

Why you need a Will

1. If you die without a Will this creates an intestacy for your estate.

If you die without a Will the distribution of your estate is made according to New South Wales statute law. Often the state's formula for transferring assets will not be the same as you would have chosen if you had done the planning. As you have not appointed any person to act as your Executor the court will appoint an Administrator to collect your assets and discharge your debts. If your spouse did not survive you the court will also appoint a guardian for any minor children standing to inherit.

You should also be aware of the situation where spouses die in an accident the younger is presumed to have outlived the other spouse. Where one spouse survives the other and then dies the assets will pass only to the family of the last spouse to die under NSW intestacy rules.

2. By making a valid Will you can determine the time when a beneficiary inherits.

If you have children who will be beneficiaries you can direct your Trustee in your Will to hold the asset on trust until they reach the age of 21 or 25 years for instance. In contrast, under the laws of intestacy which apply if you don't have a Will any inheritance would be transferred to the children at 18 years.

3. Beneficiaries may not include any step-children

If you have step-children you will need to include them by name in your Will. Failing this they may be excluded as the definition of the class 'children' does not include step-children. They may make a claim on your estate as an eligible person under the Family Provision Act but this would create added difficulties and cost which could have been avoided by simply making a valid Will.

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4. Without a Will your family will be faced with more legal hurdles trying to administer your estate.

After you die your appointed Executor will often be required to apply to the Supreme Court for a grant of Probate. Without a Will, an application for Letters of Administration will be required. This procedure is more complicated. It can also create financial burdens because the applicant may be required to provide security to the court to cover the shares of non consenting beneficiaries.

5. Certain assets may fall into intestacy

Even if you believe you have arranged through estate planning methods (such as jointly owned property or a binding nomination of superannuation funds) to pass your assets outside your Will to your chosen beneficiaries, it is wise to put a Will in Place to cover any residuary assets.

6. Disputed estates

The rules of intestacy may deprive one of your beneficiaries from inheriting an adequate share of your estate. You might have provided extra for a disabled child under your Will but because there is no will a challenge may be made to secure the needed funds. A claim for costs will be made on the estate.

7. Directions

Although not legally binding you can also include directions in your Will requesting particular funerary arrangements or appoint a person as guardian of your minor children.

The information contained in this article is provided by way of information only and not intended to be legal advice. You should always obtain individual legal advice.