



## ***Validity of Wills***

A Will, to be valid in Victoria, will need to comply with matters including:

### **1. Formalities**

A Will must comply with the formalities of Section 7 of the *Wills Act 1997*:

- In writing, signed by the Will maker or by some other person in the presence of and at the direction of the Will maker
- Signed by the Will maker with intention to make a Will
- Will maker signs the Will in the presence of two witnesses present at the same time
- Two witnesses attest and sign the Will in the presence of the Will maker

The Supreme Court may dispense with the requirements for execution or revocation of Wills in certain cases and may admit to Probate the Will of a deceased person a document which has not been signed in the manner in which a Will is required to be signed, provided that the Court is satisfied that the person intended the document be his/her last Will.

### **2. Capacity**

A Will maker must have attained the age of 18 years to make a valid Will, although there are some exceptions. Otherwise, there is no limit of age for a Will maker's ability to make a Will.

### **3. Intention of the Will maker to make or change a Will or revoke a prior Will**

At all times, a Will maker must intend to make a Will for it to be valid. In that, the person must be capable of making his Will with an understanding of the nature of the business in which he is engaged. In doing so, he/she should intend by his/her act to make a disposition of property or to do any of the other things capable of being done by Will, which will be effected on death.

The person's intention must be firm and beyond the stage of mere contemplation, for example, if the Will maker is still considering alternative drafts, he/she does not at that time have an intention to make a valid Will.

If the Will document appears on its face to be a Will and satisfies the formal requirements, a presumption arises that the Will maker intended to make a Will. A court will look at rebutting that presumption if there is evidence of a contrary intention.

### **4. Knowledge and Approval of a Will**

The Court will normally infer if a Will on the face of it appears to be properly signed and that all the requirements for a valid Will have been met. The Court does not require evidence of proper execution of a Will.

A Court may find a Will to be invalid in part or in full, if there is evidence of lack of knowledge and approval, undue influence or fraud or suspicious circumstances in its making.

***"Pearce Webster Dugdales are experienced in this area and are qualified to provide advice to you."***

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**Contact: Pearce Webster Dugdales, Level 4, 379 Collins Street, Melbourne, Tel: 9614 5122, Facsimile: 9614 2964.**

**Email: [info@pearcewebster.com.au](mailto:info@pearcewebster.com.au)**