



# Wills & Estate Planning

Probate

Info  
Kit

Half of Australian's do not have a Will, yet considering the ease and importance of drafting one, it makes sense to be in the half who do.

Setting up a Will is just one step in protecting yourself and your family, and most people leave it too late. You should also consider setting up authority over your life when you may be incapable to do so. Having peace of mind and your affairs in order will ensure yours and your family's lives will be covered when the unforeseeable happens.

You may also be in a situation to take advantage of tax reductions or need to protect current and future wealth for your family. Your lawyer and accountant can advise you on the right strategies and planning to protect and increase your wealth such as through family discretionary trusts.

## Good to know

- There are many factors to Wills and estate planning. Please feel free to contact us to discuss your matter in a no-obligation initial consultation so we can provide you tailored advice.
- As laws in states and territories differ, please note this fact sheet covers the law in NSW.



At Altria, we provide advice **you can understand**, in a straightforward, clear and concise manner.

This fact sheet provides an overview of the factors to consider if you are planning for the future of your family.

If you require more details or wish to discuss your matter, please call or email us on  
Tel- (02) 9134 5851  
Em- [info@altrialaw.com](mailto:info@altrialaw.com)

The law is on your side

altria

## Wills and testament

Put simply, a Will is a document that sets out how you want your property and assets to be divided once you pass away.

A legal Will protects the interests of those you care for most, freeing them of financial worries at one of the most emotional times in their life. Anyone over 18 can make a Will, and it is best to make one when you are healthy and of sound mind. In Australia, there are a few requirements to make a Will legal to ensure the document will be approved by the court:

- ✓ Be in writing and dated.
- ✓ Be signed by the Will-maker, as well as initialling each page, with the sole intention of making a Will.
- ✓ Preferably don't make alterations, but if so ensure they are all initialled and witnessed next to them.
- ✓ Attest to the circumstances of the Will being made.
- ✓ Be witnessed by two other people at the same time of the Will-maker signing, who are NOT beneficiaries (otherwise the witness may lose their claim), as well as initial each page, preferably with the same pen.

### Your options

#### ✓ RECOMMENDED

##### USE A QUALIFIED LAWYER

A lawyer ensures your Will complies with guidelines and how you are gifting is legal, especially trusts, co-owned assets and insurance. They will advise on the legality of the people you wish to gift to, and advise on debt settlement and funeral costs.

A lawyer can reduce the likelihood and ability of an individual contesting your final wishes and seeking their share. A lawyer can also verify you made your Will in sound mind and safeguard it as the last and current version of your final requests before passing.

A lawyer can help execute the Will if matters become more complicated and burdensome.

OR

##### DO IT YOURSELF

There are several DIY kits on the market for around \$30. They cover the basics to make a Will in a step-by-step process. CHOICE independently reviewed the best options and found that while some kits are comprehensive, none of them are perfect or cover all the complexities that can occur with a deceased estate.

Will kits can be a useful research tool, but CHOICE still recommended professional legal advice.

It's not worth the risk to leave it to chance. Still interested? Read the CHOICE article [here](#) to see available options and reviews.

### What is probate?

Probate is a Supreme Court order acknowledging your Will is proven to be your last valid Will, and allows your executor(s) to collect and distribute the estate according to the terms of your Will.

### Good to know

- Dying without a legal Will means the court will make a predetermined judgement on your estate, and in NSW your spouse or domestic (de facto) partner gets the first \$350,000, your personal effects and half of the rest of the estate; only then do your children get what's left. If you have no Will, partner or children your estate will be split between relatives. Only a Will can ensure your wealth is distributed per your final wishes.

### 1. THINK ABOUT THE FUTURE

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You will have a lot to think about, so it is important you take the time to work out the full breadth of your estate and who you wish to leave it to. Your estate includes your house, land, car, bank accounts, jewellery, clothes, household goods and investments. Proceeds from life insurance and superannuation may be included, but that will depend on the wording of your policies. You will also be considering your next of kin and family members to look after, charities and causes you wish to bequeath to and your funeral expenses.

