

# Making changes to your will

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*Ed wrote in and asked: "I'd like to include a charity in my will, but don't want to have it rewritten at great cost. Is there an easy way to make changes to my will?"*

If you want to make a small or minor amendment to your existing Will, you can do so by making a Codicil. This is a short document that amends your Will, such as adding an extra clause leaving money to a charity.

You should seek legal advice about making a Codicil, to ensure that it does not invalidate your Will. You should also consider whether the change would be best made by making a new Will.

While on the subject of gifts in Wills, there are situations when making a gift can cause problems for the person receiving the gift. When you make a Will, you expect that the money you leave to people in your Will will benefit those people.

However, if someone in their Will has left money or property to a person who is bankrupt, rather than helping out that person, that

inheritance will instead go to the bankrupt person's creditors. This situation results from the Insolvency Act, which places a bankrupt person's property with the Official Assignee. In these circumstances the bankrupt would only get the remainder of any inheritance, if any is left, after all debts are paid.

A similar problem arises if the intended beneficiary under the will is incapable of managing money, perhaps due to an addiction to drugs or gambling. Money given to them will disappear on their addictions rather than provide any lasting support for them.

Obviously the above situations are ones that someone making a Will wants to avoid. There are ways a Will can be drafted to preserve the benefit of leaving an inheritance like this by shielding the assets from any creditors or by being wasted away.

The Insolvency Act also provides that any property held in trust for another person does not go to the Official Assignee in bankruptcy. So making inheritances in favour of certain trusts can act as a safeguard to ensuring an estate still benefits those the will-maker intended, despite the beneficiary's financial situation.



A "testamentary discretionary trust" is a way of doing this. This type of trust begins at the point of the will-maker's death. Property from the deceased person will pass to the trust, rather than to the individual (bankrupt)'s possession. The trust will hold and use that property only for the benefit of the person or persons named; it will ensure that property is not exposed to an individual beneficiary's creditors.

Discretionary trusts are also a good way of protecting beneficiaries against other situations, such as where a person (for example a child of the will-maker) is suffering from an addiction or mental illness. Putting the property in a testamentary discretionary trust

can ensure ongoing benefit for the person intended, rather than have the property potentially squandered through gambling, addiction or general inability to manage money.

Testamentary discretionary trusts can also be useful where the money is intended for a person in a high risk profession, (such as doctors, business people or directors of companies) who may, in the course of their work, become liable for large claims against them. However, testamentary discretionary trusts are complex. The particular clause in your Will and the trust deed detailing the terms of the trust need to be carefully drafted by your lawyer.

There also are other ways of protecting children or other

beneficiaries of your Will who are bankrupt or who have other issues such as addictions, including giving them a life interest (a right to live off the income from particular property during the person's life time) or setting up a trust for a person during their lifetime.

If you have a situation where you want to leave property to someone in your Will who will not, for whatever reason, be able to manage or receive the money themselves, you should take legal advice to ensure you protect those people as far as possible.

Column courtesy of Rainey Collins Lawyers, 0900 733 494. If you have a legal inquiry you would like discussed, email Alan: [aknowsley@raineycollins.co.nz](mailto:aknowsley@raineycollins.co.nz).