

# making a will

HICKS  
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Lawyers & Notary

## assets in your name only

Your will applies to assets that are in your name only. Your will does not apply to joint assets, trust assets or assets held by your company.

## joint assets

Joint assets owned by you cannot be distributed according to your will. The surviving joint owner becomes the sole owner. For example A & B are 'joint proprietors' of their house and have joint bank accounts. If A dies, B becomes the sole owner. If it is not your intention for the surviving party to become the sole owner, you can sever/break the joint tenancy so that each owner owns his/her half share as 'tenants in common'.

## superannuation proceeds

Generally, assets held in your superannuation are distributed by the superannuation trustee in its absolute discretion. The trustee will generally distribute your superannuation proceeds to your dependents. It is your responsibility to check what the requirements are for each of your superannuation funds because each fund has different requirements.

If you wish to nominate someone to be the beneficiary of your superannuation proceeds, please check with your trustee regarding the procedure. Generally, trustees of superannuation funds that are not privately managed by you, are not bound by your nomination and can pay the proceeds to whoever they think fit. For example, you may nominate your children to be the beneficiary and the superannuation trustee may exercise its discretion to pay the proceeds to your spouse instead.

We also advise you to seek financial advice regarding the most tax effective way to distribute this asset.

## life insurance policies

Generally, the trustee of a life insurance fund must pay the proceeds to your nominated beneficiary. However you must check with that trustee whether this applies in your case. If your life insurance policy is obtained through your superannuation fund, it is likely the trustee is not bound by your nomination. Again each life insurance policy is different. Please check.

## managed funds

When investing in managed funds, please check whether or not the trustee of your fund has absolute discretion regarding distribution of the proceeds. Some managed funds are held by trustees who have the absolute discretion and your will therefore does not apply to such funds.



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## contesting of wills

You cannot stop people from contesting your will or applying to the Court for a larger share of your estate. Whether or not a person succeeds in a claim against your estate depends on the circumstances of each case. If there is good reason for excluding someone or giving someone a lesser share, we suggest that a short reason be included in the will. We strongly advise you to prepare a separate detailed statement of those reasons in writing and keep that statement with your original will.

## we do not destroy earlier wills

Our firm's policy is to hold all wills, including your revoked will. If after your death the latest will is found by a Court to be invalid, then your earlier will applies. This is helpful in most cases because if all earlier wills are destroyed, then your assets will be distributed in accordance with legislation as if you died without a will.

However, the content of earlier wills may also cause great family tension particularly when you have reduced the share of a beneficiary. If we hold your earlier will(s), and if you require your earlier will to be destroyed, you must instruct us to return them to you for destruction.

## personal belongings

Due to the increasing number of second marriages whereby the will maker and will maker's spouse/partner have children from previous marriages, and due to an increasing number of disputes in relation to the distribution of the deceased's personal belongings and household items, we suggest that you include in your will all items that you wish to specifically bequeath/give to someone. As these items are generally of considerable sentimental value but of little monetary value, it is not worthwhile for beneficiaries to pay substantial legal fees to argue about these items in Court.

We also suggest that you and your spouse/partner make a list of what items (furniture, jewellery, heirlooms, whitegoods) belong to each other and what belong to both of you jointly. Both of you should sign this list. Any items that are not owned jointly will form part of the deceased's estate and are to be distributed according to his/her will. You should also update this list regularly as you acquire and give away items during your lifetime.

call us to make  
an appointment  
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