



## Preliminary Questionnaire

### Your Last Will and Testament

In order to prepare a Will for you we will require answers to the questions below from you.

#### 1 Personal details

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- (a) What is your full name, address and occupation?

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- (b) Are you known by any other name?

*[It may be necessary to use more than one name in the will, especially if land or other assets are recorded under different names. The will-maker should sign the will using only one name. The inclusion of an occupation or status is desirable, especially if the will-maker has a common name, although it is not essential.]*

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- (c) What is your present marital status?

*[Inquire as to will-maker's marital status (single, married, civil union, de facto relationship, and whether living together, separated or whether the marriage or union has been dissolved). If applicable ask the name of the husband/wife/partner. The effects of the Property (Relationships) Act 1976 should be kept firmly in mind and depending on the will-maker it may be appropriate to explain the effects of this legislation at this point.]*

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- (d) What is the name of your husband/wife/partner?

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(e) Do you have any children?

*[Obtain details as to the will-maker's child(ren): their names; the name of the other parent if not the present spouse/partner; the child(ren)'s date(s) of birth; addresses; whether any child has died leaving children of their own (if so give details); whether there are any adopted children or step-children; whether there are any ex-nuptial children (if so, are such children to share in or be excluded from any class gift to children?); any provisions for the possibility of future children; whether any other persons are dependent on the will-maker.]*

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## **2 Appointment of executor(s) and trustee(s)**

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(a) State the full names, addresses and occupations of person or persons you wish to name as executor(s) and trustee(s):

*[Except in cases where the whole estate is gifted to an individual named executor and there are no trusts to be carried out, it is usual to appoint the same persons as both executors and trustees and to refer to such persons as "my trustee(s)".]*

*[An executor is the person or persons who will prove the will, arrange burial or cremation, get in the assets and pay the debts, taxes, funeral and administration expenses. Once such administration is complete there is then a transition from the role of executor to the role of trustee. More than one executor and trustee can be appointed which allows for a combination of both family and professional executors and trustees. The difference between an executor and trustee should, as appropriate, be explained to the will-maker.]*

If trustees are to be appointed who are not the executors, please provide their full names, addresses and occupations. *[If a private executor and trustee has been named, is he or she likely to survive the will-maker? Is he or she capable in business?]*

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- (b) If trustees are to be appointed who are not the executors, please provide their full names, addresses and occupations.

*[Where a single executor is desired, it should be pointed out that, if such a person assumes the post, and dies, his or her own executor succeeds to the executorship (although generally not to the trusteeship). Are private trustees to be remunerated? If so, how? By legacy? By annuity? By a commission on capital and income? Is a solicitor or accountant trustee to have power to charge profit costs, and if so, only for professional work or for time and trouble as a trustee?]*

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### **3 Appointment of testamentary guardian(s)**

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- (a) Do you wish to appoint testamentary guardian(s) for your children under the age of 18 years?

*[If the will-maker wishes to appoint a person or persons to be guardian(s), check whether this has been discussed with the proposed appointee(s) - otherwise recommend that this occur. This, at the very least, ensures that any person(s) proposed are aware and have agreed, are able and/or are willing, to take up the potential appointment.]*

If so, please provide their **full** names, addresses and occupations.

*[Again, obtain the full name, address and occupation of the proposed guardian(s).]*

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### **4 Funeral directions and other related wishes**

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- (a) Do you have any special funeral directions?

*[Often special arrangements are best expressed as "wishes" as strict compliance with a direction may prove possible but totally impractical.]*

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(b) Do you wish to be buried or cremated?

*[Find out the will-maker's wishes regarding: burial or cremation; the disposal of ashes; the use of his or her organs for therapeutic or transplant purposes; any other matters required to be attended to (for example, provision for the upkeep of a grave); the desire to make a living will (advance directive).]*

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## **5 Assets and liabilities**

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*[Obtain a full list of present assets and liabilities- including any intellectual property- with the approximate values of each and where they are located. Are any assets owned jointly with the spouse/partner or some other person? Are assets mortgaged, charged or encumbered in any way? If so, is there any insurance or other provision for repayment of the same in the event of the will-maker's death? Some questionnaires ask the will-maker to list property as separate or relationship property at this stage. It is vital to make sure that the will-maker does in fact own the property or the interest in property he or she intends to gift. It is not always safe to take at face value the information given by the will-maker. Further questions of the will-maker's accountant may be appropriate. A title search might also be undertaken.]*

