



What's an "Informal Will"?

An informal Will is any document expressing testamentary intention, that is, a person's final wishes but which fails to meet formal legal requirements. These informal Wills could be anything from handwritten notes, text messages, smartphone memos, emails, audio or video recordings, to even draft documents not properly executed. The common informal document we see as solicitors, is a Will that was correctly drafted, but the testator later made handwritten notes over the top of it, making it informal. Another example is an additional page later written by the deceased that they intend as a document that extends to their Will, known as a 'codicil', that was not correctly drafted, executed or witnessed. By that very nature, the document is informal. The original Will may still be a completely valid document but the codicil that the deceased intended to add further information to the Will, is not formal. This may still be considered a testamentary document and therefore, a complex Court application is required.

Legal Criteria for Valid Wills in South Australia

Under the Succession Act 2023 (SA), a valid Will must:

1. Be in writing;
2. Be signed at the end by the testator (or by someone in their presence and direction);
3. Clearly show the testator intended the document to be effective as a Will;

4. Be signed by the testator in the presence of two or more witnesses, and those witnesses must sign in the testator's presence.

If these requirements aren't met, the document may not be treated as a valid Will, unless the Court decides otherwise.

Can an Informal Will Be Recognised in South Australia?

Yes, though the process is far more complex. To admit an informal Will to probate, you must apply to the Supreme Court of South Australia by way of an Originating Application, to obtain an order of the Court that the deceased indeed intended that document to reflect their wishes.

Summarising Section 11(2) of the Succession Act 2023, the Court must be satisfied that:

1. The document expresses the deceased's testamentary intentions, being that it conveys how they wanted their assets distributed and who they want to administer the estate as executor.
2. The deceased intended the document to act as their Will.

The admission of such a document is guided by Rule 353.5 of the Uniform Civil Rules 2020.

These are strict requirements. To support them, applicants will need to present effective and compelling evidence to the court that the document or documents, were intended by the testator to give effect to their wishes. This will need to be presented by way of affidavits or witness statements by other parties with knowledge of the circumstances, one of the witnesses of the Will, medical evidence of capacity (where applicable), and explanations for why a formal Will wasn't executed. Further, if a beneficiary of the Will is affected by the changes made to the document by informality, codicil, or would have otherwise benefited under the laws of intestacy, that is, where a Will was never made, then such person would need to consent to the application. Should the affected person/s not consent to the application, then it would need to be heard before the Court. An order will then be made.

Why It Matters:

It is still important to consider any document made by a deceased person, especially if signed, and present it to the Court and have an order made as to its validity. It allows enforcement of genuine intentions when no formal Will exists. However, you should always speak to a solicitor before considering such an application.

These applications are very complex, expensive, and time-consuming legal proceedings. Further, where there is an affected beneficiary by way of a change in the Will, or someone who would have otherwise benefited by intestacy should that person never had drafted a Will in the first place,

consent is required. Finally, there is a heavy evidentiary burden – you need clear proof of intent, capacity, and reasons for informality.

Given these strict requirements, there is significant potential for delays and uncertainty if evidence is weak or contested or otherwise not available.

Guidance: What Should You Do?

If you discover an informal document believed to reflect the deceased's wishes, seek legal advice immediately. A solicitor can assess whether pursuing an informal Will is worthwhile or whether to apply instead for letters of administration or proceed under intestacy rules.

For your own benefit, work with a qualified Wills solicitor to draft a formal Will, ensuring it's valid, signed, witnessed, and stored safely. This will help to avoid the complexities of informality.

How can Andersons help?

Informal Wills are sometimes recognised by the Supreme Court of South Australia, but only when evidence convincingly shows the deceased's intentions and context, and even then, the process is arduous. A thoughtfully prepared formal Will not only spares loved ones from legal headaches, but also guarantees that your final wishes are respected.

If you're dealing with a potential informal Will or planning your own estate, it's always best to consult a legal professional experienced in Wills and Probate. Andersons Solicitors are experienced in expansive estate planning, Will drafting and a wide range of complex probate applications.