

MALAYSIA

WILLS

WEEK 2022



Is a Will necessary?

Writing a Will is not compulsory, but it is highly recommended that you have one. Read on and decide for yourself.

Having a Will allows your assets to be managed quickly through probate. Probate is basically the process of admitting the validity of the Will or making your Will official. It is a legal process where assets are passed to your heirs and people named in the Will. Usually, probate starts just after the death and funeral of the owner of the Will.

The Will is also used to appoint someone of your choice to manage and distribute your wealth according to instructions on how you wish your estate to be distributed when you are no longer around. With instructions clearly written out, potential disputes among surviving family members over individual claims can be avoided.

Death Without a Will

Similarly, a Will allows Muslims to appoint an executor of their choice to carry out the same duties. Next comes the part where most people get it wrong.

A small fact that is often overlooked is that the estate of persons professing the religion of Islam is not within the scope of laws under the Wills Act 1959. It means that the rightful heirs and distribution cannot be decided by the high court because it has to follow Islamic law.

In the context of Islamic succession, should your Will increase, reduce or take away the interests of the legal heirs established by *faraid* - the laws of inheritance - than these instructions require the agreement of each and every person concerned. Also, Islamic law does not recognise the concept of 'right by birth' where a son immediately after birth gets a right to the property. An heir does not possess any right before the death of an ancestor because the heirs' rights and interest start only after the owner's death. Any instructions in the Will that follow his demise are potentially *ultra vires* or beyond the owner's control.

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The faraid law has a structure of 14 male and 9 female potential claimants categorised as primary, secondary or substitute heirs and each relative's portion of rights and interest is not diminished by a Will.

each relative's portion of rights and interest is not diminished by a Will. However, the final count of proper claimants depend entirely upon their presence or absence at the point of death.

High profile cases similar to the late founder, chairman and chief executive officer of the Naza Group of Malaysia; and former politician, diplomat and Minister of Science, Technology and Innovation that have gone before the civil and shariah courts are examples of errors and miscalculations in estate and legacy planning.

The heirs' rights and interest on your estate starts immediately upon your death, and any instructions that follow after your demise is potentially *ultra vires* or beyond your control.

What should be included in a Will?

You can have a will written to appoint guardians for minor children, select executors of wills and set up trusts for beneficiaries. In practice, two executors are ideal but, you can name a trust organisation or up to four individuals for this position.

When your Will is prepared by a trust company the executor is usually the trust organisation itself. You can either agree or appoint your own executors to replace the trust company.

Basically, a Will contains a list of your assets which are either movable or immovable and a description with details of bank account number, insurance or takaful policy number, financial institution, property address, etc. In short, whatever that you own or has your name on it.

This information is especially useful when submitting a petition for the Grant of Probate and Distribution Order.

The rest of the Will is made up of a set of instructions or testament, plus a list of assets and names to whom the assets are to be given to. This is the part where consent and agreement are required from every Muslim beneficiary before distribution is carried out, as stated above.

Nevertheless, Islamic law permits a Muslim to give away a third of his/her net wealth (assets available for distribution after the payment of funeral expenses and debts) to an individual of any race and religion or organisation in the Will. This is especially beneficial for people with non-Muslim biological parents and siblings.

You can also use other conventional and sharia-compliant instruments to give away 100 percent of your wealth to anyone.



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What should you know?

If you already have a Will, the Grant of Probate will be issued by the civil court regardless of the value of your assets including property. The administrative procedures shall require the services of a lawyer and at times even a sharia lawyer for Muslims.

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Estate Administration is the process where the court will appoint an executor - someone you might not know or even trust if you were alive - to oversee and administer your estate.

For assets valued under RM2.0 million, commonly referred to as small estate, the Letters of Administration and Distribution Order will be issued by an Estate Distribution

Officer at the Department for Division of Inheritance or Pejabat Pentadbiran Pusaka. The entire process only involves immediate family members and does not require the services of a lawyer.

Although the procedure is fairly simple, the length of time taken to obtain the distribution order depends entirely on the full cooperation and agreement of each beneficiary during the hearing of the petition. In the event of a dispute, distribution of the estate will follow the law under the Small Estates (Distribution) Act 1955 for non-Muslims and the faraid inheritance system for Muslims.

An amendment to the Small Estates (Distribution) Act 1955 was passed in January 2022 to increase the threshold of RM2.0 million to RM5.0 million for estates without a Will; and shall come into effect soon.

Having a written Will does not mean that your estate is already in good hands. Unless the appointed executor acts on it, even the best written Will will only collect dust.

Amendments and additions to the Small Estates (Distribution) Act 1955 provides for a new framework where the *harta pusaka tidak berwasiat* shall be acted upon by the Estate Distribution Officer, Public Trustee or Islamic Religious Council within six months from the occurrence of death.

Recently, the **Malaysian Institute of Estate Planners (MIEP)** launched the first ever **Malaysia Wills Week 2022**. With 30 presentations held from **1 September to 9 September 2022** MIEP also announced that Malaysia Wills Week will be held every year onwards with the next event scheduled in October 2023.

Mr. See Kok Loong, President of MIEP in his opening speech said that approximately only 28% of Malaysians have their wills documented pre-death.

He also cautioned against people who wrote their own DIY Wills where the instructions could contradict certain legal clauses and eventually render it invalid, akin to “having no Will because the courts won’t recognise it.”

“There have been instances where business partnerships fall into the hands of family members who are not familiar with the work, or minors without a guardian.”

“Families have been known to split up due to poorly written Wills,” he added.

He said that MIEP is currently working on a proposal for a one-time tax relief for creating a Will, say RM500, to be provided in the next federal budget.

“There is currently no such incentive to encourage people to have their Wills written,” he said.

This year’s Malaysia Wills Week event was sponsored by UNEEDWILL with the collaboration of Kumpulan Wang Simpanan Pekerja (KWSP), Pertubuhan Keselamatan Sosial (PERKESO), Jabatan Ketua Pengarah Tanah dan Galian (JKPTG) and Amanah Raya Berhad (ARB).

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