

Coutts Guide to
Estate Planning

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YOUR ESTATE PLANNING Experts

The Wills & Estates Lawyers at Coutts are proud to offer clients more than just a Will.

Getting the right estate planning advice provides peace of mind and a feeling of security in our ever-changing world.

By taking the 'what if' out of the equation, our Wills & Estates Lawyers team provide clarity for your future.

Our goal is to ensure that you have every opportunity – no matter which stage of life – to have peace of mind in knowing your wishes will be carried out if something were to happen to you.



Kaisha Gambell
Senior Associate



YOUR Will

What is a Will?

A Will is a legal document that specifies how you wish your assets and liabilities to be distributed following your death. A Will nominates one or more people as the executors to assume responsibility for the administration and distribution of your estate. Other aspects of a Will include appointing a guardian for minor children, burial preference and distribution instructions of personal belongings.

For a Will to be valid it must:

- ✓ Be in writing
- ✓ Signed by the Will maker
- ✓ Be signed by two independent witnesses in the presence of the Will maker

It is important to understand the difference in Wills and what option is best suited for your individual needs. These include:

- ✓ Standard Will
- ✓ Custom Will
- ✓ Testamentary Trust Will

Coutts can help you draft, organise and execute a Will. We will go through each provision with you clearly and carefully so you are confident in the decisions and distributions made.

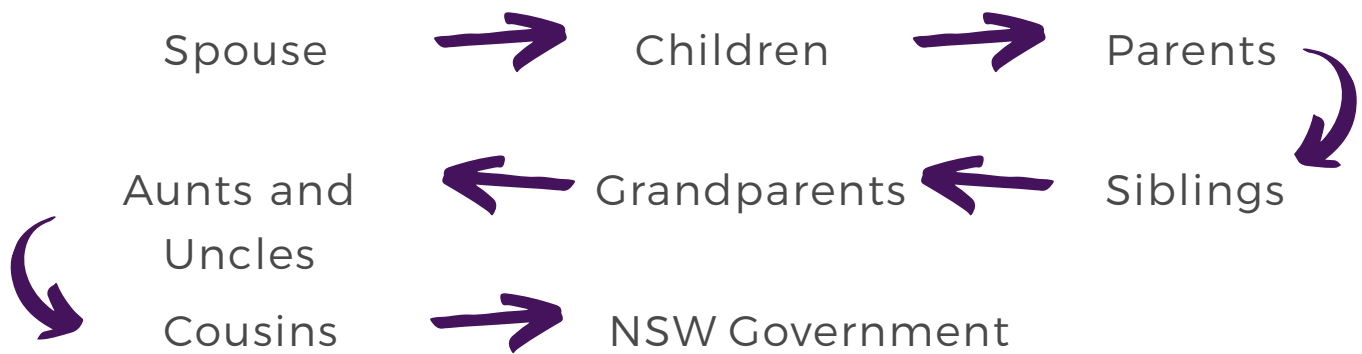
You might have heard of 'DIY Wills' or 'at home' Will kits, some problems with these include:

- ✓ Attempting to give away assets you do not own
- ✓ Being too specific
- ✓ Illegible handwriting
- ✓ Failing to comply with the basic legal formalities

One of the most important documents you will sign
in your life is your Will

What happens if you do not have a Will?

When someone passes away without a valid Will in place, they are said to have “died intestate”. Their assets will pass to a class or hierarchy of beneficiaries that are pre-determined by the law. This has been created by the Court to achieve a blanket solution. The order of beneficiaries is not perfect, and might not be what the deceased person wanted to achieve.



This is why it is so important to have a valid Will in place.

