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Financial guidance you can trust

Wills & powers of attorney

Preparing for your family's future

No-one wants to think about death, but it's important to decide what will happen to your assets when you die. Find out how you can give instructions to your family about your legal and medical preferences should you fall ill or lose the capacity to make those decisions yourself.

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Estate plans

An estate plan includes your will as well as any other directions on how you want your assets distributed after your death. It includes documents that govern how you will be cared for, medically and financially, if you become unable to make your own decisions in the future.

You must be over 18 and mentally competent when you draw up the legal agreements that form your estate plan. Key documents might include:

- Will
- Superannuation death nominations (see [Getting your super](#))
- Testamentary trust
- Powers of attorney
- Power of guardianship
- Anticipatory direction.

If you have made a [binding nomination](#) in your super or insurance policies, the beneficiaries named in those policies will override anyone mentioned in your will. If you have a family trust, the trust continues and its assets will also be distributed according to the trust deed, no matter what is written in your will.

Ask a legal professional to check your estate plan. A good estate plan should minimise the tax paid by your heirs, and help avoid any family squabbles.

Wills

A will takes effect when you die. It can cover things like how your [assets](#) will be shared, who will look after your children if they are still young, what trusts you want established, how much money you'd like donated to charities and even instructions about your funeral.

Your will can be written and updated by private trustees and solicitors, who usually charge a fee. Some Public Trustees will not charge to prepare or update your will if you nominate them to be the executor of your will. Other Public Trustees may only exempt you from charges if you are a pensioner or aged over 60. Check with the Public Trustee in your state or territory.

Smart tip

It's estimated that nearly half of all Australians die without a will, or 'intestate'. Don't let this happen to you. Make a will today.

- **ACT** - [Public Trustee and Guardian for the ACT](#)
- **NSW** - [NSW Trustee and Guardian](#)
- **Northern Territory** - [Office of the Public Trustee](#)
- **Queensland** - [The Public Trustee of Queensland](#)
- **South Australia** - [Public Trustee South Australia](#)
- **Tasmania** - [Public Trustee Tasmania](#)
- **Victoria** - [State Trustees Victoria](#)
- **Western Australia** - [Public Trustee Western Australia](#)

You can buy will kits online but it's a good idea to ask a solicitor to review your will to make sure everything is in order. If a will isn't signed and witnessed properly, it will be invalid.

Keep your will valid and up to date as your legal rights change - specifically, if you marry, divorce or separate; have children or grandchildren; if your spouse or beneficiaries die; or if you have a significant change in financial circumstances.

If you die [intestate](#) or your will is invalid, an administrator appointed by the court pays your bills and taxes from your assets, then distributes the remainder, based on a pre-determined formula, which may not be how you intended your assets to be distributed.

If you die intestate and don't have any living relatives, your [estate](#) is paid to the state government.

Testamentary trusts

A testamentary trust is a trust set out in your will that only takes effect when you die. Testamentary trusts are usually set up to protect assets.

Here are some reasons why you would create a testamentary trust:

- The beneficiaries are minors (under 18 - 21 years old)
- The beneficiaries have diminished mental capacity

- You do not trust the beneficiaries to use their inheritance wisely
- You do not want family assets split as part of a divorce settlement
- You do not want family assets to become part of bankruptcy proceedings.

A trust will be administered by a trustee who is usually appointed in the will.

A trustee must look after the assets for the benefit of the beneficiaries until the trust expires.

The expiry date of a trust will be a specific date such as when a minor child reaches a certain age or a beneficiary achieves a certain goal or milestone (e.g. getting married or earning a specific qualification).

Powers of attorney

Appointing someone as your power of attorney gives them the legal authority to look after your affairs on your behalf.

Powers of attorney depend on which state or territory you are in: they can refer to just financial powers, or they might include broader guardianship powers. You will need to check with your local Public Trustee.

The different types of power of attorney are:

- **General power of attorney** is where you appoint someone to make financial and legal decisions for you, usually for a specified period of time, for example if you're overseas and unable to manage your legal affairs at home. This person's appointment becomes invalid if you lose the capacity to make decisions for yourself.
- **Enduring power of attorney** is where you appoint a person to make financial and legal decisions for you if you lose the capacity to make your own decisions.
- **Medical power of attorney** can make only medical decisions on your behalf if you become unable to do so yourself.

You can prepare a few other documents to help your legal appointees and family as you grow older, including an:

- **enduring power of guardianship** that gives a person the right to choose where you live and make decisions about your medical care and other lifestyle choices, if you lose the capacity to make your own decisions.
- **anticipatory direction** records your wishes about medical treatment in the future, in case you become unable to express those wishes yourself.
- **advance healthcare directive (or living will)** documents how you would like your body to be dealt with if you lose the capacity to make those decisions yourself.

The documents you choose to draw up will depend on your situation, and the responsibilities you're happy to entrust to others. Get legal advice if you are not sure.

Choosing your powers of attorney

Nominate people that you know are trustworthy, financially responsible, and likely to be around when you need them.

Your legal and financial housekeeping

Once your paperwork is in order, it will help your executor and family if you list the legal documents you have and where they are kept.

Here is a list of key documents to keep:

- Birth certificate
- Marriage certificate
- Will
- Enduring power of attorney
- Advance healthcare directive (also called a living will)
- Life insurance policies
- House deeds
- Home and contents insurance
- Deeds and insurance policies for any other real estate you own
- Bank account details
- Superannuation papers
- Investment documents (securities, share certificates, bonds)
- Medicare card
- Medical insurance details
- Pensioner concession card
- Any pre-paid funeral arrangements.

The NSW Government's [Planning Ahead tools website](#) gives more detailed information on advance care directives, wills, power of attorney and enduring guardianship.

A good will and estate plan can help make sure your wishes are carried out after you die, or if you are no longer able to make your own decisions.

<https://www.moneySMART.gov.au/life-events-and-you/over-55s/wills-and-power-of-attorney>