

# Q&S WILLS & ESTATES UPDATE

ISSUE 1, 16 MARCH 2009

## WHO IS ENTITLED TO VIEW THE WILL

This is a question that has an easy answer but which surprisingly is not widely known.

A will takes effect upon death, so until a person dies they can change their will even on their death bed.

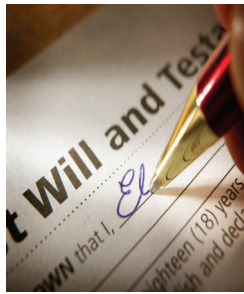
As a consequence, a will of a living person is a privileged document and the person holding it (often the solicitor who made it) must respect the client's right to privacy and cannot reveal its contents to anyone without the authority of the Testator ( i.e. the person who made the will).

In Queensland, anyone who has possession or control of a will of someone who died must allow a wide cross-section of people to inspect the will, or provide a copy of it at their own expense. The people entitled to see or copy the will include:-

- anyone mentioned in the will, whether a beneficiary or not;
- anyone mentioned in an earlier will as a beneficiary of the estate and whether named or not;
- the spouse of the deceased;
- parents of the deceased;
- children of a deceased;
- anyone who would have been entitled to a share of the estate of the deceased person had the person died without leaving a will;
- any parent or guardian of a minor referred to in the will or who would be entitled to a share of the estate of the deceased person if the deceased person had died without leaving a will;
- any person, including a creditor, who has or may have a claim at law or in equity against the estate of the deceased person; and
- any person who can apply for maintenance from the estate.

This law allows anyone who falls into any one of these categories to obtain access to the will in order to:-

- mount a challenge to the validity of a will (e.g. alleging lack of capacity) ;
- discover its contents in time to dispute distribution of the estate;
- ensure that they receive their proper entitlement from the estate;
- lodge a caveat in the Supreme Court to stop probate being issued;
- make a family provision claim, or;
- satisfy themselves what the deceased put in the will, even though they have no wish to contest the will.



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We recently advised a client whose deceased mother had put her will in a sealed envelope with a note on it saying "do not look at my will until 6 months after my passing". The client and his brothers wanted to know if they could look at the will immediately. As he was a child of the deceased and the executor and had possession of the will, our client could look at it if he chose to. However, he chose to honour his mother's wish and did not open the envelope until 6 months after his mother passed away.

### **Russell Leneham, Senior Associate, Quinn & Scattini Lawyers**

If you would like to ask any question about this or any other similar issue Russell may be contacted on 3807 7688 between 8.30am to 5pm Monday to Friday.

***Quinn & Scattini Lawyers has offices in Brisbane, Beenleigh, Caboolture, Gold Coast, Ipswich and Cleveland. In addition to Wills & Estates services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Conveyancing, Criminal Law and Family Law.***

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