



*Simple & Easy*  
Legal Will Kit

## Important disclaimers

**The Simple & Easy Legal Will Kit is not a substitute for legal advice.**

We are not involved in providing financial or legal advice, or the attempt to give financial or legal advice.

**This kit contains a simple Will, which does not cover the following:**

Complicated family or financial arrangements.  
Relationship property matters.  
Blended families.  
Maintenance issues.  
Trusts.  
Where there are any potential claims against your Estate under the Family Protection Act.

Leaving out a spouse or child.  
Life interests.  
Gifts to charities.  
Pet guardianships or Trusts.  
Multiple Beneficiaries.  
Payments on trust or to recognise efforts (e.g. to Guardians or Executors).

If you are unsure about any of the matters raised in this kit, have a complex family situation, have an asset portfolio, or think there might be a possibility of any claim against your Estate, you should seek expert legal advice and accounting advice prior to completing your Will.

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*take control* with the  
Simple & Easy Legal Will Kit  
for New Zealanders

Writing a Valid Will is an important step to ensuring your loved ones are cared for after your death. Without it, your family could face financial hardship and emotional stress waiting for your Estate to be divided. Creating a Will is not a fun task. It can be hard to think about your own death, and even harder to imagine the lives of your loved ones after you're gone. But death is a fact of life, and a Will can help ease some of the pain caused by your passing, allowing your loved ones to focus on what's important during this difficult time. Drafting a Will also puts you in charge of deciding how you'd like your assets to be divided upon your death, instead of leaving it up to the courts.

# About this WillKit

## The Basics

A Will gives you the opportunity to provide for your loved ones after you die, helping them avoid confusion and delays.

### What is a Will?

A Will or Last Testament is a legal document that outlines how you would like your personal property, commonly referred to as an Estate, to be distributed after your death.

A Will gives you the opportunity to provide for your loved ones after you die, helping them avoid confusion and delays.

### What does a Will do?

Wills generally provide instructions for dividing your Estate, including assets such as your home, car and any cash held in bank accounts. A Will can also name a Guardian for Minor children or list preferences for funeral arrangements.

*If you die without a Valid Will, there are specific legal rules used to determine who inherits your Estate and how much they will receive.* This is referred to as “dying intestate,” and the legal process of distributing these types of Estates may cause delays and expense for loved ones.

Without a Valid Will, your assets may not be distributed according to your wishes. This may also include:

- The appointment of an unfamiliar or unwelcome Executor to administer your Estate.
- The appointment of a Guardian for your children who is not of your choosing.
- Your De Facto spouse, step-children and other family or friends being overlooked. Any Minors (particularly your children) given a lump sum payment at 18 years of age, instead of at a later age.

A Will can be used to leave your entire Estate or portions of it to anyone you choose. You are free to distribute your assets as you please, as long as you have the mental capacity to do so and are free from excessive influence from others at the time your Will is written.

## Who needs a Will?

Whilst not everyone may need a Will, having one can help divide your Estate faster and with less confusion. Anyone aged 18 years of age or older can make a Will.

## What is an Executor, and what do they do?

An Executor is the person (or persons) who make sure the instructions in your Will are carried out after your death.

Anyone who is 18 years of age or older may be named as an Executor, and you can name more than one person to act as an Executor. People often choose their partner, a family member, a friend, their accountant or a solicitor.

Being an Executor is a big responsibility, and it should only be given to someone you trust. He or she may need to obtain probate of your Will and pay any taxes, debts or final expenses before distributing the balance

of your Estate. Unless provided for in your Will, an Executor is not entitled to any payment for his or her work as Executor.

Before naming an Executor, first ask them if they are prepared to take on the task.

Once your Will is completed, confirm with the person that they have been appointed as Executor.

# How this Simple & Easy Legal Will Kit can help

This kit has been reviewed by a solicitor and is approved for use throughout New Zealand.

