



IMPORTANCE OF HAVING A WRITTEN WILL

(Revised 15.04.20)

- For Guidance only and each Person is at liberty to consult any Professional(s) for assistance
- Please read Context **She** or **Her** where **He** or **His** is marked
- Please read Context **Testatrix** where **Testator** is Marked
- Terminology and meaning at the end of the Document

Definition : A Will is a legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death, duly made and executed according to certain provisions of the law and may include a codicil.

Your Will dictates your wishes or intentions with regards to your monies, possessions and property (*i.e. Estate*) and how it should be distributed or shared amongst whom, after you die.

If you don't leave a Will, the Law decides on how your Estate is passed on to your immediate and even extended family in an order of priority basis pursuant to lineage in accordance to the Law of Succession Act in your country.

Reasons for Making a Written Will

1. The making of a Written Will is of considerable personal importance as it carries with it the advantage of peace of mind. One will be sure if they leave a Will behind, everything will be in order to its maximum.
2. A written will avoids squabbles among the surviving beneficiaries/dependents over the Estate.
3. It enables the testator to make a full disclosure of all the property they own or die possessed of, which is not possible in case of intestacy where a lot of the undisclosed property or assets may be lost or impossible to identify

4. It gives an outline on how and to whom the property of the Deceased will be distributed or shared. This will avoid any disputes or squabbles between dependants over the estate.
5. It enables the testator to benefit persons outside the family circle because the rules of intestacy (*dying without a Will*) only make provision for the deceased's next of kin. It is only by making a Will that a testator can benefit others e.g. friends, employees, neighbors, distant relatives, or even children's home and other charity organizations.
6. The decision to make, change or revoke a Will gives the testator an opportunity to consider his own affairs and to decide with a sober mind who should inherit what from his estate, instead of leaving this important decision to be made by other people after his death. The making of a Will avoids the rules of intestacy.
7. It also enables the testator to choose his own personal Representatives / Executors to administer his estate when he dies.
8. A Will enables a testator who has minor children, not only to provide for his/her said minor children via a trust but to also appoint for his/her said minor children, a **Guardian**. The guardian will have parental responsibility over the testator's children until they attain adulthood.
9. A Will also enables a testator to appoint a **Guardian** for his mentally challenged Child / Adult if any.
10. A Will may also be used to give directions regarding the disposal of the dead person's body. This could be in accordance with religion, culture or personal beliefs. The precise mode of disposing and burying the testator's body can be spelt out in a Will.
11. It enables the testator to maintain control over property after his death. This is especially important for a person with a spouse and children.

If a husband makes a Will leaving the entire estate to his wife, he loses control over the ultimate destination of the property on death. He simply has to hope that she will dispose of what was originally his estate to the children of the marriage rather than marrying someone else after his death and leaving the combined estate to her second husband.

He could achieve control by giving his wife simply a life interest in his estate with the remainder passing on his death to the children. A life interest only entitles the wife the income for the estate.

12. The administrators of estates derive their authority to administer the estate from the grant of letters of administration while the executors derive their authority from the Will.

As the Executors derive their authority from the Will, Executors can begin to administer the estate immediately upon the deceased's death.

The grant of probate merely confirms their authority. The grant of letters of administration takes time which means there is always a considerable lapse of time between the death of the deceased and the grant of letters. The estate of an intestate cannot be administered until after the grant of letters has been obtained. The dependants of an intestate are therefore exposed to inconvenience and immobility to deal with the Estate.

Thus through a Will a testator ensures that their estate may be dealt with immediately upon his death.

12. A further aspect of administrative convenience in executing a Will is that it is possible to give many useful and desirable powers of administration to the Executors under the Will. Otherwise, the powers of the administrator of an intestate's estate are limited by the Law of Succession Act.

Type of Wills

There are many types of Wills, but the one that is emphasized in this document is the: **Written Will**

A Written Will tells People Several Important things:

- a) It makes it easier for your Family or Friends to sort out your estate when you die
- b) Who should benefit (*called "Beneficiary or Beneficiaries"*) from your Estate when you die
- c) Who will be responsible for organizing your Estate and following instructions you have expressed in your Will. That person is called your "Executor" and you can name more than one person if you so desire
- d) Any other wishes you have, like instructions for your burial or cremation, monies to Charity Organizations, or various other wishes on the distribution of your Estate.

A Written Will is **not valid** unless:

- a) the testator has signed or affixed his mark to the Will;
- b) the signature or mark of the testator, is so placed that it shall appear that it was intended thereby to give effect to the writing as a Will;
- c) the Will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the Will, where the said competent witness ought not to be a beneficiary.

Persons capable of making Wills:

- a) Any adult person who is of sound mind, male or female and not a minor;
A person is who has attained the age of majority (*18 years plus*) and understands the implication of making a Will.
- b) A female person, whether married or unmarried, has the same capacity to make a Will as does a male person.
- c) Only the owner of a particular property can have that property devolved through his/her Will.
- d) The testator needs to acknowledge and approve the contents of the Will to make sure that whatever he wrote down is precisely what he desired to write down;
- e) Persons not in a state of delusion, that is, the testator should not be drunk or using substances that might impair his thinking at the time of making the Will;
The testator needs to be in a sober mind when making the Will;
- f) Persons not coerced or under any undue influence.
This means that the testator should not be forced by others to make a Will which does not meet his expressed desires as he wished.
- g) A person ought to be of sound mind, that is, not mentally challenged, be it medically or otherwise.

