**YOUR WILL AND ESTATE PLAN**

|  |  |  |
| --- | --- | --- |
| **QUESTIONS** | **IN AUSTRALIA** | **IN PHILIPPINES** |
| Your home State / Province |  |  |
| Do you have existing Will? |  |  |
| Real estate property you own |  |  |
| Personal assets you own  Eg bank accounts, shares, car |  |  |
| Private Company share, director?  Family Trust beneficiary, trustee? |  |  |
| Loans / Debts owed **to** you  By whom? In writing? Terms? |  |  |
| Liabilities, debts **you** owe  Eg mortgage, personal loans, credit cards etc |  |  |
| Spouse – wife, de facto |  |  |
| Children and their age(s) |  |  |
| Your executor and alternative |  |  |
| Guardian of kids etc |  |  |
| Your death wishes  Eg funeral, cremation, organ donor, back to Australia etc |  |  |
| Specific Gifts  Eg money, car, house, RSL, charity |  |  |
| General / Residuary gifts  Balance of estate  Eg all to wife, then to kids etc |  |  |
| Power of Attorney  General / enduring / Special  Financial, Medical, Guardian |  |  |
| Superannuation Benefits  Fund name, receive pension? |  |  |
| Life Insurance policy?  Who is beneficiary? |  |  |
| Digital assets  Login facebook, bank, email |  |  |

## GENERAL NOTES ON WILLS

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**IF THERE IS NO WILL**Dying without having made a valid will is also known as dying intestate. It is a common belief that if you die without a will your property is taken by the government.  This is not correct, however legislation in Philippines and each State in Australia sets out a system for dealing with your estate. If you die without a Will and have assets in Australia, a close relative will usually apply to the Supreme Court for a grant/order for Letters of Administration to give them legal power to deal with the assets, usually in accordance with the applicable State intestacy formula (and which differs from State to State).

This may create major headaches for those left to clean up after you. And it may take a long time, perhaps years, not to mention possibly large legal or other bills, for your assets to be released and distributed. Getting your affairs in order gives peace of mind as well as expediting estate administration.

You should be aware of Philippines inheritance law and tax, which is not covered here, and applies according to many variables such as the existence of any spouse and/or children, whether you are citizen or alien, residence etc.

And you should be aware that certain assets may not necessarily form part of your estate, ie they may have to be distributed according to different laws, eg where you own property jointly (eg with wife) or superannuation accounts.

**BEFORE DOING A WILL**

You need to consider what assets and liabilities / debts you have and where they are located – it is best to draw up a list (eg bank account in Philippines, property in NSW, mortgage in NSW etc). You should also make a list of where any important documents are stored, eg property title deeds, company share certificates, trust deeds, superannuation documents, birth/marriage etc.

Whomever you appoint as executor will then get a court order necessary to deal with those assets, to sell or distribute, to reinvest etc. according to your Will and / or the relevant law (ie where the asset or liability is located). A lawyer can assist in this process. IT IS A VERY IMPORTANT DECISION.

**Who needs a Will?** You generally need to do a Will if you own assets and:

* are in a domestic (previously known as a de facto or same sex) relationship and you want your partner to inherit anything
* have children and you want to make arrangements for someone of your choice to care for them should you die (although your wishes may not take effect if the person you choose is not the appropriate person to care for the children)
* want to make special gifts to people from your possessions, whether they are family members or not
* want part or all your estate to go outside the family, such as charities.

**MAKING A WILL**

You can buy will kits from a number of sources, hire a lawyer to draft a Will for you or do it yourself, eg using the proforma provided, which has been designed to comply as far as possible with both Filipino and Australian State laws (which generally provide for overseas Wills to be valid in Australia provided the relevant formalities are observed). Wills made under Australian law can also be valid in the Philippines. All Australian States now recognise Wills made under the International Convention (Washington USA 1973).

You should at least consider doing a simple Australian will – it certainly can be recognised under Philippine law but the process can be long and difficult.

