

# Littleton Hackford

Lawyers & Notary Public



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Traralgon 115-119 Hotham Street Tel: 03 5176 1345  
Fax: 03 5174 9316

Sale 134 Raymond Street Tel: 03 5144 5600

Fitzroy 65A Gertrude Street Tel: 03 9419 2280

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## Preparing a Will



**Guarantee Fund** Law Institute Protection

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### Powers of Attorney

An Enduring Power of Attorney is a document whereby you appoint a relative, friend or trusted advisor the power to make legal, financial and personal decisions on your behalf.

Being an "Enduring" power, the appointment endures beyond loss of cognitive capacity, provided of course that you do not revoke the power whilst you retain cognitive capacity.

### Other forms of Powers of Attorney

#### General Power of Attorney

Unlike an Enduring power, this appointment ends with the loss of cognitive capacity.

#### Medical Power of Attorney

Entered into pursuant to the Medical Treatment Act, this appointment is enduring and authorises your agent to make decisions concerning medical treatment, including the refusal of treatment.

Your Attorney has certain duties and obligations when acting under the power, including acting in your best interests, avoiding a conflict between their interests and yours and keeping accurate records and accounts.

### Professional Costs

Our professional costs range from the standard prices below, upwards depending upon the level of complexity involved in providing advice and drawing the Will. Where additional costs are involved, such as our providing detailed advice, liaising with accountants or financial advisors, or preparing Testamentary Trusts, we cost pursuant to the Practitioners Remuneration Order, a copy of which is available on our website

Standard Will	Single	\$210.00
Standards Wills	Mutual	\$405.00

### Our professional costs in relation to Powers of Attorney

Power of Attorney	Single	\$155.00
Powers of Attorney	Mutual	\$265.00
Out of Office attendance		\$120.00

### Cost Reductions

Seniors Card Holders	10%
Clients when a matter is on foot	10%

Prices exclude GST

## What is a Will?

A Will is a legal document which enables you to specify where and by whom your assets are to be distributed upon death. Ideally you should review your Will every 5 years or otherwise upon the occurrence of a major life event to determine whether your Will needs to be updated.

A Will does not become operative until you die but Powers of Attorney operate during your lifetime and can govern legal and financial matters, medical treatment matters and lifestyle and accommodation decisions. Confronting our own mortality can be difficult and discussing these issues with loved ones is often avoided. Similarly, children, siblings, parents and business partners can also find these issues sensitive and confronting.

We recognize that the needs of our clients vary and give consideration to each individual when preparing his or her Will.

### Here are some broad issues to consider in Estate Planning we all need to be aware of:

- A Will is revoked by marriage
- A Will is not revoked by divorce, but any disposition to the ex-spouse provided for in a Will that pre-dates the divorce is revoked.
- Assets held as joint tenants pass to surviving tenants regardless of what is stated in the Will.
- Leaving a note or placing a sticker on an item does not have any legal effect where the Will does not replicate the bequest.
- Superannuation and life insurance do not necessarily pass to your estate to be dealt with in accordance with your Will.



- Many people fail to update their nominated beneficiaries, often resulting in, say, an ex-partner receiving an unexpected bonus.
- Having no Will means your estate is automatically dealt with in the Courts in accordance with a preset formula. Accompanying this process is usually delay, frustration and additional cost.
- Assets held by Companies or Trusts require special attention and a simple statement in your Will that the particular assets owned by your Trust should pass to a particular individual is usually meaningless.
- There are a number of valuable tax planning opportunities that exist in relation to Estate planning for example, Testamentary Trusts allow for distribution of income to certain children at the normal marginal tax rates applicable to adults.
- Just taking advantage of the tax free threshold can result in a greater tax free benefit for each child.
- Selecting the appropriate guardians for your minor children is a critical and important task which requires consultation with your chosen guardian and a consideration of how you wish that guardian to raise your children.
- Different assets give rise to different taxation consequences in the hands of beneficiaries.
- Leaving assets to pensioner beneficiaries can result in the cancellation of benefits under the Means Test.
- Family members may be able to challenge your Will if you have not made adequate provision for them and upset the implementation of your final wishes.
- At any given time, adequate funds for your family requires a snapshot of your assets and liabilities and if appropriate augmenting your net assets with appropriate insurances.
- Providing a clear exit strategy in respect of your business interests that is agreed to by your business partners avoids frustration of your family having to take a seat at the boardroom table alongside your business partners. This can involve a buy/sell agreement between business partners which can be augmented by insurance.
- Protecting your estate from spendthrift children (or their spouse) and ensuring your assets arrive at their intended destination requires careful planning. In this way you can ensure those you intend to benefit do in fact benefit.



## What is an Executor?

An Executor (or Executrix in the feminine) is the person responsible for administering and distributing your assets to beneficiaries. Where not a Legal Practitioner, the Executor works with the Legal Practitioner to administer and finalise your estate. The duties of an Executor can be demanding and at times complex. In appointing an Executor you should bear in mind that this person will need to have or be able to comprehend legal, taxation, accounting and business practises.

### The duties of an Executor can include:

- Attending to funeral arrangements.
- Identifying the assets and liabilities of your estate.
- Applying for and obtaining the Grant of Probate.
- Collecting monies and discharging debts.
- Preparing taxation returns.
- Transferring property and distributing the Estate according to your wishes.
- Litigating any action brought against your Estate by a person or persons making claim under the Testator's Family Maintenance provisions of the Administration Probate Act.

Where not provided for in the Will, and where the Executor claims Commission a Court allows out of the assets of any deceased person to his Executor up to 5% for his pains and trouble as is just and reasonable.