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MAKING A WILL BARBADOS

LAST WILL & TESTAMENT

GENERAL

What is a last Will and Testament & why do I need one?

Your last Will and Testament is a legal written document that specifies where and to whom you wish your property and possessions – known as your ‘estate’ – to be distributed in the event of your death. It is essential you have a valid Will in place prior to your death, in order to ensure your wishes are met. Those who do not have a Will or a valid Will are known to die ‘intestate’ and as such distribution of your assets would be in accordance with succession laws.

A will does not have to be made in Barbados if:

- it complies with the form of an International Will; or
- the internal law of the place where it was made, or the place of nationality or habitual residence of the testator at the time of death, or when the Will was made.

Do I have to have a minimum amount of assets to create a will?

No. You can create a Will to dispose of assets no matter how big or small.

How often should I review my will?

You should review your Will at least once a year and after any major changes in your life, such as having a child, getting married, separated or divorced, acquiring or selling any property or starting or closing a business, as these life circumstances may prompt you to make changes to your Will to ensure that your Will still fits your needs.

Before making an appointment to make a will, start by thinking about what you want to leave and to whom.

- 1 Contact us and make an appointment
- 2 Complete our Customer Verification Form, Will Information Form and submit them along with accompanying documents.
- 3 Review and approve our draft Will
- 4 Sign and date your Will
- 5 After signature, the Will will be lodged in the Wills and Deeds Department of the Supreme Court Registry and a receipt and sealed copy of the Will be given to the Executor for safe keeping.

LAST WILL & TESTAMENT

DOCUMENTS

- Full name and address of Testator
- Full name and address of proposed Executor(s)
- Full name and address of Beneficiary(ies)
- List of assets
(Proof of ownership required)
- Distribution of assets

FORMALITIES

- The Testator must be 18 years or older
- The Testator must make the will voluntarily
- The Testator must have testamentary capacity
- The Will must be made in writing
- The Will must be signed by the Testator
(Beneficiaries should not be present)
- The Will must be attested by at least two witnesses in the presence of each other and the Testator
(Witnesses must not be Beneficiaries)
- Medical Certificate
(if applicable)

TESTAMENTARY DISPOSITION

Can I will what I want, to who I want?

You have complete freedom of testamentary disposition as there are no "forced heirship" or "reserved portion" laws in Barbados. You, as the owner, are free to dispose of property to anyone, before or after death, subject to the following conditions:

- Any clause in a Will of which attempts to disinherit minor children (or children under disability) or a spouse who was judicially separated less than 3 years before the death of the testator, is void.
- Where you have failed to make adequate provision for the maintenance of a minor child or a child who, is by reason of some mental or physical disability, incapable of maintaining himself/herself, that child has a right to claim financial maintenance from your estate.
- If the Will contains a gift of property to the surviving spouse, that spouse must, within 6 months of the grant of probate, elect to take the property given in the Will, or to take his/her legal right under the Succession Act, unless the Will states that he/she shall take both. It should be noted that if a man and a woman have been cohabiting for a period of 5 years immediately before the death of either, succession rights are the same as for a married couple. Further, the spouse's legal right to claim a designated share in the estate takes priority over any devises, gifts or bequests made under the deceased spouse's will.

Can I will my share in a joint tenancy?

No. If real property is owned by you as a joint tenant with another party, the property automatically passes under the law of survivorship to the surviving party upon your death, unless there was a prior severance of the joint tenancy.

Can I will my share in a tenancy in common?

Where you co-own property as tenants in common, each person owns a distinct fractional share in the property. When a tenant in common dies his/her share in the property forms part of his/her estate and stands to be inherited by the persons entitled under his/her Will or under the succession laws on intestacy.

EXECUTOR

Who is an executor and what are his/her responsibilities?

An executor (or executrix) of an estate is an individual appointed by you to administer upon your death. As a legal representative of your estate, their main responsibility is to follow through on your wishes and to manage the affairs of your estate, ensuring all assets in the Will are accounted for, along with transferring these assets to the beneficiaries.

Who can be my executor?

The executor can be almost anyone but is usually a lawyer, accountant or family member, and he/she must be over the age of 18 and are mentally capable. Because you chose a family member as your executor does not mean that you have to leave them out of the Will.

How many executors can I have?

You can choose up to four people to become Executors for your Will but they all have to act jointly so it might not be practical to appoint that many people. It's a good idea, though, to choose two executors in case one of them dies before you do. You can also appoint substitute executors to cover the situation if your first choice dies before you.

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CHILDREN

Do I have to leave property to my children?

