

Legal Update

Singapore

2020 DECEMBER



ADSAN LAW

IMPORTANCE OF WILL WRITING DURING A PANDEMIC

Will Writing has always been perceived as non-essential until an individual is much older or has sustained a life limiting illness.

The COVID-19 pandemic has ravished many lives in an unprecedented way with no forewarning. This unfortunate event serves as an important message for us to reflect on our mortality, the fragility of life and the need to protect our loved ones. Hence, writing a Will is the most sensible thing that you can do in these unprecedented and unpredictable times so that your loved ones and assets are protected if the unexpected should happen.

In this article, we will be sharing some basic knowledge and the importance of Will writing in Singapore.

What is a Will?

A Will, or Testament is a legally enforceable declaration of how you want your assets to be distributed upon your demise.

What are the advantages of having a Will?

(a) Distribute your assets in accordance with your wishes and decide who will receive your assets

Having a Will can give you some peace of mind and ensure your loved ones would inherit your assets according to your wishes. Arranging your affairs in advance also gives you the assurance that your loved ones will be financially secure and taken care of in the event of your death. When you create a Will, you may nominate beneficiaries of your choice and decide how you would like to distribute your assets among them.

(b) Nominate a guardian for your minor children

Besides the allocation of assets, you may nominate a guardian for your minor children in your Will¹. In the scenario where one parent has passed away, the surviving parent usually becomes the natural guardian of the child and will act either alone or jointly with any guardian appointed by the other parent.² However, in the unfortunate scenario where both parents have passed away, the guardian(s) that you have appointed will take on the responsibility for your children.

In the event that no guardian has been appointed on the death of both parents, the court may, if it thinks fit, appoint any person who applies to the court to be the guardian of the child³. This could mean that someone you would not have chosen will be raising your children. By appointing guardians, you can ensure that your children are looked after by someone you trust and thereby minimize court involvement in the care of your children.

(c) Appoint executors to manage your estate and administer the Will

You may appoint an executor in your Will. The executor has the duty of carrying out your wishes in line with your Will, and he or she is granted legal power to administer the estate.

(d) A Will Prevents Intestate Succession

If you pass away without a Will in Singapore, your assets will be distributed according to the rules of intestacy⁴ expressed in the Intestate Succession Act⁵ which can often result in an undesirable outcome.

Generally, your spouse, children, or parents take priority under the rules of intestacy or, if you have neither, to your other closest relatives. If no relatives can be found to inherit your property, it will go to the Government⁶.

However, some individuals may want to distribute their property differently than the default distribution under the Intestate Succession Act. For instance, they may want their money and assets to be distributed to their friends, unmarried partners, or charitable organisations. They may also want to distribute their assets in the proportion or manner they desire. However, the Intestate Succession Act does not allow for any of that. Hence, having a Will can ensure your wishes are followed.

¹ Guardianship of Infants Act (Cap. 122), S.7

² Guardianship of Infants Act (Cap. 122), S.6(1) & (2)

³ Guardianship of Infants Act (Cap. 122), S.6(3)

⁴ Intestate Succession Act (Cap. 146), S.7

⁵ Intestate Succession Act (Cap. 146)

⁶ Intestate Succession Act (Cap. 146), S.7

(Note: The Intestate Succession Act does not apply to the estate of any Muslim. The estate for these individuals will be distributed according to the rules of the Muslim law⁷.)

(e) To Avoid Unnecessary Delay

If you pass away without a Will, your next of kin (or family members) would have to apply for Letters of Administration⁸ and appoint an administrator to administer the distribution of your estate. This process can be time-consuming, expensive, and even contentious for your loved ones, as it requires many procedures and checks and balances to ensure that your estate is being handed justly. For instance, you must first identify the legal beneficiaries of the estate and consent is needed to appoint one of them as an administrator. This could take some time.

The entire process of administering your estate could take approximately 2 to 5 years (or even longer depending on the complexity of the case). If your assets include time-sensitive assets such as stock holdings, the value might depreciate by the time the Letter of Administration is granted.

With a Will, the process would be rather simple and straightforward. If your probate case is non-contentious, it normally takes about 3 to 6 months for the executor to obtain a grant of probate to administer the estate.

(f) Avoid Family Conflicts over Inheritance of Property

Making a Will is important to prevent your family from fighting over your possessions. Without a Will, disputes can arise as to who is entitled to your assets. A Will that clearly lays out your wishes may reduce conflict and speculation over what you “would have” wanted. It is crucial to consider carefully who should inherit your estate when you pass away, especially if your family circumstances or assets are complicated.

As stated above, if you pass away intestate, your next of kin (or family members) would need to appoint an administrator to administer your estate. Sometimes, who should be appointed as administrator(s) would become an issue amongst the beneficiaries. This could lead to family disputes over who should be in charge if no one can reach an agreement.