## Why should I make my own Will?

Writing your own Will puts you in control, allowing you to make important decisions that may affect your family's future. You can:

- Decide who will control your Estate, and who will administrate your spouse's and/or your children's funds.
- Appoint Guardians for any Minor children.
- Leave gifts to loved ones and friends.
- Make a donation to your favourite charity.
- Create a Trust to help take care of your children's welfare and education.
- Make some arrangements for your own funeral.

## What makes a will legal or Valid in New Zealand?

Making a Valid Will is a relatively simple process for many people. There are no laws requiring a solicitor to do this for you, though there are some instances when you may want to seek legal advice

(see 'Other times to seek legal advice' further down).

This kit will help you through the steps for drafting a simple Will.

A Valid Will must be prepared in accordance with the Wills Act and capable of being put into effect by a grant of probate.

For your Will to be Valid, it must be:

- **In writing:** It must be recorded in permanent ink (not pencil). It can be typed or printed.
- **Clear:** Instructions for how your Estate is to be divided must be clear and unambiguous.
- **Signed:** Each page of your Will must be signed (including front and back).



- **Witnessed:** Two adult Witnesses must be present together when you sign your Will. They must also sign each page of your Will (front and back) in your presence.

If your Will is not executed as described above, it may be invalid. This could lead to someone challenging the Will after your death (see 'Other times to seek legal advice').

***Choosing your Witnesses:***

*The Witnesses co-signing your Will must be aged 18 years and over and cannot be a named Beneficiary or Executor in your Will.*

## Is my Will Valid if it's written in a foreign language?

In New Zealand, a Will is considered Valid if it is written in a language other than English. Your Executor will need to obtain

an authorised translation and show that you approved of its contents for the Court to honour the Will.

If you wish to complete your Will in a foreign language, you should seek expert legal advice.

## I have a visual impairment or disability that stops me from reading and writing properly. What should I do?

Anyone who has a visual impairment or disability that prevents them from reading or writing properly should seek expert legal advice. A solicitor can put together a Valid Will that takes into consideration impairments or disabilities that may make signing or witnessing the document difficult.

## I own a joint property with someone else. Can I still use this kit?

Property that you own as a “joint tenant,” such as a house or car purchased with your partner, automatically passes to the other joint owner(s) regardless of what is stated in your Will. Property that you own as a “tenant in common” can be broken into shares and passed onto your chosen Beneficiary in your Will.

These assets can be listed in the gifts or Residuary Estate sections of your Will.

If you are unsure about the ownership structure of your assets, you should get expert legal advice before including them in your Will.

## What about my KiwiSaver or any life insurance policies?

KiwiSaver cannot be held as a joint asset with your partner, so it will automatically become part of your Estate. It will be distributed in accordance with your Will along with your other property and assets. Under existing legislation, once an asset exceeds \$15,000 it requires probate (your Executor will apply to the High Court of New Zealand to “prove” your Will is Valid). It is likely that where you have KiwiSaver, probate will be required.

Any life insurance policies you have will become part of your Estate, unless you have nominated a specific person (or persons) as the Beneficiary on the policy. The person(s) named on the policy will be paid directly, and a Will is not necessary to distribute those funds.

## Other times to seek legal advice

A simple Will can cover the needs of most people. However, some situations are more complex and may require expert legal advice from a solicitor. Family, friends and other people can challenge a Will if they feel you did not have the mental capacity to make a Will or that you were unfairly influenced by another person.

When writing your Will, you may want to take the following into consideration:

- Do you intend to leave more or less to any one person?
- Do you intend to leave anyone out of your Will?
- Are any assets in your name considered joint property (shared with someone else)?
- Are you giving a person a life interest or right of occupancy (but not ownership) in a house/unit for the duration of their life or for some other set time-frame?
- Are you providing for an incapacitated child, or a Dependent with special needs or some other disadvantage?
- Will you provide a payment to the Guardian or your children, or to recognise the efforts of the Executor of your Will?
- Do you wish to establish a Trust, or already have a Trust?
- Do you wish to leave a gift to an organisation that is not a registered charity?

