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WHAT IS A WILL?

A Will is the expression of a persons wishes concerning the distribution of property after death. In general, a Will is a written statement signed in compliance with the formalities prescribed by the Wills Act 2007.

WHO CAN MAKE A WILL?

A woman or man of sound mind who is at least 18 years old, married or has entered into a Civil Union can make a Will. In addition a Judge or the Public Trustee can approve the making of a Will by anyone between the ages of 16 and 18 years. The person who makes the Will is called the Willmaker. The instrument itself is called the Will or Testament.

HOW TO MAKE A WILL

Because of the importance of your Will, the law says it must be made in a prescribed manner. The lawyers at Govett Quilliam are well experienced in making Wills of all types.

DYING WITHOUT A WILL

If a person dies without making a Will, she or he is said to die intestate and there is an intestacy. A surviving wife, husband, civil union partner, de facto partner, children or immediate family usually inherit your money, property and possessions in set proportions as set out in the Administration Act. Such distribution may not be what you would have wished and may even cause hardship.

A de facto partner's right to receive a share in your estate if you have no Will is provided for in the Property (Relationships) Act. A claim would have to be made within six months of the granting of Probate or Letters of Administration or six months after the date of death if the estate is a small estate.

Govett Quilliam can handle your estate even if you have not made a Will, but it may take longer and cost more than if you had a Will.

WHAT SHOULD YOUR WILL INCLUDE?

The nature and form of your Will can change as your life evolves. However certain constants remain clear.

- Your Will should name an executor or executors. They should be responsible people who will ensure your wishes, as expressed in your Will, are carried out when you die.
- It should provide for payment of your liabilities such as mortgages, overdrafts, and debts. We can advise you on insurance if necessary.
- It should make adequate provision for your dependents.
- It should provide for the disposal of all your property and possessions.
- It may appoint guardians of your infant children after your death.

MARRIAGE OR OTHER CHANGES IN YOUR CIRCUMSTANCES

If you marry, enter into a civil union or remarry your old Will is in almost every case automatically revoked and you need a new one. If your marriage is dissolved your Will may become invalid. If there is a change in your life, property, or family circumstances your Will may need to be revised.

HOW TO REVOKE, CHANGE OR MAKE A NEW WILL

You may revoke or change your Will or make a new Will at any time but it must be completed in the prescribed manner.

HOW GOVETT QUILLIAM CAN HELP YOU PREPARE YOUR WILL

Though you choose what to say in a Will, the law specifies how it should be said. If you do not comply with the law, your Will may be invalid.

Our lawyers can:

- Suggest how you can best and most fairly provide for your family and dependents.
- Express your wishes so that they have the legal effect you intend.
- Tell you about alternatives you must consider
- Advise you on the appointment of a suitable executor
- Advise on and form Trusts for your beneficiaries

When you come to see us we ask you to bring a list of your assets, a list of the names of people you want to leave things to and a list of questions you want to ask.

YOUR WILL DOES NOT STOP YOU DEALING WITH YOUR PROPERTY

A Will does not prevent you from selling or giving away anything, or dealing with your property, during your lifetime. It takes effect from the date of death not the date of signing. For example, if you leave

your car to your sister but sell that car before you die and do not replace it, she has no claim against the estate for it. However if you do dispose of any of your property you should revise your Will to see that the Will still is in accordance with your wishes.

HOW YOU CAN REVOKE YOUR WILL

Your Will will be revoked almost always by subsequent marriage or by a Will dated subsequent to the date of your previous Will.

OTHER DETAILS

Your Will can give specific gifts to individual members of your family. Your Will can also state whether your body should be cremated or buried. Some people also prepare a *“Living Will”* which expresses a desire to relatives and doctors not to prolong your life if in fact there is no reasonable expectation of a recovery from extreme physical or mental disability.

THE RESPONSIBILITIES OF TRUSTEES AND ADMINISTRATORS

The duties of executors and administrators include:

- Arranging the funeral (if this has not already been done)
- Obtaining the grant of Probate or Letters of Administration as appropriate
- Obtaining details of all assets and liabilities of the estate, taking reasonable steps to protect and preserve the assets and as appropriate selling and disposing of property in the course of administration of the estate
- Paying debts, testamentary expenses and taxes of the estate

- Keeping accounts and records of all dealings involving the assets of the estate; and
- Distributing the assets of the estate according to the terms of the Will or rules of intestacy.

WHEN CAN AN ESTATE BE WOUND UP AND DISTRIBUTED?

An estate can usually be distributed as soon as the assets have been identified and valued (if necessary) and all debts and taxes have been paid. This is the case as long as no claims have been made against the estate. The estate assets can be distributed if no claims are notified within six months of the date of granting of Probate. However in many cases delays can be caused while assets are sold and in the case of estates with complex business and investment assets, delays can be caused finalising valuations and clarifying tax obligations. If the validity of a Will is challenged, the executors may not be able to commence administering the assets for many months while the case is considered by the Courts. Where a claim is made against the contents of a Will or the Court is requested to assist in interpreting a Will, distribution will be delayed until the case is heard by the Court. Where there are no claims against the estate and where the assets are left to one beneficiary (for example a surviving spouse) an estate should in most cases be wound up and distributed by the expiration of a six month period from the date of the grant of Probate or Letters of Administration or the date of death.

CLAIMS AGAINST THE ESTATE

In the great majority of estates, the responsibilities of the executors or administrators are relatively simple requiring them to list the assets and liabilities and to satisfy debts, taxes, and duties and to distribute the balance to the beneficiaries. However sometimes there are claims challenging either the validity of the Will or challenging the contents of the Will. These claims are usually under

the Family Protection Act alleging that the deceased had not made adequate provision for the proper maintenance and support of members of her or his immediate family, or in respect of promises made during the lifetime of the Willmaker. In both cases claimants are required to commence the claim in the court within 12 months after the grant of Probate or Letters of Administration. There is provision that executors and administrators may distribute the estate after six months following the grant if no notice of a proposed claim has been received. Executors and administrators may be personally liable to successful claimants if they distribute an estate before six months after the grant. Consequently claims of this type, or the risk of them, may cause prudent executors and administrators to delay distribution of an estate for six months even though the estate is ready for distribution within that period. Beneficiaries should not therefore expect distribution earlier than six months after the date of the grant of probate or letters of Administration.

Under the Property Relationship Act the surviving spouse or partner can elect either to accept the provisions of the Will or elect to make a claim under the Property Relationships Act. Such a claim must be notified within six months of the date of the grant of Probate or Letters of Administration or if it is a small estate within six months of the date of death.

THE COST OF PREPARING A WILL

The cost of preparing a Will is minimal given the importance of the result. Quite often complimentary Wills are offered in conjunction with other legal services. Feel free to call us for a no obligation estimate at any time.

Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

- *Asset Protection and Residential Care Subsidies*
- *Business Grants & Assistance*
- *Buying or Setting Up a Small Business*
- *Charities*
- *Companies Act 1993*
- *Consumer Guarantees Act*
- *Credit (Repossession) Act 1997*
- *De Facto Property Rights*
- *Employment Law*
- *Enduring Powers of Attorney*
- *Fair Trading Act 1993*
- *Family Trust*
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- *Franchising*
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- *House Buyers and Sellers Guide*
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THE LAWYERS

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