What Issues Should You Consider When Making a Written Will?

1) Assets

As a testator, what asset do you own at the time of making the Will?

Consider both moveable and immovable property. Immoveable property will be disposed as per the wishes of the Testator provided the property is within the ambit of the land laws of that particular country it is situated.

2) Beneficiaries

Who do you want to benefit from your Will?

For instance, a spouse, children, grand-children, friends, employees, charitable institutions and research institutions, medical inter alia. In addition, you may also have to consider what happens in the event that:

- Your spouse predeceases you or does not survive you for long enough to inherit your assets?
- Or the sole beneficiary of your estate dies shortly after or before you?
- The spouse remarries and the disinheritance of the children? Can they cut out estranged children, and what rights do they have?
- Who should benefit if both spouse and children die together in an accident?
- What happens if there are children from previous relationships?

There is often more to think about when it comes to Beneficiaries!

3) Executors, Trustees and Guardians

Who do you choose to carry out your wishes as per your Will?

A spouse and children may seem to be the obvious choice if the children are adults.

Who do you trust to devolve your property to the beneficiaries of your Will?

But if your spouse and children do not all get along together, you should consider the appointment of an impartial/independent or professional Executor. It might be a brother/sister, or a friend or even an Advocate.

Who do you appoint as Guardians?

A guardian is a person whom you want to place in charge of your children, if minors, or mentally challenged child/Adult.

4) Division of your Estate

It is important to consider the exact share you wish to give to each beneficiary in terms of your general assets or of a particular asset. It is also important to ensure that the same is clearly spelt out in the Will.

5) Claims against your Estate/Liabilities

You should consider whether at the date of making the Will, are there any claims against your Estate?

Further, you should also consider if there is anyone who might make a claim against your Estate **after** your death?

Certain people, including spouses and civil partners, former spouses and civil partners who have not remarried, cohabitants, children and those treated as children of the family, and others who have been maintained by you, may be able to make a claim under Law of Succession Act of your country.

6) Putting your affairs in Order

There is really no set time or age when you should write a Will, as it is dependent on your individual circumstances. However, in today's material welfare, it's an ideal time to put your affairs in order in the following ways:

- Check Property ownership and location of title deeds for registered property.
- Review Investments, Life insurance, Medical insurance etc.
- Review your Account holding instructions at financial institutions.
- Put lasting Powers of Attorney in place for management of your affairs during your lifetime, should you become unable to make decisions for yourself.
- Review your Debtors & Creditors

7) Making your will

You are allowed to make a legally binding Will at any time after you turn 18, and there are several key stages throughout a person's life that might cause them to consider writing a Will.

As can be said, making a good Will isn't always straightforward!

It is important to have your Will drafted by an Advocate, who will ensure that your Will is valid and drafted in accordance to the provisions of the Laws of the country you reside in.

Do everything possible to ensure that your wishes are not contested!

8) How Often Should I Review the Will?

Once you've made your Will, it is preferable to be reviewed every 3 to 5 years, or whenever there is a major change of circumstance in your life, such as marriage, death/s or the birth of children or acquisition of major investments.

If you get married, divorced or have a child, make sure your Will reflects this.

Review the Will every once in a while to ensure that your full Estate is established and marked.

If circumstances change with family, have the Will reviewed at the earliest!

Terminology & Meaning:

Beneficiary	: Person or Persons who are directly beneficial as marked in the Will
Child or Children	: Shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, any child born to her out of wedlock, and, in relation to a male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.
Codicil	: A Legal Document which is Signed, Dated & Witnessed
Executor	: A Person who administers the estate
Guardians	: A guardian is someone who has been legally appointed to look after another person's children, for example those of a child or someone who is mentally ill or challenged parent.
Intestacy	: When a person dies without a Written Will
Intestate succession	: When a person dies without a valid will, his estate passes to heirs or certain classes of family members by intestate succession , as prescribed in individual state laws . The purpose of intestate succession statutes is to distribute the decedent's property in an organized and methodical way.
Power of Attorney	: The authority to act for another person in a specified or all legal or financial matters, and immobility to deal with the Estate. The same is not valid after the person from whom your authority is derived, dies. A Power of Attorney (POA) is a document that allows you to appoint a person or organization to manage your affairs, if you become unable to do so. However, all POAs are not created equal. Each type gives your attorney-in-fact (the person who will be making decisions on your behalf) a different level of control.
Probate	: The official proving of a Will and to establish the validity of a Will in a court of Law.
Property Moveable	: These includes jewelry, art work including paintings, fixtures and fittings, furniture, vehicles, amongst others.
Property Immoveable	: Includes land, apartment/s, office space, house, villas, public and private shares in a company etc.

Testator : Male person who makes a Will. Has been used interchangeably with “deceased”

Testatrix. : Female person who makes a will

Wife : Includes a wife who is separated from her husband and the terms “husband” & “spouse”, “widow” & “widower” shall have a corresponding meaning.

Will : Means the legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death, duly made and executed according to the provisions, and includes a codicil.

Witness : Must be above the Age of 18 and not a beneficiary in the Will.