



### For Further Information Contact:

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## Eurobodalla Palliative Care Service

*Making a Will*



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## **What is a will?**

A will is a written document in which you state how you want your property distributed after you die. A person who makes a will is called a “testator”. Making a will allows you to choose what happens to your assets after you die. It also allows you to nominate an executor, who is the person responsible for making sure your wishes are met.

## **What happens if I die without a will?**

If you die without a will, you are said to have died intestate. If this happens, your next of kin will have to apply to the Supreme Court for Letters of Administration, which will allow them to distribute your estate in a certain way. If you are next of kin of someone who has died intestate, you should seek legal advice.

## **Who Can Make a Will?**

You can make a will if you are over 18 years of age and are of sound mind. You must know that you are making a will, understand the nature and effect of the proposed will and that you are distributing your property according to your own intentions. If you are under 18

The witnesses must sign the will in the presence of the testator and each other.

## **What should be in a Will?**

The will should specify that it is your last will and that you revoke any previous wills. It should appoint one or more persons to be your executor/s. Wills often include other requests such as funeral arrangements, preferences for disposal of the testator’s body and the appointment of a guardian to look after the testator’s children. As wills are only meant to deal with property, wishes such as these are not strictly binding on the executor, but can demonstrate the testator’s intention. If a court is asked to determine the residency and guardianship of any children, the testator’s wishes will be taken into account.

Your will should provide for payment of funeral expenses and any debts. It should then state how you want your property distributed, either by naming the item and to whom it is given, or by giving a person a certain amount or percentage of the total value of your property. If your will contains specific gifts, it should also state what is to happen with the residue (remaining assets) of the estate.

## **Executors**

An executor is a person named in your will to look after your estate. An executor must be over 18

years of age. It is easier, although not compulsory, if the executor lives in the same state as the testator. It is also preferable to name two executors in a will. This will be of assistance if one executor dies or no longer wishes to act as executor.

When considering people to be your executors, it is preferable to choose someone close to you, trustworthy and of a similar age. These are simple safeguards against complications later. If no executor is named in your will, the Supreme Court will appoint an administrator.

## **Changing or Updating a Will**

Once a will has been signed, there can be no alteration, either by crossing out or writing in new clauses. Alterations such as these will have no effect. The best way to amend or alter a will is by doing so in a separate document called a “codicil”. For a codicil to be valid it must also meet the formal requirements of making a will. In many ways it may be easier to make an entirely new will.

## **How Marriage or Divorce Affects Your Will**

Your will is automatically revoked, or made invalid, when you get married and on the day you are formally divorced by a court. However, wills made in contemplation of marriage or divorce are valid. If you do not wish to make a will in this way, a new will must be made after you marry or divorce otherwise you will die intestate