If you think there could be the possibility that your Will may be challenged on any of these grounds, you should seek expert legal advice.

## Funeral arrangements

Often, a Will is not located or read until after the funeral, and your wishes may not be carried out if your loved ones are unaware of them. Funeral arrangements can be specified in your Will, but should also be shared directly with your family ahead of time.

## Writing your Will, a step-by-step guide

Now that you're familiar with what a Will does and why you should have one, it's time to start drafting your own Will. To make things as easy as possible, we've included a step-by-step checklist to guide you through the process.

### Steps 1 to 7

Complete these **BEFORE** putting pen to paper on the final Will document.

### Step 8

Write your Last Will and Testament.

### Step 9

Sign your Will with your two Witnesses.

### Step 10

Make a copy and store your original Will in a safe place.

### Step 1: List your debts & assets

List any debts you currently hold. It is important that your Will accurately reflects the true value of your Estate. Your debts do not disappear after your death, and your Executor will need to pay them before the rest of your Estate is divided. Debts can be small (such as ongoing household bills) or large (like a mortgage or car payment).

Also list your assets, including any property, bank or investment accounts, and other items of value (antiques, Jewellery, etc).

### Step 2: Choose your Executor(s)

Any person 18 years of age or older can act as your Executor, as long as they are not bankrupt and they have the mental capacity. You may appoint as many people as you like to act as the Executors of your Will. Your chosen Executor(s) should be someone you can trust to take care of things responsibly for you when you die. You should not appoint someone who

is likely to be in poor health or very elderly at your death or to die before you do. It is always best to ask your chosen Executor(s) if they are willing

and able to take on this responsibility before naming them in your Will.

If you choose to name only one Executor in your Will, you may cross out additional lines before the Will is signed, and you and both Witnesses must initial beside it at the time you sign and date your Will.

Your Will should be clearly drafted to allow you to appoint an alternative Executor if your preferred Executor(s) die(s) before you do.

### Step 3: Choose your children's Guardians

If you have any Minor children (those under 18 years of age) or if it is likely that you may have Minor children in the future, you must choose a Guardian to take responsibility for them in the event you and their other natural parent both die.

Natural parents usually retain custody of their own children. If one parent dies, then the other usually becomes the child's Guardian by default.

In cases where the natural parents are separated or divorced and one parent dies, the other parent will usually become the primary Guardian (even if a current spouse or other person has been chosen as Guardian in the deceased's Will).

It is always best to ask your chosen Guardian(s) if they are willing and able to take on this responsibility before naming them in your Will. You may also want to consider your children's wishes.

You may cross out this section before your Will is signed if it is not relevant to your living situation. You and both Witnesses must initial beside it at the time you sign and date your Will.

### Step 4: Provide instructions for your funeral

Your Will can be used to provide instructions for your funeral arrangements.

This can remove some of the stress your family and friends may experience whilst planning your funeral. You can specify if you prefer to be buried or cremated. Keep in mind that your Will may not be located or read until after funeral arrangements have already been made.

Talk to your family to ensure they are aware of your wishes, and they know about any specific things you would like to have for your funeral service.

This section is optional, and may be crossed out before the Will is signed.

If you do not wish to specify your funeral wishes here. You and both Witnesses must initial beside it at the time you sign and date your Will.

## Step 5: List your Beneficiaries and any specific gifts

Decide who will get what after you die, including who will receive a share of your Estate and who will get any specific gifts you'd like to make.

Be sure to describe each person as fully as possible in your Will, including details such as their full name and address, relationship to you (e.g. daughter, next door neighbour, childhood friend), and occupation.

This will help your Executor(s) locate each Beneficiary.

Your Will should be clearly drafted to provide that if any of your Beneficiaries dies before you do, then their share will go to their children, in equal shares.

If there is more than one Beneficiary (or successor Beneficiary) of your Residuary Estate, then your Will provides that they will each receive an equal share as tenants in common (see 'I own a joint property with someone else. Can I still use this kit?').

