



legal chat

with Solicitor
MARK TOBIN

MAKING OR FIXING WILLS DURING COVID-19

While we have all been through extraordinary times during the COVID19 pandemic one thing that was highlighted early was the importance of having an up to date Will. When the full realisation started to hit, in March, there was a flurry of activity with people rushing to update or make a Will, before the lockdown occurred. Once the pandemic started to bite, the government mindful of many issues where people couldn't properly execute and have documents witnessed due to the circumstances, took steps to extend rules for alternate signing methods to maintain social distancing. Some of these came about by emergency legislation, the relevant one being the Electronic Transactions Amendment (Covid-19 Witnessing of Documents) Regulation. While the law did not change the need for the proper witnessing of documents like Wills, Powers of Attorney and Enduring Guardianships, they were bolstered with provisions allowing witnesses to watch the execution of such documents by audio visual links. That is, for example, watching a testator sign a will in a video linkup via computer, mobile phone or other camera device where such signing could be viewed in real time, even when the witnesses weren't present. There were a host of rules to follow to make the documents valid and a host of issues that could or might still arise. Hopefully now we have moved past the necessity for that type of execution of documents but the law in a lot of these cases has the ability to fix issues that may have arisen in such cases. In New South Wales the Succession Act makes provision for rectifying Wills that would normally be faulty, invalid or described as informal, that is not complying with the usual requirements for making formal testamentary

documents. The courts can accept a document that does not meet the legislated formalities if it is satisfied that the document reflected the testamentary intentions of the deceased. In making this decision, the court may consider any actions or statements made by the deceased which would indicate that, at the time the document was created, the deceased intended that it would constitute their Will. Courts have taken a broad definition of 'document'. A tape recording, video recording, and even a message recorded on an iPhone have been admitted as a Will. The reality still is however, it is safer to prepare such documents in the appropriate way to make sure there are no issues that might result in costly court proceedings.

Johnston Tobin Solicitors experienced team can help you get it right with making your Will and all your important documents.



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