If you are making a will it is important to make sure it is done properly.  It can be very stressful for those close to you if your will does not do what you intended - remember, you will not be around to explain what your intentions were. Another note details some of the broader principles of estate planning.

You should get legal advice to make sure that your will properly expresses your wishes – in particular you should get a review from a Filipino lawyer who may well be the notary who formalises the Will under Philippines law.

Your money, property, possessions and other assets are referred to as your estate. The people you choose to inherit your money or other gifts from your estate are known as the beneficiaries of your Will.

When making a will, it is common to name someone as the person you want to handle things for you after your death.  This person is called the executor.

The executor of your estate is usually your partner, someone in the family, or another person you know well and can trust. Sometimes lawyers may offer to be the executor of your estate. They will charge for their work, as do State Trustees if appointed. These costs are paid out of money in your estate.

When you die, your debts become debts of your estate. The debts can be paid from money in the estate and if necessary, property can be sold in order to pay the debts. It is not your family's responsibility to pay your debts after your death. Debts of your estate must be paid before beneficiaries can claim their inheritances under the Will. Some inheritance tax may also be payable.

Funeral costs are generally paid from your estate.  If you die without enough money to pay for the funeral, then the person who arranged the funeral pays.

Do a draft first, and once it is settled to your satisfaction, go to a Notary office to execute the Will (this is the preferable way) or arrange execution yourself if that is not necessary eg if you only have Australian assets and there are no issues under Philippine law, in which case two not three witnesses will do.

**EXECUTING A WILL**

Ensure that you read and understand the formal requirements for execution of the Will, namely the following:

* Need for three independent adult witnesses who are in the same room as the Testator and the Notary at the same time. They must have Philippines domicile, which should include persons having an Alien Certificate of Residency (ACR).
* That no witness is under 18 years of age.
* No witness is a beneficiary of the Will or the spouse of a beneficiary.
* That all three persons (the Testator and the witnesses) use the same pen – preferably a BLUE ink pen.
* That the Testator dates the Will by filling in the day of the month and the month in the blanks appearing in the “IN WITNESS whereof I have executed this my Will .....” at the end of the document.
* That the Testator signs at the right of the brackets of the execution clause at the end of the document which begins with the “Signed by the Testator (your full name should be here) …. ” sentence with your normal signature just as you sign a cheque.
* That the Testator and the three witnesses sign in the left margin of each of the pages of the Will, ie sideways but not on the print!
* That the three witnesses print their names in block letters, print their address, and print their occupations beneath their signatures on the page headed “Attestation Clause” below the execution clause.
* That no paper clips or staples are **attached** to the Will document (because it raises suspicion by the Probate Office of the Supreme Court of a missing, once attached, Codicil to the Will).

You should also be aware of the advantages of executing a Power of Attorney and Medical Power of Attorney under Australian and/or Philippine law.

If you require any additional information contact a qualified legal practitioner.

**IMMEDIATELY AFTER** SIGNING THE WILL

* Make photocopies of the signed Will and give them to a lawyer, notary, the executor and anyone who should have a copy. It is best to keep copies of your Will to a minimum, but if you do make further copies, write **‘COPY’** on each page of any copy of the Will.
* Do not attach anything to the original Will, even by paperclips, as this may place doubt on the contents of the Will. Do **not** put any staples in the Will **apart from those with which have bound its pages**.
* The original Will should be kept safe, either with a lawyer or firm of lawyers, in your bank safety deposit box, with the Registrar of Probates of the State Supreme Court or with the executor or close and trusted family members. Your branch may even provide this facility in future.
* Note on the copy of the Will or the envelope in which it is contained:
  + Where the original of the Will is lodged. It is important that it can be easily found when needed;
  + The names, addresses and occupations of the witnesses; and
  + The date you signed the original Will.
  + Keep the copy in your filing cabinet with your important papers.
* Tell the executor where the original Will is kept, and when it was deposited there.
* You may wish to make a list of your assets to assist your executor(s), as stated above. If you do, keep the list with the copy Will, **not** the original. A list of this kind does not form part of the Will itself. This list should ideally refer to the acquisition date, cost and the nature and date of any capital improvements to enable your executor(s) to complete any necessary estate tax returns.
* Once your Will has been correctly signed - but NOT BEFORE - please (with a pencil) rule a line through each page of your OLD, revoked Will, and write on it “Revoked by Will dated \_\_\_\_\_\_\_\_\_\_\_\_ presently held at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and file the old Will with the copy of the new Will”.

