

THIS IS A LIST OF FREQUENT Q&A AND GUIDELINES ON INFORMATION REQUIRED FOR THE PURPOSE OF DRAFTING OF WILL WHICH CAN BE USED AS GUIDANCE. PLEASE NOTE THAT THE ANSWERS PROVIDED ARE NOT MEANT AS A LEGAL ADVICE.

Q1 What happen if someone dies without Will?

The estate of the deceased will be frozen. The immediate family needs to apply for a Grant of Probate (GP) or Letter of Administration to unlock the deceased's estate before able to transfer it to his/her family members i.e. the legal beneficiaries.

Q2 In what situation do we apply for 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 have to apply for a LA.

Q3 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.

Q4 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.

Q5 Who can be an executor or trustee?

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

Q6 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.

Q7 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*
- 4) Call in assets*
- 5) Pay debts*
- 6) Prepare Statement of Accounts*
- 7) Distribute assets according to the Will*
- 8) Carry out some wishes mentioned in the Will*

Q8 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 Trustee will hold on trust for the minor till he/she has attained the age of 21 years old or a 'Trust Properties' or 'Trust Fund' is created in the Will.

A guardian is needed to take care of the welfare of the minor children if both parents are pre-deceased.

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- Q9 What are the duties of Trustees?**
*1) Continue to administer the estate where the properties cannot distributed, eg. For a minor or before 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.*
- Q10 I was advised that I should not appoint the same person in my Will as my Trustee and Guardian. What is the reason of this?**
The role of your Trustee is to hold on trust your money and other assets for your minor children while your Guardian is to take care of the welfare of your minor children. Thus, it is always wise to appoint different people to ensure there is counter-check, especially on the money left behind by you for your minor children.
- Q11 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 infant children.
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 cost less in terms of legal fees to apply GP than a LA.*
- Q12 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 your estate of the deceased. All legal beneficiaries of the deceased are qualified to be an administrator.
- Q13 I understand that the High Court requires two guarantors when the deceased's family member applying 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.
- Q14 Is it true the consents from all the legal beneficiaries to the estate of a deceased who passed on without a Will is required before the administrator can be appointed?**
Yes, the consents from all members of the family is required. Any beneficiary who is not applying to become the administrator will have to renounce his/her right to the appointed administrator.
- Q15 Under what situations the Court will not require an 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 administrator.
3) The administrator is sole beneficiary.
4) A Court waiver – full or partial. This is at the discretion of the Court.*

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- Q16 How long does it take to apply for a Grant of Probate (GP) or Letter of Administration (LA)?**
A GP application normally takes a shorter time than LA application. Normally a GP can be extracted within a minimum of three months to a year, depending on the size of the estate; while a LA normally takes 2 to 5 years.
- Q17 What are the essential clauses in a Will?**
*1) Opening clause
2) Revocation clause
3) Appointment of executors
4) Residuary clause
5) Attestation clause*
- Q18 What are the residuary clause?**
It is one of the vital clauses in a Will. Any asset which the testator has forgotten to will away will automatically fall under the residuary clause. Thus, with a residuary clause, there is no partial intestacy of Will.
- Q19 What happened if my Will does not have a clause in residuary estate?**
Your Will will become partial intestacy.
- Q20 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 the earlier mentioned beneficiary pre-deceases.
- Q21 When will my Will be in force?**
It will be in force upon execution with two independent witnesses and is written according to the Will Act 1959.
- Q22 What are the assets that cannot be dealt with in a Will?**
*1) Insurance policies.
2) Money in Kumpulan Wang Simpanan Pekerja (KWSP) account.
3) A joint bank account, provided there is a survivorship clause mentioned in the agreement when opening the bank account.*
- Q23 Under The Distribution of 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 $\frac{1}{2}$
If there are surviving spouse and parent only and no issue, the distribution is:-
1) Spouse $\frac{1}{2}$ and
2) Parents $\frac{1}{2}$*
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If there are surviving spouse and issue only no parent, the distribution is:-

- 1) Spouse 1/3 and
- 2) Issue in equal share of the 2/3

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

- 1) Parents 1/3 and
- 2) Issue in equal shares of 2/3

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

Q24 What happen 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) Brother and sister
- 2) Grandparents
- 3) Uncles and aunts
- 4) Great grandparents
- 5) Great uncles and aunts and
- 6) **GOVERNMENT**

Q25 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.

Q26 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 of domicile.

Q27 I have a house under joint name with my husband. Can I will my half share in my house 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.

Q28 Is it true that a testator's marriage will automatically revoke a Will written prior to the marriage?

Yes, it is.

Q29 I am going to inherit some assets from my father when he passes on to me in the future. Can I specify them in my Will even though I do not own the assets at the time I write my Will?

Yes, you can.

Q30 Can I produce my Will on videotape or VCD instead or writing everything down?

