

WILLS AND INHERITANCE

A Will is written evidence of a person's desire as to the disposal of his earthly possessions after death.

As a matter of strict law, there are several formal requirements to be observed in making a Will:

- (1) It must be in writing.
- (2) It must be signed by the Testator at the foot or end thereof or such other place in close proximity to the end or foot.
- (3) It must be witnessed by two or more persons who are present together and saw the Testator sign or saw someone do so on the direction of the testator. Such witnesses must attest to their witnessing the signature or acknowledgement in the presence of the Testator.
- (4) The Testator must be a person of the age of majority.

The requirement that a Will must be written is subject to an exception in that it is not necessary for a soldier being in actual military service or other marines may dispose of their real or personal estate in whatever form is sufficient to verify his intentions. There were cases where such Wills were written in the sand.

The requirement that the Testator must be of full age also is not applicable to Soldier and sailors in active military service. See Wills (Soldiers & Sailors Act Sec 4). The Will should identify the person or person whom the testator desires to carry out his wishes expressed in his Will and that person if male is called the executor and if female is called executrix.

WHY SHOULD YOU MAKE A WILL?

If you do not make a will, your assets will be distributed according to the Rules contained in the Inheritance Act, which are not as ridiculous as they were before that Act was passed but they do not necessarily represent your desires.

The Inheritance Act 2002 has had significant impact on the effect of a Will, particularly in relation to the activity of a person to alienate his entire estate from his family. By reason of Section 6 of that Act the surviving spouse of a Testator who has an interest in the estate of the deceased may request the personal representative to appropriate his/her interest in the estate and that any minor child of if necessary to enable the personal representative to transfer to the surviving spouse the matrimonial home. Household chattels, furniture etc. may also be appropriated in this fashion.

The exceptions to this rule are:

- (1) When the house forms part of a building and an interest in the whole of the building is a part of the estate.
- (2) The dwelling house is held as a part of agricultural land
- (3) The whole or part of the dwelling house is a hotel or lodging house.
- (4) A part of the dwelling house was used for purposes other than domestic

The personal representative shall not comply with that request:

- (a) Where six (6) months has passed since the surviving spouse was notified of that right
- (b) After the death of the surviving spouse

- (c) Where the dwelling house was left in the Will for a child of the deceased
(NB. Whether within or without wedlock – see the Status of Children Act)
- (d) Unless the surviving spouse so requests unless the surviving spouse is the personal representative.

Provision is made in the Act for Dependents if a deceased depend on section 12 to apply to the court for an order that the disposition of the estate of deceased does not make provisions for reasonable financial well being and the court may make such an order and truly provide for:

- (a) Periodical payments for such terms as may be specified or
- (b) Payment of a lump sum of such amount as may be specified

Such application must be made within six (6) months of the taking out of Probate or Letters of Administration.

The Act also provides in section 24 that a surviving spouse may not be evicted from the matrimonial home provided he/she was residing there at the time of the death of the deceased.

Where a person makes a Will before marriage that Will is revoked upon marriage and unless he/she makes a Will subsequently he/she will die intestate.

Where a person dies without a Will or intestate his/her residuary estate will be distributed in accordance with the provisions of Section 4 of the Act to which I now refer.

What is abundantly clear from this is that unless you decide and indicate in your Will, all your assets could eventually wind up in the hands of persons who may have not

done one thing to deserve the same and indeed someone who may have been an hindrance to your acquisition of that which they will now enjoy.

This may be easily avoided by taking a little time and spending a little money to make a Will.

If you have a few more dollars to spend you may indeed establish a Trust which provides greater flexibility than a Will.

The issue of presumption of death arises where there is no direct evidence of the death of a person on a particular date or a particular place. There may however, be circumstantial evidence of such death eg. The person may have disappeared on a particular date or may not have been heard of for a long time by those with whom he might have been expected to communicate or stop on board of which he may have been lost.

In those circumstances an application can be made to the Court for the presumption of death provided that his disappearance has been sustained for the appropriate length of time usually seven (7) years.

The presumed date however is the date of his disappearance of that could be determined by the evidence.