



Address: 36 Lismore Street, Waltham, CHCH 8011
 PH: 982 3839 MOB: 021 548 857 FAX: 379 7697

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Paul Richardson
 TMF Manager

Email:
paul@tmfnz.co.nz

HAPPY BIRTHDAY TO ALL MEMBERS FOR THE MONTH AUGUST 2010



Will your family be protected on your DEATH—First Hand Experience

In the last two years that I have been producing newsletters for TMF covering all types of illnesses and accidents I wasn't prepared for what was to happen. Last week my father passed away reasonably unexpectedly after a short stay in hospital. This threw the family into chaos wondering what financial precautions my father had put in place for my mother? Is there enough to pay for the funeral? was the first question. Had Dad made a will? Had Dad purchased life insurance? Was the house paid for? What investments were there, and for how much? Was there any huge outstanding bills which needed to be paid before Mum got the money? How long does probate take? Thankfully my Father had taken precautions leaving my Mother in good shape to pay for the funeral, their home was covered and investments organised for future income. It was so reassuring going to the Public Trust having a will in place and knowing Dad's wishes were being carried out. To not have had any of this taken care of, would have put a huge strain on my family and definitely considerable financial strain for myself to support my family and extended family members. I have made the focus of this months newsletter on the steps you need to take to draw up a will to protect your immediate family. A lawyer to consult if you are in Christchurch is - Kerry Williams of Williams and Eason - Phone - 379-7444



R.I.P Richard John Richardson 20/08/1931—27/07/2010

MAKING A WILL

Less than five percent of us die intestate. But we're often sluggish about putting pen to paper, fearing the lawyer's bills that may result. Making a will doesn't cost that much. The expensive bit is the will's administration after your death: these costs come out of your estate and vary depending on who administers the will.

DO IT YOURSELF

You're legally entitled to make a will yourself – but just four percent do, according to a Public Trust survey. A DIY job may be fine if your assets are modest and your family relationships orderly. But if not, you'll probably need legal advice. There are potential downsides to DIY. Experts say home-made wills may create problems if the will-maker's intentions aren't clear. Simple errors – for example, the will's not signed or witnessed properly – can also create grounds for challenge.

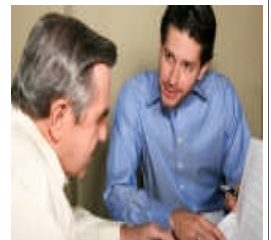
THE PROFESSIONALS

Most people use a law firm or the Public Trust to draw up their will. This doesn't mean the will can't be challenged: disgruntled relatives can still pop out of the woodwork to dispute your last wishes. But using a professional should help to ensure the will is legally valid. Both the Public Trust and Perpetual Trust offer free will-making provided you name them as executor and trustee of the will. Some legal firms will also prepare a will for free but they usually expect to be named as the executor (that's how they earn an income).



YOUR EXECUTOR

You can choose anyone to be your executor. The person doesn't have to be a lawyer: they can be a family member or friend. It's common for people to name a friend or relative and a professional as co-executors (they'll administer the estate together). There can be advantages in naming a legal expert as an executor because they can deal with legal matters. Probate (authorisation to administer your estate) will usually need to be obtained from the High Court. Your legal expert can also deal with the transfer of any property.



LIVING WILL

A living will, also called an "advance directive", states what medical care you should be given if you become physically or mentally unable to decide. You might want to make a living will saying you should or shouldn't be resuscitated or that you want life support turned off in certain circumstances.

Medical professionals can't ignore an advance directive unless there are reasonable grounds to doubt its validity. The Health and Disability Commissioner says validity revolves around whether you:

- were competent to make the particular decision
- made the decision free from undue influence
- were sufficiently informed to make the decision
- intended the directive to apply to the specific circumstances.



Life Insurance, Medical Insurance, Disability Insurance, Funeral Insurance, Income Replacement, Redundancy, Mortgage Protection, Simple Life and Total Permanent Disability Insurance.