### 2. DRAFT YOUR WILL

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Your lawyer will take you through the process and document your Will in the legal framework so it is admissible. They will guide you on your estate, your requested beneficiaries, the executor of your Will, whether a trust should be established and if you need a trustee, and any funeral requests and covering associated costs. They can witness your Will as well as keep it safe for when required.

### 3. CHANGES TO YOUR WILL

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You should consider updating your Will as your life progresses. Consider updating from time-to-time as major changes occur in your life like buying or selling property, marriage, having children or becoming a grandparent, surviving your partner, leaving your partner or finding a new partner.

### 4. AFTER YOU HAVE DECEASED

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The executor of your Will is responsible for a lot of actions after you pass, so ensure they are trusted, responsible and willing to take on the task:

- Finding the Will
- Arranging for disposal of your body
- Obtaining the death certificate from the Registry of Births, Deaths and Marriages
- Totalling your assets and liabilities and assessing their value
- Obtaining probate (if required)
- Paying down your debts, income tax, duties and funeral expenses
- Distributing the assets per your Will

### CONTESTING A WILL



If you feel you have been left out of a Will or have been given an unfair share, you can contest the Will or make an Inheritance Claim. Certain family members such as a child, spouse or de facto partner can ask the court to vary the terms of the Will. Contact us today to discuss your specific matter.

### Good to know

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- Domestic partners need only live with you for two (2) years or you have had a child together to be legally entitled to a claim on your estate.
- An executor ensures that your wishes are carried out and it is wise to appoint people you trust, including a substitute if your first preference is unable to act as executor. Your lawyer can also be your executor.
- You cannot alter your Will once signed, and you will need to make a new one for any changes. But, if you marry, your existing Will as an individual becomes automatically voided and you will need to make a new one.

