

Why Have A Will?

To simplify the administration of your estate

If you die without a Will (intestate) the process to obtain a grant to administer your estate ("Letters of Administration") is often significantly longer and more costly. In contrast, the process for applying for Probate of a will (the process of proving the validity of a will in Court) is reasonably straightforward.

Where your estate is small (less than \$15,000 at the time of your death) a copy of your valid will, and a death certificate is normally sufficient for the named executor (without Probate being required) to close your bank account and/or transfer shares and other investments to the beneficiaries named in your will. There are other situations where probate may not be required, and a death certificate and valid will can be used to administer property of small value.

However, there are circumstances where, if you do not have a valid will, small estates may still require Letters of Administration. For example, if your sole estate asset is a KiwiSaver account, some KiwiSaver providers will not release the funds unless an administrator has been appointed. This can be a costly and complicated process for families.

You choose who administers your estate

If you have signed a will you choose who is to be the administrator of your estate; this is the executor you appoint in your will. On the other hand, if you die without a will you do not choose who administers your estate. The person appointed is normally the person highest in the order of priority as set out in the High Court rules. For example, a surviving spouse/civil union partner/ de facto partner entitled to benefit on intestacy has the first priority. If you have separated, but not formally finalised the separation, your ex-partner may have the first priority to apply to administer your estate.

You choose who inherits from your estate

In your will you set out your wishes as to who inherits your estate and the share they will receive. You can also appoint testamentary guardians for your children.

Your will can also include your wishes about your funeral and whether you are to be buried or cremated.

If you die without a will you do not choose who inherits your estate. The Administration Act 1969 sets out how an intestate estate is to be distributed.

For example:

- You die with a partner and no children but with living parents. Your estate is distributed with your partner receiving the personal chattels, the prescribed amount (currently \$155,000), and two thirds of the residue of the estate. Your parents receive, in equal shares, the remaining one third of the estate.

- You die with a partner and children. Your partner receives the personal chattels and the prescribed amount but your partner now receives a one third share of the residue and the remaining two thirds is held for your children until they come of legal age (20).

Factors to consider when drafting a will

What makes up your estate? Assets and liabilities?

How are these assets owned? Joint tenants or tenants in common? Have you transferred assets to a trust?

- Do you owe anyone a duty to support them or give them anything?
- Have you made a promise to leave someone something in your will?
- Are you in a relationship – married, civil union or de facto?
- Is your will fair? Do you wish to exclude anyone from benefitting under your will?
- Do you understand the rights of your family?
- Do you understand that the Family Protection Act deals with the situation where close family members are entitled to expect some form of provision from your will?

We all hope that our families will deal with a death harmoniously. The reality is, that if you die without a will, it can lead to arguments and disputes at a time when your loved ones should be grieving. Experience tells us that it is unwise to think that those who could claim part of your estate will not do so!

We strongly recommend taking the time to make a will that is comprehensive and which takes into account all matters that can be reasonably foreseen.

It is very easy to leave your will and estate planning to another day, but consider the potentially undesirable consequences if you die before that day arrives.

For more information or assistance please contact:

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DISCLAIMER

This information is intended to be general in nature. You are strongly recommended to seek your own legal advice in relation to the matters dealt with here.