

# Frequently Asked Questions & Answers

**Q1. What happen if someone dies without a Will?**

*The estate of the deceased will be frozen. The immediate family needs to apply for a Grant of Probate (GP) or Letter of Administration (LA) to unlock the deceased's estate before able to transfer it to his/her family members i.e. the legal beneficiaries.*

**Q2. In what situation do we apply for a GP or LA?**

*When there is a Will left behind by the deceased, the immediate family will apply for a GP. However, when he/she dies without a Will, the family member have to apply for a LA.*

**Q3. What is a Letter of Administration (LA)?**

*An authority given under the seal of the Court for the administration of the estate of a person who has died without leaving a Will.*

**Q4. What is a Grant of Probate (GP)?**

*A Court order that formally authorizes the executor to administer the deceased's estate according to the Will.*

**Q5. Who can be an executor or trustee?**

*A natural person above the age of 21 or a Trust company.*

**Q6. What is the maximum number of executors I can appoint in my Will?**

*Maximum of four. One Executor is required for the application of Probate.*

**Q7. What are the duties of an executor in a Will?**

- 1) Locate the Will*
- 2) Make funeral arrangement*
- 3) Apply for a Grant of Probate(GP)*
- 4) Call in assets*
- 5) Pay debts*
- 6) Prepare Statement of Accounts*
- 7) Distribute assets according to the Will*
- 8) Carry out some wishes mentioned in the Will*

**Q8. Under what circumstances does a testator need to appoint a Guardian and Trustees?**

*When there is a minor beneficiary named in the Will. Normally, the Trustees will hold on trust for the minor till he/she has attained the age of 21 years old or a 'Trust Properties' or 'Trust Fund' is created in the Will.  
A guardian is needed to take care of the welfare of the minor children if both parents are pre-deceased*

**Q9. What are the duties of Trustees?**

- 1) Continue to administer the estate where the properties cannot be distributed, eg. for a minor or before the trust period ends.*
- 2) Manage the estate according to the instructions and powers given by the Will and according to the Trustees Act.*
- 3) The appointed trustees cannot benefit by virtue of their office. All profits must be accounted for.*

**Q10. I was advised that I should not appoint the same person in my Will as my Trustee and Guardian. What is the reason for this?**

*The role of your Trustee is to hold on trust your money and other assets for your minor children while your Guardian is to take care of the welfare of your minor children. Thus, it is always wise to appoint different people to ensure there is counter-check, especially on the money left behind by you for your minor children.*

**Q11. What are the advantages of having a Will written?**

- 1) You provide for your beneficiaries in the way you choose rather than letting the Law decides for you.*
- 2) Expedite the legal process.*
- 3) No guarantors(sureties) required by the High Court.*
- 4) You may appoint a guardian of your choice for your infant children.*
- 5) You exercise the right to appoint people of your choice to administer your estate and to carry out your wishes so as to safeguard the interests of those you love and care for.*
- 6) It costs less in terms of legal fees to apply for a GP than a LA.*

**Q12. Who is an administrator? Who is qualified to be an administrator?**

*An administrator is a person appointed by all the legal beneficiaries to the estate of a deceased who has passed on without a Will to administer the estate of the deceased. All legal beneficiaries of the deceased are qualified to be an administrator.*

**Q13. I understand that the High Court requires two guarantors when the deceased's family member applying for a LA if he/she passes on without a Will?**

*Yes, two guarantors(sureties) are required by the High Court by way of bond equivalent to the gross value of the deceased's assets.*

**Q14. Is it true the consents from all the legal beneficiaries to the estate of a deceased who passed on without a Will is required before the administrator can be appointed?**

*Yes, the consents from all members of the family is required. Any beneficiary who is not applying to become the administrator will have to renounce his/her right to the appointed administrator.*

**Q15. Under what situations the Court will not require an administration bond guarantors(sureties) when applying for a LA?**

- 1) The estate does not exceed RM50,000.00.*
- 2) A trust corporation is being appointed as the administrator.*
- 3) The administrator is the sole beneficiary.*
- 4) A Court waiver – full or partial. This is at the discretion of the Court.*