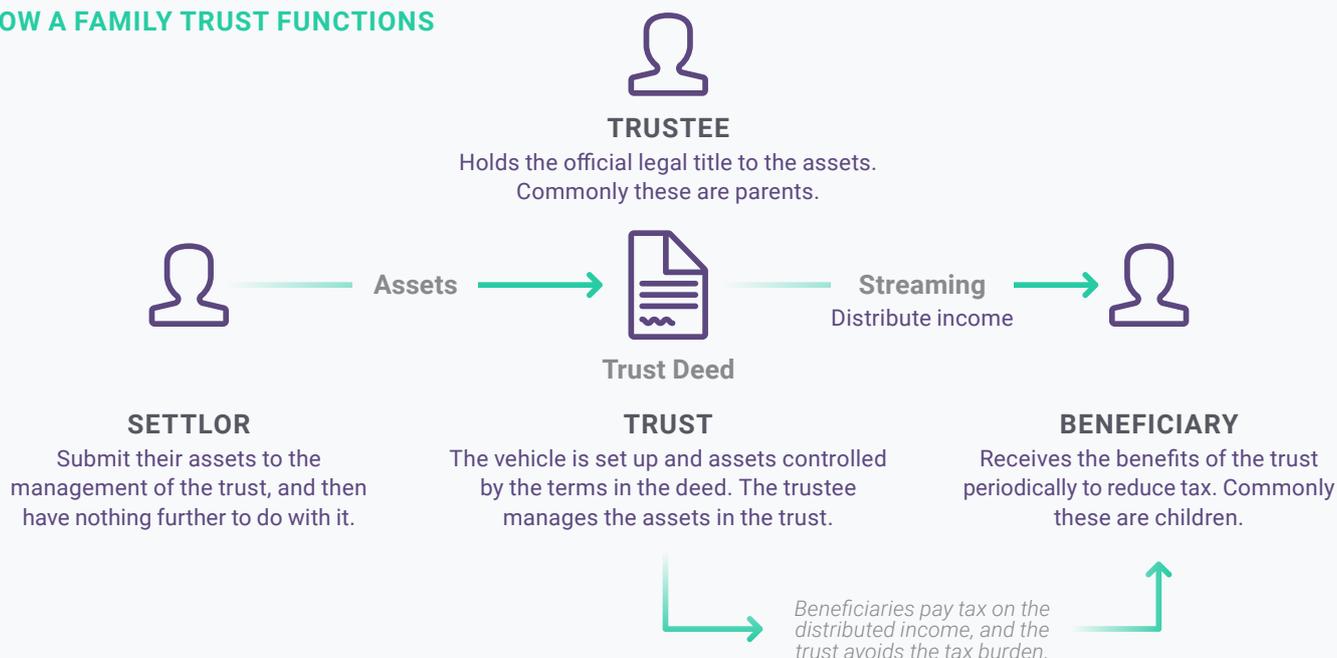
## Setting up a trust fund

### Family trusts

In Australia, family beneficiary trusts are a useful financial tool to benefit your family as a whole, including lucrative tax advantages. Usually a family trust makes sense when individuals on high tax rates can offset against lower income family members, where there is a need for increased protection from creditors and ex-partners, and to pass down assets through future generations.

They are relatively easy to set up, but you should use the services of a qualified lawyer or accountant to ensure they are drawn up correctly. Upon drawing up the trust deed which sets out the terms and conditions, one or several 'trustees' are appointed to manage the affairs of the trust and the 'settlers' allocate their specific assets into the trust. Named 'beneficiaries' in the trust deed receive the benefits of the trust as distributed income. It is important to manage your family trusts correctly to ensure their earned income is duly distributed each year to beneficiaries so taxation by the trust is avoided. The ATO has been placing scrutiny on trust arrangements, and in family trusts beneficiaries need to be deemed part of the 'family group'.

### HOW A FAMILY TRUST FUNCTIONS



### Testamentary discretionary trust

This type of trust is set up specifically for Wills once you have deceased. As opposed to granting gifts from your estate directly to recipients, you place the assets into the trust and appoint the recipients as beneficiaries.

This poses tax benefits, as you could place a residential property into the trust and then this becomes an investment property for your beneficiaries to earn continued income from. The difference from a testamentary discretionary trust to a normal family trust is that minors under 18 years old are taxed the same as adults and receive the tax free thresholds and lower income tax brackets.

This means that 'streaming' income between the beneficiaries children can mean significant ongoing tax savings, including reduced capital gains tax.

## Power of Attorney and Enduring Guardianship

There may come a time in your life when you are unable to look after your own affairs, such as being incapacitated, mental decline or accident.

You will need to consider those trusted individuals over the age of 18 who can act on your behalf as a way of insuring yours and your families future. It is wise to engage a lawyer to ensure the right limits are placed on any authority you grant.

### POWER OF ATTORNEY



A legal document that appoints and authorises an individual such as a family member or trusted friend to act on your behalf in the areas of property and financial management. You can choose this for a defined or indefinite period of time.

AND

### ENDURING GUARDIANSHIP



An appointment of a person(s) to cover the personal, lifestyle and health aspects of your life when you are incapable of doing so. They step in to decide where you will live and what medical or dental treatment you are to receive.

### HOW MUCH WILL IT COST?

In most circumstances upon receiving some basic details about your needs, we can provide a fixed fee to draft your Will or to set up power of attorney, enduring guardianship or a family trust. Altria can manage the entire process for you including acting as a witness, protector and executor of your Will.

### Wills & Estate Case Starter

Our Case Starter lets you enter simple details to start the conversation with us.



[GO TO CASE STARTER](#)

### How Altria can help you

Altria Law's team of experts have years of experience in creating Wills for large and small estates as well as protecting family wealth. We leave nothing to chance, ensuring your family is well protected from legal or financial problems especially after you have passed away.

- Wills and execution
- Power of Attorney
- Enduring Guardianship
- Family trusts
- Testamentary discretionary trusts
- Estate planning
- Asset and wealth protection
- Business succession
- Superannuation
- Taxation
- Insurance

Contact Altria today on (02) 9134 5851, or email us at [info@altrialaw.com](mailto:info@altrialaw.com)