

What do I need to know about Wills¹, Powers of Attorney and going guarantor?

Why is it important to have a will?

A Will is the only legal way you can ensure that your property and assets are distributed the way you would like them to be. It is also an effective way of making sure you provide security for any dependent children. This includes ongoing care and education. It will also help to avoid any difficulties or disputes over your property and assets after you pass away.

If you die without leaving an up-to-date will the government will divide your property and assets according to their formula. This may not reflect your current wishes and family circumstances.

So having an up-to-date Will is essential to making sure your assets are handled the way you would like them to be. Even though it is a difficult topic to think about, protecting your assets in this way can help your family and protect the money you have worked hard for.

It is also a good idea to update your Will if your circumstances have changed. Updating your will to reflect your new circumstances will make sure your assets and property are distributed as you wish them to be now.

How do I make a will?

A will can be written and updated by the Public Trustee for the ACT 02 6207 9800 (Monday – Friday, 9.00am - 4.30pm) or by a solicitor of your choosing. You may also purchase a Will kit from an Australia post outlet. It is important to keep in mind that a Will must be signed and witnessed properly for it to be valid. The [Public Trustee for the ACT](http://www.publictrustee.act.gov.au) 02 6207 9800 (Monday – Friday, 9.00am - 4.30pm) can help you to make your Will.

As part of making a Will you will need to nominate a person to manage your affairs after you pass away. The executor will need to take on the following duties:

- Locate the Will
- Find and secure your property and assets
- Prove your Will in Court;
- Manage and deal with any debts you have
- Establish any Trusts you may have mentioned in your Will
- Organise your income tax returns
- Deal with capital gains issues
- Share your property and assets according to your Will.

¹ <<http://www.publictrustee.act.gov.au/wills>>.

The executor you choose should be aware of their legal responsibilities and have a good understanding of financial, legal, accounting and tax matters. They should also understand that managing the wishes laid out in your Will may be demanding. If you are having trouble deciding on who will be your executor you can appoint the Public Trustee for the ACT. They have the expertise and experience to help you with this matter and offer unbiased and confidential services.

Keep your will in a safe and secure location. You may also get the Public Trustee or solicitor who helped you prepare your Will to store it at their premises. You should also keep a copy of the will yourself.

What is a Power of Attorney or Enduring Power of Attorney?

By selecting a Power of Attorney or Enduring Power of Attorney you give someone the legal authority to look after your affairs on your behalf.

A **Power of Attorney** is a legal document that appoints a nominated trustworthy person to act on your behalf on legal and financial matters. This is only valid while you have legal capacity.

An **Enduring Power of Attorney** is also legal document that appoints a nominated trustworthy person to act on your behalf on legal and financial matters. The main difference is that an Enduring Power of Attorney continues to be valid even after you lose legal capacity.

What is "legal capacity"?²

Legal capacity relates to a person's ability to fully understand the nature and implications of a document they are required to sign.

If there is doubt about a person's legal capacity, a medical report may be needed to confirm the person's ability to conduct their own financial and legal affairs.

Why is it important to appoint a Power of Attorney or Enduring Power of Attorney?

You may need someone to manage your financial and legal affairs in the event of an accident, illness, planned or unexpected absence or when you just can't cope.

Appointing a Power of Attorney will help you deal with financial and legal responsibilities during these times.

It is a good idea to appoint a Power of Attorney or Enduring Power of Attorney while you have legal capacity. Many people do not realise how important it is until it is too late!

² <http://www.publictrustee.act.gov.au/powers-of-attorney>

How do I appoint a Power of Attorney or Enduring Power of Attorney?

You can appoint a Power of Attorney or Enduring Power of Attorney through the Public Trustee of the ACT for a fixed fee. You can also appoint them as your Power of Attorney or Enduring Power of Attorney if you do not have another option.

Contact them on (02) 6207 9800 (Monday – Friday, 9.00am - 4.30pm).

How do I cancel Power of Attorney or Enduring Power of Attorney?

You can cancel your Power of Attorney in writing at any time, provided you have the legal capacity to do so.

For information see the Public Trustee of the ACT for more information webpage <http://www.publictrustee.act.gov.au/powers-of-attorney> or call them on (02) 6207 9800 (Monday – Friday, 9.00am - 4.30pm).

Going Guarantor

If you are a guarantor, you have promised to repay a loan if the borrower does not pay. A guarantor is legally liable to pay the borrower's debt if the borrower stops paying and the credit provider has been unable to recover the money from the borrower. Generally a lender will ask for someone to 'go guarantor' if there is a risk to the loan being repaid as agreed.

It is always best to avoid being a guarantor on a loan. This type of debt can cause great difficulty between the parties involved particularly during separation or divorce and also between parents and children.

Always seek advice about the implications of becoming a guarantor for someone else's debt ***before*** you enter into any agreement so that you understand fully what it means.

Occasionally people lose valuable assets such as their homes if they have to repay a debt that they have guaranteed. If you are a guarantor and are asked to pay a debt, seek advice from a free legal service or financial counsellor about how to proceed.