If you do not wish to make any special gifts in your Will, then this section may be crossed out before the Will is signed.

You and both Witnesses must initial beside it at the time you sign and date your Will.

## Step 6: Select your Witnesses

Any person aged 18 years or older may act as a Witness. However, they must not be a Beneficiary or an Executor named in your Will, or related by birth or business to any of your Beneficiaries or Executors.

You must select two Witnesses, who must be present when you sign and date your Will.

Your Witnesses may be contacted after you die to confirm they saw you sign your Will. Your Witnesses do not need to know the details of your Will, and you are not obligated to show them its contents.

You should choose Witnesses who are likely to live longer than you. They should also be people who are likely to live in the same place for some time.

This will make it easier for your Executor to find them, if required.

Both Witnesses must sign the Will in each other's presence and in your presence.

You and your Witnesses must sign each page of your Will (front and back), including the front cover and back page.

## Step 7: Consider a simultaneous death clause

A simultaneous death clause protects your Estate from being passed to another deceased Estate should any of your Beneficiaries die. This can cover Beneficiaries who may die at the same time as you, or within a set period afterwards (usually 30 days). This clause helps your Executor avoid unnecessary legal costs and delays when administering your Estate.

Specify a time period in your Will to give effect to the simultaneous death clause (e.g. 30 days after your death). If you do not wish to include this clause, you may cross out this section, and you and both Witnesses must initial beside it at the time you sign and date your Will.

## Step 8: Draft your Will

- Name yourself as the Will maker.
- Revoke any earlier Wills.
- Name an Executor.
- Specify the details of any gifts (Monetary amount or a particular item which is clearly described).
- Nominate the Beneficiary/ies who will get your Residuary Estate.
- Name a Guardian for your children (if applicable).
- Nominate a Trust age for any Minor Beneficiaries (if applicable).
- Note your preferred funeral directions and any special instructions regarding the treatment of your remains (optional).
- Nominate a time period for the simultaneous death clause (optional).
- Initial any changes or deletions.

## Step 9: Sign your Will

### Into the future

Now that you've written and signed your Will, it's time to make sure it is available for your Executor when the time comes.

#### Storing your will

Your Will should be stored properly in a safe place.

Many people store their original Will in a safety deposit box at their bank, or with their accountant or solicitor.

Whilst you may choose to keep the original with you, this may not be preferable. The Will could be lost and presumed to have been revoked (cancelled). It could also be accidentally damaged or even intentionally destroyed by anyone unhappy with its contents.

Regardless of where you choose to store your Will, you should keep a copy (either hard or electronic) and clearly note on it where the original is kept.

You should also let your Executor know where your original Will is kept, and provide them instructions for obtaining it after your death. You may consider giving them a hard or electronic copy as well.

#### Updating your will

Life changes, and your Will can be updated at any time to reflect major life events, evolving relationships or simply a change of heart.

You should regularly review your Will and update it as your family and financial circumstances change. This may include:

- Getting married, divorced or remarried.
- Beginning or ending a De Facto relationship.
- The birth or adoption of a new child.
- Purchasing a major financial asset (such as a home or investment property).
- The death of your Executor(s) or Beneficiary(/ies).
- If you decide to change your Executor(s) or Beneficiary(/ies).
- Any change to governing legislation that might affect the validity of your Will, challenges to your Will, the introduction of Estate Duty, Relationship Property matters, or any other area relating to Wills and Estates.

## How to update your Will

If you do need or decide to change your Will, the changes must be done in a way that does not invalidate the document.

After a Will is signed by you and the Witnesses, you cannot cross out, erase or alter your Will in any other way.

For example, you cannot cross something out and write in your new wishes.

Small changes can be written in a Codicil, a separate document that changes the provisions of your original Will. However, it is usually easier and less complicated to make a new Will that contains any changes you wish to make.

