



FORTY FOUR DEGREES
Lawyers and Consultants

Level 2, Suite 3, 50 Market St
Melbourne VIC 3000

50 Lydiard Street South
Ballarat VIC 3350

WILLS AND ESTATES



OVERVIEW

Services we provide

ESTATE
PLANNING

WILLS

POWERS OF
ATTORNEY

TESTAMENTARY
TRUSTS

MEDICAL
TREATMENT
DECISION
MAKER FORMS

STATEMENT
OF WISHES

CONTESTED
ESTATES

PROBATE &
LETTERS OF
ADMINISTRATION



FORTY FOUR DEGREES
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Thank you for engaging our firm to assist you with your Estate Planning. Forty Four Degrees Lawyers and Consultants prides itself on the level of service provided and looks forward to assisting you in planning for your future and ensuring your wishes are fulfilled.

In an effort to reduce the amount of paper we use we endeavour, where possible, to communicate with you via either email or telephone. We invite you, where possible, to do likewise.

Your main contacts will be:

Leila Chalk
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Email: leila@fortyfourdegrees.com.au

Nicola Drakeford
Mobile: 0422 411 388
Email: nicola@fortyfourdegrees.com.au

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1300 892 237
hello@fortyfourdegrees.com.au
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Verification of Identity

We are obliged to verify:



Your identity;



That you are a legal person; and



That you have the right to enter into the relevant instrument or dealing.

This means that you will need to attend our office for a meeting with one of our solicitors. You will need to bring photo ID to this meeting.

In some circumstances we may be able to verify your identity via video conference. Please contact us to discuss this option.

Alternatively, if you are unable to attend our office we will provide you with a verification of identity document for Australia Post. With this document and the required ID you can attend one of Australia Post's branches to have the verification of identity done. Please note however not every branch can provide this service, so please call ahead to ensure this service can be provided.

Estate Plans

Estate Planning is when you make a plan in advance giving directions on how you want your assets to be distributed after your death.

Your estate is comprised of everything you own. It can include cash, clothes, jewellery, cars, houses, land, retirement, investment and savings accounts, etc. No matter how large or how modest, everyone has an estate.

You must be over 18 and mentally competent when you draw up the legal agreements that form your estate plan. Key documents might include:

- Will
- Superannuation death nominations
- Testamentary trust
- Powers of attorney
- Medical Treatment Decision Maker
- Statement of Wishes

If you have made a binding nomination in your super or insurance policies, the beneficiaries named in those policies will override anyone mentioned in your will. Some nominations are lapsing and some are not. It is always important to review your nominations. If you have a family trust, the trust continues and its assets will also be distributed according to the trust deed, no matter what is written in your will.



Will

A will is a legal document that sets out your wishes and directs how your estate is to be distributed amongst your nominated beneficiaries. This includes any additions or amendments to existing wills.

If a will is incorrectly drafted, it is very difficult to adduce evidence to show the true intentions of the will maker. It is also very expensive to have the issue resolved and reinterpreted by the Courts.

To have control over how your assets are distributed, we encourage you to contact us to draft your will.



Property

For a lot of people, a majority of their estate is the property they owned while they were alive.

No matter who you want to inherit your property, it is important for us to understand how your property is legally owned when writing your will.

In general, the common methods of owning property include:

- With one person's name on the title;
- With two people's names on the title, either as:
 - Joint Proprietors; or
 - Tenants in Common
- With a company, trust, or self-managed super fund owning the property.

Joint Proprietors v Tenants in Common

It is important that you receive legal advice on whether you hold your property as a joint proprietor or tenant in common when preparing your will.

If you own a property as joint proprietors with another person, and you die, your share of that property automatically goes to that other person - even if your will says otherwise. In comparison, if you own a property as tenants in common with another person, your share of the property goes to whoever you specified in your will.



Please note that if you own property and can't give us a recent title search, we must conduct a title search when preparing your will. This typically costs around \$30, and is added to our fees in your invoice.

Joint Proprietors v Tenants in Common

JOINT TENANTS

Alex and Drew



Owners each hold an undivided share in the whole property.

Drew dies



Alex



If one owner dies and the joint tenancy has not been severed*, the property as a whole will pass to the surviving owner (regardless of the deceased owner's will or testamentary intentions).