HOW TO DEAL WITH A RELATIVE DYING WITHOUT A WILL

Introduction

If a person dies without making a will, he or she is said to have died "intestate". Since there is no will, the deceased person's property is distributed according to rules laid down in the ADMINISTRATION ACT 1969 (see below, "How is the deceased's estate distributed?"). In order for someone to have authority to distribute the deceased's estate, an application must be made to the court for it to grant "letters of administration" for the estate, which means that the court appoints a person, usually a close surviving relative, as the "administrator" of the estate. (By contrast, if there is a will the executor appointed under it applies to the High Court for it to grant "probate" of the will).

What is the administrator's role?

The administrator is the personal representative of the deceased and has authority to deal with and distribute the deceased's estate in accordance with the rules in the ADMINISTRATION ACT 1969. The administrator fills the same role as the executor under a will.

How do I apply to be appointed administrator?

You will need to apply in writing to the High Court. Except when someone is contesting the issue, the application is made "ex parte", which means it's not necessary to give notice of the application to anyone else.

The application must use the general format shown in Form 20 of the High Court Rules (which is in the Second Schedule to the JUDICATURE ACT 1908). Usually applications are made through a lawyer; if you do use a lawyer, he or she must certify that the application is correct.

The application must be filed in the High Court registry nearest to where the deceased was living when he or she died or, if the deceased wasn't living in New Zealand, at the registry nearest to where the deceased's property is.

What if someone is contesting the issue?

If someone is challenging you being granted letters of administration (for instance, claiming that a valid will exists), the process is more complicated and will involve a trial in the High Court. You must apply "in solemn form", which means you file a statement of claim under the standard procedure for civil proceedings in the High Court.

You name as defendants the people who are contesting the issue and the people who, if you are unsuccessful, may be entitled to a grant of probate (if they are claiming a valid will exists) or letters of administration.

The defendants then have the opportunity to file a statement of defence and, if they wish to, a counterclaim.

How does the court decide who to appoint as administrator?

There is an order of priority to aid the court in determining who to appoint as administrator -

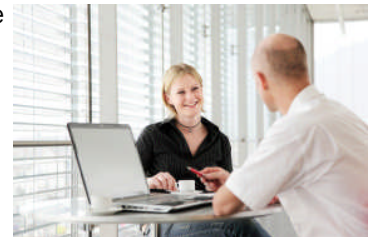
- the surviving spouse, or the surviving civil union or de facto partner
- children
- parents
- brothers and sisters
- grandparents
- uncles and aunts, or failing them their children



How is the deceased's estate distributed?

The ADMINISTRATION ACT 1969 sets out the rules of intestacy, which state who will receive the property. Generally the property goes to family members, as follows -

- If the deceased had a husband or wife or a civil union or de facto partner, but no surviving parents or direct descendants, the spouse or partner will get all of the estate.
- If there is a spouse or partner and also direct descendants, the spouse or partner will receive all the personal chattels, the first \$121,500 of the estate and a one-third share of the remaining property. The other two thirds go to the direct descendants.
- If there is a spouse or partner, no direct descendants but surviving parents, the spouse or partner receives all the personal chattels, the first \$121,500 of the estate and two thirds of the remaining property, with one third going to the surviving parents.
- If there are direct descendants but no husband or wife or civil union or de facto partner, the estate goes to the direct descendants.
- If the deceased did not have a surviving spouse or partner nor any direct descendants, the deceased's parents will receive the whole estate.
- If there are no parents, the deceased's brothers and sisters or their direct descendants receive the estate.
- If there are no brothers and sisters, nor any of their descendants, the estate is shared between grandparents or, if none, aunts and uncles.
- If none of these parties exist, the Crown will receive the property.



De facto partners were included in the above provisions on 1 February 2002, but only where the deceased died on or after that date. Further, some de facto partners are not included. Civil union partners were included in the above provisions on 26 April 2005.

When are de facto partners entitled to take property under the rules of intestacy?

