

Fact Sheet

Making your Will – Gifts to Charities

When making a Will, people often wish to leave a gift or part of their estate to a charity, charitable or not for profit organisation or foundation (the "Charity"), such as Gallipoli Medical Research Foundation.

What to consider

After providing for family members and dependents, there are several ways that you can support a charity or charitable organisation in your Will, including:

- **A residuary gift:** Once all other bequests and payments are distributed from your estate, you may leave what is left, the residuary estate, to the Charity;
- **A proportion of your estate:** You may specify a percentage or fraction of your estate to be gifted to the Charity; or
- **A specific gift:** A specific monetary amount or non-monetary item such as a share portfolio may be gifted to the Charity.

To ensure that the gift or bequest is valid, there are a number of key issues to address in your Will.

Making a valid gift or bequest

Use the proper legal name of the charity

It is vital to ensure that the institution that is to receive a gift in a Will is properly identified by its legal name and often that will be different to its common name. If this is not done, there is the possibility that the charity that was intended to benefit will not receive the bequest.

What you can do

Often the charitable or not-for-profit organisation will have suggested bequest wording on its website. Check the website or telephone the charity to ask for the correct name to be included in your Will. The ABN or ACN should also be included.

For example, to leave a gift to the Gallipoli Medical Research Foundation, you should use wording "I give devise and bequeath to Gallipoli Medical Research Foundation Ltd, ACN 077 750 693 ..."

What if the Charity changes its name or ceases to exist?

As a Will is often made several years before the Will maker dies, it is possible that the Charity may have changed its name, merged with another Charity or ceases to exist after the Will is made but before the Will is administered.

What you can do

A Will should be regularly reviewed and updated. It is also important that the Will contains special clauses which can assist in ensuring the gift is able to be fulfilled. For example, a clause can be included that empowers the Executor of the Will to direct the gift to another Charity that has the same or similar objectives to a Charity named in the Will which no longer exists.

What if you want the gift used by the Charity for a particular purpose?

Talk to the Charity to find out what is possible as there are often different programs or causes which can be supported.

Having said that, most Charities prefer a gift to be for "general purposes", so that the money can be applied where it is needed the most at the relevant time.

Considerations when gifting property

Sometimes people will leave a gift of property in their Will but there are a number of common problems that can arise causing uncertainty about the gift.

The gift is uncertain

If a person were to leave a piece of art by Artist X to the Charity but the person owned several pieces of art by the same artist, then there would be uncertainty about whether the Charity is entitled to a particular piece of art, all of the pieces of art or able to select one piece of art by Artist X from the estate.

What you can do

Be sure to identify exactly the piece of property that is being left to the Charity.

The gift is too specific

Often a person may leave a car or similar piece of property to the Charity, however, the person may have identified the car specifically as "The Toyota Camry Registration Plate 111-AAA owned by me" but the person may have upgraded their car several times since making their Will so that they no longer own the Toyota Camry identified in the Will.

What you can do

Identify the bequest as "The motor vehicle owned by me as at the time of my death which I use as my private form of transportation". That way, the bequest is specific but not uncertain.

The property is no longer owned by the Will maker

Using the same example of a gift of a motor vehicle owned at the date of death, if the Will maker has sold all motor vehicles at the time of passing, then the Charity will not be entitled to any part of the estate.

What you can do

If you are considering leaving a piece of property to the Charity that you may no longer own at the time of your passing, consider whether it is more appropriate to leave a different type of a gift, such as a proportion of your residuary estate.

Avoid ambiguity

Often the description of property can be ambiguous and create uncertainty. For example, if you were to leave your property "Lot xx on RP xx and known as Smith Station to ABC Charity" but Smith Station actually consists of 4 lots and not just the Lot described in the gift, then there is uncertainty as to your intentions.

What you can do

We recommend always having your Will prepared by a professional to ensure that it is properly prepared to carry out your wishes and is executed correctly. Thynne + Macartney offers an online service to help you prepare your Will and estate plan efficiently and cost effectively.

Your residuary estate

A properly drafted Will always includes a complete residuary clause to ensure all of the estate is dealt with.

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Superannuation

Some people may wish to leave some or all of their Superannuation benefits to the Charity. However, the trustee of your Superannuation fund can only pay the benefits to an identified group of beneficiaries, which does not include any charities.

What you can do

Subject to the governing rules of your Superannuation fund, you can direct the trustee of the fund to pay all or part of your superannuation benefits to your "legal personal representative" (the Executor of your Will) by signing a Binding Death Benefit Nomination.

Your Will can then provide a gift of the superannuation benefits to the Charity.

What if you already have a Will but you want to add a gift to a Charity?

You can make a Codicil, which is a short amendment to a Will. This is often cheaper and more efficient than making a new Will.

Start or update your Will

Visit our website to use our online drafting and information gathering tool.

You will be ahead in your planning and it will be the most cost effective way for you to ensure your loved ones and assets are protected in the future.

Thynne + Macartney

We're with you.

Contact us

For advice about making a Will or other estate planning, administration or litigation matters, please contact us.



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About us

Planning for the future can be daunting but it is the best course of action to make sure you protect the interests of your loved ones. With more than 50 years' experience across Thynne + Macartney's Wills & Estates team, we understand that every client's circumstances are unique and we will work with you to find the best options for securing your assets and your future wishes.

Offering the choice of in person (whether in our office, at your home or place of business) or an online service for your estate planning, when it is time to take care of the future of your loved ones, we're with you.

Fact sheet guide

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