

## E.J. WALL & ASSOCIATES

FAMILY, WILLS & ESTATES LAWYERS

EDMUND JOSEPH WALL LL.B

### LEGAL SERVICES – WILLS, ENDURING POWERS OF ATTORNEY AND GUARDIANSHIP, DECEASED ESTATES

(As at 1 January 2019)

We are a legal firm specialising in the preparation of Wills, Enduring Powers of Attorney and Guardianship and deceased estates and provide a home visiting service. No extra charge is made for travelling within the northern suburbs (Perth). **All charges are exclusive of GST**

#### OUR CHARGES ARE:

<b>Single Standard Will:</b>	\$300.00
<b>Couples Wills (2):</b>	\$500.00
<b>Enduring Powers of Attorney (single):</b> (Discounted to \$200 if Will prepared at same time)	\$250.00
<b>Enduring Power of Guardianship (single):</b> (Discounted to \$200 if Will prepared at same time)	\$250.00

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**Deceased Estates:** A quote or close estimate will be given on receiving instructions.

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#### PAYMENT

##### Term: Strictly

On signing your Will and/or other legal documentation, we accept Eftpos, direct credit to bank account, cheque or cash.

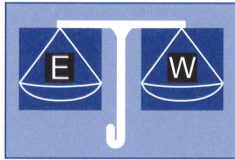
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## WILLS

"A legal Will gives you peace of mind that your family and loved ones will be taken care of."

[What is a Will?](#)

[Why should I make a Will?](#)

[Important issues relating to your will and your estate](#)

[Can I prepare my Will without the assistance of a lawyer?](#)

### What is a Will?

A Will is a legal document that sets out who is to take charge of your assets and who is to receive your assets on your death.

### Why should I make a Will?

Many Australians die without making a valid Will. There are many good reasons to make a valid will. Here are the three most important:

1. You decide who receives your assets. In making a will you nominate your beneficiaries. That is you decide who is to receive what assets and in what percentage.

If you die without a will then the law in Western Australia says that you have died "intestate". That means that your assets will go to the persons specified in a Table set out in the Administration Act. The formula in the table can be quite arbitrary. For example – your lifelong spouse, or partner, may not receive all of your assets as you had intended.

If you wish to receive further information about who will receive your assets if you die without a Will in Perth, please contact our Lawyer Ed Wall for no obligation, free telephone advice.

2. You decide who will control and/or manage your assets. In your Will you will appoint a person to control and manage your assets on your death to ensure that your beneficiaries receive the assets that you intend. This person is known as your "Executor" and "Trustee".

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Your Executor and Trustee can be a family member, a friend whom you trust, or a professional. A beneficiary of your Will can be a beneficiary of your Will and in many circumstances it is appropriate to appoint such a person. Sometimes, depending upon the circumstances, it is not wise to appoint a beneficiary as Executor or Trustee as this could lead to a “conflict of interest”.

For further information on Wills and on whom you should appoint as the executor of your Will, contact our lawyer, Ed Wall for no obligation, free telephone advice.

3. You save legal and administration costs avoid or and minimise taxation liabilities. A properly prepared Will, validly executed (signed and witnessed) will usually save legal and administration costs on your death.

Also, a carefully prepared Will, prepared in consultation with your accountant or financial advisor, can result in the lawful avoidance or minimisation of tax liabilities.

### **Important issues relating to your Will and Estate**

1. Not all of your assets will necessarily pass under your Will. For example – if you and your spouse\partner have registered real estate property in your names as a joint tenants, or hold bank accounts in your joint names, these assets will pass to your surviving spouse/ partner automatically upon your death, by what is known in as “survivorship” they will not pass under your Will. If you have registered significant assets as a “joint tenancy” with a spouse or partner and you do not want that spouse or partner to receive your share of the asset upon your death, then you will need to seek urgent legal advice.
2. If you divorce your spouse after making a Will the whole of your Will may be invalid unless you have specified in your Will that it will remain valid and effective after such divorce.
3. If you marry after making a Will the whole of your Will may be invalid unless you have specified in your Will that it is to remain valid and effective after such marriage or there is other evidence to indicate that this was your intention.
4. There are very strict requirements in making a valid Will and how that Will is executed (signed and witnessed). If those requirements are not complied with there is likely to be substantial legal costs and delay in relation to your estate. If you have made your own Will and are not sure whether it has been prepared validly or executed validly under Western

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Australian law, please contact our lawyer Ed Wall for non obligation free telephone advice.