Since 1 February 2002, a de facto partner (including same-sex partners) has had the same rights to receive the deceased's property under the rules of intestacy as has a legal spouse, provided

- the de facto partner was living with the deceased when he or she died, and
 - the relationship had lasted for at least three years
- If the relationship was for less than three years, the de facto partner has no right to receive under the intestacy rules, unless the court is satisfied:
- either that
 - there is a child of the relationship, or
 - the partner made a substantial contribution to the de facto relationship, and
 - that it would create serious injustice if the de facto partner were not entitled to receive under the rules of intestacy

DEALING WITH A RELATIVE DYING WITHOUT A WILL CONTD

If the deceased dies leaving both -

- a husband, wife or civil union partner, and
 - a de facto partner,
- then those two people share equally in the property that would have gone to a spouse or partner had the deceased left only a spouse or civil union partner or only a de facto partner. The same applies if the deceased leaves two or more de facto partners.

Surviving spouse or partner may choose division of property instead

A surviving spouse or civil union or de facto partner is entitled to choose between either -

- applying under the PROPERTY (RELATIONSHIPS) ACT 1976 for the property of the relationship to be divided according to the Act's equal-sharing rules, or
- not having the property divided under the Act and instead receiving whatever he or she is entitled to under the rules of intestacy.

For the division of property, see How to: The division of property when a marriage, civil union or de facto relationship ends.

CAUTIONARY NOTES

- A lawyer will be able to advise you of any entitlement you may have to the deceased's property under any intestacy, and can also assist you in applying to be appointing administrator of the estate.
- A lawyer can also help you make a will and avoid problems that could lead to your own intestate death, such as your will not being signed and witnessed correctly, or it being lost. A lawyer can also help you avoid a partial intestacy, such as where your property has not been adequately gifted, or where a beneficiary under your will has died before you without you having made any alternative provision under the will for the property in question.



Dying intestate—Example

I once acted in the estate of a person called Brian (not his real name) who died without a Will. He had a loving de facto partner who we shall call Jane who should have inherited everything. Inadvertently Brian left behind a massive emotional and financial burden for his partner when he died. Jane's prospects of losing part of the estate was real.

The couple had enjoyed a 20 year relationship had 4 children, but had never married. Thus Jane was not Brian's spouse. While their home was in joint names (and therefore went straight to Jane), their 2 investment properties were in Brian's sole name for tax purposes.

We had to issue proceedings in the High Court and appoint a separate lawyer for the children and grandchildren. Jane eventually got control of the investment properties through a trust for her and the children, but the estate took years to resolve and cost six times more to sort out than it would have if Brian had left a Will.

This is an example of the problems that can happen when you die without a Will. Fortunately, Jane and her children the estate was resolved, but not without avoidable cost. Where there is no resolution the Administration Act of 1955 will decide how your estate is to be divided.

Your written instructions make it easy for your loved ones. A Will is your written instruction as to how you want your property divided. You appoint the person who will manage your estate (the executor). That person has certain discretions such as the timing of the sale of assets and whether child beneficiaries should receive an advance on their bequest for important matters such as a life saving operation. Therefore you want that person to be someone you trust to make the right decisions. Of course, you have the freedom not to have a will. But, the only way you can be certain that the people you want to benefit from your estate do is by making a Will.

It only takes a moment to organise a Will but years to sort the mess out if you don't.

WHAT IS IN A WILL

We have written this page to explain exactly what it is that is included in a Will.

The information contained in a Will may differ depending on your circumstances, for example; if you are married and have children, your Will may include different information to that of a Will that is written for a single person with no children.

Use the information below to find out what may be included in your Will. If you are thinking about making a Will, the information here should help prepare you to answer all the questions necessary to write your Will.

What you can find in a Will

Executors

An executor is someone who is appointed by a testator (someone making a Will) to carry out the terms of a Will. The role of an executor is to ensure that the estate of a deceased person is secure, assess its value and pay any inheritance tax that may apply. They also need to gather all the assets, pay any debts, and then distribute what's left as outlined in the Will.

One of the key questions when writing a Will is 'Who can be an executor?'. This can often pose as a stumbling block and this particular section of the Will tends to throw up more questions

than answers.