**Q16. How long does it take to apply for a Grant of Probate(GP) or a Letter of Administration(LA)?**

*A GP application normally takes a shorter time than a LA application. Normally a GP can be extracted within a minimum of three months to a year, depending on the size of the estate; while a LA normally takes 2 to 5 years.*

**Q17. What are the essential clauses in a Will?**

- 1) Opening clause*
- 2)Revocation clause*
- 3)Appointment of executors*
- 4) Residuary clause*
- 5)Attestation clause*

**Q18. What is a residuary clause?**

*It is one of the vital clauses in a Will. Any asset which the testator has forgotten to will away will automatically fall under the residuary clause. Thus, with a residuary clause, there is no partial intestacy of a Will.*

**Q19. What happens if my Will does not have a clause on the residuary estate?**

*Your Will will become partial intestacy.*

**Q20. What is an accrual clause in a Will?**

*In a Will, an accrual clause is one that mentions the subsequent beneficiary of a particular asset should the earlier mentioned beneficiary pre-deceases.*

**Q21. When will my Will be in force?**

*It will be in force upon execution with two independent witnesses and is written according to the Will Act 1959.*

**Q22. What are the assets that cannot be dealt within a Will?**

- 1) *Insurance policies.*
- 2) *Money in Kumpulan Wang Simpanan Pekerja (KWSP) account.*
- 3) *A joint bank account, provided there is a survivorship clause mentioned in the agreement when opening the bank account.*

**Q23. Under The Distribution Act 1958 (As amended in 1997), what is the distribution among the spouse, parents and issue of the deceased?**

*If there are surviving spouse, parents and issue, the distribution is:-*

- 1) *Spouse  $\frac{1}{4}$ ,*
- 2) *Parents  $\frac{1}{4}$  and*
- 3) *Issue in equal shares of the  $\frac{1}{2}$ .*

*If there are surviving spouse and parents only and no issue, the distribution is:-*

- 1) *Spouse  $\frac{1}{2}$  and*
- 2) *Parents  $\frac{1}{2}$ .*

*If there are surviving spouse and issue only and no parent, the distribution is:-*

- 1) *Spouse  $\frac{1}{3}$  and*
- 2) *Issue in equal shares of the  $\frac{2}{3}$ .*

*If there are surviving parents and issue only and no spouse, the distribution is:-*

- 1) *Parents  $\frac{1}{3}$  and*
- 2) *Issue in equal shares of the  $\frac{2}{3}$ .*

*Please note:- Issue: Includes children and the descendent of children.*

**Q24. What happen if a person passes on leaving no spouse, children or parent?**

*The following person(s) are entitled in accordance to priority when an intestate dies without leaving behind a surviving spouse, children or parent:-*

- 1) *brothers and sisters*
- 2) *grandparents*
- 3) *uncles and aunts*
- 4) *great grandparents*
- 5) *great uncles and aunts and*
- 6) ***GOVERNMENT***

**Q25. Can the witnesses and the testator sign on the Will at different times?**

*No, both the witnesses and the testator must sign the Will at the same time. The function of the witnesses is to confirm and verify that the testator is of sound mind.*

**Q26. Can I will away my foreign assets?**

*Yes, only the movable assets in a foreign country. The immovable assets will follow the law of the country of domicile.*

**Q27. I have a house under joint name with my husband. Can I will my half share in my house away to whoever I wish?**

*Yes, you can. The house will be held jointly between your beneficiary and your husband should you pass on one day.*

**Q28. Is it true that a testator's marriage will automatically revoke a Will written prior to the marriage?**

*Yes, it is.*

**Q29. I am going to inherit some assets from my father when he passes on in the future. Can I specify them in my Will even though I do not own the assets at the point when I write my Will?**

*Yes, you can.*

**Q30. Can I produce my Will on videotape or VCD instead of writing everything down?**

*No. Under Section 5 of the Will Act 1958, all wills must be written in a prescribed form.*

**Q31. Can I sell my assets mentioned in my Will after I signed it?**

*Yes, you can. Once you have sold off any of the assets mentioned in the Will, the respective beneficiary will receive nothing as on the date of your death, there is no such asset.*

