

Wills fact finder

Date:

Client name(s):

NOTE:

Wills can be categorized into two basic types:

- (1) A **Standard will**; or
- (2) A **Smart Will** containing testamentary trusts*

* Refer to the glossary in Annexure "A" to read about testamentary trusts

Please complete the form as best you can

Don't worry if you are not sure. We will contact you if important items are incomplete or your responses indicate we need to know more about something

If there is inadequate space to fully respond to any questions, there is space at item 11 to elaborate, or you can simply attach additional relevant information

Personal Details		
	Client 1	Client 2
Title		
First Name/s		
Preferred Name/s		
Middle Name/s		
Last Name		
Previous Name/s		
Date of Birth		
Gender	Male Female	Male Female
Relationship Status (married, divorced, de facto)		
Country of Residency		
Citizenship if NOT Australian Resident		

Contact Details		
Street Address		
Suburb		
State & Postcode		
Home Phone		
Mobile		
Email		
Preferred Method of Contact	Phone Mobile Email	Phone Mobile Email

Children and/or Other Dependents (Current and/or Expected)	
Date of Birth	Full Names

1. The name, address and relationship (friend or relative) of the person you want to be the executor of your will. [Refer to the glossary in annexure "A" about what an executor does]		
<i>An executor handles all paperwork and does everything necessary to carry out your wishes in your will. Usually the spouse or close relative or friend.</i>		
First Name/s		
Middle Name/s		
Last Name/s		
Date of Birth		
Street address		
Suburb		
State & Postcode		

2. The name, address and relationship (friend or relative) of the person you want to be the Alternative executor of your will.		
<i>The Alternate executor steps in if your first chosen executor in question 1 is not available or unable to act. Usually close relative or friend.</i>		
First Name/s		
Middle Name/s		
Last Name/s		
Date of Birth		
Street address		
Suburb		
State & Postcode		
Email		

3. The name, address and relationship (friend or relative) of the person you want to act as the Guardian of your children under age 18. If no children under age 18 please proceed to question 4. [Refer to the glossary in annexure "A" about what a guardian does]		
<i>The guardian(s) care for the underage children. This is usually uncles and aunties but can be anyone of your choice.</i>		
First Name/s		
Middle Name/s		
Last Name/s		
Date of Birth		
Street address		
Suburb		
State & Postcode		
Email		

Distribution of your estate

Your estate will first be used to pay debts, funeral and related costs and then the remainder will be distributed in accordance with your instructions.

Distribution Instructions	
4. Do you wish to give any specific items or make cash gifts to a specific person? If so please complete specific bequests table at item 8.	
<i>You can give away items like a specific watch or Jewelry or specific sums of money to people or charities.</i>	
Yes No	Yes No

For singles:

After specific items or cash gifts are made, if any, the remainder of the estate will pass on to the person(s) you nominate to receive the remainder of your estate. Please complete question 5 below to nominate the person(s) and the corresponding portions.

For couples:

After specific items or cash gifts are made, if any, the remainder of the estate will pass on to your spouse. If your spouse is not available or if you die together then the remainder of your estate will be distributed amongst your children (**unless you instruct otherwise**). If you are happy with this then you can skip question 5 and go straight to question 6. If you have no children (or do not propose leaving your estate to your children) please complete question 5 below to nominate people to receive your estate (and the corresponding portions) in the event that you both pass away together.

My children should receive my estate in equal shares?	Yes No If no, what shares apply:	Yes No If no, what shares apply:
The age at which my children receive their entitlements (Eg, 18, 21 or 25)	AGE:	AGE
If you wish to exclude a child or children from your estate please provide a brief reason why (eg, estranged for many years, or already given that child adequate financial support etc).		

5. Beneficiaries		
Full name and DOB	Street address	Percentage of estate
<i>John Blo Smith (15/02/1965)</i>	<i>12 Main street, Melbourne, Vic 3000</i>	<i>100%</i>

6. Other Entities		
Other Companies / Trusts		
Do you have a Family Trust?	Yes No	Yes No
Do you have a unit trust?	Yes No	Yes No
Do you have a company?	Yes No	Yes No
Superannuation		
Do you have a SMSF?	Yes No	Yes No
<p><i>Superannuation does not form part of your estate and is not dealt with by your will. You will have to make a separate nomination in your super fund to direct your super benefits to the people you name in the nomination. If you would like your super benefits to form part of your will then in the nomination you have to nominate the legal personal representative of your estate. If you have a self-managed super fund please ensure you have made a valid nomination. If you need help with this please contact us. [Also refer to the glossary in annexure "A" about superannuation death benefit nominations]</i></p>		

