

A Guide to Wills





Why use Perpetual Guardian?

- We are an expert trustee company built on more than 130 years of experience in establishing and managing Trusts and planning estates.
- As a trustee company, we exist in perpetuity – we will not go out of business or die, leaving you without a trustee or adviser.
- We will be here when you and your family need us.
- All Perpetual Guardian staff are professionals with extensive experience in their areas of expertise.
- We are independent, and will act objectively and impartially when dealing with family members.
- We will deal with your affairs promptly and efficiently.
- We offer a full range of associated services, including Enduring Powers of Attorney, online storage of your Will and much more.

*Did you know
that more than
50% of New
Zealanders
don't have a
Will?*

Don't be one of them. Take care of things today.

What is a Will?

A Will is a document that gives instructions for the distribution of your assets after you die. Your Will identifies who will benefit from your estate (the beneficiaries) and can detail what particular assets you want them to receive. It also allows you to designate guardianship for dependants or make specific personal requests such as funeral arrangements.

A Will allows you to:

- Provide fairly and adequately for your family and any other beneficiaries you choose;
- Put in place arrangements for the sale and distribution of your assets;
- Arrange for assets to be held in trust to meet the ongoing needs of those you wish to benefit;
- Provide for payment of outstanding liabilities;
- Appoint an executor and trustee to carry out the instructions in your Will and administer your estate; and,
- Appoint a guardian for your children.

Who needs a Will?

Everyone over the age of 18 should make a Will. It is the safest way to ensure that your assets are distributed according to your wishes.

A Will should be updated regularly to take into account any major life changes, such as marriage or separation, having children and grandchildren or the purchase or sale of major assets. If your Will is not kept up-to-date, it may no longer be valid.

A valid and current Will allows you to retain control over what happens to your assets on your death.

If you die without a Will, your property and belongings will be distributed according to the requirements of the Administration Act 1969. In other words, if you do not have a Will, the law decides 'who gets what' out of your estate, regardless of the needs of those close to you, or what you may have wanted.

How do I choose an executor and trustee?

When making your Will you must nominate someone to act as executor and trustee. The executor has the legal responsibility to ensure that, on your death, the terms of your Will are carried out.

Choosing the right executor and trustee is important. The duties of an executor and trustee can be complicated, time-consuming and

difficult. Duties performed may include Inland Revenue formalities, filing for probate with the High Court, dealing with claims against the estate, distribution of assets as instructed by the terms of the Will, holding assets in trust for a time (for example if any beneficiary is under age) or selling assets.

Although the appointment of the executor and trustee is your decision, it is essential that your executor and trustee can not only be trusted to carry out your wishes, but also have the required experience, time and skills necessary to do so.

Choosing an independent trustee like Perpetual Guardian offers many distinct advantages for the administration of your estate.

You will have peace of mind knowing:

- Your estate is promptly administered because of special legal privileges given to trustee



Important

Always make sure your Will is up-to-date. An up-to-date, well-drafted Will avoids uncertainty, delay and cost in the administration of your estate.

companies such as Perpetual Guardian. This means your beneficiaries can have a portion of your assets on hand quickly for their personal needs, even while some details of settling your estate are still being finalised;

- All estate matters are confidential and only those persons with a right to know about your affairs are given information, ensuring the confidentiality of your assets and beneficiaries;
- Beneficiaries are consulted and advised at each stage and kept informed of all progress;
- Perpetual Guardian has no vested interest in the estate and will act impartially between interested parties, thus avoiding conflicts which may arise in such situations between grieving family members;
- Your estate will be handled by one of our experts who is experienced in estate administration - often a complicated and demanding process, requiring a detailed understanding of the law, taxation and accounting;
- Accounting systems will ensure all statements of accounts are accurate and available to beneficiaries on an on-going basis;
- We will be there when the time comes to administer your estate - a situation which may not be true of a family lawyer, a family



member or friend. Perpetual Guardian is firmly established in New Zealand, with origins dating back over 130 years;

- Perpetual Guardian has access to various agencies throughout the world allowing for faster administration of overseas assets; and,
- We have plenty of branches around the country. If you move, your Will can be transferred to your local branch.

How do I keep my Will up-to-date?

When you make a Will it is important to update it whenever there are major changes during your lifetime.

Marriage (or re-marriage) usually revokes a Will and therefore anyone getting married should make a new Will. Likewise, if you have separated or divorced, or there are other special circumstances such as adopted

children or children with a disability, you may need to make special provisions for them in your Will.

Regardless of major changes in your life, we recommend you review your Will every three to five years. As professional advisers, Perpetual Guardian will automatically include you in our Wills review programme when you write your Will with us.

WILLplus

When creating your Will, we recommend our WILLplus service. WILLplus offers you affordable and secure online storage for your important documents, with an added annual Will review for you and bereavement support for your loved ones at no extra cost.

