
WILL OF MR PETER JOHN SMITH

This will is made by me, **Mr Peter John Smith** of Woolloomooloo, in respect of my property in Australia, but does not take effect in or affect property or affairs of mine in any other part of the World.

1. Earlier Wills

I revoke all previous testamentary acts.

2. Appointment of Executor

I appoint Mary Jane Agate of Woolloomooloo and Carey Smith of Sydney, (together called "my executor"), to be the executors and trustees of this my will.

3. Distribution of Estate

My executor holds my estate on trust:

- 3.1 To pay my debts and funeral expenses, my estate's administration expenses and any death duty payable on my dutiable estate;
- 3.2 If my brother Stephen Smith survives me for 30 days, to pay the residue of my estate to my brother Stephen Smith;
- 3.3 If any child of mine for whom I have made provision in this my will dies before me, or is living at my death but dies before taking a vested interest in my residuary estate, leaving a child or children surviving the one who has died and me, then that child will take or those children will take equally the share which his, her or their parent would otherwise have taken under in my residuary estate;
- 3.4 If no person shall acquire an absolutely vested interest under the foregoing paragraph or paragraphs, then I give my property after payment of my debts to The Australian Red Cross.

4. Powers

4.1 My executor and my trustee may in their discretion:

- (a) exercise any powers given to them by law;
- (b) exercise the powers of a trustee for sale in respect of any property in my estate and may:
 - (i) without being liable for any loss (including liability for taxation on capital gain) caused by so doing, postpone sale;
 - (ii) without being liable for any loss (including liability for taxation on capital gain) caused by so doing, retain in its form of investment at my death any part of my estate, even though it is wasting, hazardous or reversionary;
 - (iii) sell, by public auction or private sale, and for that purpose may extend credit;
- (c) determine, for any purpose, whether receipts or outgoings are capital or income, or partly capital or income, so as to bind the beneficiaries, even though the receipts are from a company or corporation that has made a decision on the matter;
- (d) apply for the maintenance, education (including travel to broaden the mind), advancement or benefit of a beneficiary the whole or any part of the capital

and income of that part of my estate to which that beneficiary is entitled or may in future be entitled;

- (e) for the purposes of sub-clause (d):
 - (i) make a payment or payments to a minor beneficiary's parent or guardian or a person with whom the minor beneficiary resides; and
 - (ii) accept the receipt of that payee as a sufficient discharge;
- (f) make loans to beneficiaries:
 - (i) secured or unsecured;
 - (ii) on interest or interest free; and
 - (iii) on whatever terms they consider appropriate;
- (g) acquire or lease property for occupation, use or enjoyment by a beneficiary (whether alone or with some other person or persons) including the power to purchase by lump sum or periodical payments the right to have accommodation provided to a beneficiary by any organisation that provides accommodation for elderly, retired, sick or incapacitated persons, with or without health care, hospitalisation and nursing, or one or more of those services during the lifetime of the beneficiary and whether or not the amount or amounts paid will be recoverable on the beneficiary either ceasing to remain in the accommodation or on the beneficiary's death;
- (h) do any one or more of the following:
 - (i) concur in any scheme or arrangement involving or affecting the shares, securities, control, property or undertaking of;
 - (ii) vote in; or
 - (iii) apply for and accept directorship ofany company or corporation in which my estate is or may become interested or concerned;
- (i) apply for, accept or take up securities of any description or denomination, bonus shares or other rights or benefits made available by a company or corporation or units in a unit trust in which my estate is or may become interested or concerned;
- (j) borrow money, either with or without giving security, and enter into any mortgage, charge, bill of sale, lien or security over any part of my estate; and money borrowed is to be treated as part of my estate or trust property, as the case may be;
- (k) lease any part of the real or personal property in my estate:
 - (i) for the periods and upon and subject to the covenants and conditions which my executor or my trustee think fit; and
 - (ii) either with or without provisions for renewal or otherwise;
- (l) accept surrenders of leases or tenancies of my estate or any part of it;
- (m) maintain, repair, improve, develop, alter, renovate, pull down, erect or re-erect any part of my estate;
- (n) maintain, take out or participate in any one or more of the following:

- (i) an insurance policy against risks affecting my estate;
 - (ii) a life insurance policy in respect of any person;
 - (iii) a policy or contract of health or accident insurance or benefit in respect of any person;
 - (iv) a friendly society, trade union or association of employees benefit scheme in respect of any person;
 - (v) a superannuation or pension scheme in relation to any person; or
 - (vi) a funeral benefit or payment scheme in relation to any person;
- (o) without the consent of any beneficiary, partition or appropriate any part of the real or personal property of the estate in or towards the satisfaction of a legacy or a share of any person or persons in my estate, and in doing so the following provisions apply:
- (i) the value of any such property is that agreed by those of my beneficiaries affected or, if my executor or trustee is satisfied that no value can be agreed in this way, the value is that determined by an independent valuer appointed by my executor or trustee for the purpose;
 - (ii) my executor and my trustee need not take into account any differences in value of particular property to particular beneficiaries other than the value of the property as decided in sub-clause (i);
- (p) determine (in the event of my executor or my trustee disposing of or being deemed to have disposed of property) from which part or parts of the capital or income of my estate they will pay any income tax liability flowing from the disposal or deemed disposal; and for that purpose they may determine what is capital and what is income, but I express the wish that, if it seems appropriate to my executor or my trustee to do so, the proceeds of such a disposal be resorted to in the first instance;
- (q) identify, segregate into separate income accounts and allocate separately different sources and types of income, and record this in the books of account;
- (r) pay out of my estate capital gains tax (CGT) for which my executor or trustee become liable. If:
- (i) a post CGT asset is distributed in specie to a beneficiary who is a resident of Australia;
 - (ii) my executor and trustee are not liable to pay CGT in respect of the post CGT asset distributed to the beneficiary; and
 - (iii) the cost base to the beneficiary on acquisition of the post CGT asset is less than its market value at the date of distribution (reduced cost base), then my executor or trustee must pay the beneficiary an additional amount from my estate equal to the capital gains tax liability which would have arisen if my executor or my trustee had sold the post CGT asset so distributed;
- (s) with the consent of the recipient beneficiary and subject to the CGT provisions set out in the previous sub-clause of this clause, appropriate in full or partial

satisfaction of a legacy or share of residue or of my estate, any asset of my estate not specifically gifted to that beneficiary at the value acceptable to my executor or my trustee or at an independent valuation without the necessity to obtain the consent of any other beneficiary. The exercise of this power will constitute a specific bequest by me of such asset to the beneficiary entitled in place of the legacy or share of residue or of my estate which it replaces;

- (t) carry on, either alone or in partnership with any person or persons, the whole or part of any trade or business in which I am engaged or interested at my death;
- (u) delegate a power or function, and execute a power of attorney or other instrument to make the delegation;
- (v) appoint and empower nominees to act and hold property for my executor or my trustee, and appoint a custodian or custodians of any property and documents (including documents relating to property) in my estate; and
- (w) for any reason, for instance to allow an early distribution of residue, set aside out of my estate a fund sufficient to meet all debts, charges and other liabilities of my estate. If, having discharged all such debts, charges and other liabilities a balance remains, that balance does not form part of the residue of my estate, but is to be distributed as if it were part of the residue.

4.2 I express the wish that my executor and my trustee make available and give to those of my beneficiaries who inherit any property all documents relevant to that property or the assessment of tax relating to that property.

5. Disposal of my Body

I direct that my body be cremated and my ashes buried at the Great Barrier Reef.

6. Interpretation

6.1 In this will the following rules apply unless the context otherwise requires:

- (a) words denoting the singular include the plural and vice versa;
- (b) words denoting persons include bodies corporate and vice versa;
- (c) headings are for convenience and do not affect interpretation; and
- (d) words denoting any gender include all genders.

6.2 Where:

- (a) one or more persons have died; or
- (b) a person has died and one or more deaths are presumed; or
- (c) two or more deaths are presumed; and

in any of those cases, the order of deaths, whether proved or presumed, is uncertain, this will is to be construed as if the deaths, whether proved or presumed, had taken place in the following manner;

- (i) first, the oldest;
- (ii) then, after a period of 1 day, the second oldest;
- (iii) then, after a period of 1 day, the third oldest; and so on to the youngest.

6.3 Where any beneficial disposition is made to a person who does not survive me by 30 days the disposition is treated as if that person had died before me.

