



## WILLS

An up to date Will is one of the most important documents you can have. It allows you to specify how you would like to provide for your loved ones and how you would like your affairs to be managed once you are gone.

### **What if you don't make a Will?**

If you die intestate (without leaving a valid Will) your spouse or a relative would need to apply to the court to be appointed the administrator of your estate, this can be an expensive and drawn out process.

Your spouse would receive your personal chattels, the first \$121,500.00 of your estate plus interest and a third of the remaining estate. The other two thirds would go to any children you may have. The issue with this is that if the bulk of the estate is the family home and you owned it solely in your name, it may need to be sold to give the children their share. If you do not have any children at the time of your death then a share would go to your parents. For example your spouse would receive your personal chattels, the first \$121,500.00 of your estate along with two thirds of the remaining estate, leaving your parents entitled to the other third. This might mean selling the family home to give the parents their share.

It is important to keep your Will updated, for example marriage automatically revokes a Will (making the Will invalid). You can make your Will in anticipation of marriage, this would help keep your Will valid in this respect. Likewise you can make your Will in anticipation of any children you may have, which would take away the chance of any of your children being left out of your Will and them having to apply to the courts to make a claim.

### **What is contained in a Will?**

The revocation of any Will previously made by you (making them invalid).

Appointing Executors and Trustees to administer your estate. They are responsible for carrying out your last wishes. You can choose anyone over the age of 18, whether they be a family member, a friend, a solicitor or an independent Trustee. It is advisable to have two Executors and Trustees, this reduces the chance of having your Executor and Trustee predecease you. It is important to have someone you trust. Quite often people will choose a relative or friend along with a professional person being either a Solicitor or an Independent Trustee. Another option is having a substitute Executor and Trustee which is a backup if your first Executor and Trustee is unwilling or unable to administer your estate.

**Guardianship** – If you have any children under the age of 18 it is important to have someone you trust that would be willing to be appointed their guardian. This does not necessarily mean custody, it just provides that the appointed guardian has the responsibility of making the important decisions in your children's life. For example, where they live and what school they go to etc.

**Specific Gifts** – If you have any items you wish to go to a certain person e.g jewellery, antiques etc then you can state this in your Will. It is important to note that if these items are sold before the time of your death then the gift fails.

**Residue** – How the remaining estate is to be divided (this is the amount left after all bills, taxes and amounts owing by the estate has been paid). The residue will be divided between your beneficiaries as to the shares that you provide for in your Will. Whether it be to your spouse, children, relatives or friends. You may also want to think about who you would like your estate to go to should your beneficiaries predecease you. For example a common form of this is leaving the estate to your spouse, then if they were to predecease you to be divided in equal shares between your children. The full names of the beneficiaries and their relationship to you is needed to be stated in your Will. If any of your beneficiaries are to be children under the age of 18 you may need to have this in a trust until they reach a certain age.

**Trustees powers** – There is a standard set of clauses put in Wills to give your Trustees the power to handle your estate. This is needed to give authority to your Trustees to deal with your estate in certain ways. You can have these added to or amended depending on your wishes.

**Funeral wishes** – Lastly if you would like to state any relevant matters regarding your funeral. For example whether you wish to be cremated or buried.

### **What is a Living Will?**

The New Zealand Medical Association defines a Living Will as an Advance Directive and this in turn is defined in the Code of Health and Disability Consumers Rights as “a written or oral directive:

- a. By which a consumer makes a choice about a possible future health care procedure, and
- b. What is intended to be effective only when he or she is not competent.”

The Living Will or Advance Directive, directs that if at any time there is no reasonable prospect of your full recovery from any illness or accidental condition leaving you without the intellectual capacity to communicate your wishes by speech or other means, you can stipulate what your wishes are with your continued treatment and in particular you might say that you do not wish to be given any treatment that is intended to maintain or prolong your life. This document is a recording of your decision and provides a mechanism for you to state whilst you do have capacity to say what you would like to happen in the future if your mental capacity becomes impaired. Living Wills or Advance Directives only come into force once you lose your mental capacity, are unconscious or otherwise unable to communicate. In that situation, Doctors must act in the incapacitated patients best interests. Evidence of an informed advance decision should be taken into account when deciding what is in the individual person’s best interests. You must however be aware that you cannot demand or refuse anything in advance that you could not demand or refuse when conscious and competent. Should you require more information on Living Wills or Advance Directives please see the New Zealand Medical Association notes and precedents at <http://www.nzma.org.nz/patient-guide/advance-directive.pdf>

### **What is a Life Interest Will?**

A Life Interest is giving someone the use of a certain asset until the time of their death or under certain circumstances, where it then passes to the beneficiaries stated in your Will. This is usually used for giving someone a Life Interest for your house which gives them the use of that house until they die or until such a time as stated in your Will. After that time the house would then be sold and divided between your beneficiaries as stated in your Will.

### **How do I best protect my assets?**

If you are elderly and would like to protect your property that you and your spouse may have from being taken by rest home fees, and depending on your circumstances, it is a good idea to have your property as tenants in common. This means that you and your spouse own a one half share of your property each. If you are joint tenants then the property automatically passes to the survivor. Whereas Tenants in Common ensures your share is passed on as stated in your Will. You can then give your spouse a Life Interest in your one half share ensuring

they get the use of that property as long as they need. Then the property can be sold with your one half share going to the beneficiaries as stated in your Will. In the specific circumstance where one dies and the survivor needs to go into care, this simple structure currently will protect your one half share.

### **What claims can be made on my Estate?**

When you make a will you need to be aware of the potential claims that can be made on your estate. Writing a Will does not necessarily give you the freedom to do what you want with your estate. You need to think of your moral obligation to your family. The common claims made on estates are set out on our website [www.pierlaw.co.nz](http://www.pierlaw.co.nz)

### **How do I go about making a Will?**

The best way to is to call the office to arrange an appointment time. You can then discuss what provisions you would like to make in your Will. A draft Will will be sent to you where you can make any amendments. Once approved you come into the office to sign the final form. As there are certain ways a Will must be signed to be valid it is recommended to do this at our office. You will be given a copy Will to be kept safe in an envelope with our firms name and contact details. It is important to let someone know where you keep this document so that the family knows who holds your Will.

### **How much does it cost?**

If you would like to talk to someone about making a Will, a Living Will (Advance Directive) or if you have any queries please do not hesitate to call us.

We will discuss the costs with you depending on your individual needs and circumstances and provide you with a written estimate.

If we are acting for you on a conveyancing matter we offer a complimentary Wills service.