

## Factsheet Series

# WILLS & ESTATES LAW

This factsheet series is for anyone who is thinking about making a will in South Australia. In this series we explain what a will is, why you might benefit from making one, and what happens if you die without a valid will. We set out how to make a will in South Australia and where to get legal help.

We also explain the key roles and responsibilities of an executor and how to choose one, when you might need to change your will and how to do so, and who can view or contest (challenge) your will after you die.



# Legal terms used in this series

<b>administrator</b>	The person who is appointed to carry out the wishes of someone who has died without an appointed executor or without a valid will
<b>advance care directive</b>	A document that sets out your wishes for future health care, living arrangements and end of life preferences. It may also appoint one or more persons to make medical decisions for you during periods when you do not have legal capacity
<b>beneficiary</b>	A person who is left something in a will, or for whose benefit property is held by a trustee or executor
<b>binding nomination</b>	A written direction as to where you would like your superannuation to go after you die
<b>codicil</b>	A separate document that adds to or changes an existing will
<b>contest</b>	To challenge or dispute. A person may contest your will if they believe they were unfairly left out of it
<b>domestic partner</b>	<p>In relation to someone who has died, a domestic partner is a person</p> <ul style="list-style-type: none"><li>• declared by a court to have been the partner of the deceased, or</li><li>• in a registered relationship with the deceased</li></ul> <p>as at the date of their death.</p>

<b>estate</b>	All of the property you own when you die forms your estate. This includes real estate, cash, money held in a bank, motor vehicles, personal possessions and digital assets such as cryptocurrency and digital files. Superannuation and jointly owned property are not part of your estate.
<b>executor</b>	The person named in a will to carry out the wishes of a deceased person and distribute their estate
<b>family provision order</b>	The Supreme Court may make a family provision order if it decides that someone will not be properly provided for under a will or the law of intestacy and deserves a part, or a larger part, of a deceased person's estate
<b>intestate / intestacy</b>	To die intestate means to die without a valid will. The law that governs the estates of intestate persons is known as the law of intestacy
<b>legal capacity</b>	In the context of making a will, an adult has legal capacity if they understand the nature and effect of making a will and can communicate their wishes
<b>letters of administration</b>	The document that empowers a person to manage and distribute the estate of a person who died without a valid will or died with a valid will but with no executor to administer the estate
<b>power of attorney</b>	A document that appoints one or more persons to exercise your legal and financial powers while you are alive
<b>probate</b>	The official court declaration that a will is to be treated as valid and binding
<b>registered relationship</b>	A relationship that has been formally registered with Births, Deaths and Marriages under the South Australian Relationships Register Act

<b>revoke / revocation</b>	To cancel, take back or withdraw
<b>succession</b>	The area of law that governs wills and estates
<b>Succession Act 2023</b>	The new law that governs wills and estates in South Australia from 1 January 2025
<b>Supreme Court of South Australia</b>	The Supreme Court has exclusive jurisdiction to hear probate matters. This means it is the only court in South Australia that may grant probate or hear and determine a dispute about a will or an estate
<b>testator</b>	A person with legal capacity who makes a will
<b>trust</b>	Where a person (a trustee) holds property for the benefit of one or more persons (beneficiaries)
<b>trustee</b>	A person who holds trust property
<b>will</b>	A legal document that sets out who you want to inherit your estate (your money, possessions and property) when you die

## Disclaimer

This factsheet series offers a simple guide to wills and estates law in South Australia. It is not a substitute for legal advice. In this factsheet series we explain why we recommend you seek the help of a private lawyer to make your will.

The information in this series is believed to be accurate at the time of printing. However, the law constantly changes. No responsibility will be taken for the accuracy or reliability of the information, or for any loss that may arise from an error or omission in the information.

Visit our website at [www.lsc.sa.gov.au](http://www.lsc.sa.gov.au) or call 1300 366 424 for free information and general advice on the law in South Australia.

## Feedback

We welcome your feedback about the appearance, readability or content of this factsheet series.

Email [cle@lsc.sa.gov.au](mailto:cle@lsc.sa.gov.au) or call (08) 8111 5555 and ask for the Community Legal Education Team.