**LATER RECONSIDERING YOUR WILL**

If your circumstances change, or you decide you want to do things differently, you must change your will. Review the copy of your Will every two to three years or whenever a major event occurs in your family, you shift interstate or overseas, your assets or the taxation laws to make sure the Will still reflects your wishes.

If you marry, any Will you had before the marriage is generally revoked unless it specifically says that it was made with marriage in mind.

Getting divorced does not make a will invalid, but it may invalidate the gifts to divorced spouses and the divorced spouse may not be able to act as executor. For example, in Victoria any benefit conferred on a divorced spouse fails and may become part of the residuary estate. This matter is complex, especially if a divorced spouse is still named as an executor in the Will. The law regarding this area is not uniform throughout Australia. If you are contemplating a divorce, or have been divorced since making your Will, you should consult a lawyer, as divorce will not, generally, automatically revoke your existing Will.

In particular, you should consult a lawyer if:

* You change your name (for example, after marriage) or anybody in the Will changes his or hers;
* An executor dies or becomes unwilling to act as executor or becomes unsuitable due to age, ill health or any other reason;
* A beneficiary (that is, someone who has been left something in the Will) dies;
* You have specifically left any property which you subsequently sell or give away or put in trust or into a partnership or which changes its character. This applies particularly to specifically bequeathed shares in a company which restructures its share capital;
* You marry or divorce, or if you have children (including adopted or fostered children); or you enter or end a de facto relationship.
* If you wish to change your Will or revoke it or make a new Will without informing your husband or wife or de facto spouse, you may do so but you should consult a lawyer. Note, however, that where mutual wills have previously been made between two parties, special procedures may need to be taken to change one of such Wills.
* Do not add to or delete from the Will after execution. Consult a lawyer if you want to change or revoke your Will because even the simplest changes must be correctly done (by another document called a Codicil with two witnesses attesting in writing as with the original Will) or they may have serious consequences.

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# LAST WILL AND TESTAMENT

**KNOW ALL MEN BY THESE PRESENTS:**

I, \_\_\_\_name of testator\_\_\_\_\_ , (Filipino) (Australian) citizen, of legal age, (single) (married) to \_\_\_insert name of spouse if any\_\_\_, born on the \_\_\_\_th of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ , a resident of \_\_insert address\_\_ , being of sound and disposing mind and memory, and not acting under undue influence or intimidation from anyone, I hereby declare and proclaim this instrument to be my Last Will and Testament, in English, the language which I am well conversant. And I hereby declare that:

1. I hereby revoke, set aside and annul any and all of my other will or testamentary dispositions that I have previously made, executed, signed or published preceding this Last Will and Testament.
2. I desire that should I die, it is my wish to be (buried according to the rites of the Roman Catholic Church and interred at our family mausoleum in Manila) (cremated and the ashes buried in a place chosen by my wife if she is still alive and if not then in a place chosen by my executor). (I direct that my organs may be removed after my death and made available for medical or therapeutic purpose.)
3. **SPECIFIC GIFTS AND LEGACIES**I give the following specific gifts and legacies free of all duties:‑
   1. To my beloved wife \_\_\_\_\_name of wife\_\_\_\_, I give and bequeath the following property to wit:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ;
   2. To my sister the said \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ all my crystalware and the sum of five thousand dollars ($5,000)**.**
   3. To my son \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the State of Victoria, Australia, any motor vehicle registered in my name at the date of my death
   4. To my daughter \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of , \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in the State of Queensland, Australia, my diamond ring, my sewing machine and any animals owned by me at the date of my death.
   5. I release my son \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and if he dies before me his personal representative from the debt of one thousand dollars and any interest owing thereon to me at the date of my death.
   6. To my esteemed children, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_I give and bequeath the following properties to wit:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in equal shares;
   7. To my dear brother, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_I give and bequeath the following properties to wit:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   8. To my loyal assistant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_I give and bequeath the following property to wit:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
   9. To the Returned and Services League, Angeles City Sub-Branch, Philippines, care of Ponderosa Hotel, 1734 San Pablo St., Mt.View, Balibago, Angeles City 2009, Philippines, and the sum of (five thousand Australian dollars ($5,000AUD)) (one hundred thousand Philippine pesos (100,000PHP))and I direct that this gift be applied in such manner as the organisation deems fit and that acknowledgment and receipt by the Treasurer and either the President or the Vice President of the organisation for the time being shall be full and sufficient discharge to my trustee.
4. **RESIDUARY ESTATE**I give the residue of my real and personal estate to my trustee UPON TRUST to sell, call in and convert into money all such parts as shall not consist of ready money or of investments of the kind authorised below and to pay or provide for my just debts, funeral and testamentary expenses and all probate, estate and other duties or taxes payable in consequence of my death and after such payment or provision of any specific gifts made earlier in this my Will to stand possessed of the balance then remaining of my said real and personal estate upon the following trusts:‑
   1. to my wife the said \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for her sole use and benefit absolutely provided she survives me by more than thirty days but if she dies before obtaining a vesting interest in my estate then the interest to which she is entitled is to pass to such of my children who survive me by more than thirty days and if more than one in equal shares as tenants in common for their sole use and benefit absolutely.
   2. PROVIDED that if any of my children should die before obtaining a vesting interest in my estate then the interest to which they are entitled shall pass to their surviving children if any in equal shares as tenants in common (OR to my father \_\_\_\_\_\_\_\_\_\_\_\_ and my mother \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in equal shares).
   3. PROVIDED that if none of the beneficiaries or classes of beneficiaries named above survives me by more than thirty days or before obtaining a vesting interest in my estate then the interest to which those beneficiaries were entitled is to pass to such registered charitable institution or institutions as nominated by my Trustee.
5. **GUARDIANSHIP**I appoint G1 of address, Victoria, to be Guardian of any of my children who is under the age of eighteen years at the time of my death but if he shall be unwilling or unable to act as Guardian then I appoint G2 of address to be Guardian in his place.
6. **EXECUTOR AND TRUSTEE**  
   I hereby designate and appoint \_\_\_\_name of executor\_\_\_\_\_ the Executor of this my Will and Trustee of my Estate of this my Last Will and Testament. But if he should predecease me or die without having proved this my Will or be incapacitated, unwilling or unable to act or continue acting as my executor and trustee then I appoint, name and designate as my Executor and Trustee, I appoint \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as his substitute. I hereby direct that the executor and administrator of this my Last Will and Testament or his substitute need not present any bond.
7. **TRUSTEE POWERS**In the administration of my estate my Trustee shall have absolute discretion to:
   1. Postpone the realisation of any part or parts of my estate during such period as my Trustee shall think proper with the same full powers of management during such postponement as if my Trustee was absolute owner;
   2. Invest in the name or under the legal control of my Trustee any moneys liable to be invested under this my Will in any of the following investments:‑
      1. any securities authorised by law for the investment of trust funds and to retain the same together with any investments which I may hold at the time of my death for so long as my Trustee thinks proper as if the same were securities authorised by law for the investment of trust funds;
      2. fixed or cash management deposit in any bank in Australia or Philippines:
      3. debentures, notes, units, shares or stock in any company (not being a resources company) listed in the top 200 securities of the Australian Stock Exchange:
      4. real property within the States or Territories of Australia or the Provinces of the Philippines on which my Trustee shall have discretion to remove, add, repair or erect any building as permitted in the relevant by‑laws of any government instrumentality or local government authority.
   3. Carry on alone or in partnership any business in which I may be engaged in at the time of my death for so long as my Trustee may think fit so that:
      1. my Trustee may employ in the business my machinery and plant and such part of my real and personal estate as my Trustee may think fit and for any such purpose may apply capital moneys subject to the trusts of this Will or any codicil:
      2. my Trustee shall be fully indemnified out of my estate and every part of it in respect of every personal liability that my Trustee may incur in connection with any such business and my Trustee shall not be liable to my estate or to any person claiming any interest under this Will or any codicil for any loss that may be incurred in carrying on the business.
   4. Purchase any asset of my estate at a price agreed upon by all beneficiaries or if such agreement is not reached then at prices established by independent professional valuation.
   5. Apply from time to time the whole or any part of the capital or income of my estate to which any person under the age of eighteen years may be absolutely or contingently entitled for or towards the maintenance, education, advancement or benefit of that person and without obligation as to its application if paid directly to the legal guardian of such beneficiary.
8. **INTERPRETATION**
   1. “Executor” includes my legal personal representative, administrator and trustee for the time being, whether original or substituted.
   2. Where appropriate and where the context of this my Will permits words importing the singular number or the feminine gender shall also be read as importing the plural number or extending to males and vice versa.
   3. if any provision or part of this my Will is illegal or void for any reason, such provision or part is to be severed therefrom and the remainder of this my Will is to be interpreted and construed as if such provision or part was not contained herein.

