



Estate Planning in NSW

A Solicitor's Guide

What every NSW homeowner should know about wills, Powers of Attorney, and Enduring Guardianship

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Fred Kalouche & Associates

www.fklaw.com.au

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Who this guide is for

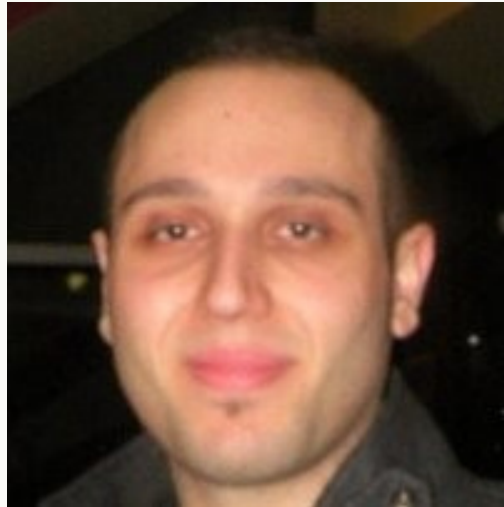
This guide is for NSW residents who want to understand the documents that make up a complete estate plan. It covers wills, Powers of Attorney, Enduring Guardianship, and what happens when these documents are missing or out of date.

You'll find this guide useful if:

- You're a NSW homeowner without a current will**
- You have a will but it was made before key life events (marriage, divorce, kids, property purchase)**
- You're worried about who would manage your affairs if you couldn't**
- You're in a blended family and want to understand your options**
- You're planning ahead and want to know what's involved**

This is general information only. For advice specific to your situation, book a free 15-minute Discovery Call — details on the last page.

About Fred Kalouche & Associates



Fred Kalouche

Principal Solicitor —
Wills & Estates

Fred is a NSW-admitted solicitor and is admitted to the High Court of Australia, which entitles him to practise in all Federal Courts. His practice focuses on Wills, Estates, and Conveyancing. The team at Fred Kalouche & Associates also includes Cristal Kalouche (Solicitor — Wills and Estates, Master of Applied Law) and Nadine Kalouche (Conveyancing and Practice Management). Every Discovery Call is conducted personally by Fred — not by a paralegal or intake person. You'll get NSW-specific advice from the same solicitor who'll draft your documents if you decide to proceed.

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[Fred Kalouche & Associates Reviews](#)

The 4 Documents That Make Up a Complete Estate Plan

Most NSW adults need all four. Some need more. Almost no one starts with all four in place.

Last Will and Testament

Sets out who inherits your assets and who manages your estate after death. Without one, NSW intestacy rules decide for you.

Power of Attorney

Allows a trusted person to manage your financial and legal affairs while you're alive but unable to do so yourself.

Enduring Guardianship

Lets a trusted person make medical, lifestyle, and accommodation decisions for you if you lose capacity.

Beneficiary Nominations

Direct your superannuation and life insurance to specific people. These often pass outside your will entirely.

Some situations also need testamentary trusts, business succession documents, or family provision strategies. We'll cover when those apply.

What a Last Will and Testament Does

A Last Will and Testament is the legal document that sets out:

- Who inherits your assets when you die (your beneficiaries)
- Who is responsible for administering your estate (your executor)
- Who looks after your minor children (your guardians)
- How your debts and final expenses are paid

Under the Succession Act 2006 (NSW), a will must meet specific requirements to be valid:

- Made in writing
- Signed by you (the testator) in the presence of two witnesses
- Both witnesses must be present at the same time
- Both witnesses must sign the will in your presence
- Witnesses must be over 18 and cannot be beneficiaries (or married to beneficiaries)

If your will doesn't meet these requirements, it may be invalid — and your estate may be distributed under NSW intestacy rules instead, which often produce results different from what you would have wanted. A will is also not a static document. It should be reviewed when significant life changes occur — marriage, divorce, the birth of a child, the purchase of property, or the start of a business.

*Not sure if your existing will meets these requirements?
A 15-minute Discovery Call will tell you. [Booking link on page 12.](#)*

When You Should Update Your Will

As a rule, review your will every 3-5 years and after any major life event.

