

The importance of an up-to-date will

Why it's better to be safe than sorry

The consequences of not having an up-to-date will can be huge.

Not having a will means the process for administering your estate is far more complicated.

It can even mean your spouse has to make a claim on your estate to get their share, or at worst, your assets end up with the Government.

So, what exactly is a will?

It is a document setting out who is to get your property and possessions when you die.

Each person needs to make their own will. It is not possible for you and your spouse to have a "joint" will.

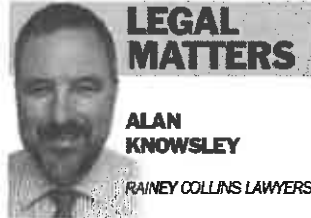
In your will you need to appoint somebody as executor of your estate.

Your executor is someone you appoint to carry out the terms of the will.

That person is required to obtain probate for the will, which is authorisation from the High Court to begin dealing with the estate.

The executor's role is then to make a list of all the assets and gather those assets in, pay funeral expenses and other debts from the estate, pay out any gifts in the will and distribute the remainder of your estate to the person, people or charities you nominate. This is done with the assistance of a lawyer.

In your will you can also appoint guardians for your children and give directions about your funeral and burial.



LEGAL MATTERS

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Wills are only valid if they are properly witnessed, so even if you have written something down and signed it, it will not be legally binding.

Also bear in mind that a will is invalidated when you marry, unless that will was made in contemplation of that marriage.

If you have divorced, the provisions in the will relating to your ex-partner are treated as invalid, but not if you have merely separated.

If you die without a will, the law governs how your estate will be divided, without regard to what you or your family might want.

Basically everything is divided between your partner and your children in specific shares that are set out in legislation.

This can cause considerable hardship to the surviving partner because they are cut off from part of the assets, which have to pass to your children, possibly leaving the partner with very little to live off.

While your partner can pursue a claim for half the assets under the Property Relationships Act, this is a lengthy and clumsy way of having to pursue entitlements.

In the worst-case scenario, if you have no blood relatives, the whole of your estate goes to the Government.

If you don't have a will, the process of administering your estate is much more complicated, can take considerably longer, and is likely to cost more in legal and other fees.

Talk to your lawyer about updating your will if you do have one, or making a will if you don't, to ensure you have your affairs in order.

The New Zealand Law Society recommends regularly reviewing your will, possibly every five years.

The time taken to make a will is insignificant compared to the time, emotion, stress and anguish of unintended consequences if you do not have one or have not updated it.

Column courtesy of Rainey Collins Lawyers, phone 0800 733484. If you have an inquiry email aknowsley@raineycollins.co.nz.

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