**Q32. Under what circumstance can Amanah Raya Berhad (ARB) administer the estate of a person who dies intestate?**

*When the gross value of the estate is less than RM600,000.00.*

**Q33. At what age will my children inherit my property?**

*A person is legally capable of holding property upon attaining the age of 18.*

**Q34. Can I write my Will in Chinese?**

*A will can be written in any language. However, where the Will is not in English a translation certified by a court interpreter or a translation verified by the affidavit of a person qualified to translate must be annexed to the application for Grant of Probate.*

**Q35. I am an orphan, my mother never come back after leaving me with my nanny who take care of me since I was three years old. When I am gone, will my nanny benefit from my estate for the work done by her?**

*No, she would not. You need to write a Will and name your nanny as a beneficiary.*

**Q36. I was working in USA for five years and had written a Will there. Now I am back in Kuala Lumpur. Is my Will recognized by the Court in Malaysia?**

*Yes, only for movable assets in Malaysia.*

**Q37. Does a Will need to be stamped and sealed?**

*No, under the Will Act, a Will need not be stamped.*

**Q38. Can one of my beneficiaries be the executor, trustee and guardian in my Will?**

*Yes, he can. However, for check and balance purposes, it is always advisable to appoint a guardian who does not perform the duty of a trustee.*

**Q39. I want to give everything I own to all my children in equal shares but I plan to have one or two more children in the near future. Does it mean I have to rewrite my Will every time I have a new child?**

*No. You can include the clause “en ventre sa mere” which means future children are included as well.*

**Q40. Can a Grant of Probate (GP) be granted on a copy of a Will?**

*No, normally the Court requires the original copy.*

**Q41. Can I write a Will for someone when I am one of the beneficiaries in the Will? Is there any conflict of interest?**

*There is no restriction on writing a Will. However, if the Will is contested in Court later and the Court finds suspicious circumstances exist, probate might not be granted unless the suspicious are removed.*

**Q42. I will be getting married in a few months' time. I understand that if I write my Will now, my marriage will revoke it? What shall I do in the meantime?**

*Put the name of your fiancé in the Will.*

**Q43. What is ‘Contemplation of Marriage’?**

*When a person gets married, his/her Will will automatically be revoked unless he/she mentions that he/she is subsequently going to marry a particular person or he/she is in ‘contemplation of marriage’.*

*In this case, this Will will not get revoked even after marriage to this particular person.*

**Q44. Can a beneficiary or his/her spouse be a witness in a Will?**

*No. A beneficiary or his/her spouse must not be a witness. If he/she does, then he/she will lose his/her share in the Will. However, this will not affect the validity of the Will.*

**Q45. If I have nominated my parents as the beneficiaries for the money in my KWSP account, can I subsequently will it away to my spouse? Can my Will revoke the nomination I made earlier?**

*No, your beneficiary in the Will will not be able to revoke your earlier nomination in the KWSP account. Under the KWSP Act, all beneficiaries for the money in the KWSP account must be mentioned in the prescribed forms provided by KWSP.*

**Q45. Can I make a pre-arrangement to pay my appointed guardian periodically for the work done by her in my Will?**

*Yes, you can. It will be known as a 'Trust Fund'.*

**Q46. After signing the Will, if the testator divorces his wife who is a beneficiary in the Will, will she be able to receive the gift mentioned in the Will?**

*Yes, she will. A divorce does not render a Will null and void.*

**Q47. Can I donate a specific amount to charity?**

*Yes, you can mention the specific amount for donation. However, in your Will, you need to name the charity that you want to benefit.*

**Q48. In my Will, can I create a 'Trust Fund' to pay for the maintenance expenses of my elderly parents and my retarded nephew that I loved very much?**

*Yes, you can. It is known as 'Maintenance Trust Fund' for your elderly parents and your nephew. 'Trust Fund' can also be created for payments of education expenses, medical expenses, monthly donations etc.*

**Q49. Can I state my funeral arrangements in my Will?**

*Yes, you can. In a Will, you can mention your wishes and the executor appointed by you will have to carry out your wishes. This is one of the purposes of writing a Will.*

