COVID and your Will

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COVID and your Will; what can constitute as a Will?

While you may have seen a lawyer about making a will, until you have signed the document, it is considered an informal will. The circumstances that usually lead to someone considering making a will often entail a scare to the person's health, or someone close to them. This means that there are not many opportunities to attend the lawyer's office and complete the execution of the document.

One such case is that of In the Estate of Sugars (Deceased) [2021], where the deceased had given instructions to her lawyer and had requested further amendments to the will prior to executing the document. Due to the need to alter the document, the will was never executed prior to the client's death. The court took into consideration that the client's time was impacted due to her health and that they had every intention to execute the will when possible.

In the same token, there is a difference between a draft will and an informal will. The case of The Estate of Bradley Scott Lyons (2021), deals with a man who had previously made a will, and once diagnosed with cancer, contacted his solicitor to create a new will. While there were obvious circumstances that meant he was unable to attend the solicitor's office, the intentional delays in attending the solicitor's office to execute the will, constituted to the court the intention of the client that the document was not to govern the disposition of his property after his death.

Informal wills can be made in times of COVID without the assistance of a lawyer and still be held by the court as valid. In Re Logan (2021), A man in an aged care facility had spoken about wanting to change his will, shortly after, the COVID pandemic commenced and he was unable to leave the facility, nor his lawyer attend. Changes were made to his will on an unexecuted copy that had been previously sent by his lawyer, had signed each of the pages after the alterations were made and filed it with other important documents. The court held that it was the deceased's intention that the document stand as his final will.

There is also the potential for hand written notes to constitute as a will, should relatives happen upon these documents during the estate distribution process. The case of The Estate of Walter Ostro (2021), held that hand written notes on the back of his old will, which were found in a filing cabinet of the deceased, amounted to an informal will as the intention of the deceased to be used as their will.

Meanwhile, the case of Re Josipovic (2021), the deceased left a hand written note in Croatian in a safe custody packet in the bank, detailing where to find cash that had been buried in her back yard, with directions on how it was to be used and distributed to. The court ruled that as the deceased intention was to use this note as a codicil to her will, and so it must be regarded as such.

Intention of the will maker is the primary consideration of the courts when determining if an unprofessional and informal will is to be considered as valid. Such informal documents will add to the expense and delay in finalising the administration of your estate. We therefore suggest that you ensure your will is professionally drafted and ensure that it is executed once complete so that such disputes and associated costs may be avoided.

More Information

If you wish to obtain further information, advice or assistance in updating your Will, please contact one of our Will Lawyers in our Estate Planning team at Matthews Folbigg on 9635 7966, email us at estates@matthewsfolbigg.com.au or through the website www.matthewsfolbigg.com.au

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