



KINGSTON LAWYERS
BARRISTERS & SOLICITORS

MAKING A WILL & POWER OF ATTORNEY

- WITH KINGSTON LAWYERS -

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This booklet seeks to help you understand the areas involved in making a Will and Power of Attorney (POA).

This booklet constitutes general legal advice.

Should you require legal advice for your personal circumstances please contact our friendly team to arrange a consultation with our solicitors.

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So, it's time to do that Will and/or Power of Attorney you have been contemplating for some time. It is a topic most people prefer not to discuss, yet it is also one of the most important things you can do in your life for those you love.

Well you have taken the first step, and from here it is pretty straight forward with the help of our firm.

Everyone with any assets should have a Will. A Will is the only way you can tell others how you want your assets to be distributed after your death. It is the only way you can provide for people who may depend on you like your partner or your children.

A Power of Attorney ("POA") gives someone the authority to do things on your behalf - "You stand in their shoes." A document that is just as important as a Will but for when you are alive.

This booklet has been created for you, to help you understand the details about Wills & POA's, and answer any questions you may have. Of course, if you would like to discuss your personal situation further, you are more than welcome to attend a free consultation with one of our lawyers.

Simply complete the forms email them back to our office. Then we will prepare these important documents for you and send drafts to you for your approval.

Once you are satisfied with the drafts please contact our office to make an appointment to sign same. We store thousands of Wills and POA's at no ongoing cost to clients of our firm.

Yours faithfully,

Stephen Lucas
LLB(Hons) M.A.I.C.D.
Principal Director



PURPOSE OF MAKING A WILL

A Will is the only legal means by which you can determine how your assets will be dealt with upon your death. You should make a Will as part of the proper ordering of your affairs

WHEN SHOULD YOU MAKE A WILL OR REVIEW YOUR EXISTING WILL?

- a) As soon as you acquire any assets however small they may seem and in any event by the time you reach the age of 25.
- b) When you marry (a Will may sensibly be made in contemplation of a marriage about to take place).
- c) When you enter into a serious de facto relationship.
- d) When you divorce.
- e) When you have a child.
- f) When you re-marry.
- g) When one of your beneficiaries dies.
- h) When you receive an inheritance or if you expect to be a beneficiary in another estate.
- i) When your financial circumstances change significantly.
- j) When you are going overseas for an indefinite period.

WHO SHOULD HELP YOU MAKE A WILL?

Your solicitor is the most appropriate person to assist you when making a Will. The charges for Will preparation are relatively modest and readily justify engaging a solicitor.

DO NOT under any circumstances draft your own Will or use Will kits.

Such homemade Wills often end up in the Supreme Court where the deceased Estate's funds are dwindled away in legal fees in contests between beneficiaries or in seeking to resolve complexities over poorly drafted Wills. It is important the Will is seen to be independently drafted. The message is simple –

"Spend a little now, or else a lot of your money may end up going in legal fees rather than to your chosen beneficiaries at a later date."

COMMON QUESTIONS ABOUT MAKING A WILL

Can I leave my property to anyone I choose?

Yes, you do have a complete discretion to leave property to whomever you choose. However, there are limited circumstances where people may make an application to the Victorian Supreme Court to challenge the distribution of property under your Will. These situations include where people believe they have an entitlement and you have failed to provide for them. (e.g current spouses, children).

Can I have more than one or two Executors?

Yes. You may have four executors but having more than two may cause inconvenience in the administration of your estate.

How many Executors should I have?

It can be appropriate in some cases to have only one, such as your spouse, but in that case it is sensible to appoint an alternative executor in case the person who is your first preference dies before you or at the same time as you do.

Generally speaking it is often sensible to name two executors.

Can I limit what people do with my property on my death?