So, let me explain: You will need to appoint two executors in your Will

- An executor can be your partner or spouse, and for those that are looking to make a joint Will (for example a couple), it is advised that you appoint one another as the first executor. This makes things a lot easier upon the death of the first partner.
- Beneficiaries of a Will can be executors. Beneficiaries such as children can also be executors, and can be a good selection as they are in a perfect position to carry out the wishes contained in a Will.
- If you are single with no children, or, you do not have a partner or child willing to act then the next best person to appoint as executor would be a relative or sibling.
- If you cannot find a suitable executor then you can instruct a solicitor to be an executor.
- You must always check with your prospective executor that they are willing to act before naming them in the Will. You will need to explain what is required of an executor as most are unaware of the roles and responsibilities imposed.



WHAT IS IN A WILL—CONTD

Guardians

A legal guardian is a person who has legal authority to care for the personal interests of another person.

The role of a guardian in a Will is to ensure that the minor children of the deceased are cared for, this can include schooling and moral training. Like that of the executors above, choosing a guardian can be very difficult and it is advised that careful consideration is taken before reaching a decision. If you die without making a Will, the courts will decide who takes care of your minor children (Children under the age of 18). The decision of the court may be ok however to ensure that your children are looked after as you would have wished, it is strongly advised to make a Will and appoint a guardian. In the majority of cases the sole surviving parent assumes care of your children however when making a Will you should name a guardian for your minor children in case neither you nor your spouse is able to act.

A guardian must be over the age of 18 and willing to assume responsibility. So similarly to choosing an executor, it is advised that you check with your prospective guardian/s that they are willing to act. You may want to consider naming more than one guardian therefore if one may die others can take over.

Gifts of Money

This section of a Will allows you to specify any gifts of money. These are normally:

- A basic cash gift
- A conditional cash gift (For example you may want to leave a gift of money to a young person however do not want that person to receive the gift until they have reached a certain age)
- A charity cash gift

Specific Gifts

Many people will choose to leave specific gifts to individuals. These are not gifts of money and therefore need to be described carefully when making the Will. Specific gifts can include jewellery, a car or even smaller items such as digital cameras, laptops, iPod etc.

Estate

Your estate is everything you own, this includes all of your assets including property, investments and cash.

Once your specific gifts and gifts of money are apportioned you can specify who inherits the remainder of your assets. The remainder of your assets can be distributed in equal shares or you may decide to state specific percentages. For example; you may wish to leave 40% to both your son and daughter and 20% to a sibling.

Funeral Wishes

Funeral wishes in a Will are not legally binding however if you state your wishes then normally your family or relatives will follow them. The three most popular funeral wishes are:

- Burial
- Cremation
- A request that your body may be used for medical purposes such as education and research.



Accuro Claims Statistics

- Over \$9.844 million was paid in claims to members for the year ended 31st March 2010
- \$9 million was paid for 1,141 members who made surgery claims
- 5,092 members had claims paid for the year ended 31st March 2010



Can you afford a cup of coffee?

If you answered yes....then you can afford health insurance.

For less than one cup of coffee per day—a young family and their loved ones can be protected for \$3.40 per day.¹

If you are single, for \$5.50 per week you can have cover for less than a pint of beer.²

For a couple, we have a cheaper product that is the same cost of going to the movies twice a month.³

- 1 Two 40 year old non-smoking adults with two dependants
- 2 One 20 year old non smoker adult
- 3 Two 30 year old non smokers



To all TMF Members.
Hope you enjoy this months newsletter.
Thank you for your time.

Birthday Card Response



We have been sending birthday cards for some time and we have received some very nice responses. We have had a few cards come back due to changed addresses. If you have moved, can you please email your new details to Clare at admin.chch@awunz.co.nz

and she will amend your records accordingly.

Latest birthday card response was from a member at Sicon Ltd who wrote:

Hi Paul

thank you for your hand written birthday card, it was a nice surprise. All the best to you and your team.

Thank you, it is always nice to know that our members are receiving their birthday cheer from TMF.



Life Insurance, Medical Insurance, Disability Insurance, Funeral Insurance, Income Replacement, Redundancy, Mortgage Protection, Simple Life and Total Permanent Disability Insurance.