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# The Wills Act 2007: A Timely Reform Of Succession Law

***Katherine Heta**, a solicitor practising family law with the Whangarei Lawlink firm of Webb Ross, gives us a brief overview of the new Wills Act and some of the changes that have been made.*

On 1 November 2007 the new Wills Act 2007 came into force. The Act consolidates several pieces of legislation including the Wills Act 1837 (a United Kingdom statute in force in New Zealand) and no less than five Wills Amendment Acts enacted between 1852 and 2005. A makeover of the existing law relating to wills is long overdue as 170 years has passed since the original legislation was enacted.

The Act is the product of the government's commitment to sensible, useful law reform that aims to make the existing law more accessible to New Zealanders. The purpose of the Act is to restate the current legislation in a single statute using modern language while making certain reforms. The result is an uncomplicated, easy-to-read piece of legislation which should mean that from November this year making a will is easier.

## IMPROVEMENTS AND REFORM

The Wills Act includes the following reforms:

- The modernisation of old-fashioned terms means the Act is easy to understand. A "testator" is now called a "will-maker" and a "testamentary document" is now a "will".
- A will is now valid no matter where in the document it is signed by the will-maker. Under the previous law a testator had to sign at the end of a will. In the past this led to the invalidation of many wills, particularly home-made wills.
- If a will does not comply with the requirements of the Act, and would otherwise be invalid, the High Court now has the power to declare a will valid if it is satisfied that the document expresses the deceased person's testamentary intentions.
- Under the previous law a bequest

to a witness or the spouse of a witness is void. Under the new Act, the High Court may declare that a disposition to a witness is not void if it is satisfied that the will-maker knew and approved of the disposition and made it voluntarily.

- The rule that marriage revokes a prior will is now extended to civil unions. In the same vein, the rule that the dissolution of a marriage revokes dispositions to a former spouse (unless the contrary is clearly expressed) is also extended to the dissolution of a civil union.
- The Act corrects an anomaly under the previous legislation where a separation order prevented dispositions to an estranged spouse if the will-maker died intestate but did not prevent dispositions made in a valid will. Now an estranged spouse or civil union partner will (unless the contrary is clearly expressed) be disinherited under the deceased's will if there is a separation order in force at the time of death.

## CURRENT WILLS REMAIN VALID

There is no need to panic if you have an existing will drafted under the previous legislation – it does not need to be changed or amended now that the new legislation is in force. The new Act applies to all wills of people who die on or after 1 November 2007, but the changes to how a will is executed affect only wills made after the Act came into force.

## ARE LAWYERS NEEDED?

As under the previous legislation it is still possible to make a home-made will. There is no requirement under the Act that a will must be drafted by a lawyer or that a will-maker must take legal advice before making a will. However, consulting a lawyer remains the sensible thing to do.

This is the safest way to make sure that your estate will go where it is intended after your death.

## CONCLUSION

The Wills Act is a timely reform to the existing succession law. Its plain English and uncomplicated content makes it clear and accessible to New Zealanders. However, while New Zealanders are still able to execute a home-made will, the best way to ensure that your estate goes where you want it to after you die is to seek advice from your Lawlink lawyer.

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