## **Can I prepare my Will myself, without the assistance of a Lawyer?**

Yes you can – but there is a significant risk, despite your best efforts, that the Will you have prepared (even with the assistance of a helpful friend) may not be completely legally effective to give effect to your intentions. Further, it may have been executed invalidly (incorrectly signed and/or witnessed). ‘Will Kits’ can be purchased from many newsagents and they are helpful, but be very careful as they may seem to be deceptively easy! If you have prepared your own Will and are not sure whether it has been prepared validly or executed validly, please contact our lawyer Ed Wall for non obligation free telephone advice.

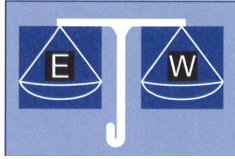
For a simple standard Will, or a simple standard husband and wife/ partners Wills the legal costs are not significant (and can be less than taking your family to a nice Perth restaurant). The legal costs of a Lawyer in preparing a Will in Perth, will almost certainly be substantially less than the extra, and unnecessary, legal costs incurred for your estate (not to mention the extra delay) if you have prepared your Will invalidly or it was executed invalidly.

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### ENDURING POWER OF ATTORNEY (EPA)

An enduring power of attorney is a legal agreement that enables a person to appoint a trusted person - or people - **to make financial and/or property decisions on their behalf**. An enduring power of attorney is an agreement made by choice that can be executed by anyone over the age of 18, who has full legal capacity.

'Full legal capacity' means that the person must be able to understand the nature and effect of the document they are completing and the nature and extent of their estate.

An enduring power of attorney cannot be made by another person on behalf of a donor whose capacity might be in doubt due to mental illness, acquired brain injury, cognitive impairment or dementia.

An enduring power of attorney can be operational while the person still has capacity but may be physically unable to attend to financial matters.

The benefit of an *enduring* power of attorney is that unlike an ordinary power of attorney, it will continue to operate even if the donor loses full legal capacity.

An enduring power of attorney does not permit an attorney to make personal and lifestyle decisions, including decisions about treatment. The authority of the attorney is limited to decisions about the donor's property and financial affairs.

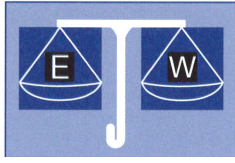
To cancel (revoke) the enduring power of attorney the donor must have full legal capacity. It is recommended that the revocation is made in writing. If the donor has lost capacity, an application must be made to the State Administrative Tribunal to decide if the enduring power of attorney should be cancelled (revoked).

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### ENDURING POWER OF GUARDIANSHIP (EPG)

An Enduring Power of Guardianship is a legal document that authorises a person of your choice, **to make important personal, lifestyle and treatment decisions on your behalf should you ever become incapable of making such decisions yourself**. This person is known as an enduring guardian.

An enduring guardian could be authorised to make decisions about things such as where you live, the support services you have access to and the treatment you receive.

An enduring guardian can not be authorised to make property or financial decisions on your behalf.

To make an Enduring Power of Guardianship you must:

- be 18 years of age or older
- have full legal capacity (this means you must be able to make a formal agreement and understand the implications of statements contained in that agreement).

The person you appoint as your enduring guardian must also be 18 years of age or older and have full legal capacity.

You can appoint more than one enduring guardian as joint enduring guardians, but they must act jointly which means they must reach agreement on any decisions they make on your behalf. If you plan to appoint more than one enduring guardian it is important you consider their ability to work together on your behalf.

We recommend you appoint no more than two joint enduring guardians.

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You may also appoint substitute enduring guardians who would take over decision-making responsibilities in the event one or more of your enduring guardians was unable to continue in the role.

The scope of authority given to your enduring guardian is determined by you when you make your Enduring Power of Guardianship.

You may authorise your enduring guardian to make the same range of decisions as a plenary guardian, who is appointed by the State Administrative Tribunal.

This would enable your enduring guardian to:

- decide where you live, whether permanently or temporarily
- decide who you live with
- decide whether or not you work and, if so, any matters related to that work
- make treatment decisions on your behalf to any medical, surgical or dental treatment or other health care (including palliative care and life-sustaining measures such as assisted ventilation and cardio-pulmonary resuscitation)
- decide what education and training you receive
- determine who you associate with
- commence, defend, conduct or settle any legal proceedings on your behalf, except proceedings that relate to your property or estate
- advocate for and make decisions about the support services you access
- seek and receive information on your behalf.

Alternatively, you may restrict the decision-making authority of your enduring guardian. For example, you may authorise your enduring guardian to make decisions about any treatment you receive, but not about where you live or who you associate with.

When making an Enduring Power of Guardianship you must also determine the circumstances under which your enduring and substitute enduring guardians will act. For example, you might direct that your enduring guardian act only when they are in the same State as you.

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