Statutory Requirements for a Valid Written Will

Generally, for a Will to be valid, the following must be in place: -

- a. The testator must be 21 years old and above⁹;
- b. The testator must be of sound mind with mental capacity to understand and express his or her wishes;

⁷ Intestate Succession Act (Cap. 146), S.2

⁸ Probate and Administration Act (Cap. 251), S.2 & S.18

⁹ Wills Act (Cap. 352), S.4

- c. The Will must be written¹⁰ and signed by the testator at the foot of the Will in the presence of two or more independent witnesses present at the same time¹¹; and
- d. The witnesses must also sign the Will in the presence of the testator¹².

It is important to note that the beneficiaries and their spouses must not be the witnesses under the Will. Otherwise, the gifts to the beneficiaries will be invalid¹³.

What are the roles of the executor?

The executor of a Will is responsible for carrying out the wishes of the deceased in accordance with his or her Will. Some of executor's duties include, but are not limited to¹⁴: -

- a. locating the Will;
- b. applying to Court for a Grant of Probate;
- c. acting in the best interest of the beneficiaries of the Will;
- d. determining the assets and liabilities of the estate;
- e. collecting estate assets;
- f. paying any liabilities and distributing the estate in accordance with the Will; and
- g. making funeral arrangements.

Who can I appoint to be my executor?

To be appointed as executor, the person must be at least 21 years old, not a bankrupt¹⁵ and trustworthy in the eyes of the testator. You may appoint up to 4 executors to jointly administer your estate¹⁶. A beneficiary can be an executor under the Will. It is a common practice for people to appoint one of their beneficiaries, e.g. their spouse or adult child to be an executor.

You may also appoint a back-up executor (or more) in your Will in the event your appointed executors predecease you or renounce their executorship¹⁷. As there is a lot of work involved in administering and distributing assets, you are encouraged to discuss the appointment with the person you intend to make executor prior to making the Will.

¹⁰ Wills Act (Cap. 352), S.6(1)

¹¹ Wills Act (Cap. 352), S.6(2)

¹² *ibid*

¹³ Wills Act (Cap. 352), S.10

¹⁴ <https://singaporelegaladvice.com/law-articles/what-should-i-do-with-a-deceased-relatives-will-how-is-a-will-executed/>

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *ibid*

Alternatively, you may appoint a professional executor, such as a licensed trust company or a lawyer to act as your executor.¹⁸ If your Will is complex, it is advisable that you approach a licensed trust company or a lawyer to execute your Will.

How would your marriage or divorce affect the validity of your Will?

Your Will will be revoked automatically upon your marriage or remarriage¹⁹ unless the Will expressly states that it is 'in contemplation of marriage'²⁰. However, a divorce does not automatically revoke a Will made during the marriage. You are advised to write a new one if you intend to change the distribution under your Will in such circumstances.

Will CPF savings be covered by your Will?

It is important to note that your CPF savings cannot be included in your Will as they are not considered to be part of your estate. It is strongly recommended to make a CPF nomination, if you wish to distribute your CPF savings in line with your wishes. If you do not make a valid nomination, your CPF savings will be transferred to the Public Trustee's Office for distribution according to the Intestate Succession Act or Muslim Inheritance laws (for Muslims) after your passing.²¹

Conclusion

Even though you can prepare your own Will from scratch or by using a template, it is wise to keep in mind that a Will is a legally binding document with strict legal requirements that must be adhered to. Any mistake in a self-made Will may invalidate it and jeopardize your entire estate plan and ruin your legacy. Hence, it is advisable to seek professional assistance especially when your circumstances are not entirely straightforward. It is beneficial to engage solicitors to draft up your Will as they could ensure that your Will is properly drafted, legally valid and enforceable upon your demise.

Life is unpredictable, so it is important to stop procrastinating. If you do not have a Will, consider writing your Will today.

¹⁸ *ibid*

¹⁹ Wills Act (Cap 352), S.13(1)

²⁰ Wills Act (Cap. 352), S.13(2)

²¹ <https://www.cpf.gov.sg/members/FAQ/schemes/other-matters/cpf-nomination-scheme/FAQDetails?category=Other+Matters&group=CPF+Nomination+Scheme&ajfaqid=2185971&folderid=18097>

Author: Tham Hooi Meng

CONTACT

ADSAN LAW LLC

300 Beach Road Level 26

The Concourse

Singapore 199555

Tel: 68282828

www.adsanlaw.com

This publication is only intended to provide general information only and does not constitute any legal or other advice. While we endeavour to ensure that information contained herein is accurate at the time of publication, we do not warrant its accuracy or completeness or accept any liability for any loss or damages arising from reliance thereon.

©Adsan Law LLC