HOLLAND BECKETT

WILLS MONTH
INFORMATION PACK

A Will is perhaps the most important piece of paper you can leave behind to support your loved ones. Why do you need a Will, what happens if you pass without a Will, and how best should you prepare your Will for your circumstances?

September is Wills Month.

Holland Beckett take part by offering a free Simple Will, or a 20% discount on a Complex Will, if you leave a gift to charity in your Will this September.

Visit our website: hobec.co.nz

Email: estates@hobec.co.nz

Phone: 07 578 2199

WHY DO YOU NEED A WILL?

Your Will contains your instructions about what you want done with your property when you die and how you want those that depend on you (your spouse, partner, children, etc) to be looked after.

As far as you and your family are concerned, it could be the most important piece of paper you ever sign.

WHAT HAPPENS IF YOU DIE WITHOUT A WILL?

This is called "dying intestate".
If you don't have a Will and you own assets over $15,000*, then an application to the Court for Letters of Administration will be required. This is more costly than an application for probate pursuant to a Will.

The Administration Act 1969 specifies how your property will be distributed if you die intestate.

*The $15,000 threshold is set to increase to $40,000 on 24 September 2025.

Even if you don't own major assets, you can quite quickly build up possessions that have some sort of monetary or sentimental value to you. Having a Will allows you to decide what will happen to your belongings and give some thought to sentimental items.

If you have a Will then you're already one step ahead, but is your Will up to date? When was the last time you reviewed the terms of your Will?

The basic rules of the Administration Act 1969:

1. If there is a spouse or partner, but no children or surviving parents, the spouse or partner will get all of the estate.
2. If there is a spouse or partner and also children, the spouse or partner will receive all personal chattels, the first $155,000 of the estate and 1/3rd of the remaining property. The other 2/3rds will go to the children.
3. If there is a spouse or partner and no children, but surviving parents, the spouse or partner will receive all personal chattels, the first $155,000 of the estate and 2/3rds of the remaining property. The remaining 1/3rd will go to the surviving parents.
4. If there are children, but no spouse or partner, the estate will go to the children.
5. If there is no spouse or partner or children, the estate will go to the parents.
6. If there are no parents, the siblings or their children (the nieces and nephews) will receive the estate.
7. If there are no siblings, nieces or nephews, the estate is shared between grandparents, or if none exist, aunts and uncles.
8. If none of these parties exist, then the Crown will receive all of the property.

HOW DO YOU MAKE A WILL?

Because of the importance of your Will, the law says it must be made in a certain way. It must be witnessed by two witnesses and signed by you.

What should your Will include?

The following matters should be covered:

1. Your Will should name one executor, ideally two, preferably who live in New Zealand. They are:
   A. responsible for seeing that your wishes, as expressed in your Will, are carried out; and
   B. they are the administrators of your estate until it is all distributed.
2. Your Will should provide for payment of your liabilities.
3. It should make adequate provision for your partner and children.
4. It should cover off who you would want to inherit your property and possessions.
5. You might consider naming preferred guardians of your children.
6. You can also set out any specific funeral arrangements, although those organising your funeral are not legally bound to follow these instructions.
7. You can give directions as to how a business you own should be dealt with when you die.
8. Your Will can also include a bequest or a gift to charity.
9. You can also deal with any interests in Māori land in your Will as long as the people receiving the interest are entitled to do so under the Te Ture Whenua Māori Act.

Do it yourself kits do not always cover all the aspects you need to consider. You should certainly get legal advice about how to make your Will.

Should you appoint a legal guardian?

Parents are usually the legal guardians of their children.

A non-parent guardian looks after the children's welfare when the parents cannot do so, although they are not necessarily responsible for the day to day care of the children or for supporting them financially. A testamentary guardian is a person appointed by Will or deed by the parent of a child.

You are not required to name a testamentary guardian for your dependent children, although it is often a good idea to do so. This is especially important should both parents die together or if you are your children's sole guardian.

Where should you keep your Will?

Your lawyer or trustee corporation will store your Will free of charge. You should tell your executor and a family member where your Will is held.

WILL PREPARATION

We recommend that you pick two executors who live in New Zealand and can work well together. This will help to make the administration of your estate straightforward and cost effective.

If your Will is complex or you think that there may be a dispute in the family after you die, then you could consider appointing an independent professional as your Executor.

