

Who can ask for a copy of the Will when someone dies?

Historically, when someone died, the only person entitled to a copy of their will was their executor. Beneficiaries were entitled to know if they had been left anything under the will, but could not insist on receiving a copy of the will. Although it has been possible for many years in New South Wales to obtain a copy of a will where probate has been granted by the Supreme Court, this could only be done by applying to the Supreme Court for a copy of the will (called an “exemplification”).

Both New South Wales and Queensland now have laws which make it much easier for people to obtain a copy of a will when someone dies.¹ These laws entitle someone who falls within a range of categories to inspect a will or to obtain a copy of a will. Any person who has “possession or control” of the will is obliged to allow them to inspect it or give them a certified copy of the will (on payment of a reasonable fee). These sections only apply after someone has died, so they can’t be used to try to obtain a copy of a will where the person who made the will is still alive.

The categories of people who can ask for a copy of a will are very wide and include:

- Anyone named in the will (whether or not they are named as a beneficiary).
- Anyone who is named or referred to in an earlier will as a beneficiary (even if they are not named in the latest will).
- A parent, guardian, spouse, de facto partner or child of the deceased.
- A parent or guardian of any child referred to in the will or who would be entitled to a share of the deceased’s estate if they had died without leaving a will (“intestate”).
- Any person who would be entitled to a share of the estate if the deceased had died intestate.
- Any person (including a creditor) who has or may have a claim at law or in equity against the estate.
- Any attorney who held an enduring power of attorney given by the deceased.
- Any person who had formal management of the deceased’s affairs under certain legislation.

Importantly, the right to ask for a copy of the will includes not only the deceased’s last will, but any previous will or other document purporting to be a will.

Who can be asked to provide a copy of a will?

Anyone who holds the will or a copy of the will can be asked by a person who falls within one of the categories to provide a copy or make it available for inspection. This could include not only the deceased’s solicitor, but members of the deceased’s family, the executors, the deceased’s accountant or a beneficiary.

Anyone who has the will or a copy of the will must allow inspection or provide a copy of the will, even if the executors do not want them to. While they can charge for expenses incurred (such as photocopying, handling and postage), they cannot charge an unreasonable amount or added fees (such as a fee for obtaining the executor’s consent).

Examples

Here are a few examples:

- George died recently. In his will, he appointed his wife Sally as his executor and left the whole of his estate to Sally and their two young children. George had been married before and has an adult son from his first marriage, Tom. Tom wants to find out whether his father left him anything in his will. Tom is entitled to ask Sally for a copy, even though Tom is not a beneficiary under the last will. Tom can also ask Sally for copies of any earlier wills made by George, even though they have been revoked by the latest will.

¹ Section 54 Succession Act 2006 (NSW) and Section 33Z Succession Act 1981 (Qld)

- Lucy and Patrick divorced last year and have two young children who live with Lucy. After the divorce, Patrick made a new will in which he left all of his property to his mother and appointed his accountant, Fred as his executor. Lucy is entitled to ask Patrick's mother and Fred for a copy of the will. She can do this because she is a parent or guardian of the children and they would be entitled to a share of Patrick's estate if he had died without a will.
- Jake was a property developer. He died unexpectedly of a heart attack, in the middle of a building project. He owed money to his bank and to his creditors and subcontractors. He had operated his business in his own name not through a company. The bank and any of those creditors can ask for a copy of the will. This could be very useful if the will lists Jake's assets.
- Joe was 94 when he died. He had made a new will two weeks before he died. Joe had three children who survived him, but in his new will he left everything to just two of the children. Peter, the other child, was left nothing. He is entitled to ask for a copy of the will as well as copies of any earlier wills Joe made. He believes that the previous will Joe made included him as a beneficiary and is concerned that Joe may have signed his new will because of pressure from other children or that Joe no longer had the capacity to properly understand what he was doing (testamentary capacity). Peter is entitled to ask for copies of the previous will as well as the last will.

These are just some examples. Whether a particular person is entitled to inspect or obtain a copy of a particular will depends on the circumstances. If you need more information, contact one of our wills and estates specialists.