



ESTATE PLANNING (Incl. Wills & Powers of Attorney)

GENERAL INFORMATION

WILLS

At MCP Commercial Lawyers we strongly recommend our clients have a valid Will.

This is the best way to ensure that your assets are left to your loved ones; making life easier for those you leave behind.

Your assets will therefore not be managed by the State Government who in certain circumstances will deal with Estates where there is no valid Will.

POWERS OF ATTORNEY

Many of our clients also decide it is appropriate to have Powers of Attorney.

These are vital if you want someone to take care of your financial and legal affairs, or want someone to take care of your affairs if you have an accident or sudden illness which leaves you incapable of doing it for yourself. It can also facilitate medical decisions on your behalf if you become unconscious or otherwise incapable of making those decisions for yourself.

ASSET PROTECTION

Aspects of asset protection often tie in to Estate Planning issues, with respect to how assets are owned prior to death.

We can assess your current position in this regard and prepare a Report for your review.

HOW WE ASSIST YOU

- **Complete the attached Order Form and send it to us, by email, mail or facsimile.**
- **Draft/s will be prepared on the basis of this Form and forwarded to you for your consideration at an early date.**
- **We finalise your Estate Planning documentation in conjunction with you.**
- **We will invoice you at time of your order, in accordance with our Costs (see page 5). Should you pay within 14 days we will retain your original Wills and Powers of Attorney once executed on our Deeds Register at no charge indefinitely.**

Please retain a copy of your completed Order Form for ease of reference.

Should you not wish to complete the Form and simply care for a discussion, please ask for Michael Poynter, Melina Elia or Shane Frost.

GENERAL INFORMATION - WILLS

1. CAPITAL GAINS TAX

The way you wish to draw your Will may affect the application of Capital Gains Tax to your assets. You should speak to your accountant/taxation adviser.

2. PENSIONS

A gift to someone on a pension, or who may later become entitled to a pension, may raise their assets to a point where they lose or suffer a reduced pension. You should speak to the proposed beneficiary or the Department of Social Security.

3. WHAT KIND OF PROPERTY CAN I WILL AWAY?

You may not necessarily be able to leave the following assets to someone in your Will: -

- a) Jointly held property - For example, if you own real estate with another as "joint proprietors", upon your death that property automatically passes to that other person, outside of the operation of your Will. However, if you own the property as "tenants in common", you are able to gift your ownership to someone under your Will.
- b) Property Held In Trust - Such property is not your property to deal with unless clearly set aside to your benefit as a beneficiary under that Trust. You should consult your lawyer about such property.
- c) Shares - Certain shares in private companies cannot be given by Will.
- d) Partnership Property - Whether you can gift such property under your Will depends upon the terms of the partnership agreement.
- e) Superannuation - Depending on the rules of your Fund, you may have already nominated the beneficiary, and so not be able to gift it under your Will. You should talk to the trustee of your Superannuation Fund to determine this.
- f) Life Insurance Policy Proceeds - You may have already nominated the beneficiary, and so not be able to gift it under your Will. You should talk to your life insurance company to learn whether and who you have nominated as beneficiary.
- g) Capital Guarantee Deposits - You may have already nominated the beneficiary, and so not be able to gift it under your Will.

4. AFTER SIGNING

- a) If you have signed the Will otherwise than in the presence of your lawyer, you should send them a photocopy so they have a record, and can check it has been correctly signed.
- b) Do not attach anything to the original Will, not even by paper clips.
- c) The original Will should be kept in a safe place, either by your lawyer, your bank safe deposit, with the Registrar of the Supreme Court or with the Public Trustee. You should consult your lawyer.
- d) Keep any copy of the Will with your important papers.
- e) You should give a copy of your Will to your executor(s) and trustee(s), perhaps in a sealed envelope marked "Open if Necessary", and inform them where the original Will can be located.
- f) Upon making a new Will, all copies of any old Will should be destroyed, or if you cannot obtain all copies, rule a line through each page of your copy of the old Will, mark it as "Revoked" and file that copy with your new Will.

- g) You may wish to assist your executor(s) and trustee(s) by making a list of your assets from time to time. If so, file a copy of that list with your copy of your Will. Such a list will not form part of the Will itself, but is only an informal assistance to your executor(s) and trustee(s).

5. WHEN TO CHANGE YOUR WILL

- a) If you marry, your existing Will shall be revoked by the marriage unless it is expressed to be made in contemplation of that marriage.
- b) If you divorce, your Will may or may not be revoked, depending on the law in your State or Territory. The area is complex. You should consult your lawyer.
- c) Your Will is designed to continue for the duration of your life. However, it is a good idea to review it if:-
- i. You change your name or anybody named in your Will changes their name;
 - ii. An executor dies or becomes unwilling or unable to act, for example due to age or ill health;
 - iii. A beneficiary dies;
 - iv. You leave a specific asset to someone which you now no longer own or its character has changed in some way;
 - v. You marry or divorce;
 - vi. You have children (including adopted or foster children); or
 - vii. You enter into or end a de facto relationship.
- d) You may change your Will, make a new one or revoke a current one without informing your spouse, partner or beneficiaries. However you should consult your lawyer.
- e) After you have signed your Will, you should not add to or delete from it without consulting your lawyer. Even the smallest change, if not done correctly, can invalidate the Will or have unwanted consequences.

