14/8/2014

# Having a Will

## What is a Will and why is it important to have one?

A will is a legal document that records how you want your property (your "estate") to be dealt with after you die.

Having a will is important. By having a will your family will be assured of how you wanted your estate distributed and how any dependent children should be cared for. It can also help to reduce the chance of there being a dispute over your estate.

The law concerning wills is governed by the Wills Act 2007.

### Who can make a Will?

Anyone can make a will provided they are over 18 and are of sound mind. If you are under 18, and you are (or have been) either married or in a civil union relationship then you can make a will.

### What should I include in my Will?

You must name at least one executor who will be responsible to ensure the provisions of your will are carried into effect. The executor will administer your estate and ensure it is properly distributed.

You must ensure that you have made adequate provision for your dependents. Usually these will be your spouse or civil union partner and your children (including adult children). If you wish to provide less to one child than another, it is important to ensure your reasons for doing so are well recorded. You can also name your preferred guardians for your infant children.

Your will should also state any specific gifts you would like to make. For example, your will can provide for who receives your jewellery and for donations to charity. If you include your funeral arrangements in your will this can make things easier for your loved ones later.

### What happens if I die without a Will?

If you die without a will then you "die intestate". The first problem is that there are no recorded wishes as to what you would like to happen to your body. In itself, this can lead to family dissension.

The next issue which is caused by dying without a will is that letters of administration may need to be applied for. This will usually result in more cost to the estate and more delay before the estate can be paid out, as compared with the process when there is a will.

The Administration Act 1969 governs how your property is to be distributed when there is no will. Usually your property will be distributed to your surviving spouse or partner, your immediate family members or to close relatives in specific proportions. If there are no living relatives (as specified in the Administration Act) then your estate will go to the Crown.

The distribution of your estate may not be according to what you would have wished. This can be distressing for your loved ones. It may also result in financial hardship for them. Children in the family who are neither birth children nor legally adopted children miss out completely when there is no will.

If you die without a will then your family members are left without any certainty as to what your wishes were. This can result in strained relationships and even conflict between the family members left behind as to how your estate is to be resolved.

**How do I make a Will?**

Making a will is important. It is essential that your will is made in the correct manner under the Wills Act 2007. If your will is not prepared, signed and witnessed correctly then it will be invalid and in the absence of the High Court declaring otherwise, you will die intestate.

You may be considering making a will by using a pre-prepared standard form. People often do this to save the cost of having your will professionally prepared. However, it is best to have a lawyer prepare your will.

A lawyer will be best able to advise you on the numerous questions which arise. For example:

- the appointment of suitable executors; (the people who will administer your estate)
- the best way for you to provide for your family;
- how to ensure your wishes are expressed clearly and have the legal effect you intend;
- how to ensure your will is properly drafted, signed and witnessed;
- the best way to reduce the likelihood of someone making a claim on your estate (see our article "**I want to leave someone out of my will - Can I prevent an inheritance claim under the Family Protection Act 1955?**").

**When is a Will invalid?**

A will may be invalid if, for example:

- You have married or entered a civil union relationship after you made your will, unless your will was made in contemplation of that marriage or that civil union relationship;
- You have ended a marriage or civil union since the will was made;
- If it has not been prepared, signed or witnessed correctly;

- If there has been some kind of undue influence on you concerning how you dispose of your property;
- To the extent a gift is made to one of the witnesses;
- Your will is unclear or cannot be given legal effect;
- You were not of sound mind when making the will

**Cancelling or changing your Will**

You can cancel or change your will at any time. It is important to review your will regularly, particularly as and when your circumstances change. For example, you get married or enter into a civil union relationship or when you have children.

When making a will it is important to get good legal advice. Graeme Withers and Julie Withers of Graeme Withers Law are experienced Solicitors who can assist you with all matters concerning inheritance claims, making wills and family matters. Please contact Graeme on (04) 478 4889 (027) 715 5421 or Julie on (04) 478 4888 (027) 478 4888 or by email info@witherslaw.co.nz

*This note is intended for general information only. It is not intended to be relied on as a substitute for legal advice which focusses on individual circumstances.*