IN WITNESS WHEREOF, I have executed this my Will by hereunto affixing my signature this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Philippines.

**SIGNED** by the testator the said )

\_\_\_\_\_\_name\_\_\_\_\_\_ )

as and for his last Will and Testament )

in the presence of all of us being )

present at the same time and attested )

by us in the presence of the testator )

and in the presence of each other ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## ATTESTATION CLAUSE

We, the undersigned attesting witnesses, do hereby affirm that the forgoing is the last Will and Testament of \_\_\_name of testator\_\_\_ and we certify that the testator executed this document while of sound mind and memory. That the testator signed this document in our presence, at the bottom of the last page and on the left hand margin of each and every page, and we, in turn, at the testator's behest have witnessed and signed the same in every page thereof, on the left margin, in the presence of the testator and of the notary public, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_ \_\_at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

SIGNATURE OF FIRST WITNESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FULL NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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OCCUPATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE OF SECOND WITNESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FULL NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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OCCUPATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE OF THIRD WITNESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FULL NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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OCCUPATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**JOINT ACKNOWLEDGMENT**

BEFORE ME, Notary Public for and in the city of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ personally appeared:

The testator \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with CTC No. \_\_\_\_\_\_\_\_\_\_

issued at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

First Witness, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with CTC No. \_\_\_\_\_\_\_\_\_\_

issued at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

Second Witness, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with CTC No. \_\_\_\_\_\_\_\_\_\_

issued at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

Third Witness, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with CTC No. \_\_\_\_\_\_\_\_\_\_

issued at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

all known to me to be the same persons who executed the foregoing Will, the first as testator and the last three as instrumental witnesses, and they respectively acknowledged to me that the same as their own free act and deed.  
  
This Last Will and Testament consists of \_\_\_\_\_ pages, including the page on which this acknowledgment is written, and has been signed on the left margin of each and every page thereof by the testator and his witnesses, and sealed with my notarial seal.  
  
IN WITNESS WHEREOF, I have hereunto set my hand the day, year, and place above written.

**Notary Public**                  

Doc. No. \_\_\_\_\_\_\_\_\_\_;  
Page No. \_\_\_\_\_\_\_\_\_\_;  
Book No. \_\_\_\_\_\_\_\_\_;  
Series of 20\_\_\_\_\_\_\_\_.

# **Death overseas**

While every care has been taken in preparing this information, neither the Australian Government nor its agents or employees, including any member of Australia's diplomatic and consular staff abroad, can accept liability for any injury, loss or damage arising in respect of any statement contained herein.

