

Writing a Will

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WHAT IS A WILL?

*A will is a **testamentary** document **voluntarily** made and **executed according to law** by a testator with a **sound disposing mind** wherein he disposes of his property according to the wills law and gives other directives to his executors as he deems fit*

BENEFITS OF WRITING A WILL

- Benefits of writing a Will:
 - To avoid court appointment of Administrator
 - To avoid devolution by statute
 - To avoid application of Customary Law to the administration of your estate
 - To appoint guardians for children
 - To indicate the particulars of your burial
 - To give instructions as to what is to be done with your body (donation to science, cremation, etc)
 - To avoid the expense of getting Letters of Administration (bond and sureties)
 - To ensure perpetual administration of estate until estate is wound up
 - Will is proof of authority

SUGGESTIONS FOR A WATERTIGHT WILL

Lawyer to use a Pro Forma Instruction Sheet to ensure nothing is left out

To protect against lapse avoid class gifts and contingent gifts (unless lapse is desired); also make substitution gifts (*note presumption of survivorship*)

Understand the implications of specific, general and demonstrative gifts

INSTRUCTIONS

DETAILED AND SPECIFIC LANGUAGE

FORM

NATURE OF PROPERTY

EXECUTORS AND TRUSTEES

Will to be in writing

Do not devise undivided share of family property

Executors and Trustees must be willing and able to act (appoint min. of 2 and max. of 4; or appoint a Trust Corp or Public Trustee); Specify which partners in the firm of solicitors or accountants shall be the execs or trustees; appoint 1 mature exec/trustee and 3 young ones; they and their spouses should not attest the will or the legacy becomes invalid; state specifically if executor's fees are to be paid and how

Review the terms and conditions of Trust Corps or Public Trustees, and advise testator before finalising the will

SUGGESTIONS FOR A WATERTIGHT WILL

Sign at the foot or end of the will (sign for yourself or have someone sign for you in your presence and by your direction)

You must sign or acknowledge your signature in the presence of 2 Witnesses who must both watch you sign, and then sign after you

Your signature should be above the witnesses signature

Avoid suspicion of undue influence by ensuring the will is not prepared by a beneficiary, and by signing with your usual signature

Have a Residuary Estate Clause (in lieu of codicil, for problematic demonstrative legacies, inadvertent omissions, executors fees, pecuniary legacies, etc)

EXECUTION

UNDUE INFLUENCE

RESIDUARY ESTATE CLAUSE

SOUND DISPOSING MIND

BENEFICIARIES

Have proof of sound disposing mind if the provisions of the will are not what a reasonable man would expect

The witnesses should not be beneficiaries (gifts to them under the will are invalid)
Where possible Executors/ Trustees should not be beneficiaries

EFFECT OF CUSTOMARY LAW & STATUTES ON WILLS

- Depends from state to state
 - In the south of Nigeria, the devise of land is subject to customary law provisions
 - This is largely ignored in Lagos State (Idi Igi)
 - This is applied in Edo State (Igiogbe)
 - If the provisions of Customary Law are contrary to natural law, equity and good conscience, they will not apply
 - In Northern States if there is no Wills Law, the Wills Act applies and the decision in *Adesugboka v Yinusa* will work to exclude contrary provisions of Customary Law
 - Some states (e.g. Lagos and Oyo) require 'reasonable financial provisions' for spouse, children, parents, and siblings

HOW DO YOU REVOKE A WILL?

- By a subsequent Will
 - It is advisable to specifically revoke the previous will in the subsequent will

- By destruction of the will with the intention to revoke
 - Destruction whilst intoxicated; or in a fit of rage, or other strong emotion does not revoke
 - The intention to revoke and the destruction must be simultaneous
 - Crumpling and throwing away the will is not destruction

- By subsequent marriage (this does not include customary marriage)

LOSS OF WILL

- The will is not revoked by loss. By proof of contents, and attestation probate may be granted
 - Proof of Contents:
 - Lawyers notes when receiving instructions
 - Memory of the one who drafted the will or any person who read the will
 - Proof of Attestation:
 - Testimony of a witness
 - Memory of the one who drafted the will

SAFE-KEEPING OF YOUR WILL

Examples of safe places for a will:

- Probate Registry
- Bank
- Lawyer's Safe

Thank
you