No. Under section 5 of the Will Act 1958, all wills must be written in a prescribed form

- Q31 Can I sell my assets mentioned in my Will after signed it?**
Yes, you can. Once you have sold off any of the assets mentioned in the Will, the respective beneficiary will receive nothing, as on the date of your death, there is no such asset
- Q32 Under what circumstance 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
- Q33 At what age will my children inherit my property?**
A person is legally capable of holding property upon attaining the age of 18.
- Q34 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 the Grant of Probate.
- Q35 I am an orphan, my mother never come back after leaving me with my nanny who took 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.
- Q36 I was working in USA for five years and had written a Will there. Now I am back in Kuala Lumpur, is my Will recognised by the Court in Malaysia?**
Yes. Only for movable assets in Malaysia.
- Q37 Does a will need to be stamped and sealed?**
No, under the Will Act, a Will need not be stamped
- Q38 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.
- Q39 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 new child?**
No. you can include the clause “en ventre sa mere” which means future children are included as well.
- Q40 Can a Grant of Probate (GP) be granted on a copy of a Will?**
No, normally the Court requires the original copy.

- Q41 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 suspicious are removed.
- Q42 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?**
Put the name of your fiance in the Will.
- Q43 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 'contemplation of marriage'.
In this case, this Will will not get revoked even after marriage to this particular person.*
- Q44 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.
- Q45 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. Your beneficiary in the Will will not be able to revoke your earlier nomination in the KWSP account. Under the KWSP Act, all beneficiaries for the money in the KWSP account must be mentioned in the prescribed forms provided by KWSP.
- Q46 Can I make a pre-arrangement to pay my appointed guardian periodically for the work done by her in my Will?**
Yes, you can, it will be known as a 'Trust Fund'.
- Q47 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. A divorce does not render a Will null and void.
- Q48 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. 'Trust Fund' can also be created for payments of education expenses, medical expenses, monthly donation etc.
- Q49 Can I donate a specific amount to charity?**
Yes, you can mention the specific amount of donation. However, in your Will, you need to name the charity that you want to donate.
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- Q50 Can I state my funeral arrangements in my Will?**
Yes, you can. In a Will, you can mention your wishes and the executor appointed by you will have to carry out your wishes. This is one of the purposes of writing a Will.
- Q51 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.
- Q52 Do I have to control over the assets that I have willed away in my Will?**
Certainly, a Will only takes effect upon your death.
- Q53 Can I will away a joint bank account?**
No, if mandate has been given to the bank when opening the account that upon death of one of the account holders, the surviving holder will be entitled to the money standing to their credit in the bank account. However, most bank in Malaysia do not have survivorship clause in their agreements.
- Q54 What are the common testamentary trust created in a Will?**
Some of the common testamentary trust 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
- Q55 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/she is signing a Will.
- Q56 Do my witnesses need to appear in Court when my appointed Executor applies for the Grant of Probate upon my death?**
No, they need not appear on 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.
- Q57 What happens if both the witnesses cannot be located or have already passed away when the executor wants to apply for the Grant of Probate?**
The executor needs to file an affidavit saying that the witnesses cannot be located or have already passed away and the Court might need an affidavit from a person who can verify the signature of testator.

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- Q58 Is it true that the testator must state the reasons as to why he/she is not providing any gift to a particular family member of his/her family.**
Yes, it is advisable to state reasons why provisions have not been made for a particular family member, particularly for those family members falling under the Inheritance (Family Provision) Act 1971. This is to avoid any claims from these members under this Act.
- Q59 Who has the right to challenge a Will?**
Anyone who has interest in the estate of the deceased. Under the Inheritance (Family Provision) Act 1971, certain categories of people have a right to apply reasonable provisions to be made for their maintenance if nothing or insufficient amount has been left to them under the Will. These people are:-
- 1) The spouse of the deceased*
 - 2) A daughter who has not been married or is incapable of maintaining herself due to some mental or physical disability.*
 - 3) A son who is incapable of maintaining himself due to some mental or physical disability.*
- Q60 If I will my house which is under a mortgage loan to my son, will he have to settle the outstanding loan before inheriting the house?**
Yes, he has to. Thus, it is always advisable to purchase Mortgage Reducing Term Assurance (MRTA) to pay for any outstanding loan should you pass on suddenly.
- Q61 I am a foreigner, a domicile in Malaysia, can I write a Will and will away my assets I own in Malaysia to my family members who are non-Malaysian?**
Yes, you can.
- Q62 If I inherit a house from my father when he passes on, do I need to pay government estate stamp duty before transferring the house to my name?**
Yes, you do. Only a minimal amount as it is not according to the current market value of the house. The estate stamp duty was abolished on 1/11/1991.
- Q63 Is it true that a Will cannot revoke an insurance policy with a nomination?**
Yes, a Will cannot revoke any insurance policy with a nomination made under section 166 Insurance Act 1996.
Under Section 166 Insurance Act 1996 only the nomination of a spouse and/or children is allowed. However, the nomination of parent(s) as a beneficiary is allowed on condition that the policyholder is not married at the time of making such a nomination.
Any nomination other than these nominations under Section 166 Insurance Act 1996 (i.e. spouse, children and parents) receives the money as an executor unless the benefit of the policy has been assigned to him/her.
- Q64 Can a bankrupt be an executor or trustee?**
No, as the Court may use discretion to disallow the appointment.
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Q65 Can I name a bankrupt as a beneficiary in my Will?

