



**A CHECKLIST FOR PREPARING
INSTRUCTIONS FOR A WILL TO
SEND TO YOUR LEGAL ADVISER**

CHECK LIST FOR WILLS

Disclaimer: This is not legal advice – it is purely a checklist so that you can prepare for your appointment with your solicitor.

The Guiding Principle

1. Remember, the guiding principle behind a Will is that it needs to be a **CLEAR STATEMENT OF YOUR INTENTIONS, MADE AT A TIME WHEN YOU ARE MENTALLY COMPETENT TO EXPRESS THEM.** So as long as the Will is not badly written or ambiguous, you will most likely achieve what you set out to do.

A Basic Will

2. Assume that you will only need a simple will.
3. That is, say:-
 - a. husband and wife make similar or identical wills, in which they make each other their executor and leave the whole of the estate to each other. If that happens the gifting stops there. This works if one clearly survives the other.
 - b. You are single and plan to leave it all to one or two people and maybe a charity or other organisation.
4. *[If you think that your Will is more complex than that, then I suggest that you go to one of the larger firms that have a Succession partner and one that is preferably recommended by your financial advisers.]*
5. However, let's assume that you need a relatively standard Will.
6. Your solicitor will then add further standard provisions, such as in the case that the husband and wife die at the same time. In this case, further trusts may need to be set up, according to your specific requirements.

Who Will Look After my Estate After My Death?

7. If you are not just leaving it to one person, you will need to appoint **ONE OR MORE EXECUTORS.** These people are your trustees and must administer your estate according to your instructions, **if they choose to act.**
8. In becoming Executors and Trustees and taking on the duty of administering your Estate they become subject to the jurisdiction of the Supreme Court in your state, so it is a solemn duty.
9. No executor can be compelled to remain an executor and can resign at any time.

10. Therefore, choose carefully.

HINTS:

- Choose people you know you can trust – ie, close friends or siblings;
- Choose people of the same or a younger generation than you – parents and older people will most likely die before you;
- Choose people who you are reasonably certain will get along, if you are asking more than one to perform the task.
- Consider the form of dispute resolution if they can't reach agreement on something (eg decision of the older one/ majority prevails etc)
- Feel free to choose *professional executors* but understand that they are entitled to take fees out of the estate.

Revocation

11. Your Will should clearly spell out that all previous wills and codicils are revoked (basic common sense really, but it could lead to long and expensive litigation). It is a good idea to let your main beneficiaries know when and where your Will was made, just in case someone makes a claim of a later will or bequest (and it does happen).
12. A lot of people don't know that marriage automatically revokes a will (ie makes it null and void). Therefore, if you are engaged you have two choices:
 - a. you can wait until after the marriage (not recommended), or
 - b. you can expressly make the will to be: "in contemplation of my marriage to on ". It is important to specify the name of your intended and the date of the wedding. (This is the recommended way – otherwise, you can make the will so that a named person is your beneficiary without mention of marital status, but you should still re-make the will on marriage).
13. Again, important where ex-spouses or children of previous marriages are involved.
14. These days with de-facto relationships etc, you need to really think this through, and pre-nuptial agreements have assumed more importance over the past 20 years. Ask about that if you don't understand what I mean.
15. Your adviser will be putting a standard revocation clause into your will, so that there is no confusion, as to previous wills.
16. If there is a previous will, let them know so that, if necessary, previous executors can be informed. It would also be useful to produce the previous will and any copies. This will save all confusion.

Children

17. Where your children are concerned it is not strictly necessary to name them. As long as we refer to “those of my children living at the date of my death....” that is satisfactory. However, feel free to name them, particularly if you are considering specific gifts or trusts.
18. Your solicitor will make provision for grandchildren as well. This is done by saying, for example: ...”if any of my children die before me leaving children, then those children will take equally the share that their parent would otherwise have taken...”. It is called the “per stirpes” clause (bloody Latin, I hear you say!)

Your Assets

(You really don't have to go into too much detail before you see the solicitor, as most of this list is for your Executor to worry about, later, but it does tend to focus your thinking):-

19. Make a complete listing of all your assets: -
 - a. Real estate – list out your holdings and let the solicitor know roughly when the mortgage will be discharged etc (be sure to include the details of your mortgage, if you have one – title references are helpful, as are Rates notices, body corporate levy notices etc); is anyone else on the title? Are there caveats or Trusts? Is anyone likely to make a claim? Are you the beneficial and legal owner, or just the legal owner (you will have to ask your solicitor about that).
 - b. Are there any bare trusts?.
 - c. Investment properties – details of leases, managing agents, etc
 - d. Stocks and shares – not in great detail, but at least have your portfolio up to date and in one place, so that your executor can find it;
 - e. Shareholdings in a company that you control;
 - f. Savings – have your account numbers listed; or are involved in;
 - g. Other investments – precious metals, bitcoin – whatever.
 - h. Prized possessions – collections, collectibles, vintage car, boat, musical instruments, cameras, etc.
 - i. Personal items such as jewellery, watches rings – even your favourite Elvis suit or wig!
 - j. Bank account details – don't worry about balances, your executor will sort that out, but let him or her know where to look.
 - k. Are any of your assets (non-real estate or monies) encumbered by PPSR charges?
 - l. Frequent flyer miles – not sure if some programs recognise them as personal property, but if you have a lot, it would be worth checking it out.
 - m. Tools of trade – do you want them sold, or given away, or passed on to someone?
 - n. Charities – is there one, in particular that you would want to support?

- o. Insurance policies
- p. Funeral Insurance – let someone know
- q. Others ... only you know about.
- r. Countless others.

