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WILLS LAW
(2004 Revision)

Cap. 186 of the 1963 Revised Edition of the Laws consolidated with Laws 27 of 1997(part), 9 of 1995 (part) and 4 of 2003 (part).

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Cap. 186 -1st January, 1964
Law 27 of 1997-5th December, 1997
Law 9 of 1995-13th September, 1995
Law 4 of 2003-13th June, 2003.

Consolidated and revised this 6th day of July, 2004.

Note (not forming part of the Law): This revision replaces the 1997 Revision which should now be discarded.

WILLS LAW
(2004 Revision)

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WILLS LAW

(2004 Revision)

1. This Law may be cited as the Wills Law (2004 Revision).

Short title

2. In this Law-

Definitions

“personal estate” includes leasehold estates and other chattels real, and moneys, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein;

“real estate” includes messuages, lands, rents, tenements and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and any undivided share thereof, and any estate, right or interest (other than a chattel interest) therein; and

*“will” includes a testament and a codicil, and an appointment by will or by writing in the nature of a will, in exercise of a power; and a disposition by will and testament or devise of the custody and tuition of any child, and any other testamentary disposition.

*see note on page 11

3. It shall be lawful for every person to devise, bequeath or dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death, and which if not so devised, bequeathed or disposed of, would devolve upon the heir-at-law or customary heir of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator; and the power hereby given shall extend to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

What may be devised or bequeathed by will

Estates <i>pur autre vie</i>	4. If no disposition by will shall be made of any estate <i>pur autre vie</i> of a freehold nature the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate <i>pur autre vie</i> , whether freehold or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator, either by reason of a special occupancy or by virtue of this Law, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.
Wills of minors	5. (1) No will made before the 19th December, 1977 by any person under the age of twenty-one years shall be valid. (2) No will made on or after the 19th December, 1977 by any person under the age of eighteen years shall be valid.
Execution of wills	6. No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person, in his presence, and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary. Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within this Law if the signature shall so be placed at, after, following, under, beside or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will; or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature; or by the circumstance that the signature shall be placed among the words of the testimonium clause, or of the clause of attestation, or shall follow, be after or under the clause of attestation, either with or without a blank space intervening or shall follow, be after, under or beside the names, or one of the names, of the subscribing witnesses; or by the circumstance that the signature shall be on a side, or page, or other portion of the paper or papers containing the will whereupon no clause or paragraph, or disposing part of the will shall be written above the signature; or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances

shall not restrict the generality of the above enactment; but no signature under this Law shall be operative to give effect to any disposition or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

7. No appointment made by will in exercise of any power shall be valid, unless the same be executed in manner hereinbefore required, and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will, made in exercise of such power, should be executed with some additional or other form of execution or solemnity:

Appointments made by wills

Provided that any soldier being in actual military service or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Law

8. Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Publication not necessary

9. If any person who shall attest the execution of a will shall, at the time of the execution thereof or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

Will not to be invalid for incompetency of attesting witness

10. If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void; and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will.

Gift to attesting witness to be void

11. In case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Creditor attesting will may be a witness to prove its execution

Executor may prove execution of will	12. No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.
Will revoked by marriage	13. Every will made by a man or woman shall be revoked by his or her marriage except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, customary heir, executor or administrator, or the person entitled as his or her next of kin under the Succession Law (1995 Revision).
1995 Revision	
What shall not revoke will	14. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.
Revocation	15. No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.
Provision as to alterations made in will	16. No obliteration, interlineation or other alteration made in any will, after the execution thereof, shall be valid, or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witness be made in the margin, or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.
No will revoked to be revived otherwise than by re-execution or codicil	17. No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil executed in the manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.
Conveyance subsequent to execution of will	18. No conveyance or other act, made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

19. Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. Will to speak from death of testator
20. Unless a contrary intention shall appear by the will, such real estate or interest therein, as shall be comprised, or intended to be comprised, in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. Lapsed or void devises
21. A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator, or his leasehold estates, or any of them to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will. Leasehold estates
22. A general devise of the real estate of the testator, or of the real estate of the testator on any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper; and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will General gift of real or personal estate shall include real or personal estate
23. Where any real estate shall be devised to any person without any words of limitation such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will. Devise without words of limitation to be construed to pass the fee
24. In any devise or bequest of real or personal estate, the words “die without issue”, “die without leaving issue”, “have no issue” or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, How certain words are to be construed

and not an indefinite failure of his issue, unless a contrary intention shall appear by the will by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise:

Provided that this Law shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Real estate devised to trustee or executor

25. Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

Real estate devised to trustee without express limitation

26. Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devises of estate tail

27. Where any person to whom any real estate shall be devised for an estate tail or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Gifts to children who die leaving issue living at death of testator

28. Where any person being a child of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

29. Every will re-executed or re-published or revived by any codicil shall, for the purposes of the Law, be deemed to have been made at the time at which the same shall be so re-executed, re-published or revived.

What this Law not
extend to

Publication in consolidated and revised form authorised by the Governor in Cabinet this 6th day of July, 2004.

Carmena Watler
Clerk of Cabinet

Note (not forming part of the Law):

When the Children Law, 2003 (4 of 2003), which was not in force at the time of this revision, comes into operation the definition of “will” in section 2 is amended by the deletion of “and also to a disposition by will and testament or devise of the custody and tuition of any child” and the substitution therefore of “and also to an appointment by will of a guardian of a child”.

Price \$ 2.40