



# *Last Will and Testament*

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wills and codicils previously made b



MAKE YOUR  
WILL WITH

mackinnons  
solicitors



# INSTRUCTIONS REQUIRED FOR PREPARATION OF WILL

## 1. IDENTITY OF EXECUTORS

Executors are the people appointed in the Will to deal with the administration of the affairs of the deceased person and also to assist with practical arrangements in regard to the funeral, etc. The executors may be members of the family, friends or professional executors such as a solicitor, tax advisor or accountant. Partners in Mackinnons are available to act as an executor when this is the wish of the client.

For practical purposes, it is normal to have either two or three executors. If only one executor is appointed, the risk is that the executor might die before the person making the Will. On the other hand, if more than three executors are appointed, particularly if one or more lives overseas, the administration of the estate as regards signing of papers, etc., is more cumbersome and becomes more protracted.

## 2. INFORMAL WRITINGS

It can be useful to provide in the Will that "informal writings" will be legally binding and read along with the Will. This creates the flexibility to bequeath items of the estate, especially personal items such as jewellery, motor vehicles, etc., in an informal letter which refers to the Will. The normal requirement is that the informal writing requires to be signed by the testator and dated after the date of the Will. Otherwise, it can be in the testator's handwriting or printed and then signed by him or her.

The benefit of this type of arrangement is that if the testator changes his/her mind in regard to the contents of the informal writing, this can be changed without the necessity to revise the Will.

The informal writing can either be retained with the Will or in the home of the testator.



### 3. LEGACIES

The Will can provide for specific legacies to be left to individual beneficiaries. There are basically two types of legacy, legacies of money and legacies of specific items of property.

In regard to legacies of sums of money, it is normal to state in the Will that the legacy should be paid as soon as possible after the testator's death, but without interest. It may be important to make it clear whether the legacy is to be free of inheritance tax or not. The normal situation is that the testator will wish a legacy to be free of tax. The effect of this being that tax (if any) is payable out of the residue of the estate.

In regard to legacies of specific items of property such as cars, items of jewellery, etc., it can be stipulated that the cost of transferring or delivering the item to the beneficiary is to be met from the estate, if that is the wish of the testator.



#### 4. RESIDUE

The “residue” is a legal term meaning the remainder of the estate after debts and expenses have been paid and any legacies paid or otherwise satisfied. The residue can be bequeathed to one beneficiary or to a number of them. It is important to state what is to happen if a beneficiary dies before the testator. It will often be intended that the share of the estate would then pass to the children of the person who has died although variations are possible. If a beneficiary predeceases without leaving children, the testator may wish to provide that the share would then pass to the other residuary beneficiaries as if the person who had died had never existed.



#### 5. BENEFICIARIES WHO ARE CHILDREN

In the event that there are beneficiaries under the Will who are children or there is a possibility that children will inherit part of the estate, possibly in the event of their parent dying before the testator, it will be important to state at what age the beneficiaries are to receive the funds which is passing to them. In the absence of this being specified in the Will, the normal age would be 16 and for many people, this is viewed as being far too young for a beneficiary to receive a capital payment. It is normal to provide that the capital would only be paid at a later age, possibly 18 or 21 or even older, although the executors can be given a discretion to use income and capital from the share for the benefit of that beneficiary, particularly for educational purposes before they attain the specified age. During the period until the beneficiary attains that age, income from his or her share would either be paid over to the beneficiary at the discretion of the executors or retained and accumulated with the capital.



## 6. APPOINTMENT OF GUARDIANS

If the testator has children under the age of 16, it is possible to provide in the Will who is to act as guardian in the event of the death of both of the child's parents. This is not essential but can be useful to avoid any doubt or confusion at a later stage. Needless to say, the person to be appointed as guardian should be consulted in advance to ensure that he or she is prepared to accept this responsibility should the need arise.

## 7. FUNERAL WISHES

This again is an optional clause although it can be useful for a testator to state what their wishes are in the Will, e.g. a preference for cremation or burial, etc. Alternatively, funeral wishes can be written down separately or communicated in some other way to members of the testator's family.



## 8. LEGAL RIGHTS

A testator when making a Will will require to consider the question of and possible effects of Legal Rights on the division of an Estate. Legal Rights, if applicable, can operate as a form of restriction on the freedom of a testator.

## 9. CANCELLATION OF PREVIOUS WILLS

When a new Will is signed, this should provide that it supersedes any previous Will. In order to avoid confusion in this regard, it is Mackinnons' practice to destroy previous Wills except where the testator specifically instructs otherwise.



## 10. RETENTION OF WILL

Mackinnons are happy to store Wills in their safe, based at the Cults office. In that event, a copy of the Will would be provided for the testator to retain at home. In some cases, the testator may prefer to retain the original Will. This is a matter of personal choice.

## 11. REVIEW OF WILLS

Mackinnons advise that testators should review their Wills approximately every five years or earlier in the event of a material change of circumstances. If a Will is reviewed regularly, a testator can ensure that its terms are always appropriate and relevant, even if no changes are required. In the event of a change of address of an executor or beneficiary, the Will does not require to be changed although it is useful if Mackinnons are informed of the new address or contact details.







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