You can delay people receiving your assets and you may make a gift of the income from your assets for a certain period to one beneficiary and then a gift of the capital from which that income is derived to another beneficiary. You may state that child beneficiaries may only have direct access to your property upon their reaching a certain age. But many law cases deal with situations where people have left unreasonable or uncertain dispositions and these clauses will generally not be binding. For example, "My daughter can only inherit from me if she is still a virgin when she marries," will not be binding.

Can a beneficiary be an Executor?

Yes. There are no restrictions.

I do not have an obvious choice as an Executor from within my family. Whom can I appoint?

There are a small number of large companies (including a Government agency) which are authorised by law to act professionally as executors for fees.

In addition, your solicitor and your accountant may be willing to act as your executors in some cases.

What fees are charged by professional Executors?

Fees are charged by trustee companies in accordance with a scale. It is possible for you to negotiate the fees during your lifetime. The maximum they can charge is 5.5% of the gross value of your estate plus 6.6% of any income received by your estate.

Can other Executors such as family members and friends charge fees for acting as my Executor?

Other non-professional executors may only charge commission if this is stated in your Will or with the consent of your adult beneficiaries or by an order of the Supreme Court to a maximum of 5% of the gross value of your estate.

If I leave a gift to someone in my will, what happens if they die before me?

The law provides for "substitution" of the children of your own child should your own child predecease you. This rule does not apply in the case of other beneficiaries. It is a sensible idea to include provisions in your Will for substitution in all cases in which you wish for it to occur.

Do I have to mention my assets in my will?

It is not necessary to mention any assets at all. However, it is sensible to discuss with your solicitor any assets of any unusual character (e.g. an interest in a deceased estate, life insurance policy, valuable jewellery or paintings, an interest in an overseas asset such as land, an interest in a business, shares in a private company, loan accounts with private companies).

Is superannuation part of my estate?

Your superannuation balance is generally not owned by you personally—it's actually held by the trustee of your super fund on your behalf. Superannuation is only dealt with by your Will if the trustee of the super fund elects to pay it to your estate or if you direct your super fund to pay your super to your estate before you die.

POWERS OF ATTORNEY

ENDURING POWER OF ATTORNEY (FINANCIAL)

An Enduring Power of Attorney is a legal document in which you nominate someone you consider trustworthy. This person will have the required expertise to become your Attorney and manage your financial affairs in given circumstances and specifically, should you lose mental capacity or ability. Accordingly, your Attorney may act on your behalf to:

- Operate on your bank accounts
- Buy and sell assets
- Attend to your tax and financial affairs etc.

An Enduring Power of Attorney is preferable to an ordinary Power of Attorney in that it continues to operate (endures) even after the person making the Enduring Power of Attorney becomes mentally incapable through accident, illness or diminished capacity.

ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)

Enduring Power of Attorney (Medical Treatment) is a legal document that allows another person to make decisions about your medical treatment. For example, it could be used in a situation where you are unconscious after an accident and unable to provide consent for surgery.

This form of Power of Attorney is a precautionary step you can take to ensure the person you choose is the one who makes decisions about your medical treatment, if or when you are unable to do yourself, due to illness, accident or age.

The Enduring Power of Attorney (Medical Treatment) allows your Attorney to talk with doctors, ask for relevant information and advice, and then make a decision about your behalf which is a valid legal decision.

Without this, decisions about your medical treatment are left with your family and the doctor, and these decisions may have no real standing in law. If an Attorney has not been appointed and there is disagreement or conflict, the matter will be referred to the Guardianship and Administration Board.

ROLE OF AN ATTORNEY

Your Attorney can only make decisions on your behalf if you become “incompetent”. The law does not clearly define incompetence, but an obvious example of this is where you are unconscious.

Your Attorney has a responsibility to choose the most suitable medical treatment for you. Medical treatment means an operation, the giving of medicines or drugs, or any other medical procedure.

Your Attorney also has the power to refuse treatment on your behalf, if he or she thinks that such treatment would cause you undue distress, or is not what you would want.

The choice of Attorney is an important one, and it is a good idea to talk to that person about your views on the type of medical treatment you would or would not want. If you have strong views, you may even want to write these down and give a copy to your Attorney.

