

Do I need a will in Australia?

I own property in Australia, what do I need to do to protect my interests?

If you have recently purchased property in Australia, then it is imperative that you protect your new asset. The first thing most people do is take out insurance to protect against fire, theft and damage but what most people forget to do is protect their assets against government intervention during times of incapacity or on death.

What is a Will?

A Will is a written document which declares how your estate assets are distributed on your death. In Australia if you do not have a valid Will your assets will be distributed in accordance with the laws of intestacy of the state in which you own your property. In Victoria your assets could end up in the hands of distant family members you would not wish to benefit or worse in the hands of the Victorian government.

The costs and time associated with making an application to administer an estate without a Will can, and often do, outweigh the costs of preparing a basic Will in Australia.

A valid Will in Victoria requires the following:

- Testator (Willmaker) must be at least 18 years of age;
- Willmaker must have testamentary capacity;
- Be in writing;

- Signed by the Willmaker and witnessed by at least two independent individuals over 18 years of age; and
- Willmaker must sign it with the intention of making a Will.

What happens if I die without a valid Will?

If you die without leaving a valid Will ('intestate') then your assets will pass in accordance with intestacy laws. The distribution of assets on intestacy in Victoria is set out in the Administration and Probate Act 1958 (Vic) ('the Act').

If you die leaving a spouse and one or more children, your spouse will receive \$100,000 plus one third of your estate and your children will receive the remaining two thirds of your estate. Not only may this be an unsatisfactory outcome, the costs and time associated with making an application to administer an estate without a Will can, and often do, outweigh the costs of preparing a basic Will in Australia. As they say prevention is always better than a cure.

Who can you leave your estate to?

In Australia you can leave your assets to anyone you wish, including family, friends or charities. But it is important to remember that although you can leave your estate to anyone you choose, if you leave someone out of your Will who you should have provided for, then the courts may ultimately determine who will benefit from your estate.

Who can make decisions for me when I'm not in Australia?

In Australia only the legal owner of real property can make decisions in relation to that property. The legal owner however can appoint someone to act on their behalf during times when they are unable to make decisions for themselves or are out of the country and can't sign legal documents. In these circumstances you may consider appointing someone you trust and who resides in Australia (for example a child) to act for you under an Enduring Power of Attorney (financial). This type of Power of Attorney will continue to operate even if you have lost mental ability to make decisions for yourself.

What do I need to do?

If you own property in Australia, then you need an Australian Will. The laws in each country are different and a Will prepared in another country will not always achieve the results you would like. It is therefore important to ensure that you are protected in each country you own property. Without a valid Australian Will your estate could be held up for months dealing with legal requirements which could prove costly for the estate, potentially thousands of dollars in legal fees.

If you own property in Australia, and you want to ensure you are protected, and that you don't leave a mess behind for your loved ones, then you need:

1. A Will; and
2. Enduring Power of Attorney.

Contact Us

Rigby Cooke Lawyers provides a comprehensive wills and estates service to Foreign Residents, executives, business owners, investors, parents and retirees. Contact our Wills and Estates team for further information.

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