



# FAQ

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## Wills

*This document summarises some of the more commonly asked questions regarding Wills. If your question is not answered on this page or you need further advice on Wills, Estate Planning or any related matter please phone us on 02 6651 8440 or email [info@bryantmckinnon.com.au](mailto:info@bryantmckinnon.com.au).*

### Why do I need to make a Will?

You should make a Will to make sure you get a say in who inherits your property and other assets after you die.

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

You will have died 'intestate' and State intestacy laws will determine what happens to your assets by applying a set formula. If you don't have any close relatives (for example parents, siblings, cousins), your assets may go to the government, but that is very rare.

### Can I make my own Will?

Yes, but the rules for making a valid Will are complicated. Writing your Will in the wrong way could cause uncertainty for your Executor (that is, the people charged with administering your Estate) and the Court after you die or mean that your beneficiaries (that is,



the people receiving gifts from your Will) pay more tax on their inheritance or perhaps even lose their gifts.

### Can I change my Will at any time?

Yes. You can change your Will at any time as long as you have the capacity to do so.

There are a few ways to change your Will, including by making a new Will. Whichever you choose, you need to follow the rules to make sure your changed or new Will is valid.

### Can I leave my assets to whomever I want?

Yes, although your Will can be challenged by a spouse, former spouse, children or any other dependents if they think you haven't been fair.

### What happens to my Will if I marry or divorce?

When you marry, your Will is "revoked" (that is, cancelled), except for any gifts to the person who is now your spouse.

If you divorce, any gifts you have made to your former spouse, as well as their appointment as your executor, trustee or guardian, are revoked.

## Should I change my Will if I separate from my partner?

Yes, if you want to change any gifts to your former partner or you no longer want them to be your executor. Your Will remains in effect when you separate up until you are divorced. If you were not married, your current Will stays in effect until you revoke it.

*Your Will can be challenged by a spouse, former spouse, children or any other dependents if they think you haven't been fair.*

## Can I nominate who will have custody of my children after my death?

Yes, although if the other parent of your children is still alive, they will have custody in most cases. If both you and the other parent has died, your family could dispute custody even if you have nominated a guardian in your Will. If this happens, the Court will determine

who should have custody based on the best interests of the child, taking your Will into account as an indication of your wishes.

## What if I want to leave a child or dependant out of my Will?

You can do this, but you need to be very clear as to your intentions and explain your decision. Although you cannot stop a child or dependent from challenging your Will, you can put measures in place to make it more difficult for them to be successful.

## What if I have loaned money to people before I die?

As a general rule your debtors will owe the money to your Estate and become part of the assets to be handled by your executor. If this is something that you are concerned about, it is important to have any loans in writing. It is also possible to forgive loans in your Will.

## What is the role of an executor?

The executor's job is to administer your Will and ensure that your wishes are carried out. This includes organising the funeral, locating your Will, having it validated, using any assets to pay any debts, and distributing gifts to beneficiaries.

## Who is the best person to be my executor?

You should choose someone you trust and who is up to the challenge of undertaking the duties of executing your Will. This can be a significant burden. You can appoint a trustee company or professional person (e.g. lawyer) to execute your Will, although the company or professional will charge fees.

## How many executors should I appoint?

You must appoint one executor, but you should consider appointing one or two others as back-up in case your primary executor is unable to carry out his or her duties. You should avoid appointing two or more executors to act jointly unless you're confident they will work well together.

## What is the best place to keep my Will?

Keep your will somewhere secure but ensure that you and your executors know where to find it.

Refer to the [Useful Links](#) page on our website for additional resources on Wills & Estates.

*This is general information only. We are here to advise you on your specific circumstances; please get in touch to set up an initial consultation.*

