

What happens if you don't have a Will?

If you die without having a Will, the law will decide who gets your assets. This is called dying 'intestate'.

Intestacy laws in New South Wales are quite complex. Generally speaking, if a person dies leaving a spouse and children, the spouse will be entitled to the whole estate. Our experienced Accredited Specialist in Wills and Estates Law can provide you with more detailed information on the rules of intestacy and how they might apply.

Did you know...?

There are a lot of questions and issues that can arise on a daily basis and many facts that you may not be aware of. For example...

- You can appoint more than one Executor and they can be appointed jointly
- Upon your death, any bank accounts you have in your name will be frozen, unless the account is held in joint names with the other person still living after your death

- Your Power of Attorney and Enduring Guardianship is ended immediately upon your death (so any arrangements you would like to happen after that must be outlined in your Will)
- Upon sighting a receipt, most banks and financial institutions will release monies to pay for the deceased person's funeral
- If you lose mental capacity to write a Will or appoint an attorney or guardian it is too late to do so after the event
- Payment of superannuation death benefits are not governed by your Will
- Assets held in a foreign country may not be dealt with under your Will in Australia

Having a legal Will prepared by a qualified and experienced lawyer can ensure that you, and your beneficiaries, are well-informed and that your wishes can be fulfilled.

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How can Lamrocks help you?

At Lamrocks, we can provide expert advice on a wide range of issues concerning Wills and Estates. Our experienced team, led by an Accredited Specialist in the field, can help you with:

- Preparing a Will – including advice on tax minimisation and avoiding potential conflict or disputes between beneficiaries;
- Preparing Power of Attorney and Enduring Guardianship documents to suit your individual circumstances;
- Providing advice for families who have children with disabilities – for example preparing Wills that will ensure their ongoing protection and care, or making a Will for someone with a disability;
- The creation of Testamentary Trusts and other trusts designed to protect beneficiaries;
- The administration of a deceased person's Estate and applying for a Grant of Probate or Letters of Administration;
- Resolving disputes concerning a Will, including challenging the terms of a Will or defending a Will against such claims.

In addition, we can also provide a range of advice concerning the law as it relates to the elderly. This is a growing field in Australia, as our population ages, and there are a number of issues we can assist you with including:

- Advice regarding retirement village contracts and agreements;
- Advice regarding nursing home, hostel and home care agreements;
- Superannuation disputes;
- Advice on mortgage contracts and home equity release schemes;
- Preparing advance medical directives.

If you would like to discuss a legal issue with one of our solicitors, contact Lamrocks now on: **02 4731 5688** or **reception@lamrocks.com.au**.

A Guide to Wills and Estate Planning



1st Floor, Cnr Henry & Lawson Streets,
Penrith NSW 2750
PO. Box 330, Penrith NSW 2751
DX 8009 Penrith
P: 02 4731 5688
F: 02 4732 3488
reception@lamrocks.com.au
www.lamrocks.com.au



www.lamrocks.com.au

Lamrocks: The Wills and Estate Experts

The importance of planning

Preparing a Will, or making arrangements to appoint a Power of Attorney or Enduring Guardian, are tasks that many people put off.

Whether they are uncomfortable with the thought of planning for their ill-health or death, or whether they simply don't know what they would like to do with their estate, all too often people leave it until it is too late – causing even greater problems and potential difficulties for family members and loved ones.

Lamrocks Solicitors is Penrith's leading law firm with a reputation for placing clients first and offering the best legal service in the region. We have been helping individuals and families from across the Greater Western Sydney region with their Wills and Estate planning needs for over 100 years. We understand the issues you might be facing and can work with you, and your family, to ensure that your wishes are carried out in the event of your passing, as well as protecting your assets and estate both now and into the future.



Our Wills and Estates Team Leader is one of only a few NSW Law Society Accredited Specialists in Western Sydney. **Call 02 4731 5688** now for expert advice and assistance.

Why should you choose Lamrocks?

Expert lawyers working for you

At Lamrocks our lawyers are some of the most experienced professionals in the region. Our Wills and Estates Team Leader is one of only a few NSW Law Society Accredited Specialists in Western Sydney, enabling us to provide expert advice and professional representation when you need it.

Locally based and convenient

After over 100 years in the Penrith area, Lamrocks understands the needs of the local community. Our office is conveniently located in Penrith, with parking outside the door, so you don't have to travel into the city to get the best legal advice. In some cases, if your circumstances require, we will come to you.

Value for money

Being a local practice means that we can avoid the large expenses of many city-based firms and offer high quality advice at very reasonable rates. Our Wills and Estates Team members are highly experienced in this field of law and can quickly identify the important issues in your situation – saving you time and money in the process.

We focus on you

At Lamrocks, our clients are important to us. We take pride in the fact that we offer the best client service and we really focus on your individual legal needs. Our lawyers can be contacted easily by telephone, email or in person, and more importantly, they give you simple, straight forward answers in language you can understand!

Ensuring your affairs are in order

Wills

A Will is a written document that sets out what you want to happen to any property you own in your sole name at the time of your death (this is referred to as your 'estate').

Your estate includes goods such as cash, savings and investments, real estate and personal possessions. If you have joint bank accounts or own property with someone else, your Will does not control what happens to these assets and they will automatically revert to the surviving co-owner upon your death.

At Lamrocks we can help you to document your wishes concerning who will inherit your estate and structure your assets accordingly – providing peace of mind for you and your loved ones.

