



How to deal with mistakes or ambiguity in a Will

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When a loved one passes away, their Will is meant to provide clear instructions about how their estate should be managed and distributed. Unfortunately, sometimes mistakes are discovered in a Will, or the wording in the Will is unclear.

If the errors or inconsistencies are found during lifetime, the Will-maker could update and correct these issues. However, if the errors or inconsistencies are found after death, they can cause confusion, stress, and even disputes among family members.

In New South Wales, the law provides pathways to resolve these issues. Depending on whether there is a mistake in the Will, or whether the wording is simply ambiguous, different remedies may be available.

Two of the most common legal tools are known as 'rectification' and 'construction' of Wills. The process required depends on the nature of the mistake or issue and requires careful handling and strong evidence.

Common types of mistakes or ambiguity in Wills

Mistakes or ambiguity in a Will can take many forms. Some of the more common include:

- **Clerical errors:** Such as the wrong name, incorrect property description, or incorrect amounts in a gift.
- **Failure to give effect to instructions:** The Will-maker's instructions are not properly carried into writing, so the Will does not reflect what the deceased actually told their lawyer or intended.
- **Omissions:** Where something that was clearly intended to be included has been left out.

- **Ambiguity:** The wording chosen creates ambiguity, so that it could be interpreted in more than one way.
- **Meaningless wording:** Where the wording used in the Will does not convey any decipherable meaning.
- **Outdated references:** Such as where circumstances change after the Will is made, and the words used no longer fit neatly with reality. This may include gifts to people who have since passed away, or references to assets that no longer exist.

These issues can cause significant stress for families and may lead to disputes if not resolved properly.

Addressing a mistake through the Court

In NSW, addressing a mistake or issue in a Will can involve either rectification of the Will or construction of the Will, depending on the nature of the mistake or issue.

Rectification of Wills

Rectification is where the Court changes the words of a Will because it does not properly reflect the testator's (Will-maker's) intentions.

Rectification may be available if:

- a clerical error was made, or
- the Will does not give effect to the testator's instructions.

The Court will not rectify a Will just because it could have been drafted more clearly. There must be convincing evidence that the wording is inconsistent with the deceased's actual instructions. The Court can add or delete words, but not rewrite the Will to create new intentions.

The purpose is to ensure the Will reflects the true intention of the testator at the time it was made.

Construction of Wills

Construction is about the Court interpreting the meaning of the words already in the Will, rather than correcting mistakes. The Court does not change the wording, but works out what the testator intended from the language used in the Will.

Construction applies where wording in a Will is ambiguous, obscure, or capable of multiple meanings. It may be relevant where the executors or beneficiaries disagree about the interpretation of the wording in the Will.

The Court looks at the wording used in the Will first (the plain meaning of the words). It may consider the surrounding circumstances and admissible evidence not referred to in the Will but

that was relevant at the time the Will was prepared.

For example, if a Will gifts “my house at Manly” but the testator owned two houses in Manly at the time of death, the Court will need to determine which property was being referred to.

The purpose of construction is to clarify the meaning of the words in the Will without altering them.

The key difference between rectification and construction

While both deal with unclear or problematic Wills, they serve different purposes:

- **Rectification** changes the Will to fix a mistake so that it matches the testator's true instructions.
- **Construction** interprets the existing words to determine what they mean.

What happens if rectification or construction of a Will is not possible?

Not every mistake or ambiguity can be fixed. In some cases, there may not be enough evidence to resolve the issue, even if the outcome seems unfair or unintended.

In some situations, beneficiaries may consider other legal avenues, such as a family provision claim, where eligible family members can apply for a larger share of the estate if they have not been adequately provided for.

What to do if you find a mistake or ambiguity in a Will

If you are an executor, beneficiary, or other interested party, and you believe a Will contains a mistake or unclear wording, here are some steps you should consider:

Seek legal advice early

Issues with Wills can quickly escalate into disputes and [contested estates](#). An experienced Wills and Estates lawyer can advise whether the problem is likely to be resolved by construction or whether an application for rectification may be required.

There are also strict deadlines and limitation periods within which applications for rectification can be made to the Court. If the deadline is missed, then rectification of the Will may no longer be possible.

Gather evidence

Any application for rectification will require clear and convincing evidence. This is not always straightforward, as there are particular rules surrounding what evidence can and cannot be relied upon, because it would depend on the evidence the testator left behind.

The more information that can be collated, the better to assist in determining what evidence may be presented to Court.

Mediation or negotiation

In some cases, beneficiaries may be able to reach an agreement about how to deal with an ambiguous clause, avoiding the need for costly litigation. This may not be appropriate in some cases, and could lead to additional tax consequences in other circumstances.

Application to the Supreme Court

An application may need to be made to the NSW Supreme Court for rectification or construction.

How an estate planning lawyer can help

At E&A Lawyers, we regularly assist executors, beneficiaries, and families in resolving issues with Wills. Whether it involves applying for rectification, seeking the Court's guidance on construction, or negotiating a resolution among family members, we provide clear, practical advice to protect your interests.

If you have concerns about a Will, contact our team today for a confidential discussion.

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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Further reading:

- [Contested estates on the rise in NSW: why estate planning matters](#)
- [What makes a Will valid in NSW?](#)
- [Defending a Will against a Family Provision Claim in New South Wales](#)

This article 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 E&A Lawyers.