



Will Instruction Checklist

Please provide us with the following information to assist in the drafting of your Will. Also, if you have a current will, please provide us with a copy for our review.

This information comprises part of your instructions to this Firm and is therefore the subject of Solicitor/Client privilege. This information remains confidential and will be destroyed or returned to you at your request.

Please Note:

If you have obtained financial planning of accountants' advice regarding the preparation of your Will, we recommend you let us liaise with your advisor.

Please ensure that you fully understand **every aspect** of these instructions you give and the draft Will you will initially receive from us, for your review and approval. If you do not understand this instruction sheet or the Will, **we strongly recommend you make an appointment with one of our lawyers to clarify these issues.**

The information contained in this questionnaire is of a general nature and does not constitute legal advice. Please contact our office to make an appointment to obtain advice specific to your circumstances.

1	Will Maker
	<i>Full Name:</i>
	<i>Are you known by any other name/s?</i>
	<i>Address:</i>
	<i>Telephone Number: (H) (W) (Mobile)</i>
	<i>Facsimile Number: (H) (W)</i>
	<i>Email address:</i>
	<i>Occupation:</i>
	<i>Marital Status: Married / Separated / Divorced / De Facto / Single / Widowed</i>
2	Spouse/Partner
	<i>Full Name:</i>
	<i>Address:</i>
	<i>Occupation:</i>
3	Children or Other Beneficiaries (If more than 3 children or other beneficiaries, please attach a list)
(i)	<i>Full name:</i>
	<i>Relationship to Will maker:</i>
	(If the person is a child of yours from a previous marriage or relationship then please insert 'prior relationship')
	<i>Address:</i>
	<i>Age:</i>
	<i>Occupation:</i>
	<i>Marital Status: Married / Separated / Divorced / De Facto / Single / Widowed</i>

	Children: Yes <input type="checkbox"/> No <input type="checkbox"/>	
(ii)	<i>Full Name:</i>	
	<i>Relationship to Will maker:</i> (If the person is a child of yours from a previous marriage or relationship then please insert 'prior relationship')	
	<i>Address:</i>	
	<i>Date of birth/Age:</i>	<i>Occupation:</i>
	<i>Marital Status:</i> Married / Separated / Divorced / De Facto / Single / Widowed	
	Children: Yes <input type="checkbox"/> No <input type="checkbox"/>	
(iii)	<i>Full Name:</i>	
	<i>Relationship to Will maker:</i> (If the person is a child of yours from a previous marriage or relationship then please insert 'prior relationship')	
	<i>Address:</i>	
	<i>Date of birth/Age:</i>	<i>Occupation:</i>
	<i>Marital Status:</i> Married / Separated / Divorced / De Facto / Single / Widowed	
	Children: Yes <input type="checkbox"/> No <input type="checkbox"/>	
4	<p>Executor and Trustee</p> <p>Please indicate your choice of a person or persons who you wish to appoint as your Executor and Trustee of your Will. This person's duties include collecting all of your assets, ascertaining and paying your liabilities and distributing your estate to your beneficiaries in the manner set out in your Will.</p> <p>Your Executor and Trustee should be someone you trust (eg. husband or wife) and who has the ability to put your wishes into effect. You can appoint any person of your choice (or more than one person) to be your Executor and Trustee, and they may also be a beneficiary of your Will.</p>	
	<i>Full Name:</i>	
	<i>Relationship:</i>	<i>Occupation:</i>
	<i>Address:</i>	
	This Firm is able to act as your Executor and Trustee if you so wish, please specify: Yes <input type="checkbox"/> No <input type="checkbox"/>	
5	<p>Joint/Alternative Executor</p> <p>Please indicate whether you wish to appoint one or more other persons to be Joint Executor (ie Executor at the same time) with the person you named in Item 4 or whether you wish to appoint one or more other persons to be Alternative Executors if the person you named in Item 4 is unable or unwilling to perform their duties for any reason.</p>	
	Please Tick Joint or Alternative Executor: Joint <input type="checkbox"/> Alternative <input type="checkbox"/>	
	<i>Full Name(s):</i>	<i>Full Name(s):</i>
	<i>Relationship:</i>	<i>Relationship:</i>
	<i>Address:</i>	<i>Address:</i>
	<i>Occupation:</i>	<i>Occupation:</i>