Update your will when:

- You marry or enter a de facto relationship — under NSW law, marriage automatically revokes most existing wills
- You separate or divorce — divorce affects how a will operates but doesn't fully revoke it
- A new child is born or adopted
- A person named in your will dies, becomes incapacitated, or you no longer want them in that role
- You buy, sell, or significantly change real estate holdings
- You acquire a substantial asset (business, investment, inheritance)
- You become involved in a company, business partnership, or trust structure
- You wish to change who is excluded from your will
- Your existing will refers to assets you no longer own
- Tax laws or family circumstances have materially changed since your last will

If you haven't reviewed your will in the last 3 years, it's likely worth checking. Estate planning is one of those areas where small drafting errors or outdated provisions can have significant consequences for the people you care about.

What Happens If You Die Without a Will

When a person dies without a valid will, they are said to have died 'intestate'. NSW intestacy rules determine how their estate is distributed. The key features of NSW intestacy: The estate is distributed to a hierarchy of next-of-kin set out in Chapter 4 of the Succession Act 2006 (NSW). The order broadly follows: spouse, then children, then parents, then siblings, then more distant relatives. If you have a spouse and no children, your spouse generally inherits the entire estate. If you have a spouse and children together, your spouse generally still inherits the entire estate. If you have a spouse and children from a previous relationship, the distribution becomes more complex — your spouse receives a 'statutory legacy' (a fixed amount) plus personal effects, and the remainder is split between the spouse and the other children. A de facto partner generally has the same intestacy rights as a married spouse under NSW law. If you have no spouse, no children, and no living parents, your estate may pass to siblings, then nieces/nephews, then more distant relatives. If no eligible relatives exist, the estate eventually passes to the State of NSW. The administration process is also more complex without a will. The Supreme Court of NSW must grant Letters of Administration before assets can be distributed — this typically takes longer than probate of a will, and the family has no say in who is appointed administrator. The result of intestacy is often different from what the deceased would have wanted — particularly in blended families, when there are de facto relationships, or when there are estranged relatives who become entitled to a share of the estate.

When Wills Get Challenged or Contested

Two distinct things can happen to a will after death — and they're often confused. **CHALLENGING** a will means questioning whether the will itself is legally valid. Common grounds include:

- The testator lacked mental capacity at the time of signing
- The testator was unduly influenced by another person
- The will was not executed correctly (witnessing errors, etc.)
- The will is a forgery or fraudulent

A successful challenge can result in the will being declared invalid, with the estate then distributed under intestacy rules or a previous valid will.

CONTESTING a will means accepting the will is valid but arguing the distribution is unfair. Under section 57 of the Succession Act 2006 (NSW), certain 'eligible persons' can apply to the Supreme Court for a 'family provision order' — essentially, asking the court to redistribute part of the estate to them. Eligible persons include:

- A spouse of the deceased at the time of death
- A de facto partner of the deceased at the time of death
- A child of the deceased (including adult children)
- A former spouse, in some circumstances
- A grandchild who was wholly or partly dependent on the deceased
- A person who was a member of the deceased's household and was wholly or partly dependent on them

Family provision claims are common in NSW, particularly in blended families and where adult children feel inadequately provided for. The court considers a range of factors including the relationship, the size of the estate, the financial circumstances of the applicant, and any contributions they made to the deceased's welfare. Careful drafting — including reasons for any unequal distribution — can reduce the risk of successful family provision claims, but cannot eliminate it entirely.

Power of Attorney

A Power of Attorney is a legal document that lets you appoint someone (called your 'attorney') to manage your financial and legal affairs. There are two main types in NSW: **GENERAL POWER OF ATTORNEY** Operates only while you have legal capacity. Often used for short-term situations — for example, if you're travelling overseas and need someone to sign documents on your behalf. It automatically ends if you lose capacity. **ENDURING POWER OF ATTORNEY** Continues to operate even if you lose capacity. This is the version most people need as part of their estate plan, because the most common reason to need an attorney is the very situation where a General POA stops working — illness, dementia, accident. An Enduring Power of Attorney must be:

- Made in the form prescribed under the Powers of Attorney Act 2003 (NSW)
- Signed by you while you have capacity
- Witnessed by a 'prescribed witness' (such as a solicitor) who provides a certificate confirming you understood the document
- Accepted by your attorney(s) before they can act

Your attorney can do almost anything you can lawfully do yourself — pay bills, manage bank accounts, sell property, sign contracts. You can limit their powers in the document if you want. Choosing the right attorney is critical. They must be over 18, of sound mind, and someone you genuinely trust to act in your interests. Many people appoint their spouse, an adult child, or a sibling. You can revoke a Power of Attorney at any time while you have capacity. A registered POA must be revoked in writing through the Land Registry Service. A POA is automatically revoked on your death — at that point, your will and your executor take over.

