



Government of Western Australia
Department of Justice

Wills, Deceased Estates & Enduring Powers



WA *Will* Week
10-16 March 2019

Life can be unexpected
Make a Will today



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**Security for loved ones –
provided you approach it in a professional manner.**

A valid, carefully considered & up-to-date Will:

- Allow you to decide who receives your estate
- Allow you to determine who will be your Executor/s
- Deals with complexities – eg. Blended families; Financial
- Provides for those vulnerable – eg. Minors, aged spouse



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Why make a Will?



You lose **all** control over your asset distribution & the ability to determine your beneficiaries

If you die without a Will (“intestate”) –
Estate divided according to provisions in legislation,
among a class of beneficiaries in set proportions *

Key people in your life may not benefit at all

* *Administration Act 1903*



What if you die without a Will?

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The Family Setting:

- Larry (35yo) is married to Lauren (27yo)
- Larry owns: house (\$500,000) & cash (\$10,000)
- No children
- Larry has 2 brothers – Darryl & Dan (estranged)

Disaster strikes...

Larry dies suddenly without a Will



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Intestacy Example



Lauren (wife)	Darryl (brother)	Dan (other brother)
Household chattels		
First \$75,000		
$\frac{1}{2}$ Balance \$217,500		
	$\frac{1}{4}$ Balance \$108,750	$\frac{1}{4}$ Balance \$108,750





Under *Family Provision Act* (s.7), gifts can be challenged by:

- Spouse
- Parents
- Children
- *De facto* Partner

In certain cases, the following people can also challenge:

- Former spouse or former *de facto* partner
- Grandchild
- Stepchild

Entitlement is only to apply to Supreme Court

- Court *may* make order from estate, on a needs basis
- Consider documenting your reasons for not providing for family members in a separate letter to the court in case of a claim.





What makes a Will Valid in WA?

- In writing on paper – typed or handwritten
- Stating it is your Last Will & Testament
- Revokes all previous testamentary writings
- Appoints a suitable executor
- Gives away your assets to beneficiaries
- Properly signed & witnessed
 - every page signed by all
 - any alterations initialled
- Dated – identifying as the ***last*** Will
- You had testamentary capacity to execute it – lawyer & medical reports

**Don't risk the
cost to your
estate of proving
an informal Will!**





Even then . . .



- Risks in using Legal Will Kits, Online Wills, Will templates if not correctly completed
- Caution against use of these if estate is complex or moderate to high value



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Court Disputes



- Failure to include all assets
 - no catch all / residue clause
- Gifting assets not owned solely by you
 - joint tenants/tenants in common
 - Family Trusts
- Gifting Superannuation or Insurance not payable to your estate – read your policy
- Not allowing for the situation where a beneficiary dies before you.
- Order or inclusion of clauses that are contradictory.



Home-made Wills Problems



Regularly review your Will, particularly if:

- Marriage or divorce – beware revocation!
- Separation – Will is **NOT** revoked
- *De facto* relationship
- A beneficiary or executor has died
- More children
- You've changed your mind





See “***Last Will and Testament...***” brochure for details:

- From \$50 for concession or \$340 for non-concession
- Discounted fees for “couple” appointments \$38.50/\$227
- Many Wills completed at initial interview
(eg. straight-forward situations/instructions; allow 2 hours for couples)
- More complex situations attract time-based charges
(eg. Self Managed Super Funds)
- Incidental expenses (e.g. Landgate search fees)



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What does a Will cost?

Public Trustee Fees



- **Traditional options** – eg. private solicitors, banks, private trustee companies, informally at home

- **Free Will Storage**



- **Safe** – Held by Public Trustee / Department of Justice
– advantages: secure from loss, theft or damage, central location
- **Secure** – only Executor or authorised person can access the Will after the testator's death, with identification
- **Simple Process** – just complete Will Lodgement Form to deposit Will, with identification. Add your updated Will anytime, regardless who prepared it or who the executor is.



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Where is your Will?



- **Executor (& trustee)** – person legally responsible to administer the estate.
- **Appointing a friend** or family member is common but:
 - Do you want to burden them while they are grieving?
 - Do they have impartiality, skills and time?
- **Complex & time-consuming role**
 - Certain degree of legal and financial knowledge.
- **Professional Executor or assistance**
often engaged. (Expense deducted from estate).
- **Executors have the right to renounce**



What awaits *your* executor?



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Notify family & beneficiaries

Make funeral arrangements?

Creditors & Debtors Payments



Tax return & clearance

Uncooperative family members / disappointed beneficiaries?

Obtain Grant of Probate

Locate, secure, insure & value assets

Manage business interests

Establish trusts?

Distribute Estate

Income



Bank Accounts?



Other cash or shares?



Joint or solely owned?

Retirement Village or Nursing Home Bond?



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Executor Duties



- Whoever arranges your funeral can present the invoice to your bank / executor & be reimbursed (funds permitting)
- Beware:
 - **funeral insurance** – Read the fine print!
 - Premiums increase with age & don't cover certain events
 - Will not pay if your premium lapses, what if you or your carer forgets to pay in your later years?
 - **prepaid arrangements** – ensure loved ones know you've made arrangements and who you've made them with ... but what if they go bust? No WA Funeral Fund Legislation.
 - **funeral bonds** safest & most portable prepaid option





For costs see “***Deceased Estate...***” brochure or website

- **Not Commission based!**
- **‘Fee-for-service’ model** – depends on number and types of tasks required to administer estate
- **Standard scale of fees** – estate with many or complex tasks costs more than a simpler estate
- Estate’s value **does not** influence the fees (i.e. not percentage based)



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**Deceased Estate Administration
Costs Public Trustee Fees**



- Enduring Powers of Attorney (EPA) - Finances
 - You retain power to make decisions for yourself until State Administrative Tribunal (SAT) deems you lack mental capacity.
 - Attorney must act in your best interest & keep records – but little oversight of EPAs so choose your Attorney carefully or risk financial abuse.
 - SAT Administration Order sometimes ‘safer’. Application made once you lose capacity.
 - EPA ends upon your death





- Enduring Powers of Guardianship – Health, Welfare & Lifestyle
 - Office of the Public Advocate – advice & forms for EPA & EPG
- Advanced Health Directive (“Living Will”) – Health
 - Health Department / Doctor



Getting other Affairs in order

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- In-home care – are you eligible for a package?
 - 2-24 months wait. How long can you personally fund in-home care before you are awarded a package?
- Residential Aged Care – where would you prefer to live?
 - How much will it cost?
 - RAD or RAC plus Daily contribution \$50 per day plus Care Fee – up to \$270 per day, Optional Extra Services Fees (\$55p/d)
 - Palliative Care – End of life choices, organ donation
- Preserving Inheritance vs Quality Aged care
 - Family discussions regarding your instructions & wishes





- Get financial & legal advice before investing, lending or gifting money
- Ensure all family agreements involving money, property or assets, including granny flats, are documented
- Unintended consequences of gifting money including broken relationships & losing Centrelink & Aged Care benefits
- Assets & money are difficult to recover when things go wrong





So...

How prepared are you?

Questions?



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To make an appointment:

Phone **1300 746 116**

www.publictrustee.wa.gov.au



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