

Do you have a Will?

Even if you do, you could learn from this.

Dying without a will

No will? Then your estate will be divided up under the Administration Act:

- Your spouse or partner gets your personal chattels, the first \$155,000 of the estate and one-third of the rest. The other two-thirds goes to your children.
- If you have no children, your partner gets the personal chattels, the first \$155,000 and two-thirds of the rest. Your parents get the other third. Your partner gets the lot if your parents are deceased.
- If you have children but no partner, the entire estate is left to the children equally.
- If you have no partner or children, your parents inherit. If your parents are deceased, the entire estate is left to blood relatives or to the Crown if no relatives exist.

Making a will

Less than 5 percent of us die intestate, leaving no known will, with some fearing lawyer's bills that may result. Making a will doesn't cost that much – the expensive bit is the will's administration after your death. These costs come out of your estate and vary depending on who administers the will.

Do-it-yourself

You're legally entitled to make a will yourself. A DIY job may be fine if your assets are modest and your family relationships orderly. But if not, you'll probably need legal advice.

There are potential downsides to DIY. Experts say home-made wills may create problems if the will-maker's intentions aren't clear. Simple errors – for example, the will's not signed or witnessed properly – can also create grounds for challenge.

The professionals

Most people use a law firm or the Public Trust to draw up their will. This doesn't mean the will can't be challenged, but using a professional should help to ensure the will is legally valid.

The Public Trust offers a free online will-making service. But you can only use this service if your will is very simple. For example, you can't use it if you want to leave things in uneven shares to different people.

Some law firms may also prepare a will for free if you're doing other business with them.

However, they usually expect to be named as the executor (that's how they earn an income).

Your executor

You can choose anyone to be your executor. The person doesn't have to be a lawyer, they can be a family member or friend. It's common for people to name a friend or relative and a professional as co-executors to administer the estate together.

There can be advantages in naming a legal expert as an executor because they can deal with legal matters. Probate (authorisation to administer your estate) will usually need to be obtained from the High Court. Your legal expert can also deal with the transfer of any property.

Living wills

A living will, also called an "advance directive", states what medical care you should be given if you become physically or mentally unable to decide. You might want to make a living will saying you should or shouldn't be resuscitated or that you want life support turned off in certain circumstances.

Medical professionals can't ignore an advance directive unless there are reasonable grounds to doubt its validity. The Health and Disability Commissioner says validity revolves around whether you:

- were competent to make the particular decision
- made the decision free from undue influence
- were sufficiently informed to make the decision

- intended the directive to apply to the specific circumstances.

Writing a will doesn't give you the freedom to do what you want. If you overstep your legal rights, the will can be challenged.

Adequate provision

The Family Protection Act says you have a moral duty to provide for close family members in your will. If you don't, they have a right to contest the will because you haven't made adequate provision for them. Cutting a close family member from your will is extremely difficult to do, if they choose to challenge it (see "The last word", below).

Promises

The Law Reform (Testamentary) Promises Act says if you've promised someone a reward in your will for their services and don't keep that promise, they can contest the will. Say you hire a caregiver, telling her you can't afford to pay her much but you'll see her right in your will. If you don't keep that promise, he or she may challenge the will.

Significant others

If you've been in a relationship for three years or

more, the Property (Relationships) Act says your partner is entitled to half your relationship property if you separate or die. This applies to married, civil union and de facto couples, including same-sex couples. You can "contract out" by making an agreement with your partner. If you die, your partner has six months to either accept what you leave them in your will or claim their share under the Act.

The last word

Want to cut your son or daughter out of your will because you've hardly spoken for 20 years? You can try but the court is likely to override your wishes. Professor Nicola Peart, of Otago Law School, says children's claims against a parent's will are almost invariably successful.

"Disentitling conduct" has to be extreme – court decisions show it can't just be a matter of harsh words or limited contact.

In one case, a woman's will left nothing to one of her two sons. There was bad blood between mother and son and the relationship had deteriorated dramatically in the years before her death. While the court found the son didn't have an "economic need", it said the mother still had a moral duty to her child. This duty had not been recognised in the will and the son was entitled to a legacy of a "moderate amount".

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