

IS THAT WILL VALID?



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An important question to ask in all deceased estates is whether the last will is valid. You may receive greater benefits under an earlier will or under the laws of intestacy. These laws stipulate who inherits your estate if you die without a will. See our information sheet headed What if there is no Will?

A will may be ineffective for many reasons including:

1. It may not comply with the statutory formalities which require a will to be in writing, properly signed and witnessed.
2. The testator (will maker) may have lacked the testamentary capacity or mental ability to make a valid will.
3. The testator may not have known and approved the contents of the will.
4. The testator may have been forced to make the will by undue influence.
5. The will may have been revoked in part or in whole.
6. The testator may have made a codicil which is a supplement or alteration to the will.
7. The will may have been revoked by marriage.
8. The will may have been partly revoked by divorce.
9. The will may not have been the last will made by the deceased.

The effect of obliterations, interlineations or alterations to the will may need to be determined.

It is possible that a revoked will has been reactivated by a legal process called 'revival'.

It may be possible that the contents of a lost will may be admitted to probate.

Informal Will

There may be a document including computer disks, a video or audio tape that constitutes a legally effective informal will even though it does not comply with the usual formalities as to writing, signature and witnessing.

Testamentary Contracts

Sometimes people enter into testamentary contracts or agreements including:

1. Contracts to leave certain property by will.
2. Contracts to make the will.
3. Contracts not to revoke a will.

The courts may uphold these documents as legally binding.

The law of wills is complex and highly technical. There is no substitute for obtaining fully informed and considered legal advice concerning the above issues. Usually, large amounts of money pass through a deceased estate and you should be sure that this money passes to the right hands.

If you have any questions concerning the above issues contact Peter Baltins to discuss the matter.

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