



## Gifts in Wills A B C's

### LEGAL TERMS

#### A

**Administrator:** A person appointed by a Court to administer the Estate of a person who died without

- Executor surviving them;
- having appointed an Executor in their Will; or
- a valid Will.

The term may also apply to an Executor who is in the process of administering an Estate. *Also refer to "Executor" and "Legal Personal Representative".*

#### B

**Beneficiary:** A person who receives some of the Deceased's Estate arising from the Deceased's Will, the rules of intestacy or a successful claim for provision.

**Bequest:** A gift of an asset, money or other rights (i.e. intellectual property) contained in a Will. *Also refer to "Legacy", "Pecuniary Legacy" and "Specific Gift"*

#### C

**Codicil:** A properly executed amendment to an existing Will.

**Commission:** A payment made from the Estate to an Executor or Administrator to reimburse them for their *'pains and troubles'* in conducting the administration of the Estate.

#### D

**Distribution Statement:** This document is prepared by (or for) the Legal Personal Representative when distributing the residue of an Estate. It is a financial statement that outlines the assets of the Estate, the liabilities paid and the distribution of the residue. This is a particularly important document if your charity is a residuary beneficiary. The Legal Personal Representative should supply you with a copy of this document. It will allow you to keep track of the finances of the Estate to ensure your charity receives its entire gift.

Please note: The Estate may also make interim distributions. In this instance, you should receive a statement for each interim distribution.

#### E

**Eligible Person:** This term varies from jurisdiction to jurisdiction, however generally it is a defined class of people who have a defined type of relationship with the Deceased, which may include:

- Spouse of the Deceased (either married or de facto);
- Child of the Deceased
- A former Spouse of the Deceased (either married or de facto)

- A person who was (at any time) wholly or partly dependent on the Deceased, and is a grandchild of the Deceased or was a member of the household of which the Deceased was also a member,
- A person who the Deceased was living with in a close personal relationship at the time of the Deceased's death.

An Eligible Person may also be a Beneficiary.

**Estate:** The bundle of assets, liabilities, rights and obligations, which the Deceased owned or had some interest in at the time of death.

**Estate Administration:** The process of calling in the assets and paying out liabilities of the Estate. This process also includes: resolving any claims on the Estate and distribution of the Estate according to the terms of the Grant of Probate or Letter of Administration.

**Executor:** A person, people or organisation appointed by the Deceased in their Will to be the Deceased's representative after they die and administer their Estate. It once referred strictly to a male person who was appointed under a Will, however it is now used as a general term regardless of the gender of the person appointed.

Please note: Only people and certain organisations are permitted to be Executors.

*Also refer to "Administrator" "Executrix" and "Legal Personal Representative".*

**Executrix:** A female person who is appointed under a Will to administer an Estate. *Also refer to "Executor".*

**Exemplification:** An official copy of the Grant of Probate or Letters of Administration which is issued by the Court.

## F

**Family Provision Claim:** a claim by an Eligible Person against an Estate seeking "proper and sufficient" provision (general money) from the Estate. Claims can be made even if provision had been made for the Eligible Person. Also refer to "Eligible Person"

## G

**Grant:** a general term referring to a Grant made by the Supreme Court of Probate or Letters of Administration

## I

**In Specie:** in its own form. The term is often used when referring to transferring assets from the Estate of the Beneficiary. For example: a transfer of an interest in shares *in specie* is a transfer of the shares themselves rather than the Estate liquidating the shares and giving funds raised from the sale to the Beneficiary.

**Inter Vivos:** Between living persons. Inter vivo is usually used to refer to gifts or transactions made by the Deceased during their lifetime.

**Intestate:** A person who had died without leaving a Will. A person may also die partially intestate. This is where a person had died with a Will that does not deal with their entire Estate.

**Informal Will:** A Will which does not comply with all of the formal requirement may still be enforceable and subject to a Grant by The Supreme Court. *Also refer to "Will."*

**Inventory of Property:** This document contains the information about the assets of the Estate that the Court needs to know. It is submitted to the Supreme Court when an application is made for a Grant. Although at the point of applying for a Grant, the Legal Personal Representative may not know all the information about the assets of the Estate, it is, at least, a start. It is often then annexed to the Grant by the Court.

