Why do I need a Will?

A Will is a document in which you explain what you want done with the assets that you own solely in your own name when you die. These assts typically consist of property, namely real estate, money, investments , and personal or household belongings that you own. A Will ensures that your testamentary wishes are carried out upon your death.

Is it simple to make a Will?

Although a Will can seem simple, it's really a complex legal document. To make an effective Will requires a good understanding of property ownership rules and the law about Wills. There are rules that must be followed, no matter how simple the Will, otherwise the Will may not be valid, and the words used must be chosen carefully so the Will is clear and unambiguous.

What are the formal requirements for making a Will?

The formal requirements for making a valid Will are as follows:

1. the Will must be writing
2. the Will must be signed by the Testator/Testratrix on each page of the Will and at the end of the Will
3. the Testator's signature must be witnessed by two independent witnesses. A beneficiary cannot witness a Will.
4. the witnesses must sign the Will in the presence of the Testator and each other

What should be in a Will?

The Will should specifiy that it is your last Will and that you revoke any previous Wills. It should appoint one or more persons to be your executors/s. Your Will should provide for payment of funeral expenses and any debts. It should then state how you want your property distributed, either by naming the item and to whom it is given, or by giving a person a certain amount or percentage of the total value of your property. If your Will contains specific gifts, it should also state what is to happen with the residue (remaining assets) of the estate.

Wills can include other requests, demonstrating the Testator's intention, such as funeral arrangements, preferences for disposal of the testator's body, and the appointment of a guardian to look after the testator's children.

What happens if I don't make a Will?

If a person dies without a Will, the law sets out how their property will be shared out after all the debts have been paid i.e without a Will you have no direct say over how your estate is distributed after your death.

Without a Will it can be hard to work out who should apply for permission to deal with the deceased's estate. The spouse, de facto partner or next of kin should apply to the PROBATE OFFICE OF THE SUPREME COURT for *Letters of Administration*. The application is quite complicated and may require a lawyer. If the application is successful the court grants *Letters of Administration* to someone who then has the authority to deal with the estate. Click this LEGAL AID link for details about the law in regard to dying without a Will.

What is an "executor" and how do I choose my executor/s?

The **executor** deals directly with your estate; he or she pays your debts and divides what remains of your estate among the "beneficiaries", the people named in your Will to receive a share of your estate. The executor has a big job. Being an executor is a very solemn undertaking and responsibility.

Speaking generally:

1. an executor must answer to the beneficiaries for his or her managment of the estate and account for the property (including all money) of the deceased.
2. He or she must organise your funeral and burial, as well as make decisions about your personal belongings and property.
3. It is also their job to deal with your finances, such as paying your debts, closing your bank accounts and doing your taxes in the year of your death, and the year following your death for your estate.
4. Finally, if there are children under 18, their well being must be looked after.

You should choose an executor that you trust and who is likely to still be alive when you die. He or she may be a trusted family member or friend. It helps if he or she is also a good book-keeper and an efficient communicator. If you prefer, you can appoint more than one executor and both can act together as co-executors. You should also appoint an alternate executor if the first executor isn't able to act. If you have a complex estate or investments or need someone to take over the operation of a company, your should name a professional executor like a trust company.

I have minor children. Do I need to appoint a guardian in my Will?

Typically, a guardian will be appointed to look after your children if they are younger than 18 when you die. This will avoid confusion in your extended family as to who should care for your children if both you and the other parent die before the children become adults. You must make sure your appointed guardian agrees to be the guardian. It's especially important to name a guardian if you're a single parent - otherwise the court could appoint someone you might not want.

Can my Will be changed after I die?

If you Will doesn't properly provide for your spouse or de-facto spouse, or children or parent, they may be able to make a claim under the *Inheritance Act (WA)*. If usccessful, the WA Supreme Court has the power to change you Will to give them a share ofyour estate. Therefore, if you intend excluding any such dependents from your Will, or giving them less than they might reasonably expect, be sure to consult with a lawyer about this situation. An experienced Wills lawyer can advise you on how to avoid claims on your estate under the *Inheritance Act*.

