

4.10 Witnessing wills

What is a will?

Wills are documents in which people, known as testators, give instructions about what is to happen to their property when they die. Normally, the will names the people who are to carry out the terms of the will—called the executors—and sometimes also gives instructions about funeral arrangements.

People who die intestate—without a will—lose the opportunity to give directions about how their property (their estate) will be apportioned.

Wills are often drawn up by legal practitioners but many people use legal will kits, which are available through stationers and other suppliers.

A will is one of the most important documents a person will sign during their lifetime, so witnessing a will is an important task.

Why should a will be witnessed?

Wills are among the most contested of all legal documents. Anything that assists in establishing a will's authenticity will reduce the grounds on which it can be challenged. A reliable, impartial witness is crucial for establishing a will's authenticity.

For a will to be valid, two independent people—that is, people who are not beneficiaries or the spouse of a beneficiary under the will—must be present to witness its signing. That is, they must both be there at the same time. Many people prefer a Cdec or JP (Qual) as one of their witnesses, although this is not a requirement. You are free to witness a will if you are asked to do so.

How do you witness a will?

A will is a private document, so it is not advisable nor ethical to read unless the testator has a disability that affects their capacity to draft the will.

There are conventions to follow when witnessing a will:

- Ask the testator for some form of identification and note their name and document type in your logbook.
- Ask the testator if the document is their will.
- Ask the testator if they understand the contents of their will.
- Ask the testator if they require you to witness the will.

Explain the testator must sign first, and in full view of both yourself and the other witness, and both witnesses include their occupation and address.

Note: Ensure the same pen is used by all signatories.

Avoid reading the will contents when perusing the document for alterations, errors or blank spaces. Alternatively, you can ask the testator to read through the will and check for any alterations, errors or blank spaces. Any blank spaces must be crossed out. These and any other alterations, additions or corrections must be initialled by the testator and both witnesses at the same time.

1. Ensure the date shown on the will is the date of signing.
2. Sign the will with your normal signature in the presence of the testator and the other witness. You should include your occupation and the JP Branch address for contact details.
3. Ask the second witness to sign in the same way, in the presence of the testator and yourself.

4. Enter the details in your logbook. In addition to the notes mentioned above, the information that can be entered should include:

- date
- document witnessed
- testator's and details of the other witness
- type of identification sighted
- location of signing
- any other relevant details.

Note: Ensure the pages of the will are not pinned or stapled together. However, if the testator has previously done this, do not remove the attachments.

Things to bear in mind

The capacity of the testator

You may, at some stage, be asked to recollect and perhaps to give evidence about the testator's capacity to make a will and/or their demeanour and understanding at the time of signing. Therefore, you should adopt a standard practice of making notes in your logbook.

Confidentiality

The contents of any will you witness must be kept confidential. Witnessing the signing of a will is not part of your official duties but you may be asked to do so as a qualified witness.

Pins and staples

You should not pin or staple a will together or to another piece of paper. Nor should you remove any existing staples, clips or pins from an original will, as any residual marks left on the will may indicate that a page has been removed and could raise concerns or affect the administration of the estate.

Frequently asked questions

What if I am asked for advice?

You should never give advice about the wording, how to draft or the effect of a will. Refer to their solicitor or the Public Trustee.

What if I'm related to the person making the will?

You should refrain from witnessing the will if you are related to the testator, or if you or your spouse is a beneficiary under the provisions of the will. The same restriction applies to any person witnessing a will.

If you witness a will in these circumstances, the entitlement that you or your spouse would have received from the will may be jeopardised.

What if the will is a multi-page document?

If the will is a multiple-page document, the testator and both you and the other witness must sign all the pages.

Is there a set format?

Wills are one of the few legal documents that have no specific format unless a will kit is used or the will is drawn up by a solicitor.

Can I refuse to witness a will?

If you believe the testator is under any form of duress or undue influence, you must refuse to witness the will and explain your reasons to the testator. You should immediately inform the Office of the Public Trustee of your concerns.

If the testator is infirm or seems for any reason to be unable to fully comprehend the contents of the will, you should decline to witness the will until the testator has obtained medical advice that he or she is competent to make the will.

Note: Being available to witness wills is an important Cdec duty. If you are approached to witness a will and it is not possible for you to do so, please refer the person to find a JP online at www.qld.gov.au/findjp.

Where can I get more information?

Queensland legislation

www.legislation.qld.gov.au

Public Trustee

www.pt.qld.gov.au

Queensland Courts

www.courts.qld.gov.au

Quick guide

Follow these steps to witness a will

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- ① Ensure there is a second person present to witness the will. The person cannot be a beneficiary of the will or a spouse.

 - ② Ask the testator for identification.

 - ③ Note the details in your logbook.

 - Ask the testator if:
 - a. the document is their will
 - b. they understand the contents of their will
 - c. they require you to witness the will.

 - Read through the document for alterations, spaces or omissions. Do not read the content.
 - a. As the content is confidential, you can ask the testator to do this for you.
 - b. Cross out or ask the signatory to complete any unanswered fields.
 - c. Do not staple or pin the document, nor remove any that are already there.
 - d. You, the testator and the witness should initial any changes made.

 - ⑥ Number multiple page documents. You, the testator and the other witness should sign each page.

 - ⑦ Ask the testator to sign the will first.

 - ⑧ Then ask the other witness to sign the will with the same pen, including their occupation and address.

 - ⑨ Everyone must sign the document with the same pen.

 - ⑩ Place your seal of office close to wherever you have signed (either beneath or beside, but never over the signature).

 - ⑪ Enter all relevant details in your logbook.
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