



What are Informal Wills?

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The making of a Will is the usual way for a person to ensure that their estate will be passed on after their death according to their wishes.

What makes a valid Will in South Australia?

The Wills Act 1936 (**'the Act'**) at section 8 sets out what makes a valid Will in South Australia.

That includes that ordinarily, a Will must

1. be in written form;
2. be signed by the Will maker or some other person in the Will-makers presence and at the will makers direction;
3. appear on face value that the will maker intended by his or her signature to give effect to the Will;
4. appear that the Will maker's signature was made or acknowledged in the presence of two witnesses at the same time; and
5. contain the signatures of the witnesses in the presence of the will maker.

If a Will does not satisfy the above criteria, it may be deemed invalid and the person will die as though they did not have a Will at all. In this circumstance a person's assets will be distributed to their relatives based on a pre-determined formula in Part 3A of the Administration and Probate Act 1919.

What are Informal Wills?

Despite that, sometimes documents which do not meet the strict criteria of Section 8 of the Act are nevertheless considered to be 'Informal Wills.'

For instance, the Court may still be satisfied that;

1. the document expresses the testamentary intentions of the deceased; and
2. the deceased person intended the document to constitute his or her will.

If the Court is satisfied of these two elements, the court has power to admit the document to probate as a Will of the deceased person (Wills Act 1936 s 12(2)).

Example Case of an Informal Will

This follows commonwealth case law in other jurisdictions around the world also. For example, a recent Canadian case ruled that wishes of a man, Philip Langan, scribbled on a McDonalds Napkin should be honoured, alike to that of a standard Will.

Prior to Mr Langans passing, he listed the names of his seven children with clear instructions to 'split the property evenly' on a thin brown napkin.

His children disputed this Will for the following reasons;

1. Incorrect spelling of a child's name;
2. Lack of evidence that Mr Langan wrote it; and
3. Lack of evidence showing the intention of the testator, in particular whether it was Mr Langans' final wishes.

However, as Mr Langan provided the napkin to his daughter, stating that she was to keep the napkin in case anything happened to him, the court was satisfied that the document expressed clear intention. In addition, there were also witnesses present at McDonald's at the time that that Mr Langan wrote the Will. For these reasons, the Court held that there was sufficient evidence that the serviette was Mr Langans' Will, and the estate was to be split equally among is living children and grandchildren in accordance with his wishes.

What are Digital Wills?

Another example of an Informal Will is one completed using technology. The movement away from paper-based documents has made the creation of video Wills more popular, but they do not come without complications.

There have been several cases where Wills made by video have been accepted as 'Informal Wills.' Each case was determined on the individual circumstances. However, the main consideration was the fact that the Will maker clearly intended the video to constitute their last Will.

However, such cases also have the hurdles which affect all informal Wills, namely:

1. A video Will is considered at best an 'Informal Will,' and therefore will need to be considered by a court making the process costly, lengthy and potentially distressing for parties involved.
2. The parties often did not make it clear that all prior Wills are revoked, resulting in the video being deemed to be codicil to a previous Will.
3. The language was not clear;
4. The video was simply at odds with what the person had previously or subsequently stated were his wishes.

Our Advice on Informal Wills

The lesson is that while Informal Wills may have some standing, and are quick, easy and more cost effective on the face, in order for the Informal Will to be recognised it may turn into a very costly, lengthy and emotionally draining process for parties involved.

If you are considering making a Will it is important to get legal advice. Get in touch with today's blog writer, [Aria Bolkus](#) for more information.

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