

Where there's a will there's no problems

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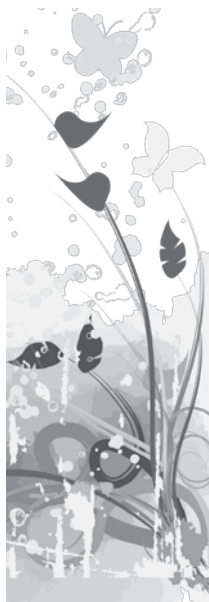
will, n., Law, a legal declaration of a person's wishes as to the disposition of his or her (real) property after death, usually in writing, and signed by the testator and attested by witnesses (*Macquarie Dictionary*).

What is necessary?

In order to properly plan for your retirement and beyond it is important to seek professional legal advice in respect of the drafting of your will, the creation of testamentary trusts and the appointment of an attorney and enduring guardian.

Simple precedent—pro-forma—wills do not deal with many of the complex issues which face us in real life and could lead to legal disputes or results that were not intended. In order to avoid costly litigation that may arise in the administration of an estate it is essential to balance and protect the entitlements of your spouse, children, grandchildren and other dependants or potential claimants on your estate.

Consideration should be given to whether your circumstances are such that it is desirable to create life interests, discretionary or fixed testamentary trusts and testamentary guardians. You will always need to appoint one or more executors and the selection of the right person is very important. The benefits of



a testamentary trust can be considerable and include asset protection and potential taxation benefits.

Other matters requiring careful consideration before deciding on or implementing a retirement strategy include the ownership of assets, discretionary family trusts, family and private companies, life insurance, superannuation and taxation issues.

A living will

The description 'living will' broadly speaking refers to documents appointing a person or persons to make medical and lifestyle decisions on behalf of another. In New South Wales this is achieved by an appointment of Enduring Guardian who can make decisions for you if you become medically unable. Similar conditions apply in the other states and territories. An attorney appointed under a Power of Attorney is authorised to make financial decisions on your behalf and the powers can come into effect immediately or at some specified future date or when you lose capacity.

If you believe that prayers for the living are a help to them, why should you not pray for the dead? Life is one, for as St Luke says: 'He is not the God of the dead but of the living' (20:38). Death is not an end but a stage in human destiny.

The love which our prayer expresses cannot be in vain; if love had power on earth and had no power after death it would tragically contradict the word of Scripture that love is as strong as death (Song of Songs 8:6), and the experience of the church that love is more powerful than death, because Christ has defeated death in his love for humankind.

Prayer for the dead

What role do they play?

It is important that the Power of Attorney specifies the attorney's powers (if you wish to limit them) and the appointment of joint, several and substitute attorneys. Similar considerations apply to the appointment of an enduring guardian.

An enduring Power of Attorney and Appointment of Enduring Guardian must be witnessed and certified by a solicitor or other prescribed person in order to be effective. Once a person lacks capacity to make decisions the documents cannot be signed or certified and orders may need to be sought from the Guardianship Tribunal for the appointment of a guardian or a financial manager. Proper planning will avoid the risk and expense which can occur if such orders are made by the Guardianship Tribunal.

Ongoing review and renewal

Effective estate planning and strategies for your retirement need to be discussed with your accountant, financial advisor and solicitor and put in place before it is too late. You can make a will at the age of 18,



and from that age you should have one, as well as a Power of Attorney and Appointment of Enduring Guardian.

Each of these documents should be reviewed and updated periodically to ensure that they make provisions appropriate to your current circumstances. A will is revoked by a subsequent marriage and, in part, by divorce.

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