6	<p>List of Assets: Including house, land, motor vehicles, cash at bank, superannuation and insurance policies (please indicate if policy already provides for a named beneficiary), shares, (including shares in '\$2' or 'shelf' (companies), jewellery and any other significant property. Please provide an estimated current value next to each asset, if possible.</p>
	<p>Do you have any assets which are held outside of Australia?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If you answered 'yes', do you intend this Will to be binding in relation to these assets?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
7	<p>Do you carry on a business or are you in partnership with anyone else? Please give the following details:</p>
	<p><i>Name of Business:</i></p>
	<p><i>Nature of Business:</i></p>
	<p><i>Your Interest in the Business:</i></p>
	<p><i>Are there any partnership, unitholder, shareholder or business succession agreements in place?</i></p>
8	<p>Do you have a family or other trusts in place which hold any assets? Please give the following details:</p> <p><i>Please supply us with a copy of the trust deed (together with all deed(s) of variation) and the latest Annual Financial Statements.</i></p>
	<p><i>Name of Trust:</i></p>
	<p><i>Name of Trustee:</i></p>
	<p><i>Name of Appointor:</i></p>
	<p><i>Who is the Appointor in the absence of any appointment during the lifetime of the Appointor?</i></p>
	<p><i>Assets held by the Trust:</i></p>
9	<p>Specific Gifts</p>
	<p>Do you wish to leave a gift of any particular property to a person? Please insert names of beneficiaries and description of property from above list. If there is insufficient space please attach a list and mark</p>

	'B'
(a)	Full Name:
	Address:
	Gift:
(b)	Full Name:
	Address:
	Gift:
(c)	Full Name:
	Address:
	Gift:
10	<p>Superannuation and Life Insurance</p> <p>Please give details of any superannuation fund(s) and or life insurances held by you and, including who the superannuation or policy is held with, its approximate value and whether you have made any "Binding Death Nomination" as to who is to receive any death benefit (see the notes at the end of this document relating to Superannuation and Life Insurance Policies).</p> <p>Do you have a self-managed superannuation fund ("SMSF")?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please provide a copy of the latest SMSF Deed/Rules and the latest Annual Financial Statements</p>
11	<p>Residue of Estate</p> <p>The residue of your estate is that part of your estate that is left over, once your estate's expenses/debts have been paid and all your specific gifts mentioned in item 9 have been distributed.</p> <p>Please indicate in your own words the manner in which the residue of your estate is to be divided (eg to all my children in equal shares).</p> <p>If the beneficiaries are young, state what age will they inherit <input type="text"/></p> <p>(eg 18, 21, 25 or other age)</p>
12	<p>Children of Beneficiary</p> <p>Are children of a beneficiary (eg. grandchildren) to receive their parents share if the beneficiary predeceases the Will maker?</p> <p>Yes <input type="checkbox"/> If yes at what age? <input type="text"/> (eg 18, 21, 25, other age)</p> <p>No <input type="checkbox"/> If no, then what is to happen to that share?</p>

	<p>Is the Executor and Trustee to have the power to be able to provide some or all of any beneficiary's share (if applicable) to the beneficiary <i>before</i> the beneficiary reaches the required age for the maintenance, education and support of that beneficiary?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
13	<p>Possible Claims on your Estate Pursuant to the <i>Inheritance (Family and Dependants Provision) Act 1972</i>, certain people are able to make a claim for further provision from your estate. Do you have any children (including ex-nuptial children), dependant grandchildren or a spouse for whom who you do not wish to make provision in your Will?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If 'yes', please provide the name/s of the people above to whom you do not wish to make provision and a brief description as to why this is the case.</p>
	<p>Do you anticipate any ownership dispute over <i>assets of others</i> you hold in your possession, or <i>your assets</i> that others may hold in their possession?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
14	<p>Future Legal Business in Relation to your Estate Is it your wish that this Firm be employed by your Executor and Trustee in proving your Will (i.e. obtaining probate in the Supreme Court) and in transacting any legal business in the administration of the Will?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
15	<p>Wishes as to Burial or Cremation Is your preference burial (please advise if you have reserved a particular plot or position) or cremation? You do not have to give any specific instructions to be included in your Will but you may do so. Whether or not you give specific instructions, we suggest that you discuss this issue with your friends and family members to help you decide and so that they are aware of your wishes. Please note that a clause to this effect in your Will is not binding on your executor.</p>
16	<p>Document Safe Custody System Do you wish to utilise this Firm's free Document Safe Custody System ("DSCS") for storage of your Will and other important documents, such as your Certificate of Title for any land you may own?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If so, please indicate which documents you wish to store.</p> <p>Once stored in our DSCS these documents are secure and can be retrieved by you or someone else with your authority at short notice.</p>
17	<p>Legal Guardian for Children Do you wish to appoint a legal guardian for your minor children (i.e. under 18 years of age) in the event that you and your spouse are deceased?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If so, please indicate the following:</p>
	<p><i>Full name of Guardian:</i></p>
	<p><i>Address of Guardian:</i></p>

