

# CODICIL FACT SHEET

## **What is a Codicil?**

A Codicil is a document that amends, rather than replaces, a previously executed Will.

## **So what can a Codicil do?**

Amendments made by a Codicil may only add or revoke a few small provisions of a properly executed Will. There is a point where you should not try to amend a Will by Codicil but rather tear up the Will and re-write it.

You may add or revoke a gift, if for example, an item is sold or destroyed in your lifetime.

You may usually change the age at which beneficiaries can take their gifts.

You may make any reasonably small alteration you deem necessary so things such as new directions to a particular item such as a safe deposit box or the address of real estate purchased after the Will you are amending was executed.

## **What should a Codicil not be used for?**

The list is pretty extensive so we will talk in generalities here. Any major alteration to a Will should really be handled by destroying the Will and starting afresh.

Here is a list - it is not exhaustive:

Changes to any trust deed or testamentary trust

Alterations to the bulk of the dispositions

Major changes to the line up of beneficiaries

If all or most of the gifts have been altered, destroyed or sold in your lifetime

If, on inspection, the Codicil will create any ambiguity

If you are at all uncomfortable about what you are doing

## **The Technicalities**

Each codicil must conform to the same legal requirements as the original Will, such as the signatures of the testator and two or three disinterested witnesses depending upon your state, province or country of residence.

There are other requirements specific to Codicils such as a precise reference to the Will being amended.

But it is essential that a witness to the execution of the codicil is not a beneficiary of the Will that is being changed or of the changes in the Codicil.

The Codicil must also make reference in very specific terms to the Will it is amending.

## **So what happens when a Codicil is produced along with a Will?**

When confronted with a testamentary document that was executed after the date of the original Will, a probate court may need to decipher whether the document is a Codicil, or a new Will. Generally, if the second document does not make a complete disposition of the testator's property, it will be presumed to be a Codicil. A prudent testator will avoid this problem by clearly labelling the document.

## **Mostly there are two types of Codicil.**

The first type of Codicil deals with situations where you might simply want to make some additions to your

Will such as adding a new item to the list of the estate, a new beneficiary when for example a child is born or correcting any number of oversights in the original document.

The second type is useful in situations where changes must be made such as the replacement of nominated, trustees, executors, personal representatives, guardians etc. Because of the need for clarity these forms are drafted to clearly revoke the original appointments and then replace them with new ones.

Exactly the same situation arises with gifts which must be altered to accommodate changing circumstances. The most common situation is that during your lifetime you move house but your Will still refers specifically to a property at 15 Smith Street even though you no longer live there or own it. The intention will always have been to leave the named beneficiary a house but the gift has a good chance of failing because the wrong property is now identified. Again the original gift needs to be revoked and a new one made to carry out what is intended. We provide a form that will accomplish this.

Other than a Codicil, the only other way to modify a Will is to write a new properly executed one and revoke all previous Wills.

### **What is a properly executed Will?**

A properly executed Will or Codicil must at least conform with the following checklist, this also applies to a Will.

### **HOW TO HAVE YOUR CODICIL WITNESSED AND SIGNED.**

- 1. You should review your WILL/CODICIL in the presence of your 2 or 3 witnesses (some states require 3 witnesses). All witnesses must see you sign your WILL/CODICIL, and also need to see each other sign as witnesses. This requires you and your witnesses to be present at the same time. It is best that all three of you use the same pen in order to reinforce that you were together at the same time.**
- 2. In front of them, you need to sign (not initial!) each page, at the end of the writing on that page, using your normal signature.**
- 3. Then go to the Attestation template. Sign and date your WILL/CODICIL using the current date.**
- 4. After you have signed and dated your WILL/CODICIL, the first witness must then sign. They must sign (not initial) at the end of the writing on each page and then on the Attestation template. Your witness should view every page so that they can confirm, if asked, that there were no changes made when you signed your WILL. They do not, however, need to specifically read the WILL/CODICIL or know what it says.**
- 5. The second witness then follows this same procedure and so on if there is a third. The witnesses should include their full names, occupations and addresses when signing so they can be located in the future if it becomes necessary for them to verify that you signed the WILL/CODICIL.**
- 6. You should confirm that each witness has signed where required. Do this while they are all still in the same room.**
- 7. Finally, make sure all pages of your WILL/CODICIL are stapled together and numbered.**