Your Business

- 20. Do you have a succession plan for your Business? It is a good idea to get it sorted while you are alive and you can set up Trusts etc to make sure that, if anything happens to you, you can organise an orderly transition.
- 21. Do you want your kids to take over? Do they want to? If not, what is plan B?
- 22. This is not something that should be left to your Will but planned and in place before you get run over by that pesky Number 92 bus!
- 23. However, a prudent solicitor will try to anticipate lots of situations and ensure that you give your executors some room to move.
- 24. For example: -
 - a. What if the COVID-19 pandemic struck just after you died? Would you have had a plan in place? Did you ensure that you left good people behind who could pick up the ball and run with it?
 - b. Were your books and tax returns, and super payments up to date?
 - c. What if you are in a volatile market?
 - d. If you are depending heavily on your business to support your family after you go, what are your plans?
 - e. What about the education of your kids, or grand kids?

There are as many issues as there are people, so it is a great idea to really think it through and discuss it with family, friends, and business associates.

Specific Gifts.

- 25. If you wish to leave specific gifts let your solicitor have a full listing of the gifts and the names and addresses of the beneficiaries (those getting the gift) with their relationship to you. This will assist in identification or in locating them should they later move somewhere.

Cutting People Out

- 26. Never a pleasant thought but one that should be dealt with. These days there are laws that allow distant relatives to come out of the woodwork and make claims. Even though they may have little chance of success, any lawyer will tell you that they can tie up the estate for a long time and drain good money out of it in costs. As a rule of thumb, even if you win a court

case you will still be out of pocket as you will rarely get all your costs back so don't deprive your loved ones of their bequest.

27. Always remember that your Executors may be administering your estate as a labour of love, so spare them the drama!
28. If you want to cut someone out, be very specific and definite about it.
29. Get your solicitor to insert a clause such as .."I make absolutely no provision in this Will for my cousin, Freddo Frog, as he is a thoroughly objectionable human being who stole \$100,000 from me ten years ago.."
30. That should do it.
31. The more common one is .."I make no provision for my former wife, Olive Oyl, as she was adequately provided for in our divorce settlement".
32. It is harder for a Court to overturn your wishes, if they are clear and precise.

Powers of Executors.

33. Your solicitor will use standard clauses to give your executors a degree of freedom to deal with your assets. This is because it may be unwise to tie their hands too tightly if they are holding onto your property for any reason (such as for the benefit of your children, or to continue your business, or to hold onto shares or property in a falling market etc).
34. Your solicitor can insert clauses which contain a lot of provisions and then discuss them with you when you go over the first draft, so that he or she knows that they suit your needs.

Guardianship of Your Children

35. You may need to make provision for the fact that you and your spouse might die, leaving infant children behind and you need to consider who should look after them. ***Clearly, this is a momentous decision,*** and one which must be taken carefully. Usually, a brother or sister is the logical choice. You may need to talk to them about that first.

Organ Donations

36. You might like to think about whether you want to leave any of your body parts to medical science. (Purely optional, of course).

Burial Wishes

37. You can include a direction as to whether you want to be:

- a. buried in a particular place;
 - b. cremated;
 - c. other (e.g - ashes scattered at sea etc)
38. You can decide which church, type of service you want, etc. It is fertile ground and you can give free rein to your intentions. After all, nobody can argue with you once, you have “dropped off this mortal coil”.

Trusts

39. Consider whether you want to set up testamentary trusts. That means Trusts contained in your Will, as opposed to *Inter Vivos* trusts, meaning trusts made to take effect during your lifetime.
40. There are usually financial and/ or taxation reasons for these, and we recommend that you discuss the options with your accountant and/ or financial planner about it, first.

You Can Give it all Away and Die a “Pauper”

41. Back in the bad old days of death taxes, people became very inventive at devising ways of dying gracefully, having given most of it away before they went, but maintaining their lifestyle and protecting themselves from the greedy kids that they gave it to.
42. Doesn't hurt to think that way, even now, because it means that you will have been in total control of your estate and have ensured that your money doesn't find its way into the hands of people that you didn't want it to, such as a "druggie" boyfriend or a crook, or a conman/ Lothario/ skank/ opportunist that might prey on your widow/ widower (God forbid).
43. Like it or not, a good lawyer will canvass these issues with you, just as a good doctor will put the fear of death into you if you need to hear it.
44. Well that was fun, and a blast from the past.
45. This is a rough guide only, but I hope it assists in your thinking.
46. Like I said earlier there are as many situations as there are people.
47. If you truly want to be a pedant just go to the Law Reports going back hundreds of years and you will read some truly salacious accounts of greed, opportunism, hubris, generosity and all the human conditions in between.

What Happens Next?

I suggest that you send these details to your solicitor in advance, and he or she will prepare drafts.

If you think that all of that is too daunting, or might be too expensive, then might I suggest that you call the Office of the Public Trustee in your state and take their advice.

You can also purchase DIY Will kits from newsagents and other places.

I have never looked at one, but I assume that they will give you good advice PROVIDED THAT you fill it out and then take it to an expert.

Please promise me that you will, otherwise the *“Law of Unintended Consequences”* might kick in and if there is one mantra in life that I always abide by, it is ...

” You don’t know what you don’t know”.

Once you have gotten your intentions to your advisers, they will then ask you to come in and go over them. At that time, they can then prepare final versions for signing in their office.

Finally

Your solicitor will usually be happy to hold your will in safe custody arrangements, or you are free to store it anywhere you wish.

However, it is important that your executor(s) know where your Will can be found, as it is a very cumbersome process to administer your estate, if the Will is lost.

Make sure that they get a complete copy of the signed and dated Will, with instructions as to where to find:

- The original and
- The witnesses, if there is ever an issue

Good luck with it and please contact me if you would like any further anecdotes of my 30 years of doing these, completely without a hitch.

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