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KAREN L HAGA
& associates

# Planning for Your Future

## Wills and Estate Planning

A Will is a written document that sets out how a person wants their assets (known as their estate) to be divided after their death.

A Will can be made by anyone over the age of 18 as long as they have the mental capacity to understand what they are doing. In order to be valid, a Will must be:

- In writing
- Signed by two witnesses who are present when the Will-maker signs the Will
- Dated at the time of signing
- Made of the person's own free will, without pressure from anyone else.

Your estate includes goods such as cash, real estate and personal possessions. If you own property jointly with someone else however, your Will does not control what happens to these assets and they will automatically revert to the surviving co-owner upon your death.

## Contents of a Will

The first step when making a Will is to choose one or more persons to be nominated as the Executor(s) of your Will. The Executor attends to, or oversees, the administration of the estate in accordance with the deceased's wishes set out in their Will. It is common for people to appoint a member of the family or a close friend as the Executor.

After appointing an Executor(s), it is then necessary to nominate those who are to benefit from your estate. You are able to make specific bequests of assets, or to leave the whole of your estate, or particular assets, to classes of beneficiaries in nominated shares.

## Testamentary Trusts

You can also create a Testamentary Trust in your Will. This form of trust can be particularly useful when you are leaving funds or property to children under the age of 18 or for relatives with disabilities. A Testamentary Trust ensures that someone, (known as the Trustee, who is also often the Executor of the Will), can oversee the inheritance and manage the finances on behalf of the beneficiary and you can stipulate that they release funds to the beneficiary over a period of time if required.

A parent can also nominate someone in their Will as the guardian of their children under 18, although a surviving parent generally takes this role. If there is a dispute about who will be the guardian, the Court will then appoint someone to the role. The Court may consider who you appointed in your Will when making this decision.

## Changing or Revoking a Will

Once a Will has been signed, it cannot be altered by crossing out clauses or writing in new ones. The only way to update the Will is by a 'Codicil' or a new Will.

A Codicil is a written document added to a Will, which must meet all the formal requirements of a Will. In most cases it may be easier to make an entirely new Will.

A Will is automatically revoked when the Will-maker marries, unless the Will was made in anticipation of marriage. A divorce will not revoke the whole Will, but it will revoke any gift to your former spouse and the appointment of your former spouse as an Executor, Trustee or guardian unless you express a contrary intention in your Will.

## Where to keep your Will and what to keep with your Will

Your Will should be easy to find after you die, otherwise the Court may presume that you destroyed it or did not have one. Your original should be in a safe place, such as with your bank or lawyer, and a copy kept at home among your personal papers. You should also tell your Executor where the original is kept.

It will make the Executor's task easier and quicker if you keep the following information with your Will:

- A list of assets, including details of where documents such as passbooks and title deeds, can be found; and
- A list of people, firms and organisations to be notified on your death.

**It is advisable to consult a solicitor for advice when making a Will. At Karen L Haga & Associates, we can ensure that your wishes are translated correctly into a valid Will that will be accepted by the Court. We also provide a complimentary service to hold your original Will in our secure deed safe.**


**Address:** Suite 24, 15 Terminus Street, Castle Hill NSW 2154
**Phone:** 02 9894 9133
**Fax:** 02 9899 9331
**Email:** info@karenhagalawyers.com.au
**Website:** www.karenhagalawyers.com.au


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# Providing for Future Incapacity

A person may want to provide for the possibility that in the future they will be unable able to make certain decisions for themselves as the result of an incapacitating illness. This can be done by using any of the following:

- Enduring Power of Attorney
- Enduring Guardianship
- Advance Care Directive (or Living Will)

## Powers of Attorney

A Power of Attorney enables you (the Principal) to authorise someone else (the Attorney) to carry out financial transactions on your behalf. You must have mental capacity when you make the Power of Attorney. You can make either a General Power of Attorney – which will become invalid if you subsequently lose your mental capacity – or an Enduring Power of Attorney which will remain valid if you lose your mental capacity.

The power given to your Attorney may be a 'particular power', that is given for a specific, limited purpose or to carry out a particular transaction, or you may give a 'general power' which allows the Attorney to carry out any business and deal with any of your financial affairs in any way that the Principal could lawfully do.

In order for a Power of Attorney to be valid, the Principal should be capable of understanding the nature of the document that he or she is signing. A Power of Attorney may be revoked at any time whilst the Principal has mental capacity and it ceases to have effect on the death of the Principal.

**The appointment of an Attorney is a major step in regard to the management of your property and affairs. It is not an occasion to take a risk and act without legal advice and a full awareness of the consequences.**

## Enduring Guardianship

The Guardianship Act 1987 allows a person to appoint someone to make decisions on their behalf about such matters as where they will live and what health care they will have, and to consent to medical or dental treatment.

Both the person making the appointment and the guardian must sign an Appointment of Enduring Guardian Form, and it must be witnessed by a Solicitor, Barrister or Clerk of the Local Court.

One or more persons can be appointed as your Enduring Guardian(s), with the stipulation that they must be at least 18 years old and someone you trust to make the decisions for you.

An appointment of Enduring Guardianship takes effect only if the appointer is unable to make his or her own personal or lifestyle decisions.

## Advance Care Directive

People sometimes make written directions about their future treatment if they are to become incapacitated.

An Advance Care Directive is a document that records your health and personal care instructions for family members, your doctor and health workers. It records the type of care and treatment you would want if, in the future, you are unable to communicate your wishes as to your health and personal care. It comes into effect only if you are unable to make your own decisions.

Advance Care Directives do not have a legislative basis and historically have not been legally binding on doctors or hospitals. However there have been reported cases where Advance Care Directives have been upheld as legally binding documents.

At Karen L Haga & Associates we can help you to take control of your future. We can provide friendly, professional advice that will ensure your needs, and your loved ones, are taken care of both now and into the future.

**For more information on Wills, Powers of Attorney and Enduring Guardianship contact Karen L Haga & Associates on Phone: 02 9894 9133**

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