

FREQUENTLY ASKED QUESTIONS AND ANSWERS

Q1. What is a Will?

A Will is a declaration in a prescribed form of the intention of the person making it of the matters which he/she wishes to take effect after his/her death.

Q2. Who is a testator?

A person who makes a Will.

Q3. What happen to the estate of a person if he/she dies tomorrow?

His/her estate will be frozen. The Law requires Grant of Probate (GP) or Letter of Administration (LA) to unlock his/her frozen estate.

Q4. 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 has to apply for a LA.

Q5. 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.

Q6. 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.

Q7. Who can be an executor or trustee?

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

Q8. 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.

Q9. 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 periodic Statement of Accounts*
- 7) Distribute assets according to the Will*
- 8) Carry out the wishes mentioned in the Will*

Q10. 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 'Testamentary Trust is created in the Will.

A guardian is needed to take care of the welfare of the minor children if both parents have passed away.

Q11. What are the duties of Trustees?

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

Q12. 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 children who are minor while your Guardian is to take care of the welfare of your children. Thus, it is always wise to appoint different people to ensure there is check and balance, especially for the money left behind by you for your children.

Q13. 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 children below 21 years old.*
- 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 to apply for a GP than a LA.*

Q14. 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.

Q15. I understand that the High Court requires two guarantors when the deceased's family member applies 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.

Q16. Is it true the consents from all the legal beneficiaries to the estate of a deceased who passed on without a Will are required before the administrator can be appointed?

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

Q17. Under what situations will the Court not require 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.*

Q18. 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 three months to a year, while a LA may takes from 2 to 5 years.

Q19. Is it true that it cost less in term of legal fees to apply for a Grant of Probate(GP) than a Letter of Administration (LA)?

Yes, it is.

Q20. What are the essential clauses in a Will?

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

Q21. What is a residuary clause?

It is one of the vital clauses in a Will. Any asset which the testator did not specifically will away will automatically fall under the residuary clause. He may have forgotten about those assets or those assets were acquired after writing his Will. Thus, with a residuary clause, there is no partial intestacy of a Will.

Q22. What happens if my Will does not have a clause on the residuary estate?

Partial intestacy will happen.

Q23. 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 an earlier mentioned beneficiary pre-deceased the testator.

Q24. When will my Will become legally binding?

It will become legally binding upon execution with two independent witnesses and is written according to the Wills Act 1959.

Q25. What are the assets that cannot be dealt within a Will?

- 1) Insurance policies with nomination(s).*
- 2) Money in Kumpulan Wang Simpanan Pekerja (KWSP) account with nomination(s).*
- 3) Assets hold on trust.*

Q26. What is an issue?

A person's issue refers to his/her children, grandchildren and all lineal descendants.

Q27. 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 remaining $\frac{1}{2}$.*

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

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

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 remaining $\frac{2}{3}$.*

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 remaining $\frac{2}{3}$.*

Please note:- Issue: Includes children and the descendant of children.

Q28. What happens 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**

Q29. 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.

Q30. 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 where the property is situated and it may be advisable to get legal advice as to its devolution upon death.

Q31. 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.

Q32. Is it true that a testator's marriage will automatically revoke a Will written prior to the marriage?

Yes, it is.

Q33. 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.

Q34. 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.

Q35. 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 beneficiary for the asset concerned no longer be entitled as the asset has been disposed off prior to death.

Q36. Under what circumstances 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.

Q37. At what age can my children inherit my property?

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

Q38. 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.

Q39. I am an orphan. My mother never came back after leaving me with my nanny who has taken 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.

Q40. I worked 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, if the Will has been executed either according to the formalities in USA or the formalities under the Malaysian Wills Act.

Q41. Does a Will need to be stamped and sealed?

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

Q42. 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.

Q43. 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. If you intend for them to benefit equally, just use the term 'children' which can include future children.

Q44. Can a Grant of Probate (GP) be granted on a copy of a Will?

Yes, if it can be proven that the original copy is lost or destroyed. The Court normally requires the original copy.

Q45. 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 suspicion is removed.

Q46. Can I make alterations to my Will without writing a new one?

Yes, provided it is signed by the same witnesses. However, it is always advisable to write a new one to avoid future complications.

Q47. I have written a few Wills years ago which I have lost. Recently, I have written another one. If any of my old Wills are recovered after I die, which is the valid Will?

The latest one.

Q48. 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?

You can state expressly in your Will that your marriage to the particular person shall not revoke your Will. The name of the person you are getting married to must be stated.

Q49. 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.

Q50. What is a codicil?

An addition to the Will signed and witnessed in the same way as the original Will. The witnesses may be different from those people who witnessed the original Will.

Q51. 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.

Q52. 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. The Will will not be able to revoke your earlier nomination in the KWSP account.

Q53. What is domicile? What is lex situs?

Domicile is the country in which a person is or presumed to be permanently resident. Lex situs means the law of the place where the property is situated. It is the general rule that for movable properties, the law of the testator's domicile applies whereas for immovable properties, it is lex situs that applies.

Q54. Can I make pre-arrangements to pay my appointed guardian periodically for the work done by her in my Will?

Yes, you can.

Q55. 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 be able to. A divorce does not render a Will null and void.

Q56. 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.

Q57. 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 love very much?

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

Q58. Can I state my funeral arrangements in my Will?

Yes, you can. You can mention your wishes in your Will. However, it is advisable to let your family members know of your wishes as a Will may be read only many days after your death.

Q59. Can I write a general Will? I do not want to list down my assets.

Yes, you can. In this case, it is advisable to keep good records of your assets as you do not wish your family members to 'treasure hunt' your assets when you are no longer with them.

Q60. 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

Q61. Do I have control over the assets that I have willed away in my Will?

Certainly, a Will only takes effect upon your death.

Q62. Can I will away a joint bank account?

To avoid complication, it is advisable to will it to the joint account holder only.

Q63. Can I keep my Will written by a Rockwills Will-Writer in my safe deposit box in my bank?

Not advisable, as the safe deposit box will be frozen when you pass on. Thus, your family members may not be able to retrieve it for the application of Probate.

Q64. 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*

Q65. I have written a Will recently. I am going to purchase some new assets next month. Do I need to rewrite again? Will there be anyone receiving these assets when I pass on without writing a new Will to include these new assets?

No, the new assets will fall under the residuary clause and be distributed accordingly. However, if you do not want the beneficiary named in the residuary estate to benefit from these new assets, then you need to write a new Will and name your preferred beneficiary for the new assets acquired after the date of the Will.

Q66. 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.

Q67. Do my witnesses need to read or know the contents of my Will before they sign as my witnesses in my Will?

No, they need not read your Will or know the contents of your Will. They merely confirm that you are of sound mind and you sign the Will in their presence.

Q68. Do my witnesses need to appear in Court when my appointed Executor applies for the Grant of Probate?

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.



For Free Consultation on Will-Writing, please contact:-

03 - 7782 1993 / 012-303 9383