

# QUICKLAW

ANSWERS YOUR QUESTIONS

## WILLS

### What is a Will?

- A Will is a document in which a person, who is called "the testator" makes sure that his or her belongings are distributed in accordance with his/her wishes after his/her death.
- This means that the person drawing up the Will can say exactly how he/she would like his/her property to be split up amongst his/her family and friends.
- After his or her death, the testator is generally referred to as the "deceased".

### Why draw up a Will?

It is wise to draw up a Will. Many people associate the making of a Will with death - an unpleasant and frightening subject to some - and they often postpone or ignore the making of a Will. In so doing they almost always bring hardship upon their loved ones who survive them.

### What is an executor of an estate?

- S/he winds up the testator's estate.
- The executor must be named in the testator's Will.
- The "winding up of an estate" means the sorting out of the deceased's belongings and usually includes:
  - Paying the creditors of the deceased.
  - Collecting money owed to the deceased.
  - Distributing assets specifically awarded to certain people.
  - Ensuring that the heirs of the deceased receive their inheritances.

- Popular choices of executors include banks, attorneys, family and friends.

### Who should draw up your Will?

You can request an attorney to assist you.

### What will happen if I die without a Will?

- If you die without leaving a valid Will, your estate is referred to as an "intestate estate" and your assets will be distributed in terms of the laws of Intestate Succession.
- Your possessions are transferred to your partner and children (if any). But special requests that the deceased might have wanted to award to friends or family cannot be done.

### What problems may be encountered when you die without leaving a Will?

- If there is no Will in which an executor is nominated, it can take a while to have one appointed. This can bring additional and unnecessary costs.
- Furthermore, the person who is appointed as executor may be somebody you would not have chosen. The lack of instructions on how to distribute your assets can cause disagreement and conflict among members of your family.
- The most important issue is that your assets would not necessarily be left to the person or persons that you wanted to leave them to.
- The law does not recognise verbal agreements such as "Dad always said that he wanted me to have his car someday."

### When should you draw up a Will?

- Every person who possesses any belongings, eg. furniture, a house, an insurance policy etc. should draw up a Will as soon as possible.
- It does not matter how big or how small your estate is.
- Ensure that you update your Will should your

circumstances change.

*Your personal circumstances may change and your Will should be revised to accommodate these changes. An existing Will is not automatically cancelled or changed by circumstances. Only you can cancel or change your Will by making a new Will.*

### What are the requirements for a valid Will?

*A Will has to comply with certain legal requirements, they include:*

- That the Will must be signed at the end by the testator and two witnesses.
- Two witnesses must sign the Will in the presence of the testator and each other.
- If the Will consists of more than one page each page must be signed by the testator and by the witnesses anywhere on the page.
- If these requirements are not complied with the Will may be invalid.

### KEY:

1. BENEFICIARY - a person who receives a benefit/an inheritance from a Will
2. DECEASED - the person who died
3. ESTATE - all that a person owns at his/her death
4. EXECUTOR - a person appointed by a testator to carry out the terms of his/her Will
5. INHERIT - to receive property/money from a Will when the previous owner dies
6. INTTESTATE - when a person dies without leaving a valid Will
7. TESTATOR - a person who has made a Will