7. Special Circumstances		
Do you have a disabled child?	Yes No	Yes No
<p><i>If you have a child that is currently receiving a disability benefit from centrelink then you should have a will that creates a 'special disability trust.' This special trust is worded in a particular way to comply with centrelink requirements to continue receiving the disability benefits for your child. If this applies to you then we will contact you with further information. [Also refer to the glossary in annexure "A" about special disability trusts]</i></p>		
Do you have a beneficiary that is adult (or upon becoming an adult) will likely be unable to manage their own financial affairs ?	Yes No	Yes No
<p><i>This, for example could be a beneficiary that has addiction problems or is a spendthrift. If this applies to you then we will contact you with further information. [Also refer to the glossary in annexure "A" about protective trusts]</i></p>		

These trusts are predominately used to give beneficiaries benefits that do not occur through a standard will, namely (i) added flexibility; (ii) tax benefits, and (iii) asset protection – creating a shield around the inheritance against claims by creditors and estranged spouses/partners. [Also refer to the glossary in annexure “A” about testamentary trusts]

11. Other special instructions / Additional comments [insert any comments here about other things you’d like us to know or wish to have addressed in your wills]

ANNEXURE “A”

GLOSSARY

A

B

BENEFICIARY is a person who derives some benefit or advantage arising from the terms of a will, trust or life insurance policy.

C, D

E

ESTATE ASSETS mean a person’s individually owned assets at the time of their death.

[*non-estate assets* are assets a person has control over, or has a right to benefit from, but does not individually own at the time of their death. For example, superannuation death benefits, assets held in a family trust and assets held with another person under a joint tenancy arrangement]

EXECUTOR/S (also called a “legal personal representative/s”) is the person or persons nominated by a will-maker to carry out their wishes including, for example, obtaining authority from court (if required) to administer the estate, managing estate assets, valuing property, paying debts and lodging tax returns, dividing and distributing the estate to individuals or trusts created under the will.

F,

G

GUARDIAN is someone appointed under a person’s will to ensure the ongoing welfare and maintenance of the will-maker’s minor children. The guardian/s are responsible for catering to the child’s day to day needs and guiding their long-term development.

H, I, J, K, L, M, N, O

P

PROTECTIVE TRUST is a special trust established under a will, in the situation where the will-maker has concerns about a beneficiary’s capacity to adequately manage their inheritance.

This might arise, for example, because the beneficiary has a disability, has addiction problems or is a spendthrift.

Depending upon the wishes of a will-maker, the will creating a protective trust might ensure only income is available to the beneficiary, from the trust. In the alternative, the will may also allow capital payments. The overall intent generally being to ensure the ongoing care and support of the beneficiary.

Q, R

S

SPECIAL DISABILITY TRUSTS are trusts established to provide for the current and future care and accommodation needs of a family member with a severe disability. These trusts receive favourable tax treatment.

A special disability trust can be established during the creator's lifetime or may also be created through a Will and in that case, it is set up on the death of the will-maker, from assets in the deceased's estate.

A special disability trust must be created using a model special disability trust deed prescribed by social security rules and there are ongoing compliance obligations that must be complied with.

SUPERANNUATION DEATH BENEFIT NOMINATIONS

Under superannuation law, the trustee of a superannuation fund that holds a member's entitlements has a discretion to decide which of a deceased member's dependents shall receive the member's death benefits. Considering a member's benefits usually accrue over decades and often also includes a life insurance component on death of the member, the value of these benefits can be substantial.

Signing a Death Benefit Nomination form provides instruction to the trustee, as to which of a member's dependents they prefer to receive the benefits. However, this form of nomination is not binding on the trustee and the trustee still retains a discretion to make a different distribution.

A Binding Death Benefit Nomination differs from other nominations, as it overrides the trustee's discretion. With this form of nomination, *assuming it is compliant with law and the terms of the fund's deed*, the trustee is bound to pay your death benefit in the manner you have nominated.

If a will-maker wants their member death benefits to form part of their deceased estate, it is important to do a Binding Death Benefit Nomination appointing the will-maker's legal personal representatives as recipient of the benefits. In that case, the benefits are received by the executors and divided in accordance with the will.

