

Update Wills and Succession

Service 80 — November 2022

Precedents

The New Zealand Forms and Precedents included in this service have been updated and split into 2 guidecards:

- Precedents — Probate
- Precedents — Wills

Case commentary

Chapter 3 — Testamentary capacity — undue influence

In *Gaitz v Donovan* [2022] NZHC 2107 undue influence had been made out in relation to the second will in 2015 and the position of the deceased reverted to what it had been at the time of the first will in 2011. See [3.12].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007 — Covid-19

In *Re Alebel* [2022] NZHC 2237 the deceased, a refugee from Ethiopia, had respiratory problems and was worried that she might die from Covid. She wanted her children to be the only beneficiaries and visited a lawyer about making a will. A draft will was emailed to her. She took her own life before the draft will was executed. The draft was validated pursuant to s 14. See [4.7.2] and [4.7.4].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007 — Covid-19 lockdown

In *Re Meyer* [2022] NZHC 2040 the deceased who had health issues and was unable to go out because of lockdown used an Excel spreadsheet to set out his testamentary intentions. He died before the spreadsheet could be converted into a document and executed. This was validated. See [4.7.4].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007 — Covid-19 lockdown

In *Re Land* [2022] NZHC 2434 the deceased was in a retirement village in lockdown and thus unable to visit the law firm which held the draft will. The documents were not signed, and even though the deceased had stated that he would visit and sign the documents when the Covid restrictions were lifted, the draft will was validated. See [4.7.4].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007

Successful recent cases of validation of wills under s 14 of the Wills Act 2007 include:

- *Re Cammell* [2022] NZHC 2010

- *Re Loader* [2022] NZHC 2154
- *Re Nam* [2022] NZHC 2023
- *Re Prasad* [2022] NZHC 2520
- *Re Rastrick* [2022] NZHC 1650
- *Re Smith* [2022] NZHC 1361
- *Swift v Rogers* [2022] NZHC 2543

See [4.7.5].

Chapter 4 — Formal requirements — validation of wills by High Court — s 14, Wills Act 2007 — deed of settlement

In *Scully v Scully* [2022] NZHC 2451 a checklist had been provided by a London solicitor but had not been returned by the deceased to the solicitor. It was argued that the applicable law was the law of England and by that law the checklist could not be validated. A deed of settlement had been completed and so Tahana J held that it was not necessary to resort to s 14 of the Wills Act 2007. See [4.7.5].

Chapter 6 — Construction of wills — correction of wills — s 31, Wills Act 2007 — will does not give effect to the will-maker's instructions

In *Re Williamson* [2022] NZHC 1397 a poorly drafted clause was to blame, not giving effect to the will-maker's instructions, and the Court corrected the will under s 31(1)(b) to properly deal with the residuary estate. See [6.2].

Chapter 12 — Administration of the estate — legacies — interest

In the absence of a contrary provision, legacies will not carry entitlement to income except that if unpaid 12 months after the date of death will be entitled to interest calculated at the rate specified in the Administration Act 1969. This view is supported by the High Court in *Harvey v Harvey (No 2)* [2021] NZHC 3508. See [12.13.1].