## L

**Legacy:** A gift in a Will usually consisting of money or private property. Also refer to “*Bequest*”, “*Pecuniary Legacy*” and “*Specific Gift*”.

**Legal Personal Representative:** Broad term which refers to an Executor, Administrator or Trustee of an Estate. It is also used to refer to an Attorney appointed under a Power of Attorney. Also refer to “*Administrator*” and “*Executor*”.

**Letter of Administration:** Also known as a Grant of Letters of Administration. An Order (*or Grant*) of the Supreme Court appointing an Administrator the right to administer the Estate of a deceased person who died:

- without a Will
- with a Will, which did not appoint an Executor;
- with a Will, but none of the Executors survived them; or
- with a Will, but none of the living Executors can carry out their duty due to some impediment (i.e. age, illness, inappropriate organisation appointed as Executor, etc.).

The last three scenarios are known as “*Letters of Administration with the Will Annexed*”

## M

**Mediation:** A safe forum where the parties of a dispute can come together in an attempt to resolve the dispute without affecting the legal rights of each other. The forum is facilitated by an independent third party called a mediator. Mediations are regularly ordered in family provision claim proceedings before the matter will be listed for hearing.

## N

**Notional Estate:** Assets the Deceased had an interest in during their lifetime, but do not form part of the Deceased’s Estate. An example of Notional Estate assets include superannuation, joint bank accounts, etc. In certain circumstances in Family Provision Claims heard in New South Wales, the Court may have the power to call these assets into an Estate for the purposes of making a Family Provision order.

## P

**Pecuniary Legacy:** A gift in a Will consisting of money. Also refer to “*Bequest*”, “*Legacy*” “*Specific Gift*”

**Probate:** Also known as a Grant of Probate. An order of the Supreme Court confirming the validity of a Will and the legal standing of the Executor appointed by the Will. It is proof that the Executor has the power to deal with the Estate of the Deceased.

## R

**Reseal:** Occasionally it may be necessary for a Grant to be made in multiple jurisdictions. So rather than applying for a Grant in each jurisdiction, a Legal Personal Representative may request the Supreme Court in the other jurisdiction/s add their Seal to the original Grant to make the original Grant enforceable in the other jurisdictions.

**Residuary Bequest:** Also known as a Residuary Gift. It is a gift of all or a share of the Residue of Estate.

**Residue of Estate:** The Residue of an Estate consists of everything that is left in the Estate after all debts and testamentary expenses of an Estate have been paid, specific gifts have been distributed and any claims made on the Estate have been settled or resolved.

## S

**Seal:** The stamp (which is often embossed) the Supreme Court to a Grant to formalise it.

**Specific Gift:** A gift in a Will of a specific item of property or amount of money. *Also refer to "Bequest", "Legacy" "Pecuniary Legacy"*

**Supreme Court:** The appropriate Court in each of the different States and Territories for proceedings relating to an Estate. In Victoria, the County Courts also have jurisdiction to hear matters relating to family provision claims.

## T

**Testament:** A testament once referred to a Will which only dealt with personal property. The term is now used interchangeably with Will. *Also refer to "Will"*

**Testator:** A person who makes a Will. It once referred strictly to a male person who made a Will, however it is now used as a general term regardless of the gender of the Will maker. *Also refer to "Testatrix".*

**Testatrix:** A female person who makes a Will. *Also refer to "Testator".*

**Trustee:** A person who holds assets on behalf of another, usually a beneficiary. The Trustee owes a duty to the beneficiary. An Executor or Administrator may also be a Trustee.

## W

**Will:** A document which purports to dispose of a person's property after their death. Usually this document will also appoint an Executor to administer the Estate. A Will may comply with the formal requirements (i.e. executed, witnessed, etc.). *Also refer to "Informal Will".*

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The content in this article is general information and does not constitute legal, financial or accounting advice. Expert legal and financial advice regarding your Will and estate should be sought from qualified professionals.