

Do I have the right to request a copy of a Will?

Currently, there is no specific legislative provision in South Australia which grants access to a copy of a deceased person's Will. However, from 1 January 2025, this will change.

Section 48 of the Succession Act 2023 (SA), which commences on 1 January 2025 provides specific provision for the circumstances in which a person is entitled to a copy of a deceased person's Will.

These categories include:
(a) a person named or referred to in the Will (whether as a beneficiary or not);
(b) a person named or referred to in an earlier will as a beneficiary of the deceased person;
(c) the surviving spouse, domestic partner or child or stepchild of the deceased person;
(d) a former spouse or domestic partner of the deceased;
(e) a parent or guardian of the deceased person;
(f) a person who would be entitled to a share of the estate of the deceased person if the deceased person had died intestate (that is, without a valid will);
(g) a parent or guardian of a minor referred to in the will or who would be entitled to a share of the estate of the testator if the testator had died intestate; or
(h) a person committed with the management of the deceased person's estate under the

Guardianship and Administration Act 1993 (SA) immediately before the death of the deceased person.

This section creates an active obligation on any person (or organisation, such as a law firm) to allow people in the above categories to either inspect a Will, be given copies of a Will (or both).

Of course, in order for a copy of a Will to be provided, there must be evidence of the Will maker's death.

The definition of a "Will" for the purposes of this section is broad, and includes the following:

- All earlier Wills (which have been revoked);
- Any document purporting to be a Will, such as an informal Will; and
- Part of a formal Will.

Section 48(3) goes on to extend the categories even further to allow "any person (including a creditor) who has or may have a claim at law or in equity against the estate of a deceased person" to make an application to the Court for an Order allowing them to receive a copy of the Will. However, in order to succeed in a section 48(3) application, the person must demonstrate to the Court that:

(a) They have a proper interest in the matter; and
(b) That the inspection of the Will would be appropriate in the circumstances.

This means that any person who is able to satisfy the Court that they have a proper interest in an estate (for example, a lender) would be able to obtain a copy of the deceased person's Will in order to enforce the debt recovery against the executor named in the Will.

The impacts of this new legislation are far-reaching and could have implications on existing Wills.

How can Andersons help?

If you have an existing Will and would like to discuss making any updates to your Will, or if you have recently lost a friend or family member and require assistance in obtaining a copy of their Will, please contact Andersons on 8238 6666 or email enquiry@andersons.com.au

Please note: The contents of this article applies to South Australian law only.