Not advisable.

Q66 My friend is a shareholder of a private limited company. Can he will away the house that is registered under his company which is utilized by him?

The company is separate legal entity when it was incorporated. Thus, the house he is staying belongs to the company not him. He cannot will the house away in his Will. However, he can will indirectly through willing away his holding of shares in the company to his beneficiary.

Q67 In what circumstances a Will will have to be re-written?

There are few situations you should consider rewriting a Will:-

- 1) Your Will is destroyed or lost*
- 2) You want to change the proportion or percentage of your estate distribution.*
- 3) You want to change you beneficiary/beneficiaries, guardian(s), trustee(s) or executors.*
- 4) Over the years things and situations have changed and you Will does not reflect your wishes as to how your estate should be distributed.*

Q68 I have a son, named John from my relationship with a man who has left me. Now, I am married to A. if I do not write a Will, will my son John be able to receive part of my estate under the Distribution Act 1958?

No, as he is not a legitimate child. You need to write a Will to include him.

Q69 I have two wives. One is legally married, and another is not. I have bought some insurance policies and name my second wife as the beneficiary. Do I need to mention this in my Will Policy to prevent any unnecessary contest?

Yes, despite the fact that she is beneficiary she is merely an executor for the money paid out from the insurance policies. Your legal wife and children have a right over the money she receives. To protect her, state in the Will that this money is for her.

Q70 I have withdrawn RM 100,000.00 from my KWSP account to invest in some unit trust funds. If I pass on, will my nominee in my KWSP account be able to receive my unit trust Investment as well?

No, your nominee will not. These unit trust investment is from part of your estate, not part of your KWSP account. However, you can will these investment in your Will.

**Guidelines of Information on ASSETS required
From the testator (Will Maker)**

No	Type of Assets	Information Required
1	Bank Account	<ul style="list-style-type: none"> - FD/ Saving? Current Account? - Account No - Sole Name/ Joint Name - Which Bank - Which Branch
2	Unit Trust	<ul style="list-style-type: none"> - Which Company - Account No
3	Shares & Securities in Bursa Malaysia/ foreign	<ul style="list-style-type: none"> - Name of stock exchange boards - Trading Account No
4	Insurance Policies (if nominee predecease testator)	<ul style="list-style-type: none"> - Insurance Company Name - Policy No
5	Employees Provident Fund (EPF) (if nominee predecease testator)	<ul style="list-style-type: none"> - EPF Account No
6	House/ Condo/ Apartment/ Shop Lot/ Factory	<ul style="list-style-type: none"> - Sole Name or Joint Name? - Full Address
7	Land	<ul style="list-style-type: none"> - Sole Name or Joint Name? - H.S. (M) No. - P.T. No/ Lot No - Mukim, Daerah, Negeri
8	Personal Car/ Motor Vehicle/ Yacht	<ul style="list-style-type: none"> - One beneficiary on (unless itemized)
9	Specific pieces of Jewellery	<ul style="list-style-type: none"> - Description of Jewellery
10	Content of Safe Deposit Box	<ul style="list-style-type: none"> - Safe Deposit Box Number - Which Bank or Branch
11	Share in Private Limited Company	<ul style="list-style-type: none"> - Name of Company - Company Reg. No
12	Sole Proprietorship/ Partnership Business	<ul style="list-style-type: none"> - Name of Business - Business Registration Number - Indicate whether business is Sole Proprietorship or Partnership
13	Education(s)/ Maintenance Trust Fund' for - Minor children, or - Spouse, or - Retarded child	<ul style="list-style-type: none"> - Beneficiary(s) name - What asset(s) to reserve? - Duration of Trust - Payment to the beneficiary(s) - When trust ends, balance money-who is the beneficiary(s)
14	Business Value Protection Fund' for -Protection against bankruptcy -creditors (if Trust set up more than 5 years - Partnership Buy & Sell Agreement - Trust Fund for continuity of Business	<ul style="list-style-type: none"> - Beneficiary(s) name - What asset(s) to reserve? - Duration of Trust - What is the business value? - When trust ends, balance money-who is the beneficiary(s)
15	Insurance Trust Fund' for - Family maintenance before Probate - Debt settlement before Probate	<ul style="list-style-type: none"> - Beneficiary(s) name - Which insurance(s) to reserve - Duration of the Trust
16	Money to Charitable Organization	<ul style="list-style-type: none"> - Name of charity - Address
17	Money to Specific Person	<ul style="list-style-type: none"> - Parents/brothers/sisters/uncle/nephew/godson
18	Item of personal Collection	<ul style="list-style-type: none"> - Type of collection – stamp/coin etc
19	List of Debts	<ul style="list-style-type: none"> - Name of company? Address? Amount?