Your new Will cancels out any earlier Will, and your last known and dated Will is considered the only Valid one.

You do not need to update your Will if you or the Witnesses change address. Address details are used to help identify you and your Witnesses, but will not affect the Execution of your Will.

## How will a new marriage or divorce affect my Will?

Typically, if you made a Will before you married, it will automatically be revoked (cancelled) when you marry. The exception to this is if you wrote the Will with your upcoming marriage in mind or “in contemplation of marriage.” If you’ve married since writing a Will, you will likely need to draft a new one.

You and your spouse can each sign “mirror Wills,” separate Wills that are drafted with exactly the same instructions for dividing your Estates and appointing a Guardian for your children. This way, if there is an accident involving both of you, your Wills are consistent.

In the case of divorce, any instructions in your Will benefiting a former spouse are automatically Revoked when the divorce is finalised or the marriage is annulled. This can include appointing the former spouse as Executor, leaving them money or other assets or naming them as Guardian of any Minor children if they are a step-parent.

It is in your best interests to make a new Will after a divorce or extended period of separation.

## What if my Will is lost or damaged?

If your Will is lost or becomes damaged, you should immediately write a new one. Your new Will cancels out any earlier Will, even if the first version is later found.



# Glossary of terms

Wills often include legal words and phrases that many people are unfamiliar with. We've included a short list of words, with definitions, to help you whilst you prepare your Will.

**Attestation Clause:** The wording at the end of your Will which records that two Witnesses saw you sign the Will in their presence. This is necessary for the Will to be Valid.

**Beneficiary:** A person or entity who you want to receive rights or benefits under your Will. This could be a family member, a friend or an organisation (such as your local hospital or school).

**Bequest:** An item or gift left by you to a Beneficiary in your Will.

**Codicil:** A legal document you would need to prepare to amend your Will. In most cases it is simpler to draft a new Will than to amend an old one.

**De Facto Relationship:** Two people (usually but not necessarily) living together in an unmarried state. This includes same sex relationships.

**Dependent:** A person (or people) who are financially reliant on you. This may include a partner, child (including adult children) or any person whom the Testator had a responsibility to provide for.

**Estate:** All personal property and real estate owned by you, excluding any property which you jointly own with another person. If you own an asset jointly with someone else rather than as a tenant in common, then the asset automatically becomes the survivor's asset. It does not form a part of your Estate.

**Execution:** The act of signing and dating your Will and having it witnessed.

**Executor:** The person you have named in your Will to execute (or carry out) its directions. You should speak to your chosen Executor first before naming them in your Will.

**Guardian:** The person you name in your Will to look after your children (if they are still Minors) or any mentally

impaired Dependents. You should speak to your chosen Guardian first before naming them in your Will.

**Intestate/Intestacy:** You are intestate if you die without leaving a Valid Will or if your Will does not dispose entirely of your Estate.

**Minor:** A person who is not yet 18 years old.

**Multiple Beneficiaries:** More than two Beneficiaries.

**Predeceased:** To die before someone else.

**Probate:** The process by which your Executor will apply to the High Court of New Zealand to “prove” that your Will is Valid, that it is the last one you made, and that they are entitled to administer your Estate.

**Residuary Estate:** Means the remainder or rest of your Estate after specific gifts, debts and expenses have been paid.

**Revoked:** When you cancel a Will you are known as having revoked it.

**Testator:** The Latin word for a person who creates a Will.

**Trust:** An arrangement whereby a person (the trustee) holds property “on trust” for someone else (the Beneficiary of the trust).

**Valid:** A Valid Will is one that has been prepared in accordance with the Wills Act and which can be put into effect by a grant of probate.

**Will:** A legal document which lets you distribute your Estate on your death.

**Witness/Attesting Witness:** The two adults who sign your Will to testify that it was Validly signed, witnessed and declared to be your last Will. You must ensure that none of your Beneficiaries or your Executors (or any of their spouses) act as your Witness as they could automatically lose their entitlements to your Estate.

