

Letters of Administration) to distribute the net assets of an Estate to beneficiaries for a period of 6 months from the date of the grant of Probate or Letters of Administration. For the Executor or Administrator to distribute earlier puts them legally at risk if, after distribution but before expiry of the 6 month period, the estate is given notice of a claim against the estate assets.

The need, in certain circumstances, for an option election pursuant to the Property (Relationships) Act may also be a factor in delaying an Estate distribution.

So, if you are ever a beneficiary, do not expect to be able to collect your legacy straight after the funeral. You need to accept that the Executor or Administrator has a number of legal responsibilities to fulfil and that Parliament has given a minimum of 6 months to undertake those tasks.

15 What are Letters of Administration?

Where there is an intestacy, the Administration Act requires an application by the next of kin of the deceased to be made to the High Court for an order to administer the assets of the Estate. The order made is called "Letters of Administration". The Court Order appoints an Administrator who must administer the Estate in accordance with the provisions of the Administration Act. The Administrator has no discretion to vary the provisions of the Act regarding distribution of assets to family members.

16 What is the Family Protection Act?

The Family Protection Act entitles immediate family members of the deceased, including de facto partners (both past and present), and in some circumstances the partner's children, to bring a claim to the Court seeking to have the terms of the Will changed.

To succeed, the claimant must satisfy the Court that the deceased had a moral duty to provide appropriately for the claimant in the Will and that the provisions in the Will did not adequately satisfy that moral duty. The extent of the moral duty depends upon the particular family circumstances.

WHY HAVE A FAMILY TRUST?

What is involved in setting up a Family Trust and what are the advantages?



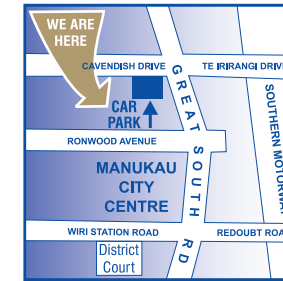
WHAT ARE ENDURING POWERS OF ATTORNEY?

Do I need them and who should be my Attorney?

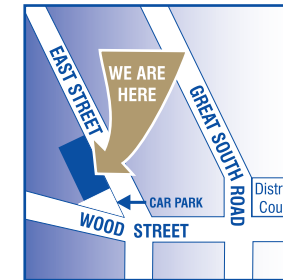
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Wills & Estate Administration



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Important facts about Wills and Estate Administration

1 What is a Will?

It is a legal document which sets out your wishes as to who should receive your assets when you die and appoints the person who you wish to administer the Estate (the Executor).

2 What is an Executor?

The Executor is the person or corporation appointed by you to carry out your instructions after your death. You may appoint more than one Executor. An Executor may be a member of the family, a friend, your lawyer or other professional advisor, and may also be a beneficiary.

3 What is a Beneficiary?

The Beneficiaries are the persons or charities to whom you wish to leave your assets and who will benefit from your Will.

4 What is a Testamentary Guardian?

Your Will may, if you wish, name a Testamentary Guardian or Guardians for your infant children. A Testamentary Guardian does not necessarily have the care of your children after your death, but that person will have a say in the important decisions affecting the care of your children.

5 Are there risks in my writing my own Will?

Yes there are. The Wills Act is quite specific as to the form, content and manner of execution of your Will. If there is not full compliance with the requirements of the Act then it is likely that you do not have a valid Will. Some people attempt to prepare their own Will using a pre printed form but unfortunately they frequently make errors resulting in an invalid Will.

6 What is a Memorandum of Intent?

It is a document, usually prepared by you at the time you make your Will, setting out your reasons;

- Why certain people have been made beneficiaries?
- Why others have been left out of the Will?

- Why certain people have been bequeathed particular assets?
- Why others have not?

In most situations a Memorandum of Intent will not be required. However, if you anticipate that there could be a dispute after your death, then such a memorandum would be useful evidence of your intentions.

7 When should I update my Will?

If you already have a Will then you should regularly consider whether it may be out of date. Your circumstances and the circumstances of the people named in your Will can often change.

Good reasons for reviewing your Will are:

- Birth of a child
- Commencing a relationship
- Ending a relationship
- Death of a family member, executor or beneficiary
- Significant change in your assets

Your Will should be reviewed regularly, certainly at intervals of not more than five years.

8 Are there differences in the law for Wills between marriage relationships and de facto relationships?

Yes there are.

If you have an existing Will and then get married, your Will is automatically revoked upon the new marriage unless the Will is stated to be in contemplation of that marriage. The Will needs to be carefully worded to ensure that it remains a valid Will after your marriage.

For de facto relationships, your existing Will continues to be valid even if you enter into a new relationship. It is therefore essential that upon ending a relationship, but before commencing a new relationship, you review your Will.

9 What is Probate?

Where the assets in your estate include land in your sole name or any other monetary asset of \$15,000 or more, the High Court is required to confirm the appointment of the executor/s. The approval is termed a Grant of Probate. A copy of the sealed Probate is required for transfer of the land or uplifting of the asset.

10 Who is responsible for paying Estate debts?

The Executors of your Estate will collect in the assets of your Estate. They have the responsibility of paying all debts from those assets. The Estate liabilities must be paid or allowed for before there can be a distribution to the beneficiaries under the Will.

11 What are options A and B in the Property (Relationships) Act?

Section 61 of the Property (Relationships) Act requires the surviving spouse of a marriage or the surviving de facto partner of the deceased to choose between:

- Making an application under the Property (Relationships) Act for a division of relationship property (called "option A"); or
- Electing not to make an application under the Act (called "option B").

In electing option A, the surviving spouse or partner ceases to be a beneficiary under the Will of the deceased and ceases to have any entitlement on an Intestacy if the deceased died without a Will.

In electing option B, the surviving spouse or partner is entitled to receive property under the terms of the deceased's Will or, if no Will then, an entitlement on an Intestacy.

The Act does not allow the surviving spouse or partner to claim both under the Act as well as take a share under the Will or on an Intestacy. There is a time limit for making the choice and specific forms to be signed. If no election is made

within the time frame allowed then the Act deems that the surviving spouse or partner has elected option B.

The preferred option will depend upon a number of factors including the nature of the relationship, the nature and value of the assets, whether the deceased had been in any prior relationships and the terms of the deceased's Will.

12 What is an Intestacy?

If you die without a Will your Estate is said to be intestate and hence an intestacy arises. In this event, the Administration Act directs what is to happen to your property and assets.

13 What is a testamentary promise?

"I'll take care of you in my Will"

"You've been so good to me, I'll leave you my house in my Will"

Pursuant to the Law Reform (Testamentary Promises) Act, if a person rendered services to, or performed work for, the deceased (during the deceased's lifetime) and a promise was made to reward that person by way of a provision in the deceased's Will, then that person may bring a claim against the Estate of the deceased where that promise has not resulted in a legacy in the Will.

However, generally such services would not include services that arise out of the natural consequences of life within a close family group.

Regardless of the dollar amount or the property actually promised by the deceased, the Court has a discretion to award an amount which the Court considers is reasonable in all the circumstances.

We can assist in providing legal advice in respect of bringing a claim under this Act or, if you have been served with a claim under the Act we can assist in providing legal advice in respect of a defence to that claim.

14 When can the assets of an Estate be distributed?

Section 47 of the Administration Act essentially restricts the ability of an Executor (for Probate) or Administrator (for