



Wills & Deceased Estates Team

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Invalid and unclear wills

It is common to hear people talk about 'challenging the will' of someone who has died. There are two main reasons for challenging a will. The first reason is that a family member has been left an inadequate inheritance, and that is the subject of our article [Making an inheritance \(or family provision\) claim](#).

The second reason for challenging a will is on the basis that there is something wrong with the will document itself. A person who alleges that there is something wrong with a will might even ask a court to treat such a will as if it had never been made.

Perhaps the most common argument made by a person asserting that there is something wrong with a will is that the person who made the will ('the deceased') did not have sufficient mental capacity when he or she made his will. When making a will, it is necessary for a person to understand the effect of making his or her will, to understand what property he or she has, to appreciate the claims against his or her estate (eg by his or her family members) to which he or she should give effect, and that his or her decision-making should not be affected by delusions.

It is usually much harder to make such an argument about capacity when a lawyer has prepared the deceased's will – as the lawyer will be expected to say that they believed that the deceased did have sufficient mental capacity at the time. Sometimes lawyers will have arranged for the deceased to be assessed by a medical practitioner or psychologist at around the time that the will was made, to reduce any doubt that the deceased did not have sufficient mental capacity.

A similar argument that could be made is that the deceased was subjected to undue influence by another person when preparing his or her will. This is where the deceased is left feeling that they must

make a will (or make a bequest to a particular person) that they do not want to make.

Fraud associated with the making of a will can occur in different ways. A person might have pretended to be a family member of the deceased in order to receive an inheritance under the deceased's will. A family member might have lied to the deceased about a second family member so that the second family member is left out of the deceased's will. A false will might have been prepared for the deceased to sign. A related problem is forgery, where a purported will of the deceased found after the deceased's death may be a forgery that has been created by someone else other than the deceased.

Sometimes it is argued that a will is invalid because it did not meet the formalities required for a will. The courts have become increasingly flexible in allowing informal documents, such as handwritten notes and even video recordings, to be treated as wills.

Another problem with a will can be the deceased's lack of clarity in the will. A will can be rectified (ie rewritten) by a court if what the deceased wrote in his or her will is unclear or does not match what the deceased was intending.

Missing original wills can also cause problems, particularly where a photocopy of the will is available after the death. On one hand, it might be argued that the original will was simply lost (and the photocopy should be relied upon) but, on the other hand, it might be argued that the deceased did not want that will to stand anymore and so had deliberately destroyed it (which is why the original copy cannot be found).

The various potential problems with wills discussed above – and the difficulties that these can cause to loved ones after death – are good reasons for anyone who is intending to make a will to have that will

prepared by a lawyer. Our team of lawyers at O'Loughlins Lawyers has expertise in preparing such wills and associated documents.

It is important that anyone who has concerns about the validity or clarity of a will seeks legal advice as early as possible.

How we can help you

O'Loughlins Lawyers has a team of lawyers who are highly experienced in dealing with deceased estates and conducting estate litigation.

We can assist you by providing you with legal advice about your circumstances and represent you in any court proceedings that may arise.

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If you require any further information, please contact a member of O'Loughlins' Wills & Deceased Estates Team:



Julie-Ann Sparkes
Special Counsel | Notary Public
julie-ann.sparkes@oloughlins.com.au



Jacquie Rochow
Associate
jacquie.rochow@oloughlins.com.au

CONTACT

Level 3 South, 191 Pulteney Street
Adelaide SA 5000
+61 8 8111 4000
admin@oloughlins.com.au

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WEBSITE

www.oloughlins.com.au