

Wills and Estate Planning

Are your affairs in order?



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Your Will

All adults should have a professionally prepared Will. Your Will is a legal document that takes effect upon your death and identifies who will manage your estate and who should benefit from your assets. There are various legal requirements to ensure your Will is valid and that your wishes can be carried out by those you have appointed. Significant financial and emotional hardship may be suffered by your loved ones if your Will is not professionally prepared by an experienced solicitor.

At Andersons we take all the guess work out of the process and discuss with you your goals and intentions to ensure your Will achieves your objectives no matter how simple or complex. For further advice or to arrange a visit, call Andersons on 08 8238 6666 and ask to speak with one of our Wills & Estates solicitors.

When to Review Your Will

As your personal circumstances change you should consider reviewing your Will. Here are just some examples of when you should have your Will reviewed by an experienced solicitor:

- ◆ birth of children or grandchildren;
- ◆ change of age or circumstance of executor;
- ◆ purchase or sale of real estate;
- ◆ death of a beneficiary;
- ◆ moving interstate;
- ◆ separation from spouse or partner;
- ◆ divorce;
- ◆ a new domestic partner or
- ◆ marriage (re-marriage).

Both marriage and divorce affect any existing Will you have. In particular, if you marry after making a Will, that Will is revoked unless it is expressly made in contemplation of the marriage. In the case of divorce, any provision made to an ex-spouse will be revoked upon

the divorce becoming absolute. Getting married or becoming separated or divorced can also trigger other legal consequences that are

relevant to estate planning. You should not delay seeking legal advice should one of these events occur.

Did you know?

Some assets may not form part of your estate including jointly owned assets, assets in a family trust, life interests, pensions and superannuation. Andersons can guide you through the variety of ownership models and make changes, if necessary, to best suit your needs and wishes.

To start the process of getting your affairs in order, call one of our Wills & Estates solicitors on 08 8238 6666.

Contesting a Will

Only certain individuals are entitled, by legislation, to contest a Will. There are many

reasons to contest a Will. The most common is insufficient provision made in a Will for a particular individual or group of individuals. There are various legal approaches that may protect a person's entitlement to an estate before distribution occurs. If early advice from an experienced solicitor is not sought you may quickly lose the opportunity to make a claim or be successful. Generally legal costs of the parties contesting a Will are paid by the assets of the estate. You should contact one of Andersons experienced solicitors to professionally advise you of any potential claim you may have.

What is Intestacy?

To die without a valid or complete Will means you die intestate and your estate is divided and administered pursuant to legislation enacted by Parliament. The persons who may benefit from your estate if you die intestate may not be those you wish to benefit.

To avoid intestacy, ensure you have a valid Will that accurately conveys your wishes for the distribution of your estate.

Probate and Estate Administration

If you own real estate or other significant assets, Probate may be required by your executors to carry out the wishes in your Will. Probate is a document issued by the Supreme Court of South Australia proving your last Will and formally authorising your executors to carry out their duties according to law. An application for Probate may be complicated and difficult. If you are an executor named in a Will you should consult one of Andersons experienced solicitors to help you through the process.

Administering an estate can also be a complicated process. Various gifts may have to be made, perhaps to charities or maybe a testamentary trust has been set up by the Will which will require careful examination. Early legal

advice to ensure you are aware of your rights and obligations will be essential.

Power of Attorney and Advance Care Directives

All adults should have a Power of Attorney and Advance Care Directive.

A Power of Attorney is a formal legal document that grants to others the rights and obligation to make decisions on your behalf in relation to money, assets, debts and financial issues.

As of July 2014, Advance Care Directives replaced Enduring Power of Guardianship, Medical Power of Attorney and Anticipatory Directions. An Advance Care Directive is a

formal legal document that allows you to formalise your wishes in relation to decisions on personal issues relating to your medical care, surgery, treatment, dental care and general welfare. An Advance Care Directive allows you to nominate Substitute Decision Maker/s if you wish.

It is not the law that your spouse and/or children automatically have the right to make decisions on your behalf if you lose mental capacity. Your spouse and children have very little authority unless specific powers are granted to them pursuant to your Will, Power of Attorney or Advance Care Directive.

Andersons can ensure those you want in control of your financial affairs and wellbeing are legally entitled to do so should you suffer a mental or legal incapacity.

Other Areas in Which Andersons Can Help

The issues involved in estate planning and Will making are wide and varied.

The following are other areas in which Andersons may be able to assist you and/or your family:

- ◆ Testamentary Trusts;
- ◆ Asset Protection;
- ◆ Business Succession Plans;
- ◆ Statutory Wills;
- ◆ Applications under the Wills Act.

If you require further information or would like to arrange a visit with one of our skilled and experienced Wills & Estates solicitors, call 08 8238 6666.

DEFINITIONS

What is a Will?

A Will is a legal document that allows you to choose who receives your estate after you die. It can also be used to appoint a guardian to look after any of your minor children until they are able to look after themselves.

What is an Estate?

An estate is the total of all your assets including, but not limited to, your home, other properties, assets, contents of bank accounts and all other items belonging to you.

What is Probate?

The process by which a Will is 'proven' (validated) by the Probate Registry of the Supreme Court and whereby the executors named in the Will are granted formal authority to deal with assets of the estate.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document which gives a person you choose the power to manage your financial affairs while you are alive, either in your absence or if you become incapacitated.

What is an Advance Care Directive?

An Advance Care Directive is a legal document which expresses your wishes, instructions or preference with respect to your future health care, end of life or living arrangements and personal matters. It also allows a Substituted Decision Maker the power to make decisions on your behalf that affect your lifestyle and medical treatment should you become mentally incapacitated and unable to make medical decisions on your own.



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S O L I C I T O R S

To arrange a free initial consultation,
at any one of our offices,
call Andersons on 1800 653 655,
or Email us at:
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