

Case review – informal Will accepted by the Court for a Grant of Probate

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When applying for probate (so the executor of a Will can distribute the assets of a deceased estate), the original Will is required to be submitted with the application. There are requirements for what documents may or may not be considered a formal Will. Sometimes, these requirements have not been complied with, and the Court must consider whether it will accept the Will and issue a Grant Probate.

In a 2024 case in Queensland, the executors sought to have an informal Will accepted (in place of a valid and properly executed Will) when applying for probate. This blog is a review of that case.

The application for probate

On 2 July 2024, the Supreme Court of Queensland delivered a decision in the case of "Re Meyer [2024] QSC 141" in relation to the Will of Mr Hand-Juergen Meyer.

Four days prior to his passing, Mr Meyer had provided to his solicitor a document which did not meet the requirements of a valid Will but that purported to express his testamentary wishes (e.g. how he wanted his assets distributed).

The executors of that document ('the informal Will') applied to the court to dispense with the need for a Will to meet the requirement that it be witnessed by two witnesses.

The court approved this application and granted probate so that the executors named in the Will could administer Mr Meyer's estate in accordance with the informal Will.

What were the circumstances of Mr Meyer's informal Will?

In this particular case, the timeline of the events is important to understand the circumstances.

Date	Event
22 February 2023	Mr Meyer signs a formal Will which had been prepared by his solicitor.
March 2023	Mr Meyer contacted his solicitor to say that he intended to change the contents of his Will, but he needed to talk to a party named in the Will first.
2 June 2023	Mr Meyer made arrangements to meet with his solicitor on 7 June 2023 to give instructions for a new Will.
6 June 2023	Mr Meyer signs the informal Will that he had prepared himself.
7 June 2023	Mr Meyer met with his solicitor to provide instructions for a new Will. He provided the informal Will to his solicitor.
11 June 2023	Mr Meyer passes away.

The Court's decision to approve an application for probate using an informal Will

The Court summarised the relevant circumstances of the 7 June 2023 meeting between Mr Meyer and his solicitor (Mr Bow) when Mr Meyer provided his solicitor with the informal Will (referred to as the testamentary document in the below quote) at paragraph [6] of its decision:

> *"Mr Bow went inside and found the deceased lying on the floor, not moving, and his breathing was faint. ... Mr Bow spoke to the deceased and noticed that the deceased was able to "rouse himself". Mr Bow observed the deceased to make "a determined effort with all the strength and willpower that he had available to focus and talk to me".*
>
> *Mr Bow described the deceased as having made "a great effort, all the time clutching my hand as hard as he could to talk to me". The deceased moved towards a bench on which rested the testamentary document.*
>
> *At this point, the deceased made reference to his intention to change his will, handed the testamentary document to Mr Bow and said words to the effect that the testamentary document contained the terms of his new will.*
>
> *Mr Bow observed the deceased to "noticeably relax" once the deceased had handed the testamentary document to Mr Bow and told him that it contained the terms of his new will.*

Relevantly, the informal Will contained:

one handwritten page (in Mr Meyer's handwriting) and four typed pages;

a notation where Mr Meyer had written 'Hans' (a reference to his first name) on the handwritten page; and

Mr Meyer's signature and the date on each of the four typed pages.

The informal Will also:

revoked all previous testamentary documents and Wills (such as the 22 February 2023 Will); and

allocated the assets of Mr Meyer's estate differently from how they were allocated in the 22 February 2023 Will.

Relevantly, Mr Meyer did not have two witnesses present when he signed his informal Will (and therefore there were no witnesses who signed the informal Will). Generally, where these requirements have not been met, the Will is not valid.

Why was the application to accept an informal Will necessary in the first place?

The Succession Act 1981 (Qld) ('the Succession Act'), among other things, sets out the required steps for making a valid Will in Queensland, including that:

(in most circumstances) the person making a Will ('the testator') be an adult;

the Will must be in writing;

the Will must be signed by the testator (or someone else at the testator's direction and in the testator's presence);

the testator must be in the presence of two witnesses when signing the Will; and

the two witnesses must sign the Will in the presence of the testator.

Pursuant to section 18 of the Succession Act, if there is a document which appears to provide the testamentary intentions of the

Will-maker but does not meet the requirements as set out in the Succession Act, then an application can be made to dispense with the requirement which it does not meet.

The Court may approve an application if it is satisfied that the Will-maker intended for the relevant document to be their Will (or part of their Will or alter or revoke their Will as may be relevant). The Court will consider evidence relating to the circumstances of the execution of the document, which purports to be the Will-maker's intentions.

Why did the Court allow the application in relation to Mr Meyer's informal will?

After considering the evidence, the Court was satisfied that the informal Will signed by Mr Meyer on 6 June 2023, and provided to his solicitor on 7 June 2023, was intended by Mr Meyer to form his Will.

The evidence the court considered to support this application included that:

- the document had been signed by Mr Meyer;
- Mr Meyer told his solicitor that the informal Will (i.e the document he handed to his solicitor) contained the terms of his new Will; and
- once Mr Meyer had given the informal Will to his solicitor and told him it contained the terms of his new Will, Mr Meyer appeared more relaxed.

On that basis, the Court approved the application to dispense with the requirement for two witnesses and granted probate of the Will signed by Mr Meyer on 6 June 2023.

Get help from an estate planning lawyer

This case highlights the complexities and technicalities involved in Wills and estates law. Not all informal Wills will be accepted by the court when applying for probate. Having to go through a process of having an informal Will considered for probate can also be stressful, add costs and delay the distribution of assets of the estate.

It is important that people looking to draft their Will or who are involved in a deceased estate engage experienced Wills and estate lawyers who can properly advise them about these complexities and ensure their estate planning documents are thorough and valid.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.