



**Barristers, Solicitors
and Conveyancers**

ABN 90 644 845 954

WILLS

Succession

Why should you make a Will?

People are often of the belief that a Will is an unnecessary document, or it becomes something they never get around to completing. When people die without a legally binding Will, it often creates confusion and uncertainty for the people that they have left behind.

When someone dies without a Will the estate is called an intestacy. This means that their assets are distributed in accordance with the relevant legislation. This legislation may require by law that your assets are distributed in a way that you would not wish.

For example, a husband or a wife may assume that their assets will automatically pass to each other. If one of them has assets in their sole name this may not occur. The relevant legislation in Tasmania provides in an intestacy for the first \$50,000.00 in the estate to pass to the spouse and then the estate is divided into thirds. Two thirds of the estate will then pass to the children. This can cause confusion and anxiety, especially if the spouse that is left behind has the care of young children. If two thirds of the assets are put away for the children until they turn 18, it may make it difficult for the surviving spouse to provide for the young children or even retain the family home.

1/4

Matters to consider before making a Will

1. Who do you want to benefit from your estate when you die?
2. What are your assets? Who owns them and what are they worth?
3. Who do you wish to be an executor? The executor is the person who controls your assets when you die. They have an obligation to ensure that your assets pass in accordance with your Will.
4. Where are your superannuation policies? Who is to benefit from your superannuation policy? Have you made a binding nomination?
5. Do you have life insurance policies?
6. Who are the people that you morally have an obligation to provide for? This may include a small provision for an estranged child.
7. Do you need a special trust set up for family members that you wish to provide for who may have special needs or a disability?

Instructing your Solicitor

You should bring information regarding all of the above information to the first meeting with your solicitor. Your solicitor needs to be provided with a clear outline of your family's financial circumstances. It is important that you know who owns your assets and how, eg, jointly, separately.

For example assets that may be owned by your family trust are not actually owned by you as an individual.

2/4

Another example is if a house or land is owned as joint tenants with another person it cannot be left in your Will. It will pass automatically on death to the other joint tenant or tenants.

Your Will

After the meetings with your solicitor you will have the benefit of a Will that is legally binding and that outlines how you wish your assets to pass upon your death.

It is important to note that it does not matter how big or small you consider your estate to be, a Will removes uncertainty when you die.

GENERAL AND ENDURING POWER OF ATTORNEY

A Power of Attorney appoints a person or persons or an organisation or your Attorney and allows them to make decisions and sign documents on your behalf. Your Attorneys signature on a legal document is as good as if you have signed it yourself. It enables a person or persons or organisation or Attorney to step into your shoes and act on your behalf.

There are two different types of Powers of Attorney.

First there is the **General Power of Attorney**. This operates while you have capacity to make your own decisions. It is useful if you are out of the country or unwell and unable to attend to your affairs. The problem with this type of Power of Attorney is the minute that you lose capacity to make your own decisions this type of Power of Attorney ceases to operate.

The second type of Power of Attorney is an **Enduring Power of Attorney**. This operates in the event that you have lost capacity to make your own decisions. The person that you appoint to be an Enduring Power of Attorney on your behalf should be someone that you trust.

It is our recommendation that everyone appoints an Attorney to be both a **General and Enduring Power of Attorney**. This means that the Power of Attorney will operate while you have capacity to make your own decisions and in the event that you do not have capacity to make your own decisions in the future.

You can appoint anyone you wish to be your Attorney. You should carefully consider who you chose to be your Attorney as they should be mature and trustworthy. An Attorney must only make decisions and sign documents that benefit you.

An example of what your Attorney can do is as follows. They can:

1. Buy or sell a house on your behalf;
2. Invest your monies;
3. Buy or sell shares; and
4. Disconnect your phone or reconnect your phone.

Everybody should have an Enduring and General Power of Attorney no matter how old or young they are. It is difficult for family and friends, in the event of you losing capacity to make your own decisions, where a general and enduring Power of Attorney has not been appointed. In this instance, an application would need to be made to the Guardianship and Administration Board. This takes time.

It should be noted that a General and Enduring Power of Attorney can lie dormant. They can be placed in our safe and not activated until such time as you require them to be activated and used.

The current cost for the registration of a Power of Attorney is \$90.50. Your Power of Attorney cannot be used by your Attorney unless it is registered at the Land Titles Office and noted on the Registry of Deeds.

BURNIE
Bartletts Barristers & Solicitors
63b Wilson Street
Centrepoint Arcade
Burnie Tas 7320

Phone: (03) 6432 2355
Facsimile: (03) 6432 2356
Email: bartletts@bartletts.com.au

SMITHTON
Bartletts Barristers & Solicitors
33 Smith Street
Smithton Tas 7330

Phone: (03) 6452 1833
Facsimile: (03) 6452 2807
Email: denise@bartletts.com.au

4/4