



To protect your wishes and
secure your loved one's future,
leave a will today

Introduction

Making a will is an important matter relating to the final wishes of a person and the distribution of his / her estate. The purpose of this leaflet is to provide information relating to the use of wills, with the aim to enhancing public understanding of wills.

What is a will?



A will is a legal document that specifies the personal representative entrusted with the power and duty to administer a person's estate (the executor) and to whom the deceased's estate should be distributed upon his / her death (the beneficiaries). A will shall take effect immediately upon the death of the testator. The executors shall act in accordance with the will, administer the estate of the deceased person and distribute them to the beneficiaries.

What constitutes a valid will?



- 1 The testator must be at least 18 years of age (or under 18 years of age but married) and mentally sound, with the capacity and willingness to make a will without any coercion or deception.
- 2 The testator may choose to write a will by himself / herself or to instruct a solicitor to draft it.
- 3 A will must be in writing and signed by the testator or by some other person in the presence of and at the direction of the testator.
- 4 The testator intends to give effect to the will by his / her signature.
- 5 The signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time.
- 6 Each witness either attests and signs the will or acknowledges his / her signature in the presence of the testator (but not necessarily in the presence of the other witnesses).

What can be included in a will?



There is no limitation on what can be included in a will. It may include:

- 1 appointment of executors;
- 2 disposition of personal effect and property;
- 3 arrangements for beneficiaries when they are under the age of 18; and
 - The beneficiary's share of estate should be held on trust
 - The testator may specify the exact age at which the estates may be distributed to the beneficiary.
- 4 appointment of a guardian to take care of minor children (under the age of 18) or disabled persons.

Why making a will?



The importance and benefits of making a will include:

- 1 **Distribution of the estate according to the testator's own wishes and avoidance of disputes**
 - Making a will ensures that the property and assets of the testator are distributed according to his / her wishes after his / her death, which prevents family disputes. Also, the testator may also distribute assets to non-relatives such as friends of the testator or charitable organisations by making a will.
- 2 **appointment of executors**
 - There can be a maximum of 4 executors of a will. The testator can appoint trusted persons, such as legal professionals, to be the executors of the will. Executors are responsible for administering and distributing the property in the estate. This prevents disputes between family members and friends over applying to the court to be the executor of the will.
- 3 **simplify the process of estate administration**
 - If a deceased did not leave a will, an application for Letter for Administration requires documents and evidence proving the entitlement of the applicant to administer the estate. For example, the renunciation of administration signed by the deceased's relatives who have prior rights than the applicant to administer the deceased's estate. If the deceased left a will, the executor who apply for the Probate is not required to obtain the aforesaid renunciation.

Order of Priority in Intestate Succession



In general, the estate of an intestate shall be distributed, in accordance with the Intestates' Estates Ordinance, in the following order:

- 1 surviving spouse;
- 2 surviving child (including illegitimate child and adopted child, but excluding stepchild) or issue of deceased child;
- 3 surviving parent(s);
- 4 surviving brother(s) or sister(s) or the issue of deceased sibling(s);
- 5 surviving grandparent(s);
- 6 surviving brother(s) or sister(s) of the parents.

Seeking Legal Advice



For legal advice relating to the making of wills or the administration of estates, member of the public may consult his/her own legal advisor or attend any of the designated appropriate referral agency to make an appointment to meet the volunteer lawyer of the Free Legal Advice Scheme, or visit the website of the Duty Lawyer Service for recorded legal information (website: http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp) on the relevant legal topics.

Disclaimer

The information provided in this leaflet is for general information purpose only and does not, and is not intended to, constitute any legal advice. You may consider it helpful in protecting your interests by seeking legal advice or instructing a lawyer before making a will or taking any action related to the administration of estates.

References

- 1 Probate and Administration Ordinance (Cap. 10)
- 2 Wills Ordinance (Cap. 30)
- 3 Intestates' Estates Ordinance (Cap. 73)