



Reading time only 4 minutes

TURNBULL HILL LAWYERS

HOW TO OBTAIN A COPY OF THE WILL

This document is a general summary of contested estate legislation in NSW. Please read it carefully.

FREQUENTLY ASKED QUESTIONS

What is a Will?

A will is the legal document that permits the will-maker (or testator) to make decisions on how his or her estate will be dealt with after their death.

What is probate?

A document obtained from the Supreme Court which, once granted, gives the executor(s) the power to administer the estate and deal with the estate assets.

What is an executor?

The person or persons appointed in a will to administer the estate of a person who has died.

What does intestate mean?

To die "intestate" generally means to die without leaving a valid will. When a person dies intestate and holds assets in his or her name, rather than obtaining probate, a document called Letters of Administration may be applied for from the Supreme Court to enable the deceased person's assets to be dealt with.

What does administration mean?

To deal with the assets of a deceased person in accordance with their Will/Probate or Letters of Administration.

THE LAW

Under s54 of the Succession Act (NSW) 2006, a person who has possession or control of a will of a deceased person whose estate is to be administered in NSW must allow a person to inspect or have a copy of the will if they are:

- (a) a person named or referred to in the will, whether as a beneficiary or not,
- (b) a person named or referred to in an earlier will as a beneficiary of the deceased person,
- (c) the surviving spouse, de facto partner (whether of the same or the opposite sex) or child of the deceased person,
- (d) a parent or guardian of the deceased person,
- (e) a person who would be entitled to a share of the estate of the deceased person if the deceased person had died intestate,
- (f) a parent or guardian of a minor referred to in the will or who would be entitled to a share of the estate of the testator if the testator had died intestate,

- (g) a person (including a creditor) who has or may have a claim at law or in equity against the estate of the deceased person,
- (h) a person committed with the management of the deceased person's estate under the NSW Trustee and Guardian Act 2009 immediately before the death of the deceased person,
- (i) an attorney under an enduring power of attorney made by the deceased person,
- (j) a person belonging to a class of persons prescribed by the NSW succession regulations.

Note that a copy of the will may be made available to you at your own expense. It is also important to note that you are not entitled to see the will of a person that is still alive even if you are an eligible person.



WHAT YOU CAN DO

If you are a person who is entitled to inspect or have a copy of the will of the deceased person, we suggest that you try the following in this order:

- Contact the executor or anyone that you think may have possession of the will and request a copy.
- Contact the executor's solicitors to request a copy of the will.
- Contact the NSW Supreme Court probate registry to find out if the Court has a copy of the will in their records.

It may be necessary for you to identify who you are and how you are an eligible person under the provisions of s54 of the Succession Act.

It is not a legal requirement to have a "reading of the will" but if you are named in the will you should be contacted by the executor.

If you are unaware of who the executor is and which solicitors they are instructing, you may monitor the local papers that circulate in the area where the deceased person lived. It may be that a death notice will be placed in a newspaper. From January 2013 probate notices will be advertised online. You can search for a probate notice on the New South Wales Online Courts registry:

<https://onlineregistryservices.lawlink.nsw.gov.au/probate/>.

In some cases, it may be necessary to lodge a caveat on a grant or re-seal of probate. You should discuss lodging a caveat with us before considering it. A caveat provides notice to persons that you have an interest in the estate prior to a grant of probate being issued.

The probate registry at the Supreme Court of NSW can be contacted on 1300 679 272. A form is available on their website to request a copy (exemplification) of a will:

http://www.supremecourt.lawlink.nsw.gov.au/supremecourt/sco2_probate.html

OUR TEAM



Warwick Gilbertson
Partner
E: wgilbertson@turnbullhill.com.au



Adrian Corbould
Lawyer
Accredited Specialist
E: acorbould@turnbullhill.com.au



Mary Windeyer
Lawyer
E: mwindeyer@turnbullhill.com.au



Justine Aubin
Lawyer
E: jaubin@turnbullhill.com.au



Kaylyn Lyle
Paralegal
E: klyle@turnbullhill.com.au



Amy Warden
Secretary
E: awarden@turnbullhill.com.au