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Are handwritten changes to a Will OK?

Date: Tuesday March 29, 2016

“Dad passed away recently and when I found his Will I also found some handwritten changes to it. What do I do?”

The first thing to do is seek legal advice, particularly if you are the executor named in the Will. Whilst that might sound fairly typical coming from a lawyer, the consequences of not seeking legal advice could lead you astray and may even end up costing you or the estate more money.

If handwritten alterations to a Will were made after the Will was signed and have been signed with the formalities of the *Wills Act* then the alterations will be valid. In order to comply with the formalities, the alterations will need to be accompanied by the signature of the Will maker and two witnesses in the margin or some other part of the Will near the alteration, or alongside or below a memorandum referring to the alteration, and at the end of the Will.

If the alterations were not signed as described above, then in order for a handwritten alteration to a Will to be admitted to probate, it must be proven that the alteration occurred before or at the time the Will was signed by the Will maker.

The need to prove this often arises when it comes time to submit the Will to probate. The Probate Registry will usually require sworn evidence in the form of an affidavit from one or both of the witnesses to the Will or someone else who may have been present when the Will was signed. The evidence will need to conclusively show that the deceased had made the alterations to the Will before or at the time it was signed.

If no evidence from the witnesses to the Will is available, due to the witnesses having since died or due to such witnesses having no recollection, it is possible that the Will with the alterations may still be accepted if it appears to the Registrar of Probate that the

alterations are of no practical importance.

If however the alterations are deemed to be of practical importance, it will usually be necessary to make an application to the Supreme Court for the Will or part of it to be admitted with or without the alteration.

It must be proven to the satisfaction of a Judge of the Supreme Court that the alterations were made by the Will maker (or at his or her direction by someone else) and that the Will maker intended the alterations to constitute his or her Will or part of the Will. The Court will hear and consider relevant evidence from witnesses, including witnesses providing circumstantial evidence. For example, the circumstances in which the Will maker made the alterations and the reasons he or she did so may be considered.

Aside from the available evidence, the actual wording of the alteration will usually be looked at carefully by the Court. If it is found that the wording does not express testamentary intentions then the wording or part of it may be deemed not to form part of the Will or may not affect the rest of the Will in any way. This may or may not be a favourable outcome depending on whether the alterations are welcome by the executors or beneficiaries of the Will. It is possible, for example, that the alterations in fact create an intestacy (in effect the estate would be dealt with as if there were no Will) which may in turn lead to the estate being left to persons who the Will maker did not wish to benefit.

If you have found a Will with handwritten alterations or if you are considering making alterations to your own Will, stop, take a deep breath, put the biro down and talk to a lawyer first.