Understand how your property is owned

If you are leaving everything to your partner, check to see if your property is jointly owned. Jointly owned property (property ownership as joint tenants) passes automatically to the survivor, which makes for a quick and hassle free process. Assets over $15,000 require an application to the High Court.

Check how your insurance policies are owned. If you own the policy, your estate will likely need to apply for probate and the proceeds will be distributed in accordance with the terms of your Will. If the policy is jointly owned, or owned by someone else, then that person may be able to access the policy straight away.

Blended families

If you have children from a prior relationship and a new partner, it is important your Will balances the needs of your partner and children and each of their potential claims against your estate. This requires specialist legal advice.

Bequest/Cash or percentage gifts

We recommend that you do not leave a cash gift in your Will. This is because, over time, circumstances can change and that gift may become a much larger or much smaller portion of your estate than you intended. Instead consider leaving a percentage of your estate. This means the gift will increase/decrease proportionately.

Dealing with personal items

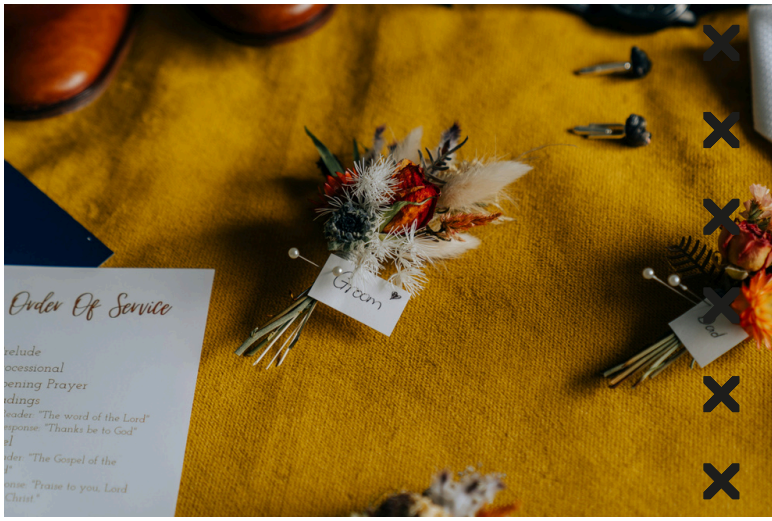
When it comes to distributing personal items there are typically two options. The first is to leave everything to a person or group of people and let them sort it out. The second is to list what you want to do with each special item.

If you prefer the second option, rather than listing each item in your Will, you can leave your personal items to your executors to distribute in accordance with any wishes you make known to them. You can then make a list which can be updated at any time, without the hassle and expense of updating your Will. The list should be kept in your lawyer's deed safe with your Will.

Understand your debts

If you want to leave a vehicle or property to a beneficiary that is under finance, consider how the debt will be repaid – does your estate have enough to repay the debt? Are you giving that particular property to the beneficiary on the condition they take on the debt?

CHANGES TO YOUR WILL



As your circumstances change, it is important to ensure the terms of your Will reflect your current wishes.

It's a good idea to review your Will after important events in your life such as a change in relationship status, changes in your financial situation, the purchase/sale of property, or births/deaths of family members.

This is not only to ensure your wishes are up to date, but because some life events can revoke or invalidate provisions in your Will, and this can have unintended and unfortunate consequences.

What could make a Will invalid?

A number of things can make your Will or parts of it invalid, including:

1. If you have married or entered into a civil union or ended those relationships.
2. If the Will is not signed and witnessed properly.
3. If there was some undue pressure on you when you made your Will.
4. If you were not of sound mind or under age when you made the Will.
5. In the case of Māori land, if the land is given to someone who is not entitled to it.

Also, parts of a Will may be invalid if they are so unclear that they cannot be interpreted with certainty.

Marriage

1. If you have recently married, your Will may no longer be valid.
2. If you were to die without a valid Will, your estate would be distributed according to the rules of 'intestacy' set out in the Administration Act. This may not be in the way you intended - for example, not all of it will go to your spouse.
3. The exception to this is if your Will was made while you were planning on getting married, and your Will states it was made "in contemplation" of your marriage to your partner.
4. Your Will isn't likely to be a top priority right after your wedding, so speak to your lawyer before your big day and make sure your Will is up to date.