18	<p>Intentions to Marry/Divorce</p> <p>Pursuant to the <i>Wills Act 1970</i> your Will <u>will be revoked</u> in the event you marry, or your marriage ends (i.e. divorce) UNLESS there is a contrary intention provided for in the Will.</p> <p>Is it likely that you may marry or divorce following the execution of your Will?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
19	<p>Binding Financial Agreements</p> <p>Have you entered into any Binding Financial Agreement with a present or former spouse or de facto spouse under the <i>Family Law Act 1975</i> or the <i>Family Court Act 1997</i>?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, please provide a copy</p>

Testamentary Trusts

- 1 A testamentary trust is a trust that has been created as a result of a person's Will.
- 2 It operates in the same way as a discretionary or family trust.
- 3 A trust arises where a person called a trustee is given assets to hold on behalf of a group of people or organisations known as beneficiaries.
- 4 The trustee must act in accordance with the powers given to him/her in a trust deed. The trust deed indicates how the trustee can act and sets out any limitations on the trustee's powers. It also indicates how any income and/or capital gains derived by the trust are to be distributed among the beneficiaries. For a testamentary trust the terms of the trust deed are contained in the Will.
- 5 Under the *Income Tax Assessment Act*, if the gains derived by a trust are allocated to the beneficiaries, then those beneficiaries are liable to pay tax on those gains at their normal marginal rates. Therefore, in practice, the trustee will distribute any gains derived by it to those beneficiaries who in that year have the lowest marginal tax rate.
- 6 Normally if a beneficiary is under 18 years of age then the trust income that is distributed to that person is taxed at penalty tax rate. Under these rates the child only has a limited tax free threshold of \$416.00. However, if the income derived by the trust was generated from inherited assets then the child will be taxed at normal adult tax rates in relation to any trust income applied for their benefit. This is one of the main advantages of using a testamentary trust.
- 7 The trustee has very wide powers of investment.
- 8 The trust will allow the trustee to bring the trust to an end at any time. Therefore, if the trustee does not need or want a trust at any time in the future then he/she can distribute the assets to the beneficiaries (which may include the trustee in the capacity of beneficiary).
- 9 For further details on Testamentary Trusts please contact us.

Superannuation and Life Insurance

- 10 The proceeds of superannuation are paid on the death of the contributor to either the contributor's nominees or those beneficiaries selected by the trustee of the superannuation fund exercising a discretion.
- 11 In practice, this means that the proceeds may be paid to the estate and be governed by the Will, or they may be paid directly to particular members of the contributor's family by passing the estate and so falling outside the scope of the Will.
- 12 The proceeds may be considerable and may seriously distort the Will-maker's scheme of distribution if they are incorrectly allocated.
- 13 It is vital that the future payment of superannuation be considered when drafting the Will and estate plan.

Life insurance policies

- 14 If the owner of a policy has nominated a beneficiary of the policy, the nomination takes precedence over the terms of the Will.

- 15 It follows that where a nomination has been made, the proceeds of the policy do not form part of the estate and are not governed by the Will.
- 16 If the Will-maker wishes the proceeds of the policy to go to someone other than the nominated person the nomination must be changed.
- 17 It is important to check with the insurance company concerned whether a nomination has been made.

Property you cannot give by Will

Jointly held property

- 18 If you own property with another person it may be held either as 'joint tenants' or as 'tenants in common'.
- 19 Property held as 'joint tenants' passes automatically to the surviving joint owner(s) on the death of the first dying joint owner. It does not form part of the estate of the first person dying.
- 20 But note that a 'tenancy in common' is a separate form of co-ownership in which property is held in common with others. In contrast with 'joint tenants' the share of a deceased tenant in common passes to his or her beneficiaries under his or her Will and does not automatically pass to the surviving tenant(s).

Property held in a trust

- 21 This passes to or is held for the beneficiaries of the trust according to the terms of the trust.

Partnership property

- 22 Is held by the partnership but the testator's interest in the partnership property or money owed to the testator by the partnership may be given by the Will.

Family Trust

- 23 Please note that if you are the beneficiary, trustee, appointor or guardian of any family or other discretionary trust, this interest will not form part of your estate and on your death will be dealt with under the respective trust instrument.
- 24 Accordingly, please provide us with the relevant family or discretionary trust document (if any) and any variations thereto for our review.