**Q50. I have written a Will five years ago. Since last month, I have become a Muslim. Is my Will still valid?**

*No. Once a person professes the Muslim faith, the distribution of his/her estate will be governed by the Syariah Law*

**Q51. Do I have control over the assets that I have willed away in my Will?**

*Certainly, a Will only takes effect upon your death.*

**Q52. Can I will away a joint bank account?**

*No, if mandate has been given to the bank when opening the account that upon death of one of the account holders, the surviving holder will be entitled to the money standing to their credit in the bank account. However, most banks in Malaysia do not have the survivorship clause in their agreements.*

**Q53. What are the common testamentary trusts created in a Will?**

*Some of the common testamentary trusts in a Will are as follows:-*

- 1) Education Trust Fund for children*
- 2) Maintenance Trust Fund for elderly parents*
- 3) Trust Fund for handicapped children/family members*
- 4) Maintenance Trust Fund for spouse*
- 5) Charitable Trust Fund on the education expenses for the poor*

**Q54. Why I need two witnesses when signing my Will?**

*Under the Law, two witnesses are required to be present when the testator signs his/her Will. The purpose of their presence is to confirm that the testator is of sound mind and aware that he is signing a Will.*

**Q55. Do my witnesses need to appear in Court when my appointed Executor applies for the Grant of Probate when I pass on later?**

*No, They need not appear in Court. However, if there is a contest on the validity of the Will, the Court might need the witnesses to appear in Court to prove that the testator was of sound mind when he/she signed the Will.*

**Q56. What happens if both the witnesses cannot be located or have already passed away when the executor wants to apply for the Grant of Probate?**

*The Executor needs to file an affidavit saying that the witnesses can not be located or have already passed away and the Court might need an affidavit from a person who can verify the signature of the testator.*

**Q57. Is it true that the testator must state the reasons as to why he/she is not providing any gift to a particular family member of his/her family?**

*Yes, it is advisable to state the reasons why provisions have not been made for a particular family member, particularly for those family members falling under the Inheritance (Family Provision) Act 1971. This is to avoid any claims from these members under this Act.*

**Q58. Who has a right to challenge a Will?**

*Anyone who has an interest in the estate of the deceased. Under the Inheritance (Family Provision) Act 1971, certain categories of people have a right to apply for reasonable provisions to be made for their maintenance if nothing or insufficient amount has been left to them under the Will. These people are:-*

- 1) The spouse of the deceased.*
- 2) A daughter who has not been married or is incapable of maintaining herself due to some mental or physical disability.*
- 3) A son who is incapable of maintaining himself due to some mental or physical disability.*

**Q59. If I will my house which is still under a mortgage loan to my son, will he have to settle the outstanding loan before inheriting the house?**

*Yes, he has to. Thus, it is always advisable to purchase a Mortgage Reducing Term Assurance (MRTA) to pay for any outstanding loan should you pass on suddenly.*

**Q60. I am a foreigner, a domicile in Malaysia, can I write a Will and will away my assets I own in Malaysia to my family members who are non Malaysian?**

*Yes, you can.*

**Q61. If I inherit a house from my father when he passes on, do I need to pay government estate stamp duty before transferring the house to my name?**

*Yes, you do. Only a nominal amount as it is not according to the current market value of the house. The estate stamp duty was abolished on 1/11/1991.*

**Q62. Is it true that a Will cannot revoke an insurance policy with a nomination?**

*Yes, a Will cannot revoke any insurance policy with a nomination made under Section 166 Insurance Act 1996.*

*Under Section 166 Insurance Act 1996 only the nomination of a spouse and/or children is allowed. However, the nomination of parent(s) as a beneficiary is allowed on condition that the policyholder is not married at the time of making such a nomination.*

*Any nomination other than these nominations under Section 166 Insurance Act 1996 (i.e. spouse, children and parents) receives the money as an executor unless the benefit of the policy has been assigned to him/her.*

**Q63. Can a bankrupt be an executor or trustee?**

*No, as the Court may use its discretion to disallow the appointment.*

**Q64. Can I name a bankrupt as a beneficiary in my Will?**

*Not advisable, as the official assignee (OA) who has jurisdiction over all the bankrupt's assets will have the access to such gift.*

