

# MAKING A WILL

## WHY MAKE A WILL

- The making of a will ensures that the assets which you own are properly administered following your death and are received by the people whom you intended to benefit.
- A Will also enables you to appoint someone of your own choice to manage your estate.
- Those assets may be of wide variety – jewellery, tools, house property, life insurances or monetary gifts and can include bequests given to you by other people.

## WHAT HAPPENS IF YOU DON'T MAKE A WILL?

- If you do not make a Will then, provided your assets, excluding joint assets, are under the value of \$15,000.00, your assets can be dealt with without probate or an application to the Court.
- If your assets are over \$15,000.00 in value, then an application will need to be made to the Court.
- If you are married or in a de facto relationship then your spouse or de facto partner (including same sex partners) will be entitled to the proceeds of your estate up to a value of (currently) \$155,000.00 and thereafter two-thirds to your children (if any) and one-third to your spouse. If the spouse or partner is dissatisfied with what they receive under the intestacy rules then she/he may be able to apply under the Property (Relationships) Act 1976 to receive half the “relationship property”.
- If you are unmarried or in a de facto relationship and have children, then your assets will pass equally to your surviving children.
- If you are unmarried or in a de facto relationship and have no children, then your assets will pass to your surviving parents in equal shares and if your parents have predeceased you then to brothers, sisters, nieces, nephews, grandparents, aunts and uncles.
- If you are not survived by any immediate family then your assets will pass to the Crown.

## CAN OTHER PARTIES CHALLENGE A WILL?

- A will can be challenged under the Family Protection Act by dependent children and families if no provision is made for them in the Will, or if inadequate provision is made in the Will.
- Third parties can also claim under the Law Reform Testamentary Promises Act where promises are made during the lifetime of the deceased in return for services rendered, and the promises are not carried out in the Will.
- A surviving spouse or de facto partner now has the option to either seek division of property pursuant to the Property (Relationship) Act 1976 or take according to the deceased's Will.

## WHEN SHOULD A NEW WILL BE MADE OR AN EXISTING WILL REVIEWED?

- Marriage/De facto Relationship (including same sex) relationships).
- Dissolution of marriage.
- Separation, especially where a person separates but does not sign a formal Separation Agreement.
- Death of a beneficiary (person entitled) or of a trustee (person appointed to carry out administration of the Will).
- During a restructure or evaluation of a person's affairs, including the setting up of a trust.

## WHAT YOU SHOULD CONSIDER WHEN MAKING/UPDATING A WILL?

- When making a new Will, or reviewing an existing Will, you should consider the following:
  - Assets owned in your name.
  - Assets owned jointly with another person.
  - Assets which are being held on trust for a third person.
- The above matters are relevant for three reasons.
  - First, if you own property jointly, ownership may be subject to the Rules of Survivorship; which means that if one of you should die, then the survivor will **automatically** acquire the share of the deceased.  
  
In such a case, any gift which the deceased may make to a third party (i.e. other than to the survivor) would have no effect.
  - Second, you can only dispose of property which is owned by you at the date of your death.  
  
Any attempt to gift a specific asset which no longer exists or which has already been disposed of, will be void and of no effect.
  - Third, any purported gift by you of an asset held on trust for a third party would be open to challenge by that third party for breach of trust.

## WHAT SHOULD BE INCLUDED IN A WILL?

- Revocation of all previous Wills.
- Appointment of trustees (preferably more than one).
- Appointment of legal and testamentary guardians if you have infant children.
- Specific bequests and legacies (for example, cherished items of jewellery, artworks, antiques; motor vehicles; monetary gifts [e.g. to a charity]).
- Gifts of the residue (balance of estate after payment of all debts and after specific legacies have been made). It should be noted that proven debts will take priority over gifts.
- The age which beneficiaries are to benefit (generally 20-25 years).
- Directions as to burial or cremation.
- Directions as to any bodily part which are to be used for the purpose of prolonging life or for medical research.
- Any other funeral instructions.

## SUMMARY

- The above details are of the briefest nature only, and are merely intended to give some ideas as to the reasons for making a Will and the possible consequences of not making a Will.

**We recommend that if you do not already have a Will, or have not reviewed your present Will for some time, you take the opportunity to discuss the matter with your Solicitor. At Mee & Henry Law Limited, we have the experience and expertise to help you with any enquiries you may have.**