

# Legalquotes News

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## WHAT HAPPENS IF YOU DIE WITHOUT A WILL?

A Will is a written statement that sets out how you want your property to be distributed after your death. The person making the Will (called the Willmaker) appoints a person, or more than one person, called an Executor, who will administer the estate of the Willmaker after the Willmaker has died. The administration of the estate means organising (collecting and protecting) the assets of the estate, paying debts, and distributing the balance of the estate in accordance with the terms of the Will. The people and entities (such as charities) who receive a benefit or property under a Will are known as beneficiaries.

Many people simply do not have a Will. In addition, a lot of people who have a Will may not have a valid one (which for most purposes is the same as not having a Will at all).

For a Will to be valid, the Will must comply with certain minimum requirements. These include:-

1. The Will must be in writing.
2. The Will must be properly signed on each page by the Willmaker.
3. The Will must identify the Willmaker and show that this person intends the document to be his or her last Will and Testament.
4. The Will must be witnessed by two people who are present when the Willmaker signed the Will (the witnesses should also sign each

page of the Will using the same pen).

What happens if you don't make a Will or you don't have a valid Will because all the formalities were not complied with?

If a person dies without having made a Will (or a valid Will), he or she is said to have died "intestate". If this occurs, the deceased person's property is distributed according to a formula set by law. This may or may not be the way that the person would have wanted his or her property to be left. The formula is based on the principle that the deceased person would have wished his or her closest family members to have his or her property. This means that, in New South Wales, the main beneficiaries are the person's spouse and children.

It is clear that dying without a Will (or a valid Will, or a Will which does not achieve what the person thought it was achieving) takes away choice for the person dying:

1. Your estate will be distributed in accordance with a formula determined by law, not you.
2. The Government may possibly benefit from your estate (if no beneficiaries within the terms of the formula can be found).
3. Your family and loved ones may not be provided for in accordance with your wishes.



4. Possible avoidable taxes may be unnecessarily incurred.
5. People you do not approve of could be appointed as guardians of your minor children.
6. Your family members with special needs may not be adequately provided for.

Anyone who is over the age of 18 years should make a Will. We especially recommend that you have a current Will when one or more of the following circumstances apply:-

1. You have assets which you would like distributed in a certain way.
2. You own your own business.
3. You get married, divorced, or enter into a defacto relationship.
4. You have minor children.
5. You have family members with special needs.
6. You wish to leave money to your favourite charity or non profit organisation.



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