A Will can be made by anyone over the age of 18, as long as they have the mental capacity to understand what they are doing. In order to be valid, a Will must be:

- **In writing**
- **Signed by two witnesses who are present when the Will-maker signs the Will**
- **Dated at the time of signing**
- **Made of the person's own free will, without pressure from anyone else.**

Most importantly, you can change your Will as often as you like. The best times to make/update your Will include the following:

- **When you marry or divorce**
- **When you have children**
- **When you acquire significant assets such as buying a house**
- **When your circumstances change in any way, for example if you had planned to leave your estate to a relative who passes away before you.**

Testamentary Trusts

Creating a Testamentary Trust allows you to allocate the funds from your estate more effectively and can provide many advantages for your beneficiaries, including asset protection and tax minimisation.

This form of trust can be particularly useful when you are leaving funds or property to children under the age of 18, or relatives with disabilities for example. They ensure that someone who is properly qualified can oversee the inheritance and manage the finances on their behalf, and you can stipulate that they release funds to the beneficiary over a period of time if required.

Powers of Attorney and Enduring Guardian

Powers of Attorney and Enduring Guardianship are legal documents that allow a person, or people, of your choice to make decisions on your behalf, if you are not able to yourself. To appoint someone as your attorney or guardian, you must be over the age of 18, and have sufficient mental capacity to make the appointment. You must be able to understand things like:

- **What sorts of powers the attorney or guardian will have;**
- **What sorts of decisions they have the authority to make on your behalf;**
- **The effects that the appointment may have on you; and,**
- **How to cancel or change the arrangement in future.**

These documents are quite powerful by nature and you should always speak to your solicitor before entering into any such arrangement. The appointments you can make include:

General Power of Attorney

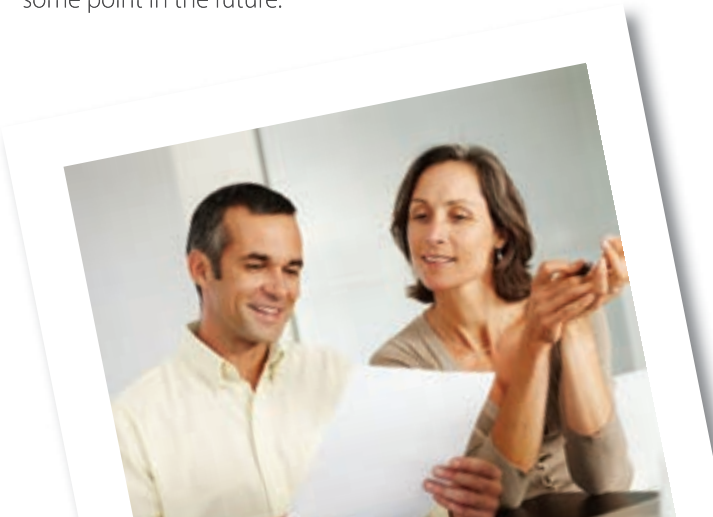
Someone to make financial and/or legal decisions for you, at your direction only, and usually for a specified period of time such as when you are away on holidays. A General Power of Attorney comes to an end if you lose the capacity to instruct your Attorney.

Enduring Power of Attorney

Someone to carry out the same functions as above, but you intend for them to continue to manage these affairs for you if you are no longer able to do so.

Enduring Guardian

Someone to make day-to-day lifestyle decisions, such as where you live and what health care you are to receive, if you are unable to make these decisions yourself at some point in the future.



Administering an Estate

When a person passes away and has left a Will, they have usually appointed an Executor in the Will to oversee the distribution of their assets and make sure that the conditions of the Will are met.

What does an Executor do?

The Executor of a Will is responsible for the following tasks:

- **Collecting all of the assets and having them valued if need be**
- **Finding out what debts are owed and paying them off from the assets of the Estate**
- **Passing on any assets to beneficiaries according to the Will-maker's wishes**
- **Arranging tax returns**
- **Claiming life insurance**
- **Arranging the funeral**
- **Applying for a Grant of Probate**
- **Distributing the estate according to the Will**
- **Taking or defending legal action on behalf of the estate if a dispute arises.**

If a Will-maker doesn't appoint an Executor, the major beneficiary will usually be appointed to administer the estate. If you have been appointed the Executor of a Will, or you are required to administer a Will, Lamrocks' experienced Wills and Estates Team can help you through the process and alleviate any stress. We can help you with all of the practical aspects of estate administration mentioned above and ensure you comply with any legal requirements.

What is a Grant of Probate?

A Grant of Probate is a Court Order giving the Executor permission to carry out what a Will says. Not every Will needs a Grant of Probate but it is usually required if there are real estate, large sums of money, or other valuable assets involved.

Claims made against a Will

In some instances, family members may feel that they have not received proper provision from a Will. Sometimes there are disputes with beneficiaries and sometimes even disputes between Executors appointed by a Will. At Lamrocks Solicitors, we can help to resolve these disputes and provide advice as to whether a claim against the estate is viable.

It is important to note that there are strict conditions concerning who can make a claim against a Will and expert legal advice is strongly advised. If you think you are eligible to make a claim, or if you are an Executor defending a claim against the estate by another person, speak to our Accredited Specialist in Wills and Estate law for accurate, professional advice.

A guide to Estate Administration



Note: This is a simplified version of the events that need to take place. The average estate takes approximately 6-12 weeks to finalise and there are many steps along the way. Some estates can take up to 10-12 months to complete. Lamrocks can guide you through the process and ensure that all of the correct procedures are followed.