

Debunking 5 Common Will Making Myths



Article by Andrew Lind, Principal Author and Editor of LawPacks, 3 August 2007

In this brief paper I set out my top five common Will making myths which have been informed by years of legal practice in this area, in Australia.

Myth 5: I have to list all my assets in my Will

Wrong. Most Wills are made by the Will maker gifting, "the whole of my estate of whatever nature and wherever situated", to particular people.

The benefit of making a Will in this way is that you do not need to change your Will each time specific items of property change.

If specific items of property are listed in your Will and one of those items is sold the gift of that item of property fails. This can result in your intended beneficiaries being deprived of part of your Estate because an identified asset has been disposed of and therefore cannot be gifted by your Will.

Myth 4: Only a lawyer made Will is a valid Will

Wrong. There is a very famous case about a handwritten note simply saying, "All to mother" being held by a Court to be a valid Will.

Myth 3: A valid Will has to be witnessed by a lawyer or a JP

Wrong. The requirements for witnesses of Wills is that the witnesses be of age and capacity and independent to the Will maker.

The witnesses should understand that the document that they are witnessing is a Will and be satisfied that the Will maker has capacity (called *testamentary capacity*) to make a Will. If in doubt, seek legal advice.

Myth 2: A simple Will is more open to being challenged

Wrong. If the "age old" formal requirements for making a Will are followed (which are relatively simple) it is highly unlikely that a Will could be challenged on the basis that it lacked the right form. (See also Myth 4).

If there are those (for example close family members) who may have a claim against a Will maker's assets if they are excluded or not adequately provided for, they will have that claim whether the Will is simple or complex. This is because such a claim arises as a matter of law.

If you are concerned about a claim someone may have against your estate take specific legal advice. I have also written an Article on my Blog site which may help: [Avoiding a claim on your estate](#)

My number 1 myth: I've got plenty of time

Wrong. We all know stories of people who have thought this and have had their lives tragically cut short.

The grief and cost for loved ones left behind who need to administer your affairs without a Will are huge.

It is far better, to make a simple Will today and change it in a month or so ... after you have thought about it further than put off making any Will for a month or so which almost inevitably will become 6 months or so, no 12 months or so, no 24 months or so ... or ... never.

Make a Will today!

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Note: This Article is not legal advice.

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