Keeping your Will up to date

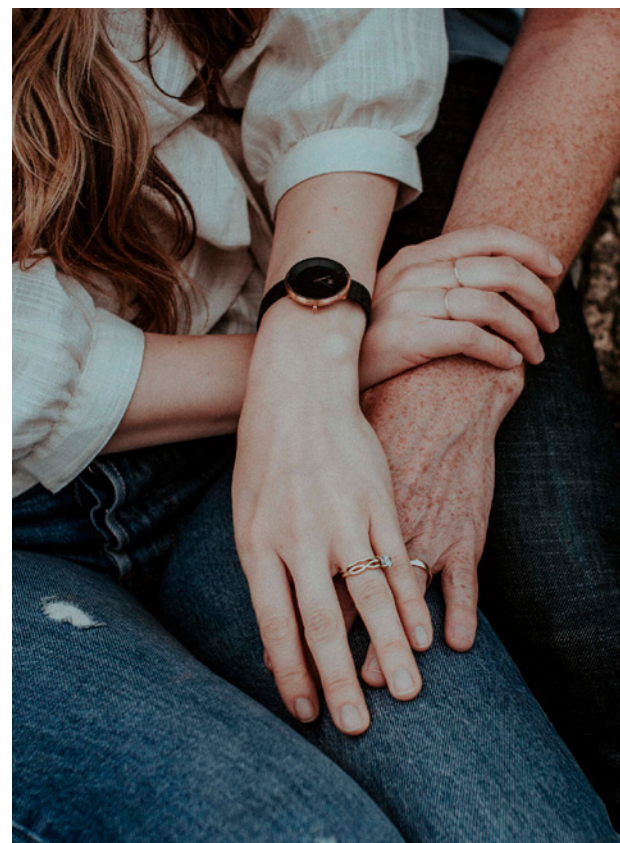
We understand that your life can change in the blink of an eye. Throughout life there will be many situations that will call for your Will to be amended or changed or even start a new Will altogether, it is important to keep this in mind.

When is the right time to make a new Will?

- ✓ If you buy a house or inherit assets
- ✓ If you start a new de-facto relationship
- ✓ If you get married
- ✓ If you have children or adopt a child
- ✓ If you are separated or divorced

When is the right time to update your existing Will?

- ✓ If your assets substantially change
- ✓ If your children are adults
- ✓ If a named beneficiary or executor person passes away
- ✓ If you have a change of mind



ROLES & Responsibilities

You should always choose the right people for each role in your Will! In order to do so, you will need a better understanding of what each role is and their responsibilities.

The Executor

The choice of your Executor is a very important one. This is the person (or persons) you appoint in your Will to administer your estate when you pass. The Executor is responsible for:

- ✓ Attending to funeral arrangements;
- ✓ Applying for probate;
- ✓ Paying debts of the estate;
- ✓ Collecting assets of the estate;
- ✓ Distributing the estate to beneficiaries; and
- ✓ Dealing with any conflicts or challenges to your Will, which may arise.

The Trustee

When a trust is created by a Will, the role of a Trustee will come into effect and will continue for the period as nominated by you in your Will. The Trustee is responsible for:

- ✓ Managing of estate assets for any minor beneficiaries, or until a beneficiary reaches the specific age as nominated by you in your Will; and
- ✓ Managing of estate assets that have been placed into a testamentary trust.

You may wish to appoint more than one executor or trustee, as such your executor or trustee can act:

- ✓ Jointly, where the decision is agreed on by majority or unanimously;
- ✓ Severally, where anyone of them can act on their own; or
- ✓ As an alternative, where the first appointed executor dies, resigns or becomes incapacitated.

tips!

When choosing an executor or trustee, we recommend you consider:

- ✓ The location of the person
- ✓ The age of the person (must be over the legal age of 18);
- ✓ If the person is someone you can trust to follow your instructions and carry out the wishes of your Will;
- ✓ If the person has the skills and time to fulfil the role; and
- ✓ If the person is able to deal with any family conflict.

Choosing a guardian for minor children

We understand that selecting a guardian for your minor child may be a difficult decision, however it is beneficial to make a contingency plan in the event that something were to happen to you. The most common choice of a guardian would be a relative or close friend.

tips!

When choosing a guardian for your children we recommend you consider:

- ✓ The age of the person;
- ✓ If the person shares similar values and lifestyle to you;
- ✓ If your child has an existing relationship with a specific person;
- ✓ If the person has children or a desire to have their own children; and
- ✓ If the person is physically, emotionally and financially capable of raising your child.

