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This article talks about the very unusual situation where a Court dispenses with the requirements of a traditional/formal Will and proves an Informal Will to be valid.

Informal Wills

An informal Will is one that is proven to express the testamentary intentions of the author and is the last Will of the deceased, even though it doesn't comply with the formal legal requirements of Will.

An application must be made to the Supreme Court to 'prove' an informal Will. For a Court to accept an informal Will as valid, it must be satisfied that the deceased intended it to operate as their last valid Will.

While an informal Will is unusual, a Court *may* decide an informal Will is valid.

Formal/Traditional Wills

A formal Will is **always** the preferred option when writing your testamentary intentions. A formal Will complies with all legal requirements in the Succession Act.

It is carefully drafted by an experienced lawyer. It is in writing and on paper, ideally typed. It is signed and dated by the person making it. The signature of the testator is also witnessed by two people who are present and together, when the testator signs.

Examples of Informal Wills

The Courts have recognised the following "documents" as valid informal Wills:

- a) A word document saved to a computer,
- b) Notes saved on a smartphone;
- c) An audio recording
- d) A video recording;
- e) Unsent text messages;
- f) Draft Wills prepared by the deceased's lawyers but not signed before the death of the deceased person.

Many relatives of a deceased person will assume such 'documents' have no effect, which isn't always the case. All of these could potentially be a valid informal Will.

If the Court is satisfied of the author's intention, an informal Will could potentially include anything from writing on a wall to handwritten notes on the back of a post-it note, napkin, or envelope. It could also be a digital statement such as an email or text message. It could also be a Facebook post, or private message.

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When will an Informal Will be Valid?

This is a complicated area of law. The Court will look very closely at the deceased's intention and there are various requirements that need to be satisfied for an informal Will to be found valid.

If it can be shown that the deceased was aware of the formal requirement to make a Will (ie. that it needed to be signed and witnessed in a certain way etc) it may be difficult to prove they intended the document to operate as a Will.

The Court will also look at how the deceased treated the document. If they didn't place much importance on it or hadn't talked about it a lot, then it will be difficult to show it was intended as a Will.

Also, the longer the time between making the document and the author's death, the less likely the court will find it was meant to operate as a will.

A Case Example of an Informal Will that was Valid:

Video

In ***Radford v White (2018)*** a **video** was ruled to be a valid record of the deceased's testamentary wishes. The testator was a 39-year-old man who recorded a video message containing his last wishes for his assets in a last-minute act before picking up his new motorcycle. The video Will left most of his assets to his de facto partner; made provision for his child; and stated that nothing should be given to his 'soon-to-be ex-wife'. He also recorded his intention to make a more formal Will at a later day. He then had a motorcycle accident on the same day where he sustained a severe head injury.

He remained in hospital and died 14 months later. His de facto partner applied to the Supreme Court seeking to validate the video will. The deceased's ex-wife opposed the application.

The Court found that the video was a 'document' and was a valid informal Will as it contained the testamentary wishes of the deceased. The Court said that the failure to complete a formal Will could be explained by his head injury.

Unsent text message

There are other cases which are unusual. In ***Nichol v Nichol (2017)*** the court found that an unsent text message was a valid informal Will.

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When will an Informal Will be Invalid?

While there are many examples of an informal Will being valid, there are also many cases where informal Wills have been found to be **invalid**.

Having a properly drafted formal Will prepared and signed under the direction of a lawyer is important and always the best practice to follow.

What should you do if you find a document that might be an Informal Will?

1. Seek legal advice from an experienced Wills and Estates lawyer.
 2. Think about the high costs of applying to Court and the likelihood of what you 'might' gain if the Court decides the Will is valid or not valid.
 3. Think about the situation at hand and if there are other disputes within the family/beneficiaries. You may not need to have the Will proved as valid as everyone may 'work things out' without going to Court.
 4. Look at how much information there is about how the document came into existence. If there isn't much, then it may be very difficult to prove the document is an informal Will.
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Lessons to Learn:

- Be very careful what you text, post, email, video, write...
 - If you locate a document after a loved one dies, that looks like it might have been intended to be a Will or part of a Will, you should seek legal advice quickly.
 - Having a properly drafted formal Will prepared and signed under the direction of a lawyer is important and always the best practice to follow.
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