

Wills and Enduring Powers of Attorney

At Hayman Lawyers, we consider that all adults should have wills and enduring powers of attorney.

What is a will?

Your will sets out how you would like your assets distributed after your death. It can also include other directions such as your burial requests and who you would like to appoint as a guardian of your children.

Why do you need a will?

If you don't have a will then you won't decide how your assets are distributed on your death. Instead they will be distributed in accordance with rules laid down by the law and this could result in your property going to people you didn't want it to. Not having a will can also result in unnecessary distress and uncertainty for your loved ones.

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If I don't have a will who gets my property?

If you are married your spouse gets some of your property and your children get the remainder. If you have been together with your defacto partner for three years they will get some property but otherwise they may get nothing. If you don't have a partner it goes to your children and if you don't have children to your parents. If your parents are dead it goes to blood relatives and lastly, if you have no relatives, it goes to the Government.

Do I need legal advice before I make a will?

It is possible to make your own will but at Hayman Lawyers we recommend you have someone with legal experience help you make it. This is because for a will to be legally binding there are certain legal technicalities that you must follow. Also, there are certain ways your will can be challenged after your death. At Hayman Lawyers we will advise you on how to avoid your will be challenged, how to ensure that your assets go to who you want them to and how your relationship or marriage (including your second marriage) might affect your will.

Because we also administer estates, we can give practical advice about how to make a will that keeps things fair and simple for your family.

Sometimes there might be better ways to make sure your assets go to who you want, like a family trust for instance.

What is an enduring power of attorney?

An enduring power of attorney allows you to appoint someone else to manage your affairs if you are unable to.

What things can I appoint people to do?

There are two types of enduring powers of attorney.

You can appoint someone in relation to your property and someone in relation to your personal care and welfare.

How does it work in relation to PROPERTY?

You can appoint someone to make decisions and act on your behalf in relation to all or part of your property. It can come into effect immediately or at a given time in the future or only if you become mentally incapable. You can appoint more than one person to be your property attorney and you can limit the assets that they have control of.

How does it work in relation to my PERSONAL CARE AND WELFARE?

You can appoint someone else, usually a member of your family or a close personal friend, to make decisions about how you are cared for if you are unable to look after yourself because of serious illness or an accident. You may only appoint one care and welfare attorney and it only comes into effect if you become mentally incapable of making the decisions for yourself.

What if I want to change the powers of attorney?

As long as you are mentally capable of doing so you can cancel or change your enduring powers of attorney at any time.

What if I don't have enduring powers of attorney?

If you don't have enduring powers of attorney and become incapable of making decisions then the Family Court can appoint people to do this on your behalf. However, this can be a costly and time consuming process and is stressful for your family. Enduring powers of attorney allow you to choose who you would like to make decisions in relation to your assets and your care and welfare.

The other advantage of enduring powers of attorney in relation to property is that they can be useful if, for example, you are travelling overseas and need to leave someone to deal with your property in your absence.

Hayman Lawyers

If you need some more advice regarding your will and enduring powers of attorney, at Hayman Lawyers we have a team of experienced and dedicated professionals able to help you.

We are a firm that specialises in providing quality legal advice to ensure that legal measures are in place to protect you and your family.

Please feel free to contact any of our team.