

## **How to Write an Islamic and Legal Will**

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This week for some reason - or just by coincidence - I received more than the average number of questions and requests for consultation about the Islamic Will and how to draft it. So I decided to write briefly about this important topic to clarify more this subject in the Canadian context.

In Canada and most of the Western countries, it is left to the individual's free choice to decide what to do with one's assets after death. For instance, for most of the wills in Ontario, people usually go to a lawyer and write down how they wish to distribute their possessions after their death. The person making the will (testator) and two non-beneficiary witnesses sign the document in order for the latter to be formally valid. If the testator is Muslim, he/she would usually state specific details on how the division of the assets should be by writing the fractions or percentage of the value of all the owned assets as well as the entitled heirs according to the Islamic law or he/she can simply state without details that "the division of the assets should be according to the Islamic inheritance law (fara'id)." Later after death, the heirs would consult a legal expert or a Muslim scholar to go over the fractions and also identification of the eligible heirs.

However, in most of the Muslim countries where some Islamic laws (family, inheritance...) are still practiced, even if a person does not

leave a will, the assets are distributed by default according to the Islamic inheritance law (*fara'id*). As for the bequest known as "*wasiyyah*" it is more about the extra things a person wants to give to those who are not eligible for inheritance by default. It can be verbally expressed or even much better in a written document that is witnessed and documented properly.

Therefore, one must distinguish between the two (*fara'id*) and (*wasiyyah*) here in Canada but also know that it is possible to combine them in one document in order to make it legal and formally valid. The *fara'id* statement could be in the will and *wasiyyah* could be in the Codicil. However, *wasiyyah* portion should not be for the heirs and should not exceed one third of all the assets as Prophet Muhammad (S) said to Sa'd b. Waqqas when the latter asked him once, **'O Messenger of Allah, I own a lot of money and there is nobody to inherit from me except one daughter. May I contribute two thirds of my money as alms?' The Prophet (S) said, 'No.'** Then he said, **'Then half of it?' The Prophet (S) said, 'No.'** Then he said, **'Then a third?' The Prophet (S) said, 'Yes, and the third is too much. To leave your heirs wealthy is better than to leave them having to be dependent on someone. If you spend any money in the cause of Allah you'll be rewarded for it, even the bite you put in your wife's mouth.'** (Muslim)

In the Muslim tradition, regardless of the age, social status or gender, an adult Muslim is instructed to write his/her will and also have it accessible to his/her immediate relatives (spouse, children, parents

and siblings when applicable) after death. In this important document, a person gives full details and information about all of his/her assets and how they should be divided among the heirs as well as any endowments or donations and how they should be distributed, loans and debts and how they should be paid off, funeral arrangements and how they should be executed, the children and who should be their guardian and of course anything a person would advice his/her loved ones to do for him/her or for others such as admonishing them or reminding them to stick to the straight path and always pray to the creator and be kind and merciful to his creation. We basically think ahead of the advent of our death and what we may want to be done on our behalf or to be done to us since we lose the ability of doing anything in this reality once we are dead. Hence, we write a bequest and legalize it so it becomes an authoritative record that expresses our will and makes what we own known to our heirs. Prophet Muhammad (P.b.u.h.) said, **“It is not right for a Muslim who has property regarding which he/she must make a will that he/she should sleep for two nights (consecutively) but that his will should be written down with him.”** (Bukhari)

On another note related indirectly to this topic, people can also give from their assets to their children provided that the latter become immediate owners with full access to benefit and right of use before the death of their parents. This is called *hibah* or *'attiyyah* which is a transfer of ownership and it should be divided equally among the children – males and females - unless the siblings agree to giving to some of them instead of all due to different reasons other than

favoritism such as joblessness, help with marriage, business, health complications, education...etc.,

In a nutshell, if a Muslim wants to make a legal will that accommodates the Islamic inheritance law (*fara'id*), he/she should consult a legal expert to prepare a legal document that states how the assets will be divided after death. In addition to that, a person has the option to make a bequest or wasiyyah stating the beneficiaries of a portion of the possessions that does not exceed one third of the total assets.

For a fillable will, I have designed one recently and you can access it by [clicking here on Islamic Will](#).