**Q65. My friend is a major shareholder of a private limited company. Can he will away the house that is registered under his company which is utilized by him?**

*The company is a separate legal entity when it was incorporated. Thus, the house he is staying belong to the company not him. He cannot will the house away in his Will. However, he can will indirectly through willing away his holding of shares in the company to his beneficiary.*

**Q66. In what circumstances a Will will have to be re-written?**

*There are a few situations you should consider rewriting a Will:-*

- 1) Your Will is destroyed or lost.*
- 2) You want to change the proportion or percentage of your estate distribution.*
- 3) You want to change your beneficiary/beneficiaries, guardian(s), trustee(s) or executors.*
- 4) Over the years things and situations have changed and your Will does not reflect your wishes as to how your estate should be distributed.*

**Q67. I have a son, named John from my relationship with a man who has left me. Now, I am married to A. If I do not write a Will, will my son John be able to receive part of my estate under the Distribution Act 1958?**

*No, as he is not a legitimate child. You need to write a Will to include him.*

**Q68. I have two wives. One is legally married, the other not as Malaysian law does not allow polygamy. I have bought some insurance policies and named my second wife as the beneficiary. Do I need to mention this policy in my Will to prevent a contest?**

*Yes, despite the fact that she is a beneficiary she is merely an executor for the money paid out from the insurance policies. Your legal wife and children have a right over the money she receives. To protect her, state in the Will that this money is for her.*

**Q69. What is pecuniary legacy?**

*It is defined under the Probate and Administration Act as including an annuity, a general legacy or a demonstrative legacy so far as it is not discharged out of the designated property, and any general direction by a testator for payment of money, including all duties free from which any advice, bequest or payment is made to take effect.*

**Q70. I have withdrawn RM88,888.88 from my KWSP account to invest in some unit trust funds. If I pass on, will my nominee in my KWSP account be able to receive my unit trust investment as well?**

*No, your nominee will not. These unit trust investments form part of your estate, not part of your KWSP account. You can will these investments in a Will.*

**Q71. What are your Professional Will-Writing Fees?**

***WILL-WRITING FEES STRUCTURE (w.e.f 1/10/2008)***

<b>Type of Will</b>	<b>No. of Clauses</b>	<b>Will-Writing Fee (RM)</b>
<i>Basic</i>	<i>Up to 10</i>	<i>380</i>
<i>Intermediate (I)</i>	<i>11 to 14</i>	<i>500</i>
<i>Intermediate (II)</i>	<i>15 to 18</i>	<i>650</i>
<i>Comprehensive (I)</i>	<i>19 to 21</i>	<i>800</i>
<i>Comprehensive (II)</i>	<i>22 to 24</i>	<i>1,000</i>
<i>Comprehensive (III)</i>	<i>25 to 27</i>	<i>1,200</i>
<i>Exclusive (I)</i>	<i>28 to 30</i>	<i>1,500</i>
<i>Exclusive (II)</i>	<i>31 to 33</i>	<i>1,800</i>
<i>Exclusive (III)</i>	<i>Above 33</i>	<i>2,100 – 12,000</i>

**Q72. What are your Professional Will Safe Custody Fees?**

***Three Options:- (w.e.f 1/10/2008)***

**A). EXCLUSIVE LIFETIME CUSTODY (ELC)**

- A single payment of RM1,300/= or 4(four) instalments by credit card \*\*

**You enjoy:-**

- Any subsequent rewrite - **50% discount** on Will-Writing fee from Rockwills

- FREE RM20,000/= Personal Accident Assurance, covered till 65 years old

\*\* (exclusive of RM20/= registration fee)

**B). LIFETIME CUSTODY**

- A single payment of RM1,000/=

**You enjoy:-**

- Any subsequent rewrite - **20% discount** on Will-Writing fee from Rockwills

- FREE RM10,000/= Personal Accident Assurance, covered till 65 years old

**C). ANNUAL CUSTODY**

- YEARLY payment of RM100/= (First year compulsory)

- Can be up-graded to Lifetime Custody or Exclusive Lifetime Custody (ELC)

**For more questions on Will-Writing, please contact us at  
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