

# Rudall & Rudall

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## LAWYERS

# WILLS

### Introduction

Everybody knows what a Will is. You probably have a good story about one. Up to 1/3rd of South Australians die without a Will. Unfortunately, most people without a Will are not aware of the significant consequences of not preparing a Will or dying "intestate".



### Why do I need a Will ?

The consequences of dying without a Will include, but are not limited to, the following:

- You lose the ability to decide who will be your executor as legislation will determine who represents your estate.
- The estate will be distributed according to a formula set out in legislation ("intestacy"). that can be inflexible and mean that beneficiaries of an estate are not those that would have been chosen or in the order that would have been chosen.
- De facto couples ("domestic partners") must commence court action to prove their relationship existed before they are entitled to any distribution exposing them to unnecessary legal costs.
- For people who have companies or partnership, consideration needs to be given to a variety of issues including

whether the constitution / partnership agreements restrict the passing of shares or the surviving partner's interest.

- People with discretionary (family) trusts must make a gift of the power of appointment in accordance with the relevant trust deed which often states that it must be made pursuant to a Will.
- A Will enables protection of beneficiaries with "special needs" such as those with a physical or mental incapacity, advanced age, or minor status. Leaving an inheritance directly to such beneficiary with special needs can result in loss or misuse of inheritance. A protective trust in a Will addresses this issue.
- A testamentary discretionary trust can provide greater flexibility, tax minimisation and asset protection.
- For some families, the creation of a life interest is useful where you want to provide accommodation for the life of a beneficiary but for the house to pass to somebody else.
- For young families, having a Will allows parents to nominate guardians to look after children.
- Young adults often overlook the need for a Will forgetting that a significant amount of money may be payable through the Death Benefit connected with their superannuation.
- A Will allows you to leave sentimental items to particular people so that your family is not arguing after you have died.

If you do not have a Will, or you know somebody that does not, it is vital that you act immediately to ensure that you and your family are protected. It is also critical that your Will is up to date and reflects your current wishes. An out of date Will can cause many problems. A regular review is essential.

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