Your Will must be regularly updated so it continues to reflect your wishes as the circumstances of your life change over time. Also, your Will should be

kept safe, where it can be easily found in time of need. We recognise though, that in our busy lives it is difficult to find the time to keep things up to date. Perpetual Guardian makes this easy and cost effective for you with our WILLplus service providing three valuable benefits.

Review

The annual review allows you to update your Will to account for the changes that have happened throughout your life. These may require updates to beneficiaries, executors, guardians or gifts. This ensures your things will go to the people you intend, and that your loved ones will be protected as you would want.

Secure

Our digital storage facilities will keep your Will safe and confidential. The Perpetual Guardian myDigital Vault is purpose-built to store digital copies of the personal papers which you need ready access to, but for which you need an additional level of security. This could be your Will, birth certificates, passport copies, passwords or even old school reports.

Help

Bereavement Help is available to provide support and advice to those who are left behind. Bereavement Help provides online information about what to do next and a free-phone to call if you need more help. As a professional trustee we monitor the bereavement notices daily, so we will be ready and responsive when needed.

Is there anything else I need to consider?

Although you are free to distribute your estate as you wish, in New Zealand there are three key pieces of legislation which may impose certain obligations on you when you make your Will. It is important to be aware of what is covered by these pieces of legislation and how they may affect the provisions you have made in your Will.

Below is a brief introduction to the three pieces of legislation that could affect your Will.

The Property (Relationships) Act 1976

When one spouse or partner dies, it is assumed that all assets are relationship property and the value of your combined relationship assets should be shared equally unless there is evidence to prove otherwise.

On death, a surviving spouse or partner will have six months to choose between taking what they have been given under the Will or making a claim. If they choose the second option they will be deemed to have abandoned everything they were given under the Will.

However, your Will can say that your spouse or partner is to benefit under your Will even if he or she decides to bring a claim under the Act. We recommend that you seek independent legal advice when considering any relationship property matters.

When you are giving instructions for a Will to be prepared, we suggest you ask yourself:

- Will your partner receive less than half of the total relationship property when your Will comes into effect?; and,
- Is there a previous spouse or partner who may have a claim because division of relationship property has not yet been finalised by court order or by binding agreement?

The Family Protection Act 1955

The Family Protection Act 1955 gives certain family members the right to claim against your estate if they do not feel they have been adequately provided for under your Will. The family members who have a right to claim are: a spouse or partner (civil union or de facto partner, including same-sex partner), children, grandchildren, stepchildren (including in some circumstances



the child of a *de facto* spouse), and parents. 'Children' can also mean children born outside a relationship who you may have had little or no contact with. Step-children can only claim if they have been supported by you immediately prior to death, or were legally entitled to have been supported. If there is no spouse, child, grandchild or step-child, parents may claim if they were being, at least partly, supported by you immediately prior to death, (or entitled to be supported).

In determining the extent to which a claim against an estate should be met, the court considers many factors, such as whether you had a duty to provide for the claimant, the claimants need for some financial provision, etc.

When you are giving instructions for a Will to be prepared, we suggest that you ask yourself whether you have excluded any possible claimants in your Will, or left them a limited entitlement or an entitlement which is less than they might otherwise expect to receive (e.g. unequal treatment of children).

Law Reform (Testamentary Promises) Act 1949

A person may claim against your estate if you breached a promise to leave them something in your Will in return for work or services that they provided you with.

This Act provides that a person may claim against your estate to enforce that promise;

1. If they have performed work or services for you during your lifetime

(and this generally excludes the normal day to day services another member of your family household may routinely provide, such as cooking, cleaning etc.); **and**,

2. You have made either an expressed or implied promise to make some provision for that person in your Will in return for those services; **and**,

3. You then fail to make that provision.

When you are giving instructions for a Will to be prepared, we suggest you ask yourself:

- Is there anyone who is presently providing you with services, paid or unpaid, who would have the expectation of being included in your Will?
- Have you promised to provide for someone in your Will in exchange for work or services provided?

If you answered yes to any of the above questions, please discuss the particular issue or issues with your Perpetual Guardian adviser who will provide you with, or refer you for, specific advice.

These questions are not intended to be a comprehensive list, but are simply designed to help you identify any obvious areas where you may need further advice. If you feel your personal situation may give rise to any other concerns which may impact on the way your Will should be prepared, please raise these issues with your Perpetual Guardian consultant. You should not rely solely on the commentary provided in this brochure.

What are the costs?

Fees charged for preparing your Will are very competitive and proportionate to the complexity of the work involved.

What else can I do?

An up-to-date Will is still the cornerstone of a good estate plan. When completing a Will, Enduring Powers of Attorney should also be put in place to provide for your personal care and welfare if you become incapacitated and the ongoing management of your assets and financial arrangements. To find out more about Enduring Powers of Attorney, ask one of our experts for more information.

Important Note

Perpetual Guardian does not accept any liability for loss arising as a consequence of anyone acting in reliance on these notes alone without individual advice. Equally, liability will not be accepted where individual or specific advice was given but all relevant details were not supplied to Perpetual Guardian.

Perpetual Guardian is a trading name of Perpetual Trust Limited.

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