*Joint tenancies can be severed unilaterally so that the consent of the joint tenant is not required

TENANTS IN COMMON

Alex



Drew

Owners separately hold an individual share in the property. E.g. 50/50, 30/70, etc.

Drew dies



Alex



Drew's estate

If one owner dies, the surviving owner retains their individual share in the property and the deceased owner's share becomes an asset in their deceased estate.

Powers of Attorney

A Power of Attorney is a formal written document by which you legally appoint a person or an organisation to make decisions, sign documents and act on your behalf in various matters.

When you grant a Power of Attorney you may choose to limit the actions which the attorney can perform on your behalf (Limited Power of Attorney) or give the attorney wide powers to undertake actions on your behalf (General Power of Attorney).

The different types of power of attorney are:



- **General power of attorney** is where you appoint someone to make financial and legal decisions for you, usually for a specified period of time, for example if you're overseas and unable to manage your legal affairs at home. This person's appointment becomes invalid if you lose the capacity to make decisions for yourself.

- **Enduring power of attorney** is where you appoint a person to make financial and legal decisions for you if you lose the capacity to make your own decisions.



- **Medical power of attorney** can make only medical decisions on your behalf if you become unable to do so. Medical powers of attorney are known as an appointment of a Medical Treatment Decision Maker.

You can prepare a few other documents to help your legal appointees and family as you grow older, including an:

- **Enduring power of guardianship** that gives a person the right to choose where you live and make decisions about your medical care and other lifestyle choices, if you lose the capacity to make your own decisions.
- **Anticipatory direction** records your wishes about medical treatment in the future, in case you become unable to express those wishes yourself.
- **Advance healthcare directive (or living will)** documents how you would like your body to be dealt with if you lose the capacity to make those decisions yourself. This can include:
 - an instructional directive with legally binding instructions about future medical treatment you consent to or refuse
 - a values directive which documents your values and preferences for your medical treatment decision maker to consider when making decisions for you
 - your organ donor status and wishes

Contested Estates



Unfortunately, there are occasions when wills are found to be unenforceable because of the circumstances in which they were signed.

Some of the circumstances in which this may happen are:

- When the person making the will may not understand what they were signing due to language difficulty or illness.
- It is also possible that they were under some kind of duress or have been deceived.

In these circumstances the Courts may find that the will is void and it should be set aside.

At Forty Four Degrees, we are able to assist you in both contesting an estate as well as safeguarding your estate from being contested in the future.

Medical Treatment Decision Maker Forms

You can legally empower someone to make decisions about your healthcare on your behalf, in the event that you suffer an injury or medical condition that affects your ability to make those decisions yourself.

This person will be your 'medical treatment decision maker.' A medical treatment decision maker's role is to make all necessary decisions about a person's medical treatment when they are unable to.

This decision must be informed by the medical treatment decision maker's understanding of the person's preferences and values.

Statement of Wishes



A Statement of Wishes is a confidential document which is designed to guide and assist your executors when it comes time to administer your estate, trusts and companies. A Statement of Wishes takes the form of a separate document to your will.

Superannuation

Your superannuation does not automatically form part of the assets under your will in most cases.

We are able to draft a binding death benefit nomination ('BDBN') with your superannuation fund. A binding death benefit nomination is a written direction to the Trustee that sets out the dependants and or legal personal representative that you want to receive your benefit in the event of your death.

There are 3 types of Superannuation Funds:

1. Self Managed Superannuation Funds (SMSF)
2. Australian Prudential Regulation Authority (APRA) (overseas banks, credit unions, general insurance, life insurance, Friendly Societies and most members of the superannuation industry)
3. Public Sector Superannuation Schemes (PSSS)

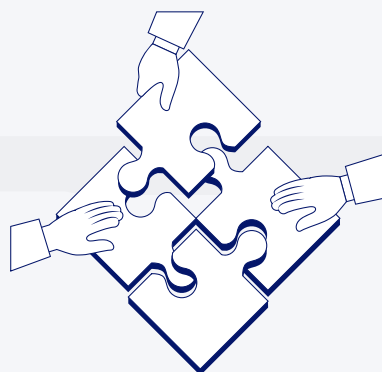


Testamentary Trust

A testamentary trust is a trust set out in your will that only takes effect when you die.

