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QUICKLAW GUIDE





Wills

What is a Will?

A will, often referred to as a last will and testament, is a legal document that outlines a person's wishes regarding the distribution of their assets and the management of their affairs after their death. The person making the will is called the testator. It typically includes instructions on how the testator's property, possessions, and finances should be divided amongst his/her heirs/ beneficiaries.

Who can make a Will?

Any person who is 16 years or older may make a Will, unless s/he is mentally incapable of appreciating the nature of making a Will.

What are the requirements for a valid Will?

- > It must be in writing.
- The Will must be signed at the end of every page by the testator and two witnesses.
- > The testator and the two witnesses must sign the Will in the presence of each other.
- > Witnesses may not benefit from the Will.
- > 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 and under the direction of the testator 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 law of the Republic of Botswana, public interest or good morals.

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

- > The will should be practical and care must be taken that legal and practical restrictions are adequately provided for.
- > 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.

What will happen if a person dies without a Will?

- > If a person dies without a Will, the property will be distributed in terms of the laws of intestate succession. This refers to the laws which govern the property of a person who dies without a will.
- > According to intestate succession, property will be distributed amongst the deceased's spouse, children and family (if any) according to certain rules relating to the order in which they will be entitled to inherit. The distribution may vary according to the deceased cultural practices, and if his lifestyle and nature of his estate demands customary administration.
- > If the deceased did not have a spouse, children or family, the property will be forfeited to the State.

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.

Simply, put if a testator dies within three months of his/her divorce, and that person executed a will before the divorce, the will shall be implemented as if the previous spouse had died before the date of divorce, unless it is clear from the will that the testator intended to benefit his ex-spouse despite the marriage ending.

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, normally at a bank or a law firm.
- > The testator must inform a reliable person of the whereabouts of his/her Will.

Glossary of terms:

BEQUEST: the distribution of property in terms of a Will.

CERTIFY: to confirm, usually in writing, that something is true or correct.

CERTIFYING OFFICER: may be a Magistrate, Justice of the Peace, Commissioner of Oaths or a Notary Public.

CODICIL: it is an amendment to an existing will.

COMPETENT WITNESS: any person of the age of fourteen years or older who is competent to give evidence in Court of Law.

EXECUTE: means to perform or carry out the administration of the estate or the property of the deceased person in terms of the Will.

EXECUTOR: is a person appointed by a testator in the Will to see to the administration of his/her estate in terms of the Will.

INTESTATE: when a person dies without leaving a Will.

INTESTATE SUCCESSION: refers to the method of property distribution when a person dies without a valid will.

PROPERTY: a place where a person can live in, for example, a house, room, flat, garage or similar structure built on land used for housing purposes.

SIGN: signing Includes in the case of a testator, the making of a mark but does not include the making of a mark in the case of a witness, and "signature" has a corresponding meaning.

TESTAMENTARY TRUST: a trust is a fiduciary relationship or a relationship of trust in which one person gives another person authority to handle their assets or property for the benefit of a third party, called the beneficiary. A testamentary trust is a trust which arises upon the death of the testator and which is specified in his /her will.

TESTAMENTARY WRITING: is a document which is given by an officer lawfully authorized and which grants power to a person named as executor to execute a last.

TESTATOR: a person who makes a Will.

How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest Branch.