Enduring Guardianship

An Enduring Guardianship Appointment (often shortened to 'Enduring Guardian' or 'Appointment of Enduring Guardian') is a separate document from a Power of Attorney. The key difference:

- A Power of Attorney covers FINANCIAL and LEGAL decisions
- An Enduring Guardianship covers MEDICAL, LIFESTYLE, and ACCOMMODATION decisions

You generally need both as part of a complete estate plan. An Enduring Guardian, appointed under the Guardianship Act 1987 (NSW), can make decisions about:

- Medical and dental treatment
- Where you live
- Who you live with
- What services you receive (in-home care, residential care)
- Other lifestyle and personal welfare matters

They cannot make decisions about your finances or property — that's what your attorney is for. An Enduring Guardian only has authority when you lose capacity. While you can make these decisions yourself, your guardian has no role. The document must be in the prescribed form, signed by you, signed by the guardian(s) accepting the role, and witnessed by an 'eligible witness' (such as a solicitor, justice of the peace, or registrar of the local court). If you don't have an Enduring Guardian and you lose capacity, your family generally has to apply to the NSW Civil and Administrative Tribunal (NCAT) for a guardianship order. This takes time, costs money, and the person appointed by NCAT may not be the person you would have chosen. Most people appoint the same person as both their attorney and their enduring guardian — typically a spouse, with an adult child as a backup. This isn't required but is common practice for simplicity.

Common Questions We Hear From NSW Clients

FAQ 1:

Q: How long does it take to put a complete estate plan in place?

A: For most clients, drafts are ready within 5 business days of engagement, with signing typically completed within 2 weeks. Urgent matters can be expedited if needed.

FAQ 2:

Q: What's the difference between a will and an estate plan?

A: A will is one document. An estate plan is a coordinated set of documents — typically a will, Power of Attorney, Enduring Guardianship, and beneficiary nominations — that work together to cover both during-lifetime incapacity and after-death distribution.

FAQ 3:

Q: Do I need a lawyer for a will, or can I use a DIY kit

A: NSW law doesn't require you to use a lawyer. However, DIY wills are the most common type of will challenged in court. Witnessing errors, beneficiary-witness conflicts, and ambiguous wording often render DIY wills partly or fully invalid.

FAQ 4:

Q: What's involved in updating an existing will?

A: Depending on the changes needed, we either prepare a codicil (a supplementary document) or draft an entirely new will that revokes the previous one. New wills are often simpler and clearer than codicils.

FAQ 5:

Q: I'm in a blended family — what should I be thinking about?

A: Blended families typically need more careful estate planning. Considerations include how to provide for both your current spouse and children from previous relationships, whether to use testamentary trusts, and how to reduce family provision claim risk. We'll walk you through the options.

Common Questions We Hear From NSW Clients

FAQ 6:

Q: What if I don't want to leave anything to a particular family member?

A: You generally have testamentary freedom in NSW, but excluded eligible persons (such as adult children) can apply to the court for family provision. Careful drafting and a clear written explanation of your reasoning can reduce the risk of a successful claim.

FAQ 7:

: How are your fees structured?

A: We work on fixed fees, agreed in writing before we start. The fee depends on complexity. After your free 15-minute Discovery Call, you'll receive a written fixed-fee quote.

FAQ 8:

Q: Can I do the consultation by phone or video?

A: Yes. We offer phone, Google Meet video, and in-person appointments. Most clients prefer video for the initial Discovery Call.

Next Step: A Free 15-Minute Discovery Call

If reading this guide has surfaced any questions about your specific situation, the next step is straightforward. Book a free, no-obligation 15-minute Discovery Call with Fred. We'll review what you have in place, identify any gaps under NSW law, and explain what a complete estate plan would look like for you. If you decide to engage us, you'll receive a fixed-fee quote in writing the same day. If you decide not to proceed, you'll leave with a clear understanding of where you stand — at no cost.

BOOK YOUR FREE 15-MINUTE CALL

www.fklaw.com.au

Your paragraph text

Prefer to call or email? Phone: (02) 8062 6300 Email: fred@fklaw.com.au

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