Each year almost 1000 Australians die overseas, usually through illness or accident. The death of a loved one is always distressing for family and friends. When the death occurs overseas, isolating and confusing circumstances can make it even more difficult.

The death of an Australian overseas can involve complications in organising the funeral, repatriation and other administrative arrangements and formalities. These processes can seem unfamiliar and unnecessarily demanding for the family or friends, whose priority is to bring their loved one home.

This information is provided to help you understand what consular staff in Australia and overseas can do to assist during this difficult time. It also provides guidance on what should be done when a relative or a travelling companion dies overseas.

When Australians travel abroad, they leave behind Australia's support systems, emergency service capabilities and medical facilities. The Australian Government will do what it can to help families and friends who have lost a loved one overseas. However, there are legal and practical limits to what can be done on their behalf. You should have realistic expectations about this.

## Insurance

If an Australian dies overseas and has travel insurance, this can significantly reduce the stress on relatives and loved ones. Insurance companies will generally provide advice on and take care of most of the arrangements and costs associated with a local funeral or the return of the remains to Australia.

Unfortunately, many Australians are still travelling overseas without adequate insurance cover. If an Australian dies overseas and is not covered by travel insurance, it becomes their family's responsibility to make the funeral arrangements and meet the costs involved, such as returning the remains to Australia.

We strongly recommend that all Australians travelling overseas take out travel insurance to cover the costs of hospitalisation and medical treatment should they become ill overseas, as well as costs incurred as a result of death.

## What we can do

We will do everything in our power to assist Australians who have lost a relative or friend overseas. We can often help with our knowledge and understanding of the local environment, but we must also work within the legal and administrative processes that apply in the host country.

We can:

* assist family and friends to understand the legal and administrative processes that apply in that country
* if required, liaise with representatives from the travel insurance company in both the overseas country and Australia
* provide a list of local funeral directors and lawyers
* liaise with the local funeral director so they are aware of Australian quarantine regulations
* provide guidance on obtaining translations if an English-speaking funeral service company is not available
* advise on the estimated cost of local burial, local cremation and transport of the remains back to Australia
* advise on the estimated cost of transporting any personal property back to Australia
* advise on how to transfer funds from Australia to meet any costs
* assist, if necessary, to identify the body
* assist with obtaining quarantine clearance for the return of the remains
* provide advice on managing media enquiries.

## What we cannot do

We cannot:

* recommend a funeral director or lawyer
* investigate the death of an Australian citizen
* pay burial or cremation expenses
* pay for or organise the return of the remains to Australia
* take responsibility for freighting personal effects
* make legal representations or become involved in legal issues surrounding the circumstances of the death or matters relating to a deceased estate
* pay any outstanding debts the deceased may have.

## What happens if a family member dies overseas?

Under international law, the nearest Australian mission (embassy, consulate or high commission) should always be notified of the death of an Australian citizen.

If a tour company or a friend notifies us of the death of an Australian overseas, we will always confirm the information with the local authorities in that country. We will then contact the State or Federal police who will visit the next-of-kin (or other contact specified in the deceased's passport application) to inform them of the death and provide our contact details to them. We can then provide the next-of-kin with further details about the death and advise the steps that need to be taken overseas.

It is important to understand that it is the responsibility of the funeral directors appointed overseas and in Australia to make repatriation and funeral arrangements on behalf of the next-of-kin and in accordance with their wishes.

While consular staff will make every effort to ensure that relatives do not first learn of a death via the media, this cannot always be prevented. If you hear of the death from a journalist, a tour operator or any other third party, you should contact the 24-hour Consular Emergency Centre on +61 2 6261 3305 (anywhere in the world) or 1300 555 135 (local call cost within Australia). We will seek to confirm the death with local authorities and provide advice to immediate family on how to best manage media enquiries.