You can appoint different people to act as your Attorney for medical and financial decisions or you can appoint the same person.

COMMON QUESTIONS ABOUT POWER OF ATTORNEYS

Can my Attorney appoint someone else to take over as my Attorney?

No one else can appoint an Attorney for you. You must do it yourself while you are still able to do so.

What happens if I lose mental capacity?

You cannot make an Enduring Power of Attorney after you lose capacity, and an ordinary Power of Attorney ceases to be operative automatically. A State/Territory Government body is then responsible for deciding who can control your affairs. Therefore it is in your interest to be prepared.

May I revoke my Enduring Power of Attorney?

Yes. You may cancel or revoke the appointment at any time and either resume control yourself or appoint another Attorney provided you have full mental capacity. If another Attorney is appointed, we recommend that you obtain and destroy the revoked document to avoid confusion.

When should I make an Enduring Power of Attorney?

An Enduring Power of Attorney can be made at any time subject to certain provisions. Advice should be sought in making an Enduring Power of Attorney while you have full capacity and can make balanced judgments. For this reason, we recommend that you consider executing an Enduring Power of Attorney at the same time as preparing your Will or undertaking important Financial or Estate Planning. Both documents are an important part of your planning.

Who should I appoint as my Attorney?

Because the whole of your financial affairs may pass into the hands of your Attorney, you will need to consider a suitable appointment very carefully. While it is a criminal offence for an Attorney to misuse that position, the law may not check to see if the job is done correctly.

Clearly, you need to appoint someone with the necessary experience and expertise to safeguard your investments, and competently carry out the duties of an Attorney in a professional manner. They must also be available as and when required, and have the time to devote to the task.

WILLS & POWERS OF ATTORNEY

- SCHEDULE OF FEES -

Simple Will for one person	\$550.00
Testamentary Trust Will for one person	\$1,650.00
Power of Attorney (Medical)	\$550.00
Power of Attorney (Financial)	\$550.00
Home or Hospital Visits	\$550.00 (local) \$1100.00 (over 20km)
Value Package for couples: 2 Wills & 4 POA (Save \$550)	\$2,750.00

All charges are inclusive of GST



WILLS & POWERS OF ATTORNEY QUESTIONNAIRE



NOTE: To assist you in making your Wills and Powers of Attorney, you may use our questionnaire below. This document does not constitute a Will or Power of Attorney. It is merely to provide information to assist in the preparation of these documents.

If you are not sure of your answers, please leave the answer until discussion with your solicitor.

PERSONAL	
Full Name	
Address	
Date and Place of Birth	
Occupation	
Telephone Number	
Email Address	

	EXECUTOR	EXECUTOR IN SUBSTITUTION
Full Name		
Address		
Date and Place of Birth		
Occupation		
Telephone Number		
Email Address		
Relationship		

Guardians for underage children (if any)	
Full Name	
Address	
Date and Place of Birth	
Occupation	
Telephone Number	
Email Address	

WILLS & POWERS OF ATTORNEY QUESTIONNAIRE



OTHER MATTERS	
Burial Requests (if required) and organ donations (if applicable)	
Specific gifts (if any required) or particular items of property, jewellery or money	
General gifts	
Is there any person who might feel aggrieved about being overlooked by me in my gifts under my will? Please state details	

WILLS & POWERS OF ATTORNEY QUESTIONNAIRE



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If you are not sure of your answers, please leave the answer until discussion with your solicitor.

Power of Attorney required: ☐ Financial and/or ☐ Medical

*If you are appointing more than one attorney, please advise whether the attorney's can only make decisions when:

- ☐ they all agree (jointly); or
- ☐ they both agree or by themselves (jointly and severally).

	ATTORNEY 1	ATTORNEY 2
Full Name		
Address		
Date and Place of Birth		
Occupation		
Telephone Number		
Email Address		
Relationship		



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