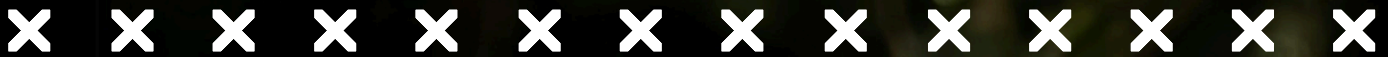




HOLLAND BECKETT

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?



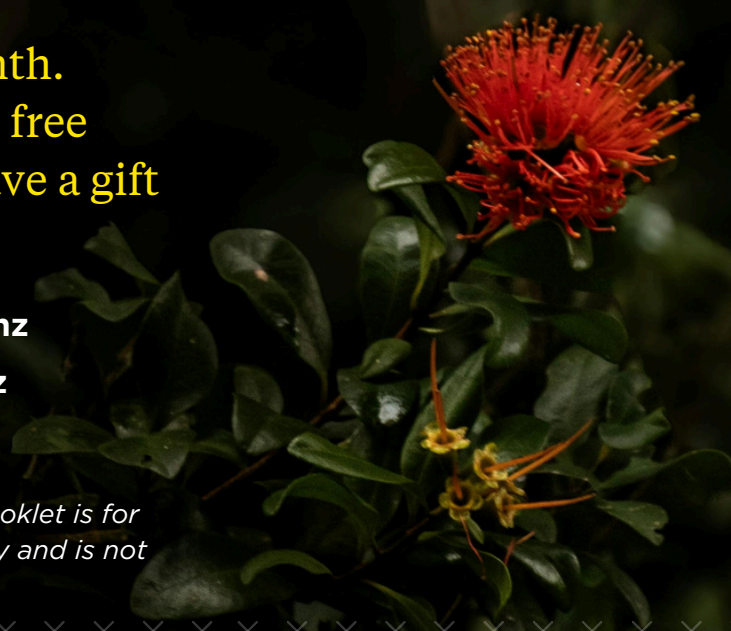
September is Wills Month.
Holland Beckett offer a free
“Simple Will” if you leave a gift
to charity in your Will.

Visit our website: hobec.co.nz

EMAIL: estates@hobec.co.nz

PHONE: 07 578 2199

The information provided in this booklet is for general informational purposes only and is not intended to be legal advice.



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, de facto partner, children, etc) to be looked after.

It is important to consider what happens if there is an unexpected change in circumstances, if you become seriously ill or pass away. If you have not planned properly for the future, decisions about your affairs will be made by someone else - and those decisions may not reflect your wishes.

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

Why do you need a Will?

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. Without a Will, your assets flow according to the legal framework in the Administration Act 1969.

Legal advice will ensure that your Will is validly executed and achieves your succession goals. It can also help you to minimise the chances of your Will being challenged.

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? *Check out our guidance on page 5.*



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 a more costly process than an application for Probate pursuant to a Will.

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

The basic rules are:

1. If there is a husband, wife, civil union or de facto partner, but no surviving parents or children, the spouse or partner will get all of your estate.
2. If there is a spouse or partner and also children, the spousal partner will receive all of the personal chattels, the first \$155,000 of your estate and 1/3rd of the remaining property. The other 2/3rds will go to your children.
3. If there is a spousal partner and no children, but surviving parents, the spousal partner will receive all the personal chattels, the first \$155,000 of your estate and 2/3rds of your remaining property. The remaining 1/3rd will go to the surviving parents.
4. If there are children, but no husband or wife or civil union or de facto partner, your estate will go to the children.
5. If you do not have a partner or children, your parents will receive the whole of the estate.
6. If there are no parents, your brothers and sisters or their children (your nieces and nephews) will receive the estate.
7. If there are no brothers or sisters nor any nieces or nephews, the estate is shared between grandparents, or if none exist, the aunts and uncles.
8. If none of these parties exist, then the Crown will receive all of your 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 my Will include?

The following matters should be covered:

- 1.** Your Will should name at least 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.** who will administer 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 I 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 is the best place to keep my 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.

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 or 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. *Hint: not all of it will go to your spouse. Check out page 3.*
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 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 your ex-partner or appointment of your ex-partner will be void.

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.

Check out our Will preparation checklist on page 7.

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 valuable or sentimental 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.

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. For example, instead of giving a percentage to each of your grandchildren you could consider giving 10% of your estate equally to your grandchildren. This means the gift will increase/decrease proportionately.

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. Any asset over \$15,000 requires an application for probate (Court authority) to deal with that asset.

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.

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?

WILL CHECKLIST

What we need to know to prepare a Will

✘ Your details:

Full name:

Occupation:

Town of residence:

✘ Who will your executors be?

Full name:

Relationship to you:

Occupation:

Town and country of residence:

Full name:

Relationship to you:

Occupation:

Town and country of residence:

✘ Who is in your family?

Full names of spouse/partner, children, grandchildren, step-children.

✘ 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, and relationship to you.

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 takes part by offering a free “Simple Will” if you leave a gift in your Will to go to a charity.

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 to charity 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 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