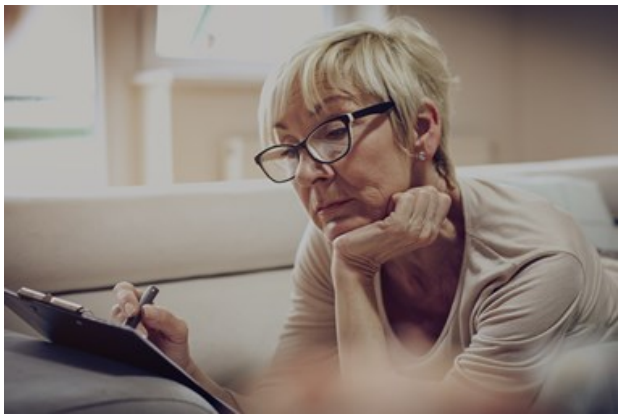

Can I make handwritten changes to my Will?

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Once you've written your Will, it's not always just a matter of storing it forever more. You may, from time to time, need to make changes to the Will. You may want to change an executor or change beneficiaries, amongst other things. Some people may be tempted to simply handwrite and initial changes on the original Will. This poses the question, "are handwritten changes to my Will valid?"

As a Will is a legal document, there are formal requirements prescribed by State legislation that must be adhered to when you want to make or change your Will.

When should I make changes to my Will?

You should review and if necessary, update your Will**every time there is a significant change**in your circumstances.

This may include when:

1. you get married;
2. you separate;
3. you divorce;
4. you have a child;
5. a family member dies (particularly someone who is nominated as an executor or beneficiary in your Will);
6. your financial circumstances or assets change;

7. you want to appoint different executors; or
8. you want to make specific gifts (bequests) in your Will.

We recommend reviewing your Will every three to five years and updating it if needed to ensure that the document correctly reflects your intentions.

How should I make changes to my Will?

You can change your Will as often as you like, so long as you have the capacity to do so.

This can be done in two ways:

1. Write a new Will

The most effective way to change your Will is to make a new Will. If a new Will is prepared correctly, it should effectively cancel (revoke) any of your previous Wills. Your new Will should include a clause which specifically states that you cancel or revoke all previous Wills made by you.

2. Write a Codicil

A Codicil is an additional document to your Will which changes, explains or cancels part of your existing Will. A codicil is a legal document, and therefore, for it to be valid, it must comply with the formalities in Section 7(1) of the *Wills Act 1997*.

What are the legal requirements for changing a Will in Victoria?

Pursuant to Section 7(1) of the *Wills Act 1997* ('the Act'), a Will (or codicil) is not valid unless:

1. it is in writing, and signed by the testator (the Will-maker) or by some other person, in the presence of, and at the direction of the testator; and
2. the signature is made with the testator's intention of executing a Will, whether or not the signature appears at the foot of the Will;
3. the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
4. at least two of the witnesses attest and sign the Will in the presence of the testator but not necessarily in the presence of each other.

Any changes made to a Will, including those made by a codicil, must be executed in accordance with these requirements.

Do I have capacity to make changes to my Will?

To make a valid Will or to make changes to your Will, you must have testamentary capacity. This means that you must:

1. be over the age of 18 years;
2. not be suffering from a disorder of the mind; and
3. understand the nature and the effect of any changes you wish to make to your current will.

You can learn more about testamentary capacity in our blog "What is testamentary capacity and how it is assessed?"

Are handwritten changes to my Will valid?

Not all handwritten changes to a Will are valid. For example, a Will cannot be amended by crossing out or erasing certain clauses unless these amendments are signed by the Will-maker and the two witnesses in the same way as for the actual Will itself.

Handwritten changes may constitute an informal Will (that is, a Will which does not comply with the requirements of the Act). There is no guarantee that an informal Will shall be accepted by the Court and such a Will can cause expense, delays and uncertain outcomes to the administration of a deceased estate.

You can read more about informal Wills in our blog "What is an informal Will?"

Whether the handwritten changes to your Will are valid will depend on whether the requirements in the Act have been adhered to. However, in some circumstances, probate of the Will may still be granted even if changes made are determined "informal".

In such circumstances, when the court is asked to grant probate, if they are satisfied that:

- there was a 'document';
- the document (including the changes) recorded the testamentary intentions of the deceased; and
- the Will-maker intended the document to be their Will, or intended the changes made to form a part of their Will;

probate will be granted.

Are there any risks to making handwritten changes to my Will?

There are many potential issues that may arise when making handwritten changes to your Will. This may impact the validity of the document and therefore, the granting of probate of your estate by the Supreme Court and subsequent administration of your estate.

Problems that could occur when making handwritten changes to your Will include:

- the use of uncertain language or ambiguous phrases;

- whether the handwriting or amendment is legible; and
- whether the changes have been correctly witnessed in accordance with the Act.

If these mistakes occur when making handwritten changes to a Will, it can prove to be costly and create difficulty for your family in the future. It is always recommended that you make a new Will instead.

How a Wills and Estates lawyer can help?

Smith Family Law can help you to obtain a Grant of Representation of an informal Will.

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