



Where there is no will, there is a way..... but not your way!

If you die without a will

1. Someone, usually family members, must apply to the High Court for the right to administer your estate (the property you own when you die). Although there is a set priority for who should have this right (spouse/partner, then children, parents, siblings etc), there can be conflict. A child may believe the surviving spouse is incompetent, children of a first marriage might not like their parent's new partner, there might be a de facto partner as well as a spouse (!), or if there is no spouse or partner, there could be disagreement amongst the children as to who should have the right to apply. Costly courtroom battles can follow. Creditors also have the right to apply but rank behind beneficiaries in priority.
2. Section 77 of the Administration Act 1969 sets out who gets what from your estate if you die without a will. This may or may not be what you would want to happen.

For example, if you die leaving a surviving spouse/civil union or de facto partner and children:

- all personal chattels (furniture, books, vehicles etc) go to your spouse/de facto partner (which could upset your children).
 - the administrator must then pay the spouse/partner, out of the balance of the estate, a specified sum (set from time to time by law), currently \$155,000.00, plus interest from the date of death (currently at 8.4% p.a.). This could mean for example selling property to find the money to make this payment.
 - any remaining estate is divided into three - one third for the spouse/partner and two thirds for the children.
 - If there is a de facto partner as well as a spouse or civil union partner, then they may share equally with the spouse or civil union partner.
3. If you have a family trust, it is normal to forgive any debts that the trust owes you in your will, so that the trust is not then forced to repay these debts to your estate. Repayment of debts to your estate could result in a surviving spouse suddenly holding assets personally which they were not intended to hold. The value of setting up a trust structure can be lost simply by not having an appropriate will.
 4. Without a will, you lose your chance to structure your affairs after your death. There may be blended family considerations, specific items you want to leave to certain family members, children that need more consideration than others (or less if they have already benefited significantly during your life), debts to forgive, or elderly parents that need care. You may want to provide for debts on chattels or property to be repaid before they are passed on to family members.
 5. Without a will you leave uncertainty as to your wishes, potential conflict and cost for family and friends, at a time which is already highly emotional and stressful. It could also mean that family members receive, or have to renounce, gifts under your will in a way that does not best meet their needs, their own trust structures, and so on.

Whatever.....I have a will - I made it ages ago

As important as having a will, is having an up-to-date will. A will should be reviewed whenever there has been a change of circumstances or, we recommend, at least every five years. Reasons include:

- if you have married since making a Will, the Will will be void and when you die, you will be held to have died without a will.
- if you have divorced since making a will, certain clauses under that Will will be void.
- if your Will refers to specific property, say your then home, and you have since sold that property, that part of your will may become meaningless.

A will needs to take into consideration and correctly reflect the property that you own, the liabilities that you have, the members of your family, business succession needs, and other changes in circumstances.

Making a Will can seem onerous and even depressing, but in fact can bring great peace of mind. Whatever the value of your estate, why not do it your way?