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The Master of the High Court



DO YOU HAVE A WILL? Frequently asked questions about Wills

WHAT IS A WILL?

A will is a specialised document, which should preferably be drawn up by an expert like an attorney or trust company.

WHO IS COMPETENT TO MAKE A WILL?

The person who draws up a will is called the testator/testatrix. All persons 16 years and older are competent to make a will in order to determine how their estate should devolve upon their death.

Persons incapable of appreciating the consequence of their actions, are not competent of making a will.

WHO IS COMPETENT TO ACT AS A WITNESS TO A WILL?

All persons of 14 years and over are competent to act as a witness to a will, provided that at the time they witnessed the will they were not incompetent to give evidence in a court of law.

WHAT ARE THE REQUIREMENTS FOR A VALID WILL?

Since 1 January 1954, all wills must be in writing. They can be written by hand, typed or printed. The signature of the testator/testatrix must appear at the end of the will. This signature must be made in the presence of two or more competent witnesses.

The witnesses must attest and sign the will in the presence of the testator/testatrix and of each other. If the will consists of more than one page, each page other than the page on which it ends must be signed anywhere on the page by the testator/testatrix. Although the testator/testatrix must sign all the pages of the will, only the last page of the will needs to be signed by the witnesses.

WHAT ARE THE REQUIREMENTS FOR A VALID WILL IF THE TESTATOR/TESTATRIX CANNOT SIGN HIS/HER NAME?

If the testator/testatrix cannot sign his/her name, he/she may ask someone to sign the will on his/her behalf or he/she can sign the will by making a mark (a thumbprint or a cross).

When the will is signed by someone on behalf of the testator/testatrix or by making a mark, a Commissioner of Oaths must certify that he/she has satisfied him/herself as to the identity of the testator/testatrix and that the will so signed is the will of the testator/testatrix.

The Commissioner of Oaths must sign his/her certificate and he/she must also sign every other page of the will, anywhere on the page.

The Commissioner of Oaths must also be present when the will is signed and must append his/her certificate as soon as possible after

the will is signed even if the testator/testatrix dies soon after signing the will.

WHAT IS A CODICIL?

A codicil is a schedule or annexure to an existing will, which is made to or amend an existing will. A codicil must comply with the same requirements for a valid will. A codicil need not be signed by the same witnesses who signed the original will.

WHAT IF I WANT TO AMEND MY WILL?

Amendments to a will can only be made while executing a will or after the date of execution of the will.

Amendments to a will must comply with the same requirements for a valid will and, if a testator/testatrix cannot sign it, with the same requirements that apply for persons who cannot sign a will.

When amending a will, the same witnesses who signed the original will need not sign it again.

MUST I AMEND MY WILL AFTER A DIVORCE?

A bequest to your divorced spouse in your will, which was made prior to your divorce, will not necessarily fall away after divorce. The Wills Act stipulates that, except where you expressly provide otherwise, a bequest to your divorced spouse will be deemed revoked if you die within three months of the divorce.

This provision is to allow a divorced person a period of three months to amend his/her will, after the trauma of a divorce. Should you, however, fail to amend your will within three months after your divorce, the deemed revocation rule will fall away, and your divorced spouse will benefit as indicated in the will.

WHO IS DISQUALIFIED FROM INHERITING UNDER A WILL?

The following people are disqualified from inheriting under a will: a person or his/her spouse who writes a will or any part thereof on behalf of the testator; and a person or his/her spouse who signs the will on instruction of the testator or as a witness. Consult your legal representative for more information in this regard.

For assistance to draft a will, please contact your attorney, bank or trust company.

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