Making hard choices

You can protect yourself and your loved ones against unnecessary complication through the execution of a Power of Attorney and an Enduring Guardian.

If you are unable to make your own financial, health and lifestyle decisions and have not executed the appropriate documentation, your loved ones will need to make an application to the relevant court or tribunal to be appointed as your Power of Attorney or Enduring Guardian. This process is emotionally taxing and the person you may have chosen will not necessarily be chosen for you.

If the court or tribunal believe there is no suitable person to fulfil these roles, they may appoint a public or corporate trustee and guardian to make those decisions for you.

Enduring Guardianship

An Enduring Guardianship is a legal document which allows the guardian to make medical and lifestyle decisions on your behalf, if you lose capacity to make these decisions for yourself.

tips!

When choosing an Enduring Guardian, consider:

- ✓ The age of the person (must be over the legal age of 18)
- ✓ If the person is someone you trust to act in your best interests; and
- ✓ If choosing more than one guardian, are the persons able to cooperate with each other

It is possible to appoint one or more people as your alternative Enduring Guardian who can act on your behalf if your original Enduring Guardian dies, resigns or becomes incapacitated.



Power of Attorney

A Power of Attorney is a legal document which allows the attorney to make financial and legal decisions on your behalf. There are three types of Power of Attorney:

- ✓ **General Power of Attorney**
allows the attorney to act on your behalf whilst you are alive and have mental capacity. The General Power of Attorney is terminated if you lose mental capacity.
- ✓ **Enduring Power of Attorney**
allows the attorney to act on your behalf whilst you are alive, and will continue if you lose mental capacity.
- ✓ **Corporate Power of Attorney**
is a legal document made by a company that authorises the attorney to act on the company's behalf.

You may wish to appoint more than one attorney, as such your attorneys can act:

- ✓ Jointly, where the decision is agreed on by majority or unanimously;
- ✓ Severally, where anyone of them can act on their own; or
- ✓ As an alternative, where the first appointed attorney dies, resigns or becomes incapacitated.



tips!

When choosing a Power of Attorney consider:

- ✓ The location of the person
- ✓ The age of the person (must be over the legal age of 18);
- ✓ If they have the mental capability to make the necessary financial and property decisions on your behalf;
- ✓ If the person is someone you trust to act in your best interests; and
- ✓ If choosing more than one attorney, are the persons able to cooperate with each other.

YOUR ESTATE Checklist

- ☐ Do you have a Will?
- ☐ If yes, have you reviewed your Will in the last 3-5 years?
- ☐ Have you or any of your beneficiaries entered into a new de-facto relationship or been married since your last Will?
- ☐ Have you or any of your beneficiaries separated or divorced since your last Will?
- ☐ Have you or any of your beneficiaries welcomed a new family member i.e., had a baby or adopted a child?
- ☐ Have you bought a new house or acquired any new assets?
- ☐ Have you sold a house or any assets?
- ☐ Have there been any changes in a business you hold an interest in?
- ☐ Is the executor of your Will still appropriate?
- ☐ Are your power of attorney and enduring guardianship documents up to date?
- ☐ Have you thought about including your funeral plans into your Will?
- ☐ Do you know what will happen to your superannuation after your death?
- ☐ Have you thought about your pets and what will happen to them?

ASSETS & LIABILITIES Checklist

ASSETS

Real Estate _____

Bank account _____

Investment accounts _____

Online accounts (Paypal, Afterpay, Zip Pay) _____

Shares in companies _____

Personal property of significant value _____

Life Insurance _____

Superannuation _____

Intellectual property _____

Interest in private company _____

Interest in trusts _____

Notes: _____

LIABILITIES

Mortgage _____

Personal loan _____

Credit card _____

Finance _____

Private loans (from individuals not banks) _____

Tax debt (HELP/student loans) _____

Notes: _____

tips!

You should check the nominations for your super and insurance policies to ensure that the right people are nominated to receive the benefits upon your death.

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1300 268 887

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Adriana Care
Managing Partner



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