You are under no obligation to leave property to any adult children, and may disinherit them. Adequate provision for the maintenance of a minor child or a child who, is by reason of some mental or physical disability, incapable of maintaining himself that child, must be made, failing which, the court would intervene to make provisions for this.

What if my beneficiary is a minor?

Minors cannot legally hold any estate in Barbados. If it is intended to devolve property to minors, then provision should be made in the Will for the property to be held in trust for the minors until they reach the age of majority or a specified age.

We will suggest simple trust clauses for investment of the trust funds and maintenance of the beneficiary at the trustees' discretion if required. The named executors can be the same as the trustees when the trust is created.

MARITAL RIGHTS

What effect will a prenuptial agreement have on my Will?

A spouse's legal right may be renounced by an antenuptial contract in writing between the intended parties. This however does not preclude any real or personal property you have left to your spouse by Will, Codicil or any other testamentary dispositions.

Can marriage revoke my Will?

Yes. If you marry, remarry or enter a civil partnership this will usually revoke a previously existing Will except a Will made in contemplation of the marriage and so expressed in the Will.

Does my former spouse automatically renounce his/her share upon divorce?

No. Being divorced does not automatically invalidate a Will made during the marriage. You should therefore make a new Will as soon as possible if you do not wish your former spouse to inherit.

Can my estranged spouse take any share of my estate?

In both testacy and intestacy, if a husband and wife have been living apart continuously for a period of 5 years immediately preceding the death of either, the survivor is precluded from taking any share in the estate of the deceased as a legal right, or on intestacy. In the case of testacy, this does not preclude the surviving estranged spouse from receiving a specific gift in the Will. You should therefore make a new Will as soon as possible if you do not wish your estranged spouse to inherit.

CHANGING OF WILLS

Can I change my Will after I sign it?

If you change your mind about how your property should be distributed you should update your Will to reflect that change. If you want to change your Will, you can either revoke the old Will and make a new one or add a Codicil to the original Will. A Codicil is a supplement to the Will that details changes or additions. This must be signed and witnessed in the same way as an original Will. If you revoke a will you should destroy it and state on the new one that it revokes all previous wills.

BENEFITS OF A WILL

A Testator can:

- name an executor/executrix to manage the affairs of your estate
- determine distribution to beneficiary(ies) as oppose it being determined by intestate succession laws
- Establish legal guardianship of your children if they are still minors
- create trusts for his/her children or other young beneficiaries
- make charitable gifts and donations so that his/her legacy lives on
- forgive debts
- detail his/her funeral arrangements
- reduce possible family conflict by documenting his/her intentions
- disinherit any individual he/she does not wish to benefit from his/her death (subject to exceptions)
- change the Will at any time if life circumstances change.

LAST WILL & TESTAMENT

"It is advisable for persons with assets in Barbados to make a will."

There are no restrictions on foreigners owning and/or inheriting real property in Barbados. With regard to estates consisting of real property located in Barbados, the laws of Barbados are equally applicable to both nationals and foreigners. Potential conflicts with the foreign laws of the deceased's nationality are thereby avoided.

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INVALIDITY OF WILLS

While a person can prepare a will himself/herself, an attorney-at-law experienced in estate planning and the preparation of wills should be engaged to prepare the Will to ensure that:

- the Will once executed is valid; and
- the devises or bequests made under the Will are effective.

Estate planning is not one-size-fits-all and as such, doing it yourself can create problems that cost your heirs time and money down the road.

A Will can be wholly invalid or a gift to a beneficiary under an otherwise valid Will may fail for a number of reasons:

- Beneficiaries may not receive property left to them in a Will if the deceased failed to make adequate provision for a minor or disabled child and that child exercises his or her statutory right to claim maintenance from the estate.
- Beneficiaries may not receive property left to them in a Will if the surviving spouse exercises his or her right to claim a designated share in the estate.
- Any gift to a beneficiary or the spouse of a beneficiary under a Will is rendered null and void if that beneficiary was an attesting witness to the Will.
- A gift of property to a beneficiary may fail if the subject matter of the gift, the interest in the property intended to be granted or the intended beneficiary is not clearly identified in the Will or the beneficiary witnesses the Will.
- A Will may be invalid if it was not properly signed by the person making the Will or not properly witnessed.
- The validity of a Will can be challenged if at the time the Will was prepared the deceased was of unsound mind or under duress from or unduly influenced by someone to make the Will in certain terms.

The above list is by no means exhaustive and a person intending to make a Will should seek legal advice to avoid inadvertently depriving a beneficiary of his or her inheritance under the Will.

Can my Will be challenged?

Yes - all Wills can be challenged. Nothing can prevent someone from trying to invalidate it. The real question is 'Can my Will be successfully challenged?' and this really does depend.

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