- 6.4 In this will, any gift which depends on the beneficiary surviving me by a specified period or attaining a specified age is contingent and does not vest in the beneficiary unless and until he or she has survived the specified period or attained the specified age; and
- 6.5 Income produced by any gift between my death and vesting of the gift accumulates to the gift.
- 6.6 The expressions “executor” and “trustee” means the person or persons or corporation names or referred to in this my will, and includes every person or corporation acting as my executor or trustee from time to time.
- 6.7 Any gift to a person who is named as my executor or my trustee is not dependant on that person acting as my trustee or executor.

7. Professional Charges

- 7.1 If my executor or my trustee practices a profession, he or she is entitled to be paid all usual and reasonable professional fees for work done by that person or his or her firm on the same basis as if he or she were not my executor or trustee but employed to act on behalf of my trustee.
- 7.2 My executor and my trustee or any of them may, in addition to accepting any gift given to them in this will, apply to the court for commission for their pains and trouble.

Dated the _____ day of _____ 20____

Testator

Signed by the Testator in the presence of both of us being present at the same time, and we attest the signature of the Testator in the presence of the Testator and of each other:

Witness Signature

Witness Signature

Witness Name

Witness Name

Witness Occupation

Witness Occupation

Witness Residence

Witness Residence



IMPORTANT:

This page and the next page are essential instructions to you on how to deal with your will document.

These pages are NOT part of your will and should NOT be stapled to your will.

Signing and Storing Your Will

Now that you have received your will document, we recommend that you do the following;

1. Print one copy of the will on good-quality, white, A4 sized paper. Ordinary 80 gsm photocopying paper is fine.
2. Clip the pages of the will together temporarily with a paper clip, or fold-back clip.
3. You then need to assemble two witnesses who are to watch you sign your will and to both also sign as witnesses. Neither of the witnesses should stand to benefit in any way from your will. None should be a beneficiary or even a relative of a beneficiary. If, for example your will makes provision for your sister, then one of your sister's children should not be a witness. Someone who is to be a trustee, but who will not take any personal benefit under your will, may be a witness.
4. It is very important that you and your two witnesses are all present during the signing and witnessing of your will, and that all three of you are paying attention to what is happening throughout the whole process. Your will will not be validly signed if you do not follow this process. If, for example, one of you has to leave the room, or to attend to a child or to take a phone call, you should stop the process and only carry on once all three of you are paying full attention. If something happens part way through the signing that causes you to postpone, the best course of action is to destroy the partly signed will and to print a new copy of the will. Then start the signing again later when you and both of the witnesses are present, and able to pay attention throughout the process.
5. You should be the first person to sign. Both witnesses must watch you do so. Sign the will where it is indicated for you to do so at the end. Then initial each other page, at the foot of the page. The cover sheet does not have to be signed or initialled, but if you accidentally initial the cover sheet, it is not a problem.
6. Then the first witness should sign where it is indicated for a witness to sign, and the witness should print his or her name, occupation and place of residence, and then initial all other pages. Both you and the second witness must watch the first witness sign and initial.
7. Then the second witness should repeat the process that was followed by the first witness. Again, both you and the first witness must watch while the second witness signs and initials.

8. Signature and witnessing should look like the following;

C W Smith i.e., your signature

Testator

Signed by the Testator in the presence of both of us being present at the same time, and we attest the signature of the Testator in the presence of the Testator and of each other:

Celia Clare Williams i.e., a normal signature

Witness signature

D V Harris

Witness signature

Celia Clare Williams i.e., printed name

Witness name

David Vernon Harris

Witness name

Registered Nurse

Witness occupation

Teacher

Witness occupation

Sydney

Witness town of residence

Sydney

Witness town of residence

9. Insert the date where there is provision for it to be inserted, before the place for signing.
10. Take as many photocopies of your signed will as you think that you will need. You may need a copy to give to your trustees. Many people choose not to give anyone a copy to avoid confusion if you later change your will and then do not give a copy of the changed will to the person to whom you gave the first copy.
11. Staple the will together in the top left hand corner.
12. Place the signed original of the will in an envelope or file cover, and put it in a safe place. Remember, that this will may be required many years later. You should do whatever is necessary to protect the document from decay and damage.
13. Do not attach anything to your will. Don't pin, staple, glue or even use a paper clip to attach anything to your will. Do not punch any holes in it. If you do any of those things, you will make it difficult for your executors and trustees to obtain court authority to administer your estate after your death.

These instructions were last updated on 25 November 2016.

This page is NOT part of your will and should NOT be stapled to your will.