

The Importance Of A Will

What Is A Will?

A will is a legal document, drafted and executed in accordance with the formalities prescribed by the law of the land in which the will is drafted, which becomes irrevocable at your death. In Jamaica in your will, you can name:

- Your beneficiaries.
- A guardian for your minor children.
- An executor.
- A Trustee.

IT CAN BE A TIME-CONSUMING JOB AND SO YOU SHOULD CHOOSE YOUR EXECUTOR AND TRUSTEE VERY CAREFULLY.

Does a Will Cover Everything I Own? What Is A Will?

No. Generally speaking, your will affects only those assets which are in your name alone at your death. Some assets which are not affected by your will include:

- Life insurance.
- Pension Schemes.
- Assets owned as a joint tenant.
- Trusts Deeds.

Your will affects all of your separate property held in your name alone. Even if your entire estate consists of property held in joint tenancy, a life insurance policy and a retirement plan naming specific beneficiaries, you should still consider making a will.

You may unexpectedly be entitled to a bonus, a prize, a refund, or may receive an unexpected inheritance which would then be subject to your will as well. If you have minor children, the nomination of a guardian of their person and estate is a very important reason for making a will.

What Happens If I Don't Have a Will?

If you die without a will (also referred to as intestate), the country in which you hold assets will determine the beneficiaries of your estate. Contrary to popular myth, if you die without a will, everything does not automatically go to the state but is distributed in accordance with a schedule established by law.

In Jamaica If you are married or have established a common law relationship (that is if you live with an individual who is unmarried as husband and wife) of over five years then your spouse would be entitled along with your children to share in your estate, if you did not make a Will. The Spouse is entitled to two-thirds of the estate if there is one child. If there is more than one child then the spouse is entitled to a half and all the children share the remaining half.

If you are not married or in a common law relationship, your assets will be distributed to your children, if applicable, or to a schedule of relatives starting with your surviving parents if any and if none then to your surviving full brother and sisters and if none to half brothers and sisters etc.

The Jamaican Government is the beneficiary of your estate ONLY if you die without a Will (that is intestate) and you have no spouse or children or other living line of relatives at the time of your death.

Do I need a lawyer to prepare my Will?

It is always advisable that you retain the services of an Attorney to prepare your Will, as a qualified estate planning lawyer can make sure that your will conforms with the law. A lawyer can also offer suggestions and help you understand

the many and intricate ways that your will can carry your intentions into effect.

A lawyer can also help you develop a complete estate plan and offer alternative plans which may minimize tax liabilities.. This kind of planning can be extremely helpful and economical in the long run for you and your beneficiaries.

Your lawyer will either personally supervise the signing of your will or will provide you with detailed instructions concerning the rules for its execution by you and two witnesses who are not beneficiaries of your estate.

Also, keep in mind that your will is not a living will. The term living will is used in many states in the United States to describe a legal document stating that you do not want life-sustaining treatment if you become terminally ill or permanently unconscious.

In Jamaica, advance health care directives and durable powers of attorney for health care decisions are used for the same purpose.

What If My Assets Pass To a Trust After My Death?

You may make a provision in your will for a trust to be created after your death and funded with assets held in your estate. When trusts are created under a will, they are known as testamentary trusts.

For beneficiaries who are minors, you may also consider providing for transfers from your estate to a Trustee during your life to avoid the death tax liabilities that may face your beneficiaries at your death.

Can I Change My Will?

Yes. You should review your will periodically because, if it is not up to date when you die, your estate may not be distributed as you wish. Your will can be changed through a codicil, a legal document which must be drafted and executed in accordance with the same laws which apply to wills or if your circumstances have changed significantly you may want to consider doing a new will which revokes any other you may have. A codicil is simply an amendment to your will. Your will must not be changed by crossing out words or sentences or making any notes or written corrections on it.

You should seek the advice of a lawyer and make a new will when you marry or divorce.

You should also review your will when there are any major changes in your family (such as births and deaths), when the value of your assets significantly increases or decreases, and when it is no longer appropriate for the persons named as guardian or executor or testamentary trustee to act in that capacity.

If you reside outside of Jamaica and have a will in another country which is valid under the laws of that country, Jamaica will honor its validity only if it complies with our laws. That is it must be in writing, signed by the testator and witnessed by two witnesses.

Wills proved in Commonwealth countries may be validated and adopted in Jamaica by a process known as resealing and wills proved in other countries such as the USA, may be proved in Jamaica by an application to prove a copy of the same will. This is particularly important if the will refers to property in Jamaica or there is a general clause that can capture any property located in Jamaica though not specifically named.

How Are The Provisions of My Will Carried Out?

The process by which the provisions in your will are carried out following your death is known as Probate. Probate is the court-supervised application made by your Executors and allows for the distribution of your assets at your death to the beneficiaries set forth in your will, and in the manner prescribed by your will. It also provides for the relatively quick determination of the validity of any claims by creditors against your assets at your death.

A Probate application is done by the Executors of your estate instructing an Attorney to draft the requisite documents for the application to the Court.

Who Should Know About My Will?

Other than the lawyer who writes a will for you, no one needs to know what your will says. But the location of your original will should be known by your executor and/or other close friends or relatives. Your will should be kept in a safe place such as your safe deposit box, your lawyer's safe, or a locked, fireproof box at your residence.

It is of the utmost importance that nothing is stapled or scribbled on your Will as that may delay or otherwise impede an application for Probate.

Will My Beneficiaries Have to Pay Estate Taxes/duties?

Generally, Beneficiaries are not required to pay the estate taxes and or duties associated with obtaining Probate. Beneficiaries will only be required to pay estate taxes and the other duties if the estate is without funds to do so.

The duties charged for obtaining a Grant of Probate are firstly the duties on the application, which is a sum calculated based on the value of the assets sought to be distributed. Secondly, there is estate tax, or what is commonly known as "death tax", which is calculated as a percentage of the value of the assets sought to be distributed. In both instances, the value of the assets is determined based on the market value at the time of the deceased's death.

The Government does allow for the duties to be reduced by deducting funeral expenses, and exempting properties used as the principal place of residence.

What Other Planning Should I Do?

- Record a list of assets and debts.
- Secure Power of attorney for property management.

How Can I Find a Lawyer to Write a Will For Me?

If you do not know a lawyer who is qualified to discuss your assets and your estate plan with you and to write a will for you, obtain referrals from someone whose judgment you can trust—friends, associates or your employer. The cost of preparing your Will depends on the complexity of the documentation and planning required. Costs may vary from lawyer to lawyer. Prepared by: Jeneice Nelson-Brown, Nadine R. R. Guy, Tamara Francis Riley-Dunn- Attorneys-at-Law
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