T

TESTAMENTARY TRUST is a trust established within a will. The terms of the trust are documented in the will itself. The trust sits dormant while the will-maker is alive and then comes into effect after the will-maker dies.

The drafting of a will containing a testamentary trust involves the preparation of a more comprehensive and sophisticated document compared to a standard will. Typically, the document is very detailed, but don't let that put you off. The advantages can be substantial for your beneficiaries.

Wills containing these trusts are not new. They have been around for hundreds of years.

The extra cost of preparing a will establishing a testamentary trust are generally insignificant when compared to the benefits

Because the trust does not come into effect until the will-maker's death, a will of this nature does not create ongoing compliance costs during the will-maker's life.

The person benefiting from the trust, however, must typically lodge a separate tax return for the trust in each year it operates following the will-maker's death. A testamentary trust operates for up to 80 years from its commencement (subject to the primary beneficiary's discretion to wrap it up earlier at any time).

The cost of establishing a testamentary trust, and the subsequent compliance cost borne by its beneficiaries, are usually insignificant compared with the benefits. Of course, with the flexibility built into trusts, they can typically be wound up at any time if no longer offering benefits for the beneficiaries.

The advantages are substantial

Compared to a standard will, these more sophisticated wills containing testamentary trusts offer substantial advantages for nominated beneficiaries, including:

- flexibility in the way inherited assets are managed and enjoyed
- the potential for substantial tax savings (see further commentary below)
- asset protection benefits
- protection for vulnerable beneficiaries.

Pre-determined flexibility for beneficiaries

A well-drafted testamentary trust generally permits an intended primary beneficiary to indicate whether all, or just part of their inheritance, is placed into the trust, unless the will-maker specifically directs otherwise. Most beneficiaries seek to have their entire inheritance placed into the trust, however, there is flexibility to bypass it.

You can have the document prepared to remove this flexibility if circumstances dictate. For example, if the trust is established for a vulnerable beneficiary incapable of prudently

managing money, it might be wise to have the trust managed by an independent person indefinitely.

Unless the will-maker specifically directs otherwise, a testamentary trust often contains broad powers and gives the intended primary beneficiary abundant flexibility to use and enjoy assets held in the trust. This way, the beneficiary benefits from the inherited assets as though they had been gifted to the person directly, but also receives the many benefits described above.

Testamentary trusts are different to discretionary (“family”) trusts

Unlike a testamentary trust, a discretionary (family) trust is established by someone during their lifetime. The benefits of the discretionary (family) trust can be enjoyed by both the person that established it and other nominated beneficiaries. A trust of this nature might be established for many reasons, such as asset protection, estate planning purposes or for potential tax advantages.

There is one key similarity between discretionary (family) trusts and testamentary trusts, that is, the beneficiaries of each obtain similar asset protection benefits.

Some key differences between a testamentary trust and a discretionary (family) trust are:

1. A testamentary trust comes into effect after death, so the will-maker establishing it receives no benefit from it during their lifetime. The benefits are created for the beneficiaries named in the will.
2. There are substantial tax benefits available through testamentary trusts that do not apply to discretionary family trusts.

Under the Income Tax Assessment Act, a concessional tax treatment applies to testamentary trusts creating an opportunity to minimise tax, that is not available through the use of a discretionary (“family”) trust.

Distributions of income to children under 18 years of age, from a discretionary (“family”) trust, are taxed at abnormally high penalty tax rates. This is to prevent the use of such trusts to split the trust’s income among children (under 18) for the purpose of tax minimisation. However, income generated from assets held in a testamentary trust is taxed differently. A special concessional tax treatment applies to children under 18 who are taxed as though they were adults. The penalty tax rates do not apply. This opens an opportunity to make substantial tax savings through income splitting.

A testamentary trust can lawfully be used to split the trust’s income among multiple beneficiaries, including children under 18. The collective tax burden paid by the beneficiaries on income generated from inherited assets placed in that trust is generally much lower than the tax an individual would pay on assets received directly on inheritance.

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W

WIL is a legal document by which the will-maker expresses their wishes as how their estate assets are to be distributed upon their death and who will manage the will-maker's estate pending final distributions being made. The person or persons named as intended recipient/s of a share of the estate are known as the beneficiaries. The person or persons named to manage the estate pending final distributions are called the executor/s.

X, Y Z