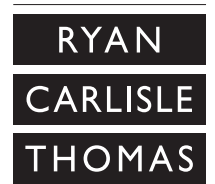


# Wills and Probate



LAWYERS

**Clients, not cases.**

# Why make a Will?

A Will is a legal document that sets out the distribution of your assets upon your death. You should have a solicitor draw up the Will to ensure that it is valid and your property will be divided according to your wishes. It is also important to identify which assets are covered by your Will and to consider the control of assets not necessarily covered e.g. superannuation and jointly owned assets.

If you die without making a Will, the division of property is made according to a scheme outlined in the Administration and Probate Act, 1958.

According to this Act, if you die without a Will your spouse or domestic partner will receive the first \$100,000, the personal chattels and one third of the balance of your estate. If you have children, they will share the remaining two thirds of the estate between them. If you are not in a domestic relationship and have no children, the estate will pass to your closest relatives – parents, siblings, nieces, nephews, grandparents and in some cases cousins. The government will inherit the estate if no relatives can be located.

The disadvantages of dying without a Will include:

1. Your property may not be divided according to your wishes.
2. Your children and other minors in your care may not receive the financial and other assistance you would have desired and will take their lump sum payment at 18 years of age, whereas you may wish to nominate a later age.
3. Your step-children, friends and favourite charities may miss out.
4. Your estate may be administered by someone you disapprove of, especially in the case of an infant child's trust account.

A Will can be altered or redrawn at any time.

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## • When should I change my Will?

Your Will should reflect your current living and financial arrangements. If these change, your Will should change accordingly. Should you marry, a Will drawn up prior to the wedding is no longer valid. In the event of a separation, the Will remains valid but the terms may be entirely inappropriate. In the event of divorce, any gifts to your former spouse and/or her or his appointment as Executor and trustee are revoked.

You should also review your choice of Executor if circumstances change.

## • What is probate?

When a person dies, the Court must recognise that the Will is valid and that the Executor has the authority to deal with the deceased's assets. This approval, granted by the probate division of the Supreme Court, is known as Probate and is simply a recognition that the Will is in fact the last valid Will in existence. Probate is often confused with Probate Duty. Probate Duty both Federal and State was abolished throughout Australia in the early 1980s.

When a person dies, the Will is brought to the Solicitor who advises the Executor who is entitled to share in the estate. The Solicitor then obtains details of all assets and liabilities of the estate. At this time, the Solicitor will apply to the Court for a Grant of Probate to confirm the Executor's entitlement to act on the estate.

Where the deceased dies without making a Will the Court will appoint an Administrator to carry out the duties of an Executor. The Administrator will normally be a major beneficiary of the deceased's estate, or if all the beneficiaries are minors, the guardian of such infant beneficiaries. The appointment of the Administrator is called Letters of Administration.

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## • What is an Executor?

An Executor is a person or persons appointed by the deceased to manage the winding up and distribution of the estate.

Their duties begin immediately on the death of the Willmaker. Some of the duties involved in being appointed an Executor include:

1. Arranging the funeral.
2. Notifying all banks, insurance and other companies of the death.
3. Preparing any real estate for sale and attending to the sale.
4. Identifying all beneficiaries and distributing their entitlements.
5. Obtaining the Grant of Probate.
6. Winding up the estate. This includes settling all outstanding tax matters, disputes and liabilities.
7. Investing funds on behalf of minors and deciding what are appropriate payments to be made from a child's trust fund.

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## • What happens in the event of a dispute?

In a small proportion of cases, there may be a challenge to the validity of the Will or to the distribution of assets. If you have concerns about the Will, it is important to obtain legal advice quickly as time limits apply.

A Will may be challenged in two ways.

Firstly, it may be challenged on the basis that the Will itself is invalid. This may be due to circumstances such as the Willmaker's mental incapacity at the time of making the Will or undue influence being exerted on the Willmaker.

Secondly, although the Will itself may be valid, certain people close to the deceased may have a right to claim on the estate of the deceased if the provisions of the Will fail to adequately provide for them.

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## • Ryan Carlisle Thomas: Putting People First

Ryan Carlisle Thomas was established in 1975 to provide quality legal services to working people, families and community groups.

Since then we have grown to employ more than 120 staff in 11 offices across Victoria and have provided legal advice and support to thousands of Victorians.

Our company believes first-rate legal services should be available for all people.

We are also committed to personal service and communicating the law in easy to understand language.

As the major legal firm in many suburbs and country areas, our company has won loyalty from communities and individuals who continue to use our full range of legal services.

*Because at Ryan Carlisle Thomas you're a client not a case.*

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## • Features of the RCT Service Estate Management, Wills and Probate

- *Free initial consultation*
- *Low-cost legally binding Wills*
- *Legal representation upon death to ensure your wishes are met.*

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# • Comprehensive legal services

In addition to Wills and Probate, RCT offers comprehensive legal services relating to:

**Personal Injuries** – Lump sum claims for financial loss, pain and suffering resulting from exposure to chemicals, asbestos, tobacco and other toxic substances, accidents on public or private property, medical negligence, defective products and wrongful death.

**Work Injuries** – Claims for weekly payments and medical expenses caused by work injuries, illness and disease. Lump sum claims for lost earning capacity, permanent disability, pain and suffering and hearing loss, including claims for widows, widowers and dependants.

**Motor Vehicle Injuries** – Compensation for loss of earnings, medical expenses and permanent disabilities and damages for serious injuries caused by a motor vehicle, train or tram.

**Criminal Law** – Defence of criminal charges arising out of all police and traffic matters and appearances in all criminal courts including bail applications, pleas, committal hearings, trials and appeals.

**Family Law** – Applications for divorce, maintenance, custody, access and restraint orders, division of property in matrimonial and defacto relationships and separate representation of children.

**Employment** – Claims for unfair and wrongful dismissal, award breaches and underpayment of wages and advice on contracts of employment.

**Anti-discrimination and Equal Opportunity Claims** – Complaints of discrimination on grounds such as age, race, religion, sex, sexual orientation and disability, and sexual harassment in employment, education or the provision of goods and services.

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**Superannuation** – Advice on termination and retirement entitlements, claims for temporary, partial and total and permanent disability benefits and applications to the Superannuation Complaints Tribunal.

**Commercial** – Sale and purchase of businesses and commercial properties, commercial, retail and residential leases, incorporation of Companies and Associations, preparation of Trust Deeds and Partnership Agreements and disputes.

**Conveyancing** – Sale and purchase of houses and land and preparation of Section 32 Vendors' Statements.

**Migration Law** – Immigration and refugee applications and appeals, student visas and family reunions.

**Criminal Injuries** – Applications for compensation for pain and suffering, permanent disabilities, medical expenses and loss of earnings caused by criminal injuries.

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## • Affiliate firms

In addition to our own offices, RCT has affiliates in Ararat, Beechworth, Bendigo, Bright, Colac, Hamilton, Mildura, Mt Beauty, Myrtleford, Portland, Shepparton, Wangaratta, Warrnambool and Wodonga.