Legal Services Commission South Australia

Wills and Estates Law: Factsheet 10

Frequently Asked Questions

I've made a will. Where do I lodge it?

Your will does not need to be lodged or registered anywhere while you are alive.

You should keep your will in a safe and secure place and let your executor or someone you trust know where it is.

If a lawyer has prepared your will, they may offer to keep your will and other legal documents in a safe and secure place until they are needed.

Your lawyer may also record the location of your will on the Law Society's Wills Register. This may make it easier to locate your will after you have died.

I have changed my name and moved house. Do I need to update or remake my will?

No. As long as the will was validly made and you are clearly identifiable, you do not need to remake your will if you change your legal name or change address.

The only exception is where you have changed your name following marriage or divorce. You will need to make a new will unless it is clear that you made your will with the change in relationship in mind.

See **I have a will. Now what?** for more information.

Someone named in my will has changed their name. Do I need to update or remake my will?

No. As long as the details of the person named in your will were correct at the time the will was made, and they are clearly identifiable, you do not need to update your will.

Of course, if someone named in your will has changed their name or may be difficult to locate or contact, you may wish to keep current contact information with your will so that your executor can more easily locate them after you have died.

How can I stop my will being contested?

You cannot stop someone contesting (challenging) your will after you have died. Having your will professionally prepared by a wills and estates lawyer will reduce the chance of a successful challenge.

A wills and estates lawyer can also give you legal advice about your options while you are alive if you have specific concerns that your will may be challenged after you die.

You may wish to explain in your will why you have chosen to distribute your estate in the way that you have. In the event of a court challenge, this will help the court understand your wishes, which is the most important factor in such disputes.

How can I stop my ex making a claim on my estate?

There is no way to prevent someone from applying to the Supreme Court for a family provision order. Having a valid will professionally prepared by a lawyer will reduce the chance of an ex-partner successfully making a claim against your estate.

If you have specific concerns, consider explaining your wishes and the reasons for your decisions in your will. You may also wish to explain why you have not left any of your estate to your ex-partner, and the nature of your current relationship with them.

In a family provision claim, this will give the Court confidence that it understands your wishes, which is the most important factor when making a family provision order.

From 1 January 2025, a former spouse or former domestic partner of a deceased person may not apply for family provision if a valid financial agreement (within the meaning of the Family Law Act 1975), entered into on or after 1 January 2025, was in force between them just before the deceased's death.

See **Who can contest my will?** for more information about family provision claims.

I have found a copy of my parent's will but cannot locate the original. Can I rely on the copy?

It is the executor's responsibility to find the original version of the will after the testator's (will-maker's) death. If they cannot find the original, they should consider contacting the deceased's family and friends and any professionals the deceased may have seen, such as lawyers and accountants. They should also contact the Law Society of South Australia, the Supreme Court of South Australia and the Public Trustee, as they may hold the original or know where it is.

If the original cannot be located, the Supreme Court may, in limited circumstances, permit a copy to be used. This should not be relied upon.

I am power of attorney for my mother. Can I continue to pay bills after she has died?

A power of attorney has no effect after the person who made it has died.

The powers of an executor are different to those under a power of attorney. It does not matter that a testator may have appointed the same person as their power of attorney and executor. After a testator has died, an executor may only authorise certain payments out of the estate, such as funeral expenses.

Seek legal advice before organising the payment of a deceased person's bills.

How much does it cost to make a will?

Private lawyers may charge anything from $300 to $3,000 or more, depending on your situation and needs.

See **Making a will and getting legal help** for information about the different options and likely cost.

Do I need to change or update my will?

Certain life events will automatically revoke (cancel) your will, such as marriage. You should also review your will every few years or following a significant life event.

See **I have a will. Now what?** for more information.

I am in a new relationship but I am still married. What will happen if I die without a will?

Usually if you die without a valid will and you are married or in a domestic relationship, your estate will go to your spouse or partner (with a portion going to any children you may have, depending on the size of your estate). See **What if I die without a will?** for more detail.

If, however, you die with **both** a spouse and a domestic partner, they will each receive an equal share of the property that would have gone to them had you only had a single spouse or partner.

