

What is a Will?

A “Will” is a legal document that sets out how you want your assets (known as your “property”) to be dealt with when you die. Your Will sets out who gets what and when and how you want your dependants (spouse, civil union partner, de facto partner, children, etc) to be looked after. Your Will can give specific gifts to individual members of your family and can also state what kind of funeral arrangements you want.

The law relating to a Will is covered by the Wills Act 2007 (“the Act”). This came into force on 1 November 2007. While the Act applies to the Wills of people who died on or after 1 November 2007, the changes it made to how a Will is made, affect only Wills made after that date. As the changes in the Act gives better effect to a Will-maker’s powers, if you made a Will before 1 November 2007 you may want to take advantage of those powers and make a new Will, even if you don’t want to change the actual content or your intentions.

Why have a Will?

Everything you own, including your house, car, investments, furniture, bank accounts, or even just a few personal objects, makes up your “Estate” and someone must decide what is to happen to them on your death. A Will lets you to decide what will go to whom, even if your possessions have sentimental rather than financial value. If you do not make that decision yourself through a Will while you are alive, your Estate will be distributed in accordance with the law (explained below). This may or may not result in your assets going where you would have liked.

Who can make a Will?

Anyone of sound mind who is at least 18 years old can make a Will. A person under 18 may make a Will if they are (or have been) married or are in a civil union or de facto relationship. Others under the age 18 can make a Will if given approval by the Family Court or if they are in the military or are a seagoing person. Most people who can make a Will should make a Will.

What if I don’t have a Will?

If you die and don’t have a Will (or if your Will is not valid), you die “Intestate”. In this situation the law (Administration Act 1969) says what happens to your property. Usually it will go to any surviving spouse/partner and your immediate family, or to near living relatives in set proportions. If there are no relatives in the different categories listed in the Administration Act (refer to Table 1), your estate goes to the Government.

Your lawyer or a family member can still administer your estate if you have not made a Will, but only according to the Administration Act.

When is the best time to make a Will?

Now. You can easily build up possessions that have a monetary or sentimental value to you and to others. It is never too soon to set out what you want to happen on your death. Though you may expect to live for some time, accidents can happen at any time.

If I make a Will, can I change it?

Yes. You can change your Will at any time. In fact you should review it regularly.

As time passes your circumstances will change - family members may be added or lost, your relationship status may change, your financial situation will change, your ideas as to who you want to see benefit from your Estate may change. If there is a change in your life, property or family circumstances, your Will may need to be revised.

* **Everyone over 18 should have a Will.**

* **A Will sets out what you want to happen on your death.**

* **If you don’t have a Will, the law sets out who gets what on your death.**

* **You can change your Will at any time**

* **It pays to get advice before preparing a Will.**

There are two ways to change a Will:

- (i) To add a “codicil” to the Will. A codicil can add a provision or revoke part of a Will and must be dated, signed and witnessed in the prescribed manner. If you make a codicil, make sure that you keep it with your Will.
- (ii) If the changes in your codicils are extensive, you should consider revoking the old Will and starting afresh. In the new Will you revoke the old Will by including a simple statement, “I revoke all wills and codicils that I have previously made”. This will protect your intentions, in the event you forgot to destroy any originals or copies of your prior Wills and codicils.

Who should prepare a Will for you?

Normally, you should get legal advice. There are rules as to how a Will should be prepared and properly signed. Failure to comply with these may mean that all, or some of your wishes, expressed in your Will, cannot be fulfilled.

A trustee company or your lawyer can advise you and prepare a Will for you. You can even buy blank forms from your local book shop and do it yourself. You should probably only do this if your estate is very straightforward.

Who should I leave my property to?

The people that you leave your property to are your “Beneficiaries” – they benefit from gifts in your Will (“Bequests”). You can name anyone and any organisation you like as a Beneficiary. Usually you cannot leave any gift to a person who witnesses your Will, or any spouse, civil union partner or de facto partner of a witness. However if you leave such a gift, it may be declared valid if the court is satisfied that the Will-maker knew and approved of the gift and made it voluntary.

Can I still deal with my property if I have made a Will?

Yes. A Will does not prevent you from selling or giving away anything or dealing with your property in any way you choose, during your lifetime. Your Will takes effect from the date of your death, not when you sign it. However if you do dispose of any of your property you should review your Will so that the Will reflects your wishes and your actual assets.

What should I put in my Will?

First, you should name or appoint the person who you want to look after your Estate and to see that your wishes are carried out. You can appoint more than one person. What is important is that they are capable of carrying out your wishes. Often it is a good idea for them to be younger than you.

Second, you should consider all the items that you own and will own, and the debts that you are likely to owe (the difference is your Estate). You need to decide how you would like this dealt with on your death - which individuals and/or organisations you want to see benefit from your Estate and how much they should benefit.

Under the Wills Act 2007, a gift to one of your children who dies before you can pass automatically to any child of that person (that is, your grandchild). You need to remember that if you do not make adequate provision for relatives and dependants, they may apply to the Court for greater benefits from your Estate under the Family Protection Act 1955. Also, you may have promised to leave a certain item or some money to someone who has helped you. If you don't make provision for that in your Will, they can make a claim under the Law Reform (Testamentary Promises) Act 1949. Again, a solicitor, or trustee company can advise you on this.

