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## WHAT HAPPENS IF SOMEBODY DIES BEFORE SIGNING THEIR WILL

### Requirements for a Will

For a Will to be valid there are a number of requirements which must be met.

These are set out in the Wills Act 2007 and include the following:

- (a) A Will must be in writing;
- (b) The Will must be signed and witnessed;
- (c) The Will-maker must-
  - (i) sign the document; or
  - (ii) direct another person to sign the document on his or her behalf in his or her presence;
- (d) At least 2 witnesses must be in the Will-maker's presence when the Will-maker signs the document and each witness must also sign the document.

### What if these requirements are not met?

If a Will does not comply with one or more of the above requirements, the Court has a discretion to have that Will declared valid.

The following are real examples where a document has been declared a valid Will despite not meeting the requirements under the Wills Act.

### Suicide notes

There have been several cases where suicide notes have been declared by the Court to be valid Wills. In *Re MacNeil* a suicide note consisting of 10 pages was found next to the deceased's body after she had committed suicide. The first page was headed "this is my last will and testament" and was dated. The deceased had handwritten the note and signed it. Despite the note not being witnessed by at least two witnesses the Court declared the document valid.

### Electronic documents

A number of cases illustrate that electronic documents created on a computer or even a phone are capable of being documents that can be declared valid. In *Blackwell v Hollings* the Will of the deceased had been drafted but remained unsigned and stored on his associate's computer. The document was still declared to be a valid Will.

### Draft Wills that have not been signed

A common occurrence is where a Will has been drafted but the Will-maker has not been able to sign it for one reason or another.

In these circumstances the Court will take all of the facts into consideration such as why the Will was not signed, how much time has lapsed between the date the instructions for the Will were given and the date of death and any evidence that a Will-maker's testamentary intentions may have changed.

In *Re Campbell* the deceased discussed changes he wanted to his draft Will with his accountant. His accountant relayed these changes to the deceased's lawyer. The lawyer prepared a revised draft, but Mr Campbell died before it could be signed. The Court declared the document to be a valid Will despite the fact it was unsigned, unwitnessed and Mr Campbell had not seen the revised draft.

Don't be left in the same position as these people. There is no excuse as we offer a Free Wills Service just head to our Free Wills website [www.freewills.co.nz](http://www.freewills.co.nz). If you want to discuss your Will please contact one of the Team at Collins & May Law.