Testamentary trusts are usually set up to protect assets. Here are some reasons why you would create a testamentary trust:

- The beneficiaries are minors (under 18 - 21 years old)
- There is sufficient assets to last more than one generation
- The beneficiaries have diminished mental capacity
- You do not trust the beneficiaries to use their inheritance wisely
- You do not want family assets split as part of a divorce settlement
- You do not want family assets to become part of bankruptcy proceedings.



Probate and Letters of Administration



What is Probate?

Probate is a document granted by the Supreme Court which gives the executor of your will legal authority to deal with your estate assets.

Without Probate, various institutions such as banks or share registries will not allow estate funds to be released.

What are Letters of Administration?

If an someone dies without a valid will, their executor (or next of kin) cannot apply for Probate. Their executor would apply to the Court for Letters of Administration.

The administrator will be required to provide evidence as to why the formal requirements of preparing a will were not followed. Often, finding such evidence is a challenging task and the additional fact finding is likely to unnecessarily draw out the time it takes to administer the estate and increase the cost involved.

Frequently Asked Questions

1 What events will make my will invalid?

Examples of events that will make a previously valid will invalid include:

- getting married
- getting divorced (in relation to your spouse)

2 When should I update my will?

You should revisit your will every 5-7 years as a guideline and update your will if:

- your financial circumstances change
- your family circumstances change, for example, if you marry, start a new relationship, divorce, separate, or have children or grandchildren
- a beneficiary under your current will dies
- an executor or trustee appointed under your current will dies or becomes unsuitable to act due to age or ill-health
- you sell or give away assets that are specifically mentioned in your will
- you buy or inherit significant assets
- you begin to hold assets that your will cannot deal with, such as in superannuation or a trust

3 What happens if I die without a will and I am in a de-facto relationship?

Under the law, your de-facto partner is considered your legal spouse, and he or she may be entitled to a share of your estate. But the onus is on them to prove that you were in fact in a de-facto relationship if there are any disputes.

To be certain that your de-facto partner receives their share of your estate, you need to create a will that details how your estate should be divided and include them specifically by name.

PRICE LIST

Fixed fees for certainty and peace of mind.

All prices include GST.

ESTATE PLANNING PACKAGE

Single **\$1100**

Couple **\$1800**

When you want the best peace of mind, get the full package. Includes estate planning and superannuation advice, a digital assets register, letter of wishes, advance care directive, wills and medical treatment decision maker forms.

THE JANE AUSTEN PACKAGE

Single **\$2500**

Couple **\$4200**

For the 'it's complicated' family. Everything in the full estate planning package PLUS a testamentary trust and personalised legal advice. You may need the Jane Austen Package if any of the following apply:

- Family trusts or companies
- Blended families
- Leaving individuals out of wills
- Right to occupy or life estates
- Protective trusts
- Discretionary trusts
- International or concurrent wills
- Surrogacy

A LA CARTE

INDIVIDUAL WILL **\$770**

POWER OF ATTORNEY **\$330**

MEDICAL TREATMENT DECISION MAKER FORMS **\$330**

LETTER OF WISHES/ADVANCE CARE DIRECTIVE **\$330**

URGENT TURNAROUND - 24 HOUR SERVICE **\$550**

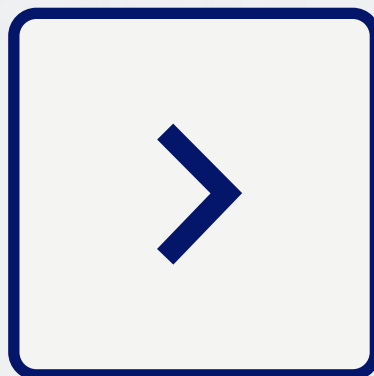
TRAVEL COSTS **\$165 PER HOUR**

Please note that if you own property and can't give us a recent title search, we must conduct a title search when preparing your will. This typically costs around \$50, and is added to our fees in your invoice.

**READY TO START THE
PROCESS?**

WILLS QUESTIONNAIRE

**USE THE LINK BELOW
TO COMPLETE OUR
WILLS
QUESTIONNAIRE**



**One of our solicitors will be in touch
to confirm your instructions and
arrange for a signing meeting.**