

Other options

The **Public Trustee** can prepare a will for free for eligible customers, including concession card holders and those under administration or guardianship orders. The Public Trustee will only prepare a will if it is named as executor. It will charge a percentage of your estate when it administers your estate. Visit www.publictrustee.sa.gov.au or call **(08) 8226 9200** for more information.

If your personal circumstances are simple or standard and you would prefer a cheaper option, you can make your own will through an online will service, a community wills day or a do-it-yourself will kit. Keep in mind that your will is an important legal document. If it is not properly drafted and executed (signed), there may be additional legal costs to administer your estate. There is also a greater risk of someone successfully contesting your will, resulting in the distribution of your estate contrary to your wishes.

The best and safest option is to see a private lawyer.

What happens when I die?

It is the executor's job to carry out your wishes as stated in your will, including any funeral arrangements. If your estate includes a large sum of money, or land in your name only, your executor may need to apply for **probate** in the Supreme Court. Probate is the official court declaration that a will is to be treated as valid and binding.

Your executor must pay your **debts** from your estate (such as funeral expenses, mortgages, personal loans and bills). Beneficiaries will only receive something after all debts are paid. If you die without enough money to pay all your debts, your funeral and executor's expenses are paid before other debts. Your executor and your beneficiaries do not have to pay your debts out of their own finances.

Contesting a will

You cannot stop someone from contesting (challenging) your will after you have died. Having your will professionally prepared by a lawyer will reduce the likelihood of a successful challenge.

A will may be contested on the basis that it is **invalid** or **unfair**.

Someone may say that your will is **not valid** because:

- you did not **understand** the will or lacked legal capacity when you signed it
- someone **pressured** you to make it
- it is **unclear** or does not comply with legal requirements.

If the Supreme Court agrees that your will is invalid, it may fix the will or order a particular distribution of your estate.

Someone may challenge your will on the basis that it is **unfair** and does not properly provide for them. While the law recognises **freedom of testation** (you are free to leave your estate to whomever you choose), the law also recognises that sometimes there is a **moral duty** to provide for family.

The Supreme Court may make a **family provision order** if satisfied that your will does not adequately provide for a person's proper maintenance, education or advancement. The Court will consider **your wishes** to be the **most important factor**. It will also consider other factors such as the vulnerability of the applicant and their conduct.

If you are concerned that your will may be contested after you die, you may wish to explain in your will why you have chosen to distribute your estate in the way that you have.

A claim for family provision must be made within **6 months** of the grant of probate or administration. Applicants should **seek legal advice** before applying to the Court.

Updating a will

Your will remains in force from the moment it is validly signed and witnessed. You should **review** your will every few years or following a significant life event such as a new relationship, the birth or adoption of children, or a change in circumstances of an executor or beneficiary. Some life events automatically affect the validity of your will. **Seek legal advice** if you have a will and you marry, divorce or start or end a registered relationship.

You can make small changes to your will by making a **codicil**. A codicil is a separate document that changes your will. The same legal requirements that apply to making a will apply to making a codicil. Accordingly, the simplest way to update your will is to **make a new one**. Making a new will automatically revokes any existing wills you have made.

Legal Helpline 1300 366 424
Child Support Advice 8111 5576

Legal Services Commission Offices

- | | |
|---|---|
| • Adelaide Office
159 Gawler Place
Adelaide 5000
Call 8111 5555 | • Port Adelaide Office
263 St Vincent Street
Port Adelaide 5015
Call 8111 5460 |
| • Elizabeth Office
Suite 2 Windsor Building
1 Windsor Square
(off Playford Boulevard)
Elizabeth Shopping Centre
Elizabeth 5112
Call 8111 5400 | • Port Augusta Office
34 Flinders Terrace
Port Augusta SA 5700
Call 8686 2200 |
| • Noarlunga Office
Noarlunga House
Ramsay Place
Noarlunga Centre 5168
Call 8111 5340 | • Whyalla Office
17A Forsyth Street
Whyalla 5600
Call 8620 8500 |

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Translating and Interpreting
Service 131 450

National Relay Service
TTY users call 133 677

SMS Relay 0423 677 767

Speak and Listen users
call 1300 555 727

Internet Relay users visit
nrschat.nrscall.gov.au

Visit us online at lsc.sa.gov.au

This information is general and not a substitute for legal advice. The Legal Services Commission provides free legal advice for most legal problems.

Wills



What is a will?

A will is a legal document that sets out who you want to inherit your **estate** (possessions and property) when you die.

To be valid in South Australia, your will:

- must be **in writing** (not spoken)
- must be **signed** by you and **witnessed** by 2 adults (ideally 2 adults who are not named in your will, to avoid suggestions of a conflict of interest)
- must name **beneficiaries** who will inherit your property
- should name an **executor** – a representative who will carry out your wishes.

Who can make a will?

You can make a will if you are at least **18 years of age** and you have **legal capacity**. A person younger than 18 may make a will if they are or have been married.

