happen suddenly due to an unexpected event such as an accident or stroke, or might arise due to age or a lengthy illness.

There are two types of EPA. A property EPA gives your attorney the authority to deal with your assets and property. A personal care and welfare EPA gives your attorney the authority to make decisions about matters such as medical treatment, where you live and any care you might need. You can choose to put one or both of these types of EPA in place.

For more detail about EPAs, see our Enduring Powers of Attorney fact sheet.

### Family Protection Act claims

It is important to consider whether adequate provision is made for certain family members in your will. The following people can make a claim against your estate under the Family Protection Act 1955:

- your wife or husband (even if you are currently estranged);
- your de facto partner;
- your children, (including children of previous marriages, children of de facto relationships, and adopted children);
- your grandchildren living at the time of your death;
- any stepchildren who were being maintained or were legally entitled to be maintained by you immediately before the time of your death; or
- your parents, if they were being maintained by you or where you do not have any spouse or any children.

### Property (Relationships) Act claims

Your surviving spouse, de facto partner or civil union partner, even if provided for under your will, can elect to claim against your estate under the Property (Relationships) Act 1976 (**PRA**).

A surviving partner can choose **either** to claim a half share of relationship property under the PRA or to accept what they have been left in their partner's will or, if there is no will, the set share that the Administration Act would provide.

### Testamentary Promises claims

If you have promised to leave someone something in your will in return for that person providing a service for you, that person can make a claim against your estate to enforce the promise. Anyone can make a testamentary promises claim, including non-family members.

The person making a claim would need to show that:

- he or she provided services to you or performed work for you during your lifetime;
- you made a promise to reward him or her;
- there is a link between the services or work and the promise made; and
- you failed to make the promised provision in your will.

### Why you should review your will regularly

Your will is a living document, which should be updated to reflect changes in your life. Keeping your will up-to-date may also reduce the risk of disputes over your estate and challenges to your will.

Regardless of your circumstances, you should review your will every five years, even if it is just to confirm that it still reflects your wishes.

The following is a checklist of some of the things you may like to think about, including life changes that may warrant a review of the provisions in your will.

- **The appointment of your Executors and Trustees:** are the people you've appointed still alive and still willing and able to act?
- **Funeral directions:** you may wish to add or change details as to how you wish your body to be dealt with and your funeral to be carried out.
- **Changes in your personal circumstances:** you should update your will if you plan to marry or enter a civil union, as any earlier will is usually revoked unless made with that event in mind. If you separate, your will's provisions for your spouse or partner remain valid until you are legally divorced, after which those gifts are null and void. De facto relationships do not affect your will in the same way—starting or ending one does not revoke your will or its provisions for your partner.
- **Changes in assets and liabilities:** if you sell your home or buy a new one, any gift of your old home in your will may fail if you no longer own it. Likewise, if you want a new asset to go to someone specific, you must update your will—otherwise, it will just become part of your estate's residue.
- **Changes to your family:** such as the birth of children or grandchildren. You may wish to appoint a testamentary guardian to look after your children or update your will to provide for new children or grandchildren.
- **Death of a family member or beneficiary:** if someone named in your will dies before you, their gift usually fails and becomes part of your estate's residue, which may not be what you want. To avoid this, review your will to see how it affects your estate's distribution.
- **Setting up a family trust:** if you have set up a family trust and want to ensure your property goes into that trust, you will have to provide for that in your will. You may also wish to consider the appointment of replacement trustees after you die, or forgive debts owed to you by your trust.
- **Specific gifts:** if you wish to leave an important item such as jewellery, artwork, or a family heirloom to a particular family member or friend, you should make sure that the item you wish to gift is specifically gifted in your will.
- **Gifts to charities or organisations:** you may wish to leave money to specific charities or organisations. You should ensure that you have the legal name of the organisation correct, otherwise a court application may be required to ensure that it gets to the right place.

Our team of specialist lawyers is at the forefront of New Zealand personal and family law. For further information about wills, please contact your usual Duncan Cotterill lawyer or any member of our [Private Client team](#).