You should also leave instructions on who will look after your children (testamentary guardian in the event both parents die together or if you are your children's sole guardian), your funeral service and what you want done with your body (i.e. cremation/burial).

The Property (Relationships) Act 1976

If you are in or entering a relationship (marriage, civil union or de facto, including same sex), you must consider the interests of your partner and the potential claims under the Property (Relationships) Act 1976 ("PRA") when you make or review a Will. The PRA applies to all wills, including those made before the PRA came into force on 1 February 2002. Under the PRA, a spouse or partner can choose one of two options. The spouse or partner can claim half the relationship property (as on separation) and receive nothing under the Will, unless the Will specifically provides for that or under the Administration Act, unless the court considers it is just that they should inherit as well as take their share of the relationship property. Alternatively they can choose not to claim half the relationship property and instead take the jointly-owned property and inherit what is available to them under the Will (or the Administration Act rules if there is no Will).

Who looks after my Estate when I die?

When you die, your Estate is administered by your Personal Representatives. If you have made a Will and appointed your Personal Representatives, they are known as your Executors. An Executor can be named as a Beneficiary in your Will. If you have not made a Will, then the Personal Representatives are appointed by the court and are known as the Administrators.

Where should I keep my Will?

Your lawyer or trustee corporation will store your Will, normally free of charge. You should tell your Executors, a family member or a friend where it is held. When you die, your lawyer or trustee corporation will check to ensure that the Will they hold is your last Will and apply to the court for approval ("Probate"). You should also keep a copy with your other important papers at home with a note as to where the original is held.

What if the Will is lost?

If the original of your Will cannot be found, the court may approve a copy, but it is necessary to prove that the Will was signed, not revoked and that the original has been accidentally lost or destroyed. If no Will can be found, you will be deemed that have died intestate and your estate will be distributed according to the Administration Act.

What about Maori land?

There are special laws governing who can inherit Maori land. The process is known as succession and it is covered by Te Ture Whenua Maori Act 1993 (also known as the Maori Land Act).

Technical terms

"**Administrator**" is someone who is appointed by law to settle your affairs if you die without leaving a Will, or if the person named as Executor in your Will does not act.

"**Beneficiary**" is someone who is left a gift in your Will.

"**Bequest**" is a gift in your Will. There are three major types of Bequests:

- A **Specific Bequest** is a gift of particular items of property, such as jewellery, books, clothing, car etc. that you want to see go to a particular person or organisation.
- A **General Bequest** is usually a sum of money or percentage of the value of your Estate given to a particular person or organisation.

- A **Residual Bequest** is how you want the remainder of your Estate to be dealt with after specific and general gifts (if any) have been made. For instance, you may leave gifts to relatives and friends and charitable organisations and then state in your will that the residue of your Estate is to be divided between members of your family.

“**Codicil**” is a supplementary amendment to your Will.

“**Estate**” is the total of what you leave when you die.

“**Executor**” is the person you appoint in your Will to see that your wishes and instructions are carried out.

“**Intestacy**” is the name given to the situation that arises when someone dies without leaving a valid Will.

“**Partial Intestacy**” is when someone’s Will does not dispose of the whole of their Estate.

“**Personal Representative**” means an Administrator or an Executor.

“**Probate**” is the legal procedure to validate a Will and to confirm that the executors have the authority to deal with your Estate.

“**Residue**” is what is left of your Estate after all expenses have been paid and specific and general Bequests have been made.

“**Will-maker**” is the person, who has made, changed, revoked or revived the will and is the equivalent of testator (male) or testatrix (female). This is you.

“**Will**” is a written legal instruction of how a person’s property is to be distributed on that person’s death. To be effective it must comply with correct legal procedures.

Table 1. If you don’t have a Will, your Estate is distributed as follows:

Who survives you?	The law says (Administration Act 1969 - section 77)
Spouse, civil union partner or surviving de facto partner survives and also your children.	All your personal chattels + \$155,000 & interest on that amount from the date of death until that amount is paid, go to your spouse, civil union partner or surviving de facto partner. The Residue of your Estate is divided: <ul style="list-style-type: none"> • $\frac{1}{3}$ to your spouse, civil union partner or surviving de facto partner absolutely; and • $\frac{2}{3}$ divided equally among your children.
Spouse, civil union partner or surviving de facto partner. There are no children but one or both your parents survive.	All your personal chattels + \$155,000 & interest on that amount from the date of death until that amount is paid, go to your spouse, civil union partner or surviving de facto partner. The Residue of your Estate is divided: <ul style="list-style-type: none"> • $\frac{2}{3}$ to your spouse, civil union partner or surviving de facto partner; and • $\frac{1}{3}$ to your parents in equal shares. If only one parent, all to that parent.
Spouse, civil union partner or surviving de facto partner. You leave no children or parents.	Whole Estate goes to your spouse, civil union partner or de facto partner.
No spouse, civil union partner or surviving de facto partner but your children survive.	Whole Estate goes to your children equally.
No spouse, civil union partner or de facto partner, no children, but your parent(s) survive.	Whole Estate goes to your parents in equal shares. If only one parent, all to that parent.
No surviving spouse, child or parent.	Some blood relatives may benefit if they fit the categories specified in the Administration Act. If no such relatives, then your whole Estate goes to the Government (“bona vacantia”).