



## CHANGE OF CIRCUMSTANCES WHY EVERYONE NEEDS A VALID WILL

**Q: Why do I need a Will?**

A: A Will provides you with peace of mind as it gives you the means to decide whom you wish to benefit from your estate and to what degree.

**Q: What if I don't have a Will?**

A: The rules of intestacy in the *Succession Act* will apply. Your estate will be distributed according to the set percentages and beneficiaries set out in the legislation. This situation can result in your estate being distributed to relatives you may not have wanted to benefit and in certain circumstances to the government.

**Q: What is the benefit of a Will when I currently have few assets?**

A: Even though you believe your estate may be small NOW circumstances may arise in an unexpected way. You may be the beneficiary of an unexpected inheritance or you may win the Golden Casket or the Pools, or a Mater or Endeavour Home. Having a Will may also save expense for your estate when you die. Statistics also show people sometimes do not update their Wills regularly. IT IS IMPORTANT TO UPDATE YOUR WILL ON A REGULAR BASIS.

**Q: What if assets are in the joint names (joint tenancy) of my partner and myself?**

A: If all your assets are in the joint names of yourself and your partner, the "Law of Survivorship" applies and the survivor is entitled so far as those joint assets are concerned. However, you might end up being the survivor in this situation. You should also remember that in your sole name you may have a windfall. If you want those assets in your name at the time of your death to be distributed in accordance with your wishes then you should have a Will in place.

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- Q: When does a Will become effective?** A: A Will ONLY becomes effective from the date of death.
- Q: What effect does marriage have on an existing Will?** A: Marriage revokes an existing Will, unless the Will states that it has been made in contemplation of marriage to your spouse.
- Q: What if I get divorced after I have made a Will?** A: Divorce will void any provision to your ex-spouse in the Will and will have other effects such as revocation of an appointment of your ex-spouse as an executor.
- Q: Why should I not just do up a Will myself?** A: Unless you have appropriate legal experience it is unwise to do a homemade Will, because it is important to ensure that the terms of the Will are clear, and it is important to avoid the risk of problems arising in the administration of an estate. It is best to ensure that the terms of the Will are professionally drafted by an experienced solicitor and that the Will is correctly executed. You should also have the opportunity to discuss with an experienced professional in the appropriate field particular ways in which you wish to distribute your estate. How the Will is drafted may make a significant difference when it comes to tax liability imposed on a particular beneficiary. There may be a myriad of other problems arising in dealing with an estate. It is best to obtain professional assistance if you are to make an informed decision as to distribution of your hard earned assets. Homemade or "Will Kit" Wills are the main source of litigation of Wills in the Supreme Court.

**Sherry Kelly is an experienced Practitioner with Colville Johnstone Lawyers who holds a strong interest in Wills, Administration of Estates and Succession Law including Estate Planning. Please feel free to contact and arrange an appointment with Sherry to discuss any of these matters.**

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