Separation or Divorce

1. Unlike marriage, separation does not automatically revoke a Will. If your ex-partner was named in a Will you made prior to your separation, that ex-partner may still benefit under your Will.
2. If you obtain a separation order or an order dissolving a marriage or civil union from the Family Court some provisions in your Will become void. The Will must be read as if your ex-partner died before you. Any gift to or appointment of your ex-partner will be void.

ENDURING POWER OF ATTORNEY

When making or updating your Will, you should also consider putting Enduring Powers of Attorney "EPOAs" in place.

EPOAs are legal documents that set out who will care for your property or personal matters if you lose mental capacity and are unable to (for example, if you have a stroke, cognitive disorder or are in a coma).

There are two kinds of EPOA; property and personal care and welfare.

EPOA for Property

An EPOA for property gives the attorney the power to make decisions and act on your behalf with respect to property you own, which includes not only land and houses, but also businesses, bank accounts, shares and other possessions.

You can choose whether your property attorney can act immediately (while you have capacity) or only if you lose capacity.

For property, you can appoint one or more attorneys, either to act jointly or individually.

EPOA for Personal Care and Welfare

This EPOA enables your attorney to make legal decisions about your personal care.

This attorney only comes into effect once you have lost mental capacity.

Unlike for property, you may only have one attorney acting at a time. You may however appoint successor attorneys who will act if the first attorney is no longer living or has lost their mental capacity.

When should you put EPOAs in place?

To be valid, the EPOA must be advised on by a lawyer or registered legal executive while you have medical capacity. Where someone has been diagnosed with a condition that may affect cognitive or physical ability, or result in palliative care, it is important to put EPOAs in place as soon as possible.

An EPOA ceases upon death and your executors under your Will will take over responsibility.

Who should be your attorney?

In most situations people consider appointing their spouse if they are of suitable physical and mental capacity, then other family or close friends. Given the power that you are vesting in this person, they must be trustworthy and you must have absolute confidence that they will act in your best interests.

If EPOAs are not in place, then an application to Court is required to appoint someone to make decisions on your behalf. This process is costly and the choice is left to a Judge, rather than to you.

CHECKLISTS

Your details:
Full name:
Phone: Email:
Occupation: Address:

Will

Executor 1
Full name:
Relationship to you:
Phone: Email:
Address:

Executor 2 (or successor)
Full name:
Relationship to you:
Phone: Email:
Address:

Who is in your family?
Full names of spouse/partner, children etc.

What are your main assets?

What are your debts?

Who do you want to leave a gift to?

What will you do with the remainder (residue) of your estate?

Do you have any funeral or burial wishes?

Who would you appoint as legal guardian for your infant children (under 18)?
Full name:
Relationship to you:

Enduring Power of Attorney

Attorney for Property 1
Full name:
Relationship to you:
Phone: Email:
Address:

Attorney for Property 2 (or successor)
Full name:
Relationship to you:
Phone: Email:
Address:

Do you want this to come into effect immediately or only if you loose capacity?

Do you want your attorney(s) to act jointly or individually?

Should your attorney(s) consult or provide information to anyone else?

Attorney for Personal Care and Welfare
Full name:
Relationship to you:
Phone: Email:
Address:

Attorney for Personal Care and Welfare (successor)
Full name:
Relationship to you:
Phone: Email:
Address:

Should your attorney(s) consult or provide information to anyone else?

GIFTS TO CHARITY

A gift in your Will costs you nothing now but can make a big difference in the years to come. By leaving a gift to charity in your Will, you leave a legacy that profoundly impacts the community you care about.

No matter the size of your gift, it will be gratefully received and appreciated by your chosen charity, allowing them to do more good in the world.

September is Wills Month.

Holland Beckett take part by offering a free Simple Will, or a 20% discount on a Complex Will, if you leave a gift to charity in your Will this September.

Importantly, these gifts need not be at the expense of providing for family; many donors choose to do both - leaving a percentage to family, and a percentage to the community.

You can choose to leave a gift in two ways:

1. Directly to the charity or cause of your choice;
2. To a named endowment fund, benefitting the charity or cause.

If invested in an endowment fund, your contribution will be professionally invested, and the income earned will be paid out to charities or causes of your choice each and every year, forever. It's a great way to support something you care about for the long-term. You can still select the charity or a type of cause you wish for your gift to go to.

Speak to the Holland Beckett Succession & Estates team about Wills Month and what charity giving options would best suit you.

Visit our website: **hobec.co.nz**

EMAIL: **estates@hobec.co.nz**

PHONE: **07 578 2199**