

TEN THINGS TO CONSIDER WHEN MAKING A WILL

1. Moral duty to provide provision

If a person making a will does not make adequate provision for the maintenance and support of each person that he or she has a moral duty to provide for, a court can say the will maker got their will wrong and make changes to it after their death.

You may have a moral duty to make provision for:

- Spouse and domestic partner
- Children and step-children
- A former spouse if there has been no family law property settlement
- A member of the deceased's household

There is no formula to determine the amount of maintenance and support necessary. Each situation is different and should be discussed with a Lawyer.

2. Superannuation

A will does not normally dictate what happens to superannuation entitlements of the deceased. Superannuation and any insurance benefit is usually paid to dependents. If you have no dependents, it may be paid into your estate. You can ensure your will dictates the dispersment of your superannuation benefits as you wish by executing a binding nomination forcing your super to be paid into your estate. You will need to contact your super fund regarding this.

3. Validity of will

A draft will has no legal effect. A will is not valid unless:

- It is in writing and signed by the will maker
- When the will maker signs, they intend the document to be their will
- The signature is made or acknowledged by the will maker in the presence of two or more witnesses present at the same time.

4. Listing your property

It is not necessary to list all of a will maker's property in a will. The will takes effect as if the will had been made immediately prior to the death of the will maker. Therefore, a will can only deal with property that exists at the time of the will maker's passing. If a will maker gives a gift in their will but disposes of the gift before their death, the gift will fail. Therefore, a will should be reviewed if your financial circumstances change.

5. Amending a will

If a will maker wishes to amend their will, they can simply make a new one. Alternatively, a will can be revoked by:

- Burning or tearing up the will
- Writing on the will in such a manner a court is satisfied the will maker intended to revoke it

6. Capacity to make a will

A will maker has capacity to make a will if he or she understands the following:

- They are making a will and what that means
- The extent of the property they are disposing of in the will
- The people they ought to reasonably make some provision for in their will
- There is no disorder of the mind that would affect the dispositions in the will

7. Legal validity of the will

A document not executed properly can still be legally valid if a court is satisfied the person intended the document to be their will. In some circumstances a copy can be relied upon, but if the original cannot be found, there is a presumption it has been destroyed.

8. Change of marriage status

A will is revoked by the marriage of the will maker unless the will has been made in contemplation of the marriage. A divorce will normally revoke the appointment of a divorced spouse as executor and any gifts to the divorced spouse made in a will which existed at the time of the divorce.

9. Gifts in a will

Any gift in a will which is ineffective becomes part of the residuary estate. Unless specified in the will, a beneficiary must survive the will maker by thirty (30) days. To be a complete will, it must deal with your residuary estate.

10. Change of marriage status

Once a will maker is deceased, the will may be seen by:

- Any person named or referred to in the will
- Any person named in an earlier will as a beneficiary
- A spouse, domestic partner, parent, guardian or child

Prior to the will maker's death, no one can see the will without their permission. Advising family members and beneficiaries of the contents of the will can avoid hurt and distress following the will maker's death so there are no unexpected surprises.