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Will Power - Power of the Will

What Makes a Will Valid in Australia?

In Australia, a valid will must meet specific legal requirements under the Succession Act. It must be in writing, signed by the testator (the person making the will), and witnessed by two individuals who are present at the same time. The witnesses should also not be named as beneficiaries in your will. These formalities ensure clarity and reduce the risk of disputes. However, courts may accept informal wills—such as video recordings, text messages, or notes on napkins—if they meet certain criteria. For example, a video will may be accepted if the court is convinced it was intended to express the testator’s final wishes and qualifies as a “document” under the law. Yet, these formats are risky and often require costly legal intervention to validate. Avoid the risk, make a valid will, save the heartache, time and money. Clearly sign and initial each page and put a clear date on the will.

What Happens When a Will Isn’t Valid?

When a will fails to meet legal standards, the estate may be declared intestate—meaning it is distributed according to default succession laws, not the deceased’s wishes. Take the case of John Smith, who died suddenly in an accident without a valid will. His estate became the centre of a bitter dispute between his children. One son had been lent a substantial sum by John, which was never repaid. Without documentation or a valid will, the daughter contested the distribution, arguing the loan should be deducted from the son’s share. The absence of a clear, signed will left the family in turmoil and the estate vulnerable to legal challenges. John had intended to formalise his wishes but never expected his life to end so abruptly.

How to Prepare Before You Even Write a Will.

Preparation is key to avoiding the pitfalls of informal wills. Before drafting a will, consider mapping your assets, listing beneficiaries, and documenting any loans or gifts to family members. Tools like an Estate Planning Toolkit can help you organise your estate and clarify your intentions. You might also record video messages or write personal notes to loved ones—but these should support, not replace, a formal will. Engaging a solicitor and storing your will securely, such as through the Australian Will Register or in a safe custody packet with your bank or with a solicitor ensures your wishes are honoured and your legacy protected.

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