6. TESTAMENTARY TRUSTS

In brief testamentary trusts:-

- a) Are created by the Will upon death.
- b) May last as long as 80 years or may be terminated at any time at the direction of the Trustees.
- c) They are entities where Trustees hold assets on behalf of beneficiaries, and have discretion as to which of nominated beneficiaries receive income and capital of the Trust.
- d) The Trustees have broad powers to invest funds while under their control.
- e) They can be tax effective, and you should consult your Accountant in that regard.

7. INTESTACY

Where a person dies without a Will or a Will is found to be invalid, provisions in *The Wills Act 1997 (Victoria)* and *The Administration and Probate Act 1958 (Victoria)* govern how an estate is to be distributed to partners and immediate family members as the case may be.

8. ORGAN DONATION

If you have indicated in your Will Order Form that you are interested in organ donation or otherwise call us in the matter, we can send you a form whereby you can register with the Organ Donor Registry.

9. OTHER MATTERS

An Expression of Wishes

Some people wish to create a letter expressing certain wishes that would not normally be found in a Will and cannot be legally imposed on an executor and trustee, such as:-

- (a) Which school they would wish their children to attend;
- (b) In which religion or faith they would wish their children to be raised;
- (c) A desire for children to be taken overseas on a regular basis;
- (d) A desire for monies to be spent on certain things for beneficiaries, while still held in trust and prior to distribution.

Such a document is not legally binding, but meant to act as a guide to assist executors and trustees in administering your estate in the manner you would prefer. It would normally be kept with the Will, and read to beneficiaries at the same time as the Will.

A Summary of Contacts

It is useful to your executors and trustees for the orderly running of your estate and its timely distribution to have a one page document with your Will, setting out all contacts in relation to financial matters, such as your lawyer, stockbroker, accountant, financial advisor, insurance representative, real estate agent and so forth.

GENERAL INFORMATION - POWERS OF ATTORNEY

1. WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a document that legally gives authority to another to look after your financial and legal affairs.

Once appointed, the person you appoint can sign all documents on your behalf, and effectively “stands in your shoes”, making all decisions that you would otherwise be required to make.

2. THERE ARE TWO ESSENTIAL TYPES

Enduring Power of Attorney (Financial)

An Enduring Power of Attorney (Financial) is used in case you suffer an accident, sudden illness or disability, offering security that someone will look after your financial and legal affairs.

You must make such a Power while you are still capable of making legal and financial decisions for yourself.

Thereafter, if you become incapable of such decisions, your appointed person can manage your financial affairs and make legal decisions on your behalf, except make your Will.

These Powers of Attorney are for long term security, and if you lose the capacity to make decisions, will continue until your demise. However, the Guardianship and Administration Board may overrule the Power if in its view the Attorney is not acting in your best interests.

In April 2004, the requirements for the correct execution of Powers of Attorney for financial matters changed. It is now a more rigorous document, requiring one of the witnesses to be certified to witness documents (i.e. A Justice of the Peace, practicing solicitor etc). The document has three parts – the Power of Attorney, Certificate of Witness and Statement of Acceptance (this last is signed by the person who consents to be granted the Power of Attorney).

Essentially it functions in the same way as any other Power of Attorney, but the terms are more explicitly stated.

Enduring Power of Attorney (Medical Treatment)

This is similar to an Enduring Power of Attorney, except the attorney is required to make decisions about your physical health as opposed to your financial and legal affairs.

This Power authorises your appointed person to authorise medical treatment, such as an operation, when you are not in a position to make that decision or give that consent yourself.

To activate this Power, you must be either unconscious or otherwise incompetent.

3. WHY SIGN AN ENDURING POWER OF ATTORNEY NOW?

Such a Power must be signed while you are still legally capable of managing your affairs.

Most situations requiring such a Power happen quickly and without warning.

Once you lose the capacity to make your own decisions, you cannot sign a Power of Attorney, and other avenues to appoint a manager of your affairs can be time-consuming and costly.

The usual procedure is to apply for an appointment with the Guardianship & Administration Board, which can take some time and in the interim, no-one can manage your affairs.

4. WHOM SHOULD I APPOINT?

The Attorney must be at least 18 years old and themselves capable of managing their own affairs.

You must have confidence in their ability to manage financial and legal affairs, and must obtain their consent to the appointment.

Your appointed Attorney is obliged to always act in your best interests.

PLEASE SIMPLY INDICATE YOUR REQUIREMENT ON YOUR WILL ORDER FORM.

COSTS

WILLS

For one Standard Will	\$550.00
Standard Wills for a couple	\$990.00
Standard Will with Testamentary Trust	\$1,650.00
Standard Wills for a couple with Testamentary Trusts	\$3,080.00

POWERS OF ATTORNEY

For each Financial Enduring Power of Attorney	\$220.00
For each Medical Power of Attorney	\$165.00

WILLS & POWERS PACKAGE

Standard Wills with Financial and Medical Enduring Powers of Attorney	\$1,430.00
Standard Testamentary Trusts with Financial and Medical Enduring Powers of Attorney	\$3,520.00

ASSET PROTECTION REPORT	\$990.00
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We will invoice at time of Order. Should you pay within 14 days we will retain your original Wills and Powers of Attorney on our Deeds Register at no charge indefinitely.

NOTES

- We will absorb all disbursements including telephone, fax, email, stationery and photocopying.
- The above costs are inclusive of GST.

DISCLAIMER

While we will use our best endeavours to maintain the fixed pricing above, please note the cost for creation of your Wills and/or Powers of Attorney may vary from those quoted above if highly specific, detailed and comprehensive work is required.

In this event we would agree any change in cost in advance and prior to commencement of such additional work.