If your spouse and partner cannot agree on the division of personal goods, sentimental items or vehicles, the administrator may sell them and share the proceeds equally between your spouse and partner.

If your spouse or domestic partner believe they should receive a greater portion of your estate, they may apply to the Supreme Court. The Court will order that your estate be distributed in a just and equitable way.

To receive a portion of your estate, your new partner must meet the definition of a **domestic partner**. This may require a court declaration as to the nature of your relationship.

If you are in a new relationship, you should consider making a will or review your existing will to consider whether it still meets your needs and circumstances.

What if I don't want to inherit money or property?

You do not have to accept a gift under a will or an inheritance under the law of intestacy. There are many reasons why you may wish to refuse an inheritance. You may be estranged from the deceased person, you may be concerned about tax or other financial consequences, or you may otherwise feel strongly against accepting the gift.

You must follow certain steps if you wish to disclaim (refuse) your inheritance. You should be sure you fully understand the legal and other consequences for you and your family, and any impact the gift may have on government benefits you may be receiving.

Seek legal advice from a private lawyer or call our legal helpline on **1300 366 424** as soon as possible.

I'm young. Can't I just wait to make a will when I am older?

You can make a will as soon as you turn 18. While you are less likely to become ill or die when you are young, you simply cannot predict if or when something might happen to you.

Making a will while you are young and have legal decision-making capacity is the best way to ensure your wishes have legal force. This is particularly important if you have strong wishes about your funeral, burial or cremation, and who will inherit your estate. A will can also make things simpler for your loved ones if you die unexpectedly.

Remember – you can (and should) update and remake your will as you age and your circumstances change.

I don't have many assets. Is it still worth making a will?

Yes. Your estate includes not only real estate, but also cash, money held in a bank, motor vehicles, personal possessions and sentimental items, and digital assets.

As well as setting out who will inherit your estate after you die, your will can also include your wishes about your funeral, burial or cremation, guardians for any children under the age of 18, donation of your organs or body to science, and who will care for your pets.

If you do not have a will, you cannot control who will make some of these important decisions or where any of your assets will go. See **Why have a will?** and **What if I die without a will?** for more information.

What if there is no executor?

A will may lack an executor because

- an executor was never appointed
- the executor has died or lost legal capacity
- the executor is no longer willing or able to act and has renounced (refused) their appointment.

In this situation, the Supreme Court may appoint an administrator to follow the directions in the will and distribute the estate. This may be a beneficiary under the will, the Public Trustee, or a private trustee company.

What if there is a question about my legal capacity to make a will?

A question may be raised about your legal capacity to make a will if you are of advanced age or if you have been diagnosed with an illness or injury that impacts your communication or cognitive ability.

If you wish to make a will but have concerns that it may be challenged, it may be useful to ask a doctor or a specialist to assess and record your cognitive ability at a point in time.

Having your will prepared by a wills and estates lawyer offers the best protection against a successful challenge to your will. Your lawyer will consider your legal capacity and will only proceed if they feel confident you have legal capacity to make a will.

If you are assessed as lacking legal decision-making capacity, the Supreme Court may be able to make a will on your behalf. The Court will only proceed if it is sure that the proposed will reflects the will you would have made if you had legal capacity.

Seek legal advice from a private lawyer if your capacity may be in doubt and you wish to make a will.

I heard someone wrote their will on the back of a cereal box. Is that valid?

To be valid in South Australia, a will must generally be in writing (not spoken), be signed by the testator and witnessed by 2 adults, and name beneficiaries who will inherit the testator's property. It should also name an executor who will carry out the testator's wishes.

A will that complies with these legal requirements will be accepted as valid even if it is written on a cereal box or other unconventional format.

A will that fails to meet the above requirements may be accepted by the Supreme Court in some situations. The Court must be satisfied that the will clearly sets out the wishes of the testator, and that there are no other issues with the will (see **Who can contest my will?** for other reasons a will may be invalid).

There may be additional costs involved in applying to the Court in relation to an unconventional will and there is no guarantee that the Court will accept the will as valid. It is safest to have your will formally prepared by a lawyer who specialises in wills and estates.