WILLS AND ESTATES

Wills

A Will is a document in which a person ("the testator") makes sure that his/her belongings are distributed in accordance with his/her wishes after his/her death.

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For all your will questions and answers, simply follow our guide below:

1. What is a Will?
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4. What are the basic elements that must be included in the content of the Will?
5. What will happen if a person dies without a Will?
6. Will a divorce have any effect on a Will?
7. Where must a Will be kept?
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1. What is a Will?

A Will is a document in which a person ("testator") makes sure that his/her belongings are distributed in accordance with his/her wishes after his/her death.

2. Who can make a Will?

- Any person who is 16 years or older may make a Will, unless s/he is mentally incapable to appreciate the nature of making a Will.
- It is advisable that a person obtain the assistance of a professional to draw up a Will, for example, an attorney.

3. What are the requirements for a valid Will?

- It must be in writing.
- The Will must be signed at the end of it by the testator and two witnesses.
- The testator and the two witnesses must sign the Will in the presence of each other. It should be noted that a person who signs as a witness is disqualified from receiving any benefit from the Will.
- 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 the testator is not able to sign the Will (for example, where s/he cannot read or write), someone can sign the Will on his/her behalf or the testator can sign the Will by making a mark (like a thumbprint or a cross). A commissioner of oaths must be present when the testator makes the mark or someone else signs on behalf of the testator.
- Any provision in the Will may not be against the public interest or good morals.

4. What are the basic elements that must be included in the content of the Will?

- The Will must contain:
    - a distribution of property;
    - the extent of the interest in the property (full or limited ownership); and
    - the identities of the heirs (the persons who must receive the property).
- The Will can also make provision for the nomination of an executor and a legal guardian of the minor children of the testator; a testamentary trust; and a clause stating that all previous Wills are cancelled.

5. What will happen if a person dies without a Will?

- If a person dies (“deceased”) without a Will, the property will be distributed in terms of the laws of intestate succession.
- According to intestate succession, property will be distributed amongst the deceased’s spouse, children and family (if any) according to certain rules relating the order in which they will be entitled to inherit.
- If the deceased did not have a spouse, children or family, the property will be forfeited to the State.

6. Will a divorce have any effect on a Will?

- A divorce will not invalidate the Will or the part of a Will where a bequest was made to an ex-spouse.
- The law provides that if the testator dies within three months after the divorce, it will be assumed that his/her ex-spouse died before him/her. This means that if the ex-spouse was an heir in the Will, s/he will not inherit from the estate of the testator.
- If the testator dies three months after the divorce without changing his/her Will, it will be assumed that the testator wanted to include his/her ex-spouse in the Will. This means that s/he will still inherit as per the testator's Will.
- A person's personal circumstances may change during his/her lifetime and it is important to revise a Will to accommodate these changes.

7. Where must a Will be kept?

- Wills should be kept in a place that is safe and where it can be easily found after the death of a testator.
- The testator must inform a reliable person of the whereabouts of his/her Will.

8. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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