

Who can see a person's Will in Victoria?

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If a Will-maker is still alive, they choose who can see their Will. If they are deceased, the *Wills Act 1997* (Vic) governs who is entitled to view the Will. In this blog, we look at who is entitled to see the Will of a deceased person, how they access that Will and their legal recourse if access to the Will is being obstructed.

How do I view the Will of a deceased person?

Once a person dies, their Will does not automatically become a public document. A Will only becomes a document on the public record, once probate has been granted by the Supreme Court of Victoria (once the Court has established that the Will is valid).

Once a Will becomes a public document, anyone can view it by using the Public Records Office Victoria's (PROV) online catalogue (although sometimes it can take years for Will and Probate records to be transferred to PROV). Probate records that have not yet been transferred to PROV can be accessed through the Probate Office of the Supreme Court of Victoria, though there may be a charge to do so.

Who is entitled to see a Will?

If the Will-maker is still alive, they choose who can see their Will.

Once the Will-maker has passed away, under the *Wills Act 1997* (Vic), the following people may see the deceased's Will:

- Any person named or referred to in the Will, whether or not they are a beneficiary, meaning whether or not they have been given anything under the Will.

- Any person named or referred to in any earlier Will as a beneficiary. This refers to any previous Will of the deceased.
- Any spouse of the Will-maker. This means the current spouse of the Will-maker at the time of the Will-maker's death. It does not necessarily include previous spouses.
- Any domestic partner of the Will-maker.

This can include a person who, at the date of the Will-maker's death, was in a registered relationship with the Will-maker (where the deceased and the domestic partner had registered their relationship with Births, Deaths and Marriages). It can also include a person to whom the Will-maker was not married but with whom the deceased was living with at their date of death, as a couple on a "genuine domestic basis" (irrespective of gender).

It is possible that the Will-maker may have had multiple domestic partners at the time of their death. For example, they had registered a relationship with one person but were then living with a different domestic partner as a couple on a "genuine domestic basis". In these circumstances, both domestic partners may be eligible to view the deceased's Will.

- Any parent, guardian or child of the deceased.
- Any person who would be entitled to a share of the estate if the deceased person had died intestate (without having made a Will). This is usually the deceased's next of kin and may include the deceased's partner, children, parents, siblings, grandparents, aunts and uncles and/or cousins.
- Any parent or guardian of a person under the age of 18 years referred to in the Will, or who would be entitled to a share of the deceased's estate had the deceased not made a Will.
- Any creditor or other person who has a claim at law or in equity against the deceased's estate.

A creditor or any other person who wants to view the Will under this circumstance must produce evidence of such a claim. It is not enough to merely argue that they have a claim without providing supporting evidence. In the event that the creditor/other person cannot produce evidence of that claim, they cannot view the deceased's Will.

What am I entitled to see?

Provided you fall into one of the above categories, you can ask for a copy of the most recent Will of the deceased, as well as:

- copies of any previous Wills;
- Codicils (an additional short document used to make a small alteration to an existing Will);
- parts of a Will; and/or
- any accompanying documents (such as a Statement of Wishes),

in existence.

How can I request a copy of a person's Will?

Locating the Will

Before you can request to see a copy of a person's Will, you might need to find out who currently has possession of the original and most recent Will. To ascertain who has the deceased's Will, you can make enquiries with people and/or organisations that are most likely to know the location of the Will.

This could include:

- The executor of the Will (if known)
- The deceased's close family members or friends;
- The funeral home;
- The deceased's lawyer or accountant; and/or
- The Probate Office of the Supreme Court of Victoria.

Contact us if you would like assistance or advice regarding locating a Will.

Requesting a copy of the Will

You can directly contact a person that you think may have a copy of the deceased's Will. We recommend that this is done in writing and that you set out under what grounds you believe that you are eligible to view the Will.

It may be necessary for you to provide identifying documents that show you are who you say you are, as well as demonstrate your eligibility to view the Will (for example, a certified copy of your birth certificate).

What recourse do I have if I am having trouble seeing a person's Will?

Legal obligations to provide a copy of the Will

Anyone who is holding a Will for a deceased person is legally obligated to allow an eligible person as listed above to inspect and make copies of the Will (at the expense of the person requesting to see the Will).

Usually, the lawyer who drafted the Will retains a copy of the person's Will and can provide an eligible person with a copy if they have permission to do so from the executor of the Will. It will usually be that the lawyer will need you to provide documents that properly identify you as an eligible person, before they can provide you with a copy of the Will.

Issues can arise where someone else holds the Will, for example, the executor (the person in charge of carrying out the deceased's Will) and they do not want to provide a copy of the Will for any number of reasons. There can also be issues if the executor does not provide the lawyer holding the Will (or a copy), permission to share the document.

Next steps if you are having difficulty accessing the Will

If you are having trouble seeing a person's Will, we recommend that you seek legal advice immediately to understand the next steps.

If you are unsure who has a copy of the Will, you should monitor any death notices or legal notices that may provide the contact details for the estate, including advertisements of an executor's intention to apply for probate, which would be published on the Supreme Court website.

If you know who has the Will but they refuse to provide a copy to you, a lawyer can liaise with the withholding party on your behalf. In this situation, we would send a letter of demand, reminding them of their legal obligation to provide you with a copy of the Will. This will usually resolve the matter, as no matter the withholding party's reasons for not wanting to provide a copy of the Will, there is a legal obligation to do so (provided you are an eligible person to see the Will).

There can be significant consequences for an executor who does not properly fulfil their obligations. You can read more about the role of an Executor and their obligations in our article "The role of executor of a Will".

If even after receiving a letter of demand, the withholding party still refuses to provide you with a copy of the Will, you can file court proceedings to compel the withholding party to produce the Will. Issuing court proceedings can be complex and we recommend you seek legal advice before taking any further steps.

I've seen the Will and I'm not included, what are my next steps?

Not everyone is able to contest a Will in Victoria. There are certain people who are eligible to do so. You can read more about who is eligible and under what circumstances in our blog "Contesting a Will".

We can help determine whether you are an eligible person to contest a Will and if so, assist if you have been left out of a Will or the amount you receive in the Will is not adequate.

How a Wills and Estates lawyer can help

Smith Family Law can assist you to determine whether you are eligible to see a deceased person's Will and, if necessary, assist you to obtain a copy of it if the holder of the Will refuses to provide you with one.

Contacting Smith Family Law

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.