



Handwritten and other informal changes to a Will

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From time to time, people may have to [make changes to their Will](#). Sometimes, the changes needed may seem simple; like changing your Executor or the amount that you want to give to one of your beneficiaries. It can be tempting to handwrite the changes a copy of the Will or even on the original, rather than going to the cost of writing a new Will. The issue is whether handwritten amendments to your Will are valid.

Options to formally amend a Will

The two options to formally amend a Will, no matter how significant or minor, are:

1. [Preparation of a new Will](#); or
2. Preparation of a Codicil. A Codicil is a supplementing or additional document that amends your Will. It is executed in the same manner as a Will.

For either a Will or a Codicil to be formally valid:

1. it must be in writing and signed by you (or by another person at your direction);
2. it must be signed by you in the presence of at least two independent adult witnesses; and
3. the witnesses must also sign the Will at the same time that you sign the Will.

Create a new Will versus prepare a Codicil

The option that is chosen will typically depend on:

1. the nature of the changes to be made. As a general rule of thumb, the greater or more complex the changes, the more likely it would be in your interests to create a new Will.
2. the availability of the text content of your original Will. If a copy of the draft Will is electronically stored in, for example, MS Word format, as many of the Wills prepared by our firm in the last 20 or so years are, then it can often be relatively simple to execute a new amended Will rather than drafting a Codicil.
3. whether there is any information in the current document that you do not wish to be seen in the new document. For example, if you reduced a gift to one of your beneficiaries and you did not want them to see the reduction. By making a new Will (instead of a Codicil to your existing Will), you would be able to hide the changes from that beneficiary.

By formally amending your Will (either with a new Will or annexing a Codicil), there is far greater certainty that the changes you have made will be effective in achieving your intentions.

Updating a Will by making minor changes or preparing a Codicil through a lawyer will come at a cost. Depending on the changes requested, that cost may be less than the cost of a new Will. [Feel free to contact us for an indication of what those costs may be before making your decision.](#)

Informal Wills which the court may still consider valid

In NSW, the *Succession Act* does include provisions which allow the Court to recognise a Will or Codicil that does not strictly comply with the requirements for a formally valid Will or Codicil.

Examples of documents that may be recognised as informal Wills include:

1. A Will that has been witnessed by only one other witness, or by no witnesses at all.
2. Handwritten notes by the deceased, or notes typed by the deceased, that are unsigned or undated.
3. Wills prepared for the deceased by their lawyer, but not signed by the deceased before their death.
4. Electronic recordings or messages (DVDs, CDs, videos, tapes, any other kind of recording created on a smartphone or computer) made by the deceased.
5. A copy of the deceased's former Will with handwritten amendments made by the deceased (either signed or unsigned).

Most of the above options can be carried out without the involvement of a lawyer and do not come with the cost of engaging a lawyer to make the changes.

It can be tempting to try to make the amendments yourself to avoid incurring any additional costs, particularly when such a change can seem so simple. But, attempting to make informal Wills comes with a risk, and the potential of costing your estate (and therefore your family) far greater than the cost of the formal amendment to the document. This is similar to the [risks associated with DIY Will kits.](#)

Handwritten changes to a Will

Take the example of a Will-maker, Alex, handwriting the changes she wanted to make, over a copy of her former Will.

- Alex had had a falling out with one of the beneficiaries under her Will, Greg.
- Instead of gifting Greg the \$200,000 included in her Will, Alex wants to cut Greg out altogether.
- Rather than going to a lawyer to assist in changing the Will, Alex chooses to save money by crossing out the clause making the gift to Greg and signing next to the changes.
- Alex forgot to date the changes she made and didn't tell anyone about the change.
- Several years later, Alex passes away. Her grief-stricken family go to see the lawyer who assisted Alex in preparing her original Will. The original Will is safely stored at the solicitor's office.
- The original Will includes the \$200,000 gift to Greg.

There are two possible outcomes to this scenario:

1. The copy of the Will that Alex made her changes to is never located by her family, and no-one was ever aware that the change was made. Therefore, the gift of \$200,000 is still made to Greg; or
2. The handwritten changes are located and Greg, dismayed to find out that he may miss out on the \$200,000 gift that Alex originally made to him under her Will, looks at his options to ensure the gift is made. He could [seek to challenge the handwritten changes to the Will](#) on the basis that:
 - no-one knows for certain when the changes were made;
 - Alex didn't know that the handwritten changes could be seen to informally amend her Will;
 - no-one can know for certain that Alex intended the deletion of that clause to be her final Will and not merely a notation for her to speak with her lawyer about. As the changes made by Alex occurred a number of years before her passing, and no-one else was present when she made the changes, it would be extremely difficult to attempt to prove what her intentions were at the time she wrote on the document.

Even if Greg was not successful in his challenges, if his attempts require the Executor to seek legal advice to attempt to defend the challenge, then the legal costs incurred would significantly exceed the cost of amending the Will formally in the first place.

Conclusion

By preparing your Will with the assistance of a lawyer, you are ensuring greater certainty that the Will is valid. The wealth you have accumulated, and the financial security that it would provide for your loved ones, are too important for short cuts to be taken.

Informal Wills can be recognised, but they often come with a greater degree of uncertainty, and greater room for arguments to arise among beneficiaries. Trying to save costs now, can result in your family being left with expensive and uncertain Court cases when trying to ensure that your wishes are upheld.

If you have been thinking about changes to your Will, but aren't sure where to start or what the cost would be, speak with your legal adviser as soon as possible. Call us if we can help.

Get help from a Wills and Estates lawyer

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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