Why should I hire a lawyer to help me?

An experienced lawyer willknow about the rules that apply to Wills. Importantly, you will have the peace of mind of knowing that your Will is properly drafted and valid, and that your estate will be paid out according to your wishes.

How can I prepare before meeting with my lawyer?

It helps ifyou have the following information ready before you meet with your lawyer:

1. A list of everyone in your immediate family with their full names and contact information, their relationship to you and the ages of all your children, including stepchildren.
2. The names and addresses of any other people or organisations to whom you want to give gifts or bequests.
3. A list of your assets, such as your home, car, investments and any personal items of significant value. It is important to describe how you own any property (for example, whether you own it alone or together with someone else).
4. Details of any superannuation and insurance policies you own, and specifically who the beneficiary is.
5. The person or company you want to be the executor and, if relevant, the guardian.

Why is it sometimes important to update my Will/Estate plan regularly?

A well-drafted Will anticipates different scenarios and plans for these (for example, what happens if an adult child or grandchild dies before you). You should, in any event, still think about changing your Will whenever your financial or personal circumstances change, or if there is a change in the beneficiaries. For example, if you made a Will when your children were young and named your parents as guardian and executor, when your children become adults, you will no longer need the guardian clause and you might want your children or a sibling to be executor instead. It is a good practice to review your Will every three to five years to ensure that it still reflects your current wishes.

Is my Will still valid after I marry or divorce?

If you marry or divorce, your Will is automatically revoked unless, for example, the Will says that it was made in contemplation of your new marriage. If you divorce, the portions of your Will that involve your ex-spouse may no longer be valid.

Where should I keep my Will?

You should store your original Will in a secure safe place, like a safe or safety deposit box, where it cannot be stolen, altered or destroyed. Alternatively, you can store it with your accountant or lawyer, so that you have a permanent, safe location. We may retain a true original copy or original at our office if requested. Your original Will is what your executor will need to present to the *Probate Registry* in future, not a copy. It is recommended that you keep other important documents with your Will too, so your executor has what he or she requires when the time comes.

What is Probate?

Probate is the process by which the executor must apply to the Supreme Courts of WA to confirm that a Will is legally valid; it is the process of proving and registering in the Supreme Court the last Will of a deceased person. It is usually the executor of your Will who administers the estate and handles the disposal of your assets and debts. In order to get authority to do this, they usually need to obtain a legal document called a *Grant of Probate*. For assistance with the process of obtaining a *Grant of Probate*, it is usually helpful to consult a specialist Wills and Probate lawyer. Details about Probate, including filing fees, can be found at the website of THE SUPREME COURT OF WESTERN AUSTRALIA.

What is a Power of Attorney/Enduring Power of Attorney and why do I need it?

A **Power of Attorney** (also known as a POA) is a legal document that gives someone else power over your property or personal care if you are ill or absent. That other person does not have to be an attorney or lawyer - typically the person appointed is a spouse or close family member. By signing a power of attorney, you authorise someone else to act as your agent, for your convenience or in the case of your absence or disability and to make financial and property decisions for them. It must be made when the donor has capacity to make such decisions but might physically be unable to manage their affairs, for example, they are going overseas, or are incapacitated in hospital. A standard *Power of Attorney* is invalid if you lose your mental capacity.

Along with your Will, and **Enduring Power of Attorney** (EPOA) is one of the most important documents you can execute in planning for your future and the future of your loved ones. Unlike a standard Power of Attorney, an Enduring Power of Attorney remains valid *after the donor loses legal capacity*, for example due to dementia, stroke, being in a coma, Alzheimer's Disease, mental illness, accident, trauma, acquired brain injury, or for other reasons. Contrary to popular belief, if you become incapable of managing your own affairs, your spouse or close family member

is not automatically entitled to act on your behalf - hence the importance of an EPOA. Like any important document, you should not wait until unforseen circumstances force you to prepare your Powers of Attorney in haste. It should be prepared and signed while you are in good health and can take the time to make the right decisions.

More information regarding **Powers of Attorney** and **Guardianship** may be found by clicking this link to the website of LEGAL AID .