## What should I do if my travelling companion dies?

It is important that the death of any Australian overseas is reported to an Australian mission. A directory of Australian overseas missions appears in the 'Getting Help Overseas' section of each edition of [Travel Smart: hints for Australian travellers](http://www.smartraveller.gov.au/hints/index.html). This booklet is issued with your passport and available online at [smartraveller.gov.au](http://smartraveller.gov.au/).

You will need the following details about the deceased if you report the death:

* Full name
* Date of birth
* Passport number, place and date of issue
* Next-of-kin
* Whether they were suffering from any communicable illness
* Whether they had travel insurance and if so, the name and contact details of the company.

If the death is unexpected and did not occur in a hospital, the local police will be involved. If you have not yet reported the death, the police should immediately notify the nearest Australian mission. The insurance company or consular staff in Australia can help to notify the next-of-kin in Australia.

## Does the next-of-kin have to travel to the country?

This is not necessary unless they wish to. The Australian mission in the country can assist by providing the next-of-kin with a list of local funeral directors, who will make the necessary funeral and repatriation arrangements on their behalf and in accordance with their wishes.

## What happens to the remains?

The next-of-kin will be consulted and the Australian mission and local funeral directors will make every effort to meet the deceased's or their relatives' wishes. However, in some countries and in certain circumstances, local regulations and conditions may require a quick decision on what to do with the remains.

## How long will it take for the remains to be returned to Australia?

This depends on local regulations and circumstances. In some cases, it can take up to two weeks. It may take longer if, for example, there is a need for an autopsy/coronial enquiry to determine the cause of death.

## What happens if the death occurs where there is no Australian diplomatic representation?

Not all countries have an Australian diplomatic or consular post but there is usually an Australian post in the region. Under a consular agreement between Australia and Canada there are a number of locations where Australians have access to consular services through embassies and high commissions managed by the Canadian Government. Informal arrangements also exist with other consular services, including those of the United Kingdom and the United States of America, to lend assistance to Australians in need.

Address and telephone numbers of Australian embassies, high commissions and consulates can be found at [www.dfat.gov.au/missions](http://www.dfat.gov.au/missions).

## Getting help overseas

### Consular services

The Department of Foreign Affairs and Trade (DFAT) provides assistance to Australians who find themselves in trouble overseas. This support is referred to as consular services. These services are provided through our headquarters in Canberra and through Australian embassies, high commissions and consulates.

The Australian Government will do what it can to help all Australians in difficulty overseas, however there are legal and practical limits to what can be done to assist travellers in other countries.

The Consular Services Charter sets out the standards of service all Australians can expect to receive from consular staff, including what they can and cannot do, and is available on [smartraveller.gov.au](http://smartraveller.gov.au/).

A directory of Australian overseas missions appears in the 'Getting Help Overseas' section of each edition of [*Travel Smart: hints for Australian travellers*](http://www.smartraveller.gov.au/hints/index.html). This booklet is issued with your passport and available online at [smartraveller.gov.au](http://smartraveller.gov.au/). Canadian missions providing consular assistance to Australians are also listed in the [*Travel Smart: hints for Australian travellers*](http://www.smartraveller.gov.au/hints/index.html) publication.

The 24-hour Consular Emergency Centre (CEC) in Canberra can be contacted for assistance from anywhere in the world on +61 2 6261 3305 or 1300 555 135 (local cost within Australia).

### Counselling services

Australians overseas who need counselling services can contact our Consular Emergency Centre on +61 2 6261 3305 to be transferred to a Lifeline Telephone Counsellor.

1. Take out travel insurance to cover hospital treatment, medical evacuation and any activities in which you plan to participate.
2. Before travelling overseas register your travel and contact details online at [smartraveller.gov.au](http://smartraveller.gov.au/) or at the local Australian embassy, high commission or consulate once you arrive so we can contact you in an emergency.
3. Check the latest travel advice for your destination at [smartraveller.gov.au](http://smartraveller.gov.au/) before you go. Subscribe to receive free email notification each time the advice is updated.