

# Making a Will

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In life one of the important matters to attend to is making a Will. In order to be valid, a Will can only be made by a person who has testamentary capacity. A Will made by a person who (perhaps because of age or illness) is not capable of making certain important decisions, may be declared invalid.

Many people make a Will and then sit back for years without thinking about revising it. However, it is not wise to do this as circumstances change and the Will you made some time ago may not fit your present circumstances. If you have married or remarried since you made it, the Will will be cancelled by operation of law.

## Reasons for Making a Will

Most people know that by making a Will they can direct how their assets are to be distributed after their death but there are a number of other important reasons why a will should be made. For instance:

- You can name the person whom you wish to administer your estate in any trusts after your death (the executor).
- Having a Will normally enables your affairs to be dealt with speedily and with the minimum of formality. This may be particularly important, for instance, the surviving spouse needs cash for living expenses and other costs incurred shortly after the death.
- You may wish to set out specific arrangements for your funeral and burial place.
- You may wish to make specific gifts in favour of a Church or a charity, or to gift items from your home to friends and relations.
- If you have an interest in a business you can give directions regarding the continuation of that business; otherwise the business might have to be sold immediately after your death.
- If you have dependant children you may make arrangements for a testamentary guardian for them and so appoint someone whom you know will take on proper responsibility for your children.
- Trusts may be established by a Will to enable a trustee to provide for beneficiaries in unequal shares. Sometimes, for example, it is important that funds be concentrated for the benefit of a child or children who are still receiving education, in preference to children who are self-sufficient.

- There may be a child who suffers a disability and requires special assistance for the remainder of his or her life – circumstances such as separation, de facto relationships, re-marriage and inheritances and other windfalls.

## **Changing Your Will**

It is advisable to have your Will reviewed from time to time and in particular:

- Following the death of a spouse.
- Following the death of any trustee or beneficiary named in the Will.
- If you are aware that any specific asset in the Will has been disposed of following marriage or separation. Remember that a Will made before marriage is revoked by the marriage.

## **“Living Wills”**

A living Will is not a Will at all in the conventional sense but rather it may be likened to a form of a “dying declaration”. Essentially, it is a means whereby an adult person, capable of giving a form of consent, expresses a wish that where there is absolutely no prospect of recovery from a terminal illness, then any extraordinary procedures designed to sustain or prolong life will either be withheld or after a specific period be withdrawn.

Some of the things that we have referred to may apply to you, or to people you know. To establish what is best for a given situation requires time, professional advice and careful judgment. To express your intentions clearly requires skilful drafting.