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## **6 Interests in Maori land**

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*[Obtain a full list of any interests in Maori land, Maori incorporation shares, any leasehold interests in a registered lease over Maori land and money held by the Maori Trustee derived from Maori land. There are legal restrictions with respect to whom these interests may be gifted.]*

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**7 Domain names, websites, email accounts and social media accounts**

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*[Seek a full list of "digital assets". Recommend that the will-maker consider access arrangements and the nomination of "legacy" contact options (as appropriate and where available).]*

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**8 Financial obligations and debts (for example, mortgage)**

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*[List any not already included above.]*

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**9 Specific gifts or legacies**

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- (a) Do you wish to make any specific gifts (legacies) of money or chattels?

*[Always consider the alternative of leaving a share of residue when legacies are large, as the remaining beneficiaries may be advantaged/disadvantaged by any substantial change in the will-maker's assets at the time of death.]*

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- (b) If you wish to make any specific gifts (legacies) of money or chattels please give a full list of names, addresses and occupations of the recipients and full details of what you wish to leave them:

*[It is important that items are clearly and specifically given to avoid later family arguments. Whenever there is a gift of an item that is capable of containing other items, then it is important to consider whether the contents of the principal item are to be included or excluded. Conditional gifts are generally better avoided. The law relating to types and construction of gifts is fully discussed elsewhere.]*

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- (c) Who do you wish to receive any specific gifts or legacies in the event that the original person(s) who were to receive the said gift(s) or legacies predecease(s) you? Please provide us with the name(s), address(es), and occupation(s) of your substitute beneficiary or beneficiaries.

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- (d) Do you wish to create a life interest?

*[A "life interest" is a gift to a person of the use of the will-maker's estate or part of it during his or her lifetime only; afterwards the capital is to be given to some other person(s). An interest*

which could be for life, but which may terminate on the occurrence of SOME other event; for example, remarriage is referred to as a "limited interest".]

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- (e) If you wish to create a life interest give the full name, address and occupation of the person(s). Give a breakdown of parts of your estate that are to be left as a life interest.

*[A life interest in chattels is generally to be avoided. It is irritating to the life tenant and difficult for the trustee who, unless the clause is carefully worded, is given the duty of keeping track of assets, which of their nature wear out, need replacement, and are often given away, or may no longer be needed if the life tenant moves to a smaller property.]*

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- (f) Who do you wish to receive the residue of your estate? Please provide us with the name(s), address(es) and occupation(s) of the individual(s) concerned.

*[The "residue" of the will-maker's estate is the rest of his or her estate after the debts and legacies have been paid and provision made for any life or limited interest.]*

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- (g) Who do you wish to receive the residue of your estate in the event that the original recipient(s) of the said residue predecease you? Please provide us with the name(s), address(es) and occupation(s) of the individual(s) concerned.

- (h) Do you have any power of appointment under any trust or estate, or power to appoint directors, which can be exercised under your will?

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If so, who do you wish to be granted the said power of appointment when you die? Please provide us with the name(s), address(es) and occupation(s) of the individual(s) concerned.

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Who do you wish to appoint as the substitute trustee(s) of your trust in the event of your death?  
Please provide us with the name(s), address(es) and occupation(s) of the individual(s) concerned.

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(i) Have you made any promise, whether enforceable or not, to leave property by will?

*[In some circumstances, such promises can be enforced against the will-maker's estate if he or she does not fulfil them. The consequences of/he Law Reform (Testamentary Promises) Act 1949 should be explained.]*

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U) If you are omitting any of your family from provision in the will, please indicate the reasons, as family omitted may apply to the court for provision from the estate.

*[The consequences of the Family Protection Act 1955 should be explained. It is good practice to make a note of the will-maker's reasons for preferring a beneficiary or not making provision for an 'eligible claimant', as applicable. This may be done by obtaining a note or letter from the will-maker to be kept with the will, or the will-drafter recording these reasons by way of file note or on the will instruction form and placed on the client's file.]*

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(k) Are there any other special provisions you wish to make?

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