Legal capacity means that you understand the nature and effect of making a will and can communicate your wishes. If you are under 18 or do not have legal capacity, you may be able to make a will with the permission of the Supreme Court.

Why have a will?

A will **gives legal force to your wishes**. This can ensure that your property goes to the people you choose. It can also help your loved ones manage your affairs according to your wishes after you have died.

Without a will, the law decides where your estate will go. This may or may not accord with your wishes. It may also be more stressful, time-consuming and expensive for your loved ones to deal with your estate at a time when they are grieving.

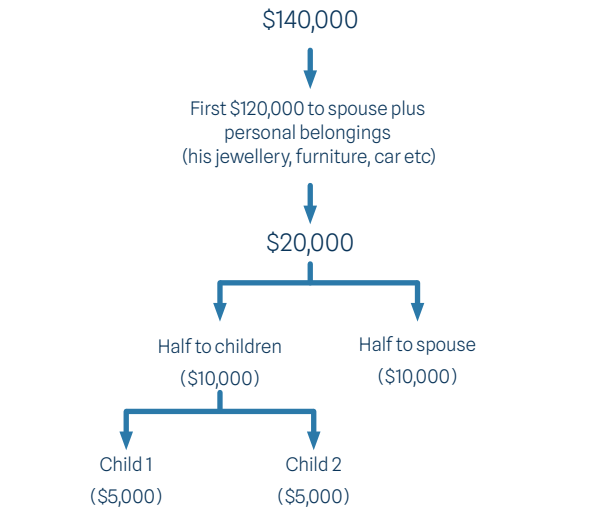


What if I do not have a will when I die?

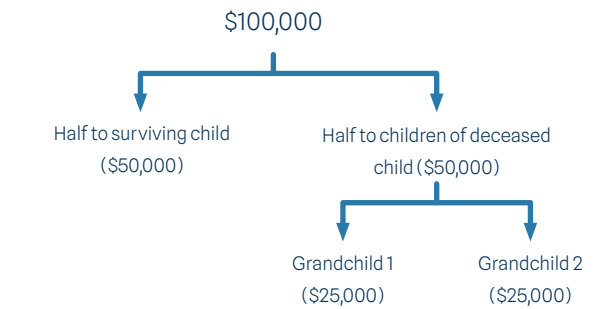
Assets in your name only are distributed according to the **law of intestacy**.

Some examples:

1. A wife dies leaving a spouse and no children. Everything goes to her spouse.
2. A single, childless person dies, leaving both parents alive. The parents each inherit half of their child’s estate.
3. A husband dies leaving a spouse and two children. He had a jointly owned house and \$140,000 in the bank in his name only. The joint asset (house) goes automatically to the surviving owner (his spouse).



4. A single father dies leaving one child. The estate is worth \$100,000. Another child has already died leaving two children (grandchildren of deceased).



What should I put in my will?

Provided it meets the legal requirements, a will can be as unique and creative as its maker.

You can set out your wishes about:

- who you would like to administer your estate and arrange your funeral (your executor)
- who will receive your assets (real estate, money, property and possessions, including digital assets)
- your funeral, burial or cremation
- your preferred guardians for your children
- who will care for your pets.

You may wish to keep a record of your digital assets (files, emails, social media accounts) including login details and passwords with your will so your executor can access your devices and online accounts.

What cannot go in my will?

Jointly owned property (such as a house or bank account) will pass automatically upon your death to the co-owner and cannot be left in a will. By contrast, property held as ‘tenants in common’ (where each person owns an identifiable portion) can be included in your will.

Superannuation is not automatically part of your estate and is subject to the rules of your super fund. You may be able to make a binding nomination that your super be paid into your estate.

Who can be my executor?

Any adult with **legal capacity** may be an executor. You may choose a relative, a friend or a professional. Your executor may also be a beneficiary under your will.

You may appoint **more than one** executor and ask that they work together to administer your estate. It is best to appoint an executor who is likely to survive your death.

If you appoint a professional as your executor, they will usually charge a **fee** for their services. If you appoint a relative or friend, they may seek help from professional services to administer the estate. Professional fees will come out of your estate.



Your will is an important legal document and should be prepared by a lawyer.

How do I make a will?

The best way to make a will is to see a **private lawyer** with experience and expertise in preparing wills. A private lawyer can give you personal advice about your circumstances, draft a will with the level of complexity that meets your needs, ensure your will complies with legal requirements, and assess and record your legal capacity at the time you make your will.

A private lawyer may charge anything from \$300 to \$3,000 or more, depending on your needs. Some may fix a price to prepare your will, power of attorney and advance care directive. Ask for a quote before choosing a lawyer.

If you do not know any private lawyers who specialise in wills and estates, ask friends, family or trusted colleagues for recommendations.

The **Law Society of South Australia** can help connect you with a private lawyer who specialises in wills and estates. Call **(08) 8229 0200** or access the [See a Lawyer Referral Service](http://www.lawsocietysa.asn.au) via their website (www.lawsocietysa.asn.au).