



Wills (from Simple to Complex)

Even if your affairs are simple, the laws surrounding estates are not. This does not mean that you need a long, complex Will. But it does mean that the Will has to be expertly drafted, however long or short, to be strong enough to be effective once you are no longer here to sort things out yourself.

A well drafted and considered Will needs to tick the following boxes:

- ✓ The clauses gifting assets are carefully considered, ensuring that those gifts do not later fail (for example if a gift no longer exists) at the time of your death;
- ✓ The correct legal terminology is used and the Will is carefully drafted, so that gifts are not ambiguous and need to later go to court for interpretation;
- ✓ The Will has provided the best possible vehicle for your beneficiary to hold the gift in, so that there is asset protection and tax advantages (for example, a **testamentary trust** or protective trust);
- ✓ The gifts take into consideration the appropriate amounts to leave to various dependants to avoid an estate claim;
- ✓ Executors are appointed and in the right number, so that your estate is administered by people who you trust to administer your estate when you're no longer there;
- ✓ Guardians of your minor children (if any) are included and the will specifies what funding is available to them to help them raise your children (see our Factsheet on '**Guardianship – taking care of young children in your Will**' for more information); and
- ✓ Ensures that the correct legal protocols have been conducted to ensure that the Will is not later challenged due to such legal issues as incapacity, undue influence or insufficient knowledge and approval.

You can see why so many Wills end up in Court disputes. These disputes after your death are expensive (often costing in excess of \$300,000), can be lengthy, and may end up with your wishes not being followed.

When you meet with one of our experienced estate planning lawyers, we will provide you with advice and solutions, considering carefully your personal situation and assets. We will then expertly draft your Will to achieve your testamentary wishes.

Real examples of 'Wills gone wrong'

Example 1:

John's Will left his house to his daughter and the balance of his wealth (shares and cash) to his son. At the time of writing the Will, these gifts were about equal. When John passed away he was living in a nursing home and had sold his house to pay the bond. His daughter received nothing under his Will.

Example 2:

Mary made a Will leaving her estate (primarily comprised of her house) to her second husband. She had a binding death benefit nomination over her super in favour of her two adult children. At the time of Mary's death, the binding nomination had lapsed and the Trustees of the super fund paid the super to her estate (to be paid in accordance with her Will).

Example 3:

Peter's Will left \$50,000 to each of his adult children, and the balance of \$900,000 to his second wife. His adult children made a claim against his estate after his death, seeking additional provision.

Example 4:

Bob made a Will leaving \$40,000 to his nephews Ben and Sam. After his death the Executor went to Court to ask for a decision on whether the clause meant \$40,000 to each of Ben and Sam, or \$40,000 divided equally between them. The cost of the court application exceeded \$100,000 in legal fees.

A Will is one of the most important documents that you will ever prepare. Having a professionally drafted Will and the expert legal advice that goes along with it, is a key part of your estate plan.

We frequently assist clients whose affairs are relatively simple and straight-forward. It may be that they are looking to leave assets to their close family members (such as their parents or siblings) or to their friends. Some clients also wish to leave their estate to charities when they pass away.

Other clients have more complex personal situations, such as blended families where the spouses are keen to ensure that their respective children end up receiving an inheritance at the end of the day. Or they may have intricate wishes, or want to control how the wealth is spent after they die.

So whether your Will is simple or complex, it must be expertly drafted, having taken into account all of the relevant matters, so that it actually works when it is called into play. Please contact us on **1300 132 567** or email us at info@estatefirst.com.au to discuss how we can help you with this.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation.

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