

WILLS ACT, 2002

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No. 4 of 2002

**AN ACT TO MAKE FRESH PROVISIONS RELATING TO THE LAW OF
WILLS; AND FOR CONNECTED PURPOSES.**

[Date of Commencement - 1st February 2002]

Enacted by the Parliament of The Bahamas.

**PART I
PRELIMINARY**

*Short title
and
commencement.*

1. (1) This Act may be cited as the Wills Act, 2002.
(2) This Act shall come into operation on such day as the Minister may, by notice published in the Gazette, appoint.

Interpretation.

2. (1) In this Act —
“child” or “issue” means a child born in wedlock or an adopted child and includes a child en ventre sa mere;
“personal estate” includes leasehold estates and other chattels real, and also 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 the administrator, and any share or interest therein;
“real estate” includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal or personal, and any undivided share thereof, and any estate, right or interest (other than a chattel interest) therein;
“will” includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power, and any other testamentary disposition.

PART II WILLS

Property disposal by will.

3. Subject to this Act, every person may dispose by will executed in accordance with this Act all real estate and all personal estate owned by him at the time of his death.

Capacity to make a will.

4. To be valid, a will shall be made by a person who -

- (a) is aged eighteen years or over; and
- (b) is of sound disposing mind.

Formalities for execution of wills.

5. (1) Subject to section 6, no will is valid unless it is in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction in accordance with subsection (2)

(2) The signature of the testator or other person mentioned in subsection (1) is effective if -

- (a) so far as its position is concerned it satisfies subsection (3)
- (b) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (c) each witness either -
 - (i) attests and signs the will, or
 - (ii) acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witness),

but no form of attestation is necessary nor is publication of the will necessary.

(3) So far as regards the position of the signature of the testator, or of the person signing for him-

- (a) a will is valid if the signature is so placed at, after, following, under, beside or opposite the end of the will that it is apparent on the face of the will that the testator intended to give effect, by the signature, to the writing

signed as his will;

- (b) no will is affected by the circumstances that -
- (i) the signature does not follow, or is not immediately after, the foot or end of the will,
 - (ii) a blank space intervenes between the concluding word of the will and the signature,
 - (iii) the signature is placed among the words of the testimonium clause or of the clause of attestation or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows or is after, under or beside the names or one of the names of the subscribing witnesses,
 - (iv) the signature is on a side page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature, or
 - (v) there appears to be sufficient space to contain the signature on or at the bottom of the preceding side, page or other portion of the same paper on which the wills written,

and the enumeration of the circumstances in paragraph (b) does not restrict the generality of this subsection, but no signature under this section operates to give effect to any disposition or direction which is underneath or follows it, nor does it give effect to any disposition or direction inserted after the signature is made.

(4) No person is a competent witness to the execution of a will if he attests the will in any manner other than by signing his name in his own handwriting.

(5) A guide as to the formalities of a will is set out in the First Schedule.

First Schedule.

Wills with foreign element.

6. (1) The Minister may make regulations governing the validity and recognition of wills and other testamentary dispositions with a foreign element or executed on board a vessel or aircraft or which, for any other reason, may not comply with the law of The Bahamas.

(2) In making regulations under subsection (1) the Minister may have regard to any convention providing a uniform law on the form of an international will or otherwise dealing with the conflict of laws relating to testamentary dispositions.

Governing law.

7. Where a testator who -

- (a) is not domiciled in The Bahamas;
- (b) is disposing of property situate in The Bahamas,

expressly declares in his will that the laws of The Bahamas shall be the governing law of the disposition, such declaration shall be valid, effective and conclusive regardless of any other circumstance.

Testamentary execution of power.

8. A will executed in accordance with section 5 or 6 is, so far as respects the execution and attestation thereof, a valid execution of a power of appointment by will, notwithstanding that the instrument creating the power expressly requires that a will made in exercise of such power should be executed with some additional or other form of execution or formality.

Incompetency of witness.

9. Subject to subsection (3) of section 5, if any person who attests the execution of a will becomes at any time afterwards incompetent as a witness to prove the execution, the will is not invalid on that account.

Gift to witness.

10. (1) Subject to subsection (2), if a person who attests the execution of a will is a person to whom or to whose spouse any interest is given by the will (whether by way of gift or by way of exercise of a power of appointment, but other than and except charges and directions for the payment of debts), the gift or appointment is void so far as it concerns such an attesting witness or the spouse of

the witness or any person claiming under the witness or spouse, but the attesting witness is competent as a witness *to* prove the execution or to prove the validity or invalidity of the will notwithstanding the gift or appointment mentioned in the will.

(2) Attestation of a will by a person to whom or to whose spouse there is given or made any such disposition as is described in subsection (1) shall be disregarded if the will is duly executed without his attestation and without that of any other such person.

(3) This section applies to the will of any person dying after the commencement of this Act, whether executed before, on or after the commencement of this Act.

Attestation by creditor.

11. If a will charges any property with any debt, and -

- (a) any creditor whose debt is so charged; or
- (b) the spouse of any such creditor referred to in paragraph (a),

attests the execution, such an attesting witness is competent, notwithstanding the charge, as a witness to prove the execution or to prove the validity or invalidity of the will.

Attestation by executor.

12. No person is incompetent on account of his being an executor of a will as a witness to prove the execution or to prove the validity or invalidity of the will.

Revocation by marriage.

13. (1) Subject to subsections (2), (3) and (4), a will is revoked by the testator's marriage.

(2) A disposition in a will in exercise of a power of appointment shall take effect notwithstanding the testator's subsequent marriage unless the real or personal estate so appointed would in default of appointment pass to his personal representatives.

(3) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that the will should not be revoked by the marriage, the will shall not be revoked by his marriage to that person.

(4) Where it appears from a will that at the time it was made the testator was expecting to be married to a particular person and that he intended that a disposition in the will should not be revoked by his marriage to that person -

- (a) that disposition shall take effect notwithstanding the marriage; and
- (b) any other disposition in the will shall take effect also, unless it appears from the will that the testator intended the disposition to be revoked by the marriage.

Effect of dissolution of marriage.

14. Where after the testator has made a will, a decree of a court dissolves or annuls his marriage or declares it void —

- (a) the will shall take effect as if any appointment of the former spouse as an executor or as an executor and trustee of the will were omitted; and
- (b) any devise or bequest to the former spouse shall lapse, except in so far as a contrary intention appears by the will.

Alteration in circumstances .

15. No will is revoked by any presumption of an intention on the ground of an alteration in circumstances.

Revocation generally.

16. No will, or any part thereof, is revocable otherwise than -

- (a) in accordance with section 13;
- (b) by another will;

- (c) by some writing, declaring an intention to revoke the will, executed in the manner in which a will is required to be executed; or
- (d) by the testator, or some person in his presence and by his direction, burning, tearing or otherwise destroying the will, with the intention of revoking it.

Alteration after execution.

17. No obliteration, interlineation or other alteration made in any will after its execution is valid or has any effect so far as the words or effect of the will before the alteration are not apparent, unless the alteration is executed in the manner in which a will is required to be executed; but the will with the alteration as part of it is duly executed if the signature of the testator and the signature of the witnesses are made in the margin or on some other part of the will opposite or near the alteration or at the foot or end of, or opposite to, a memorandum referring to the alteration and written at the end or some other part of the will.

Revival of revoked will.

18. (1) No will or any part thereof which has been revoked is revived otherwise than by -

- (a) re—execution of the revoked will; or
- (b) a codicil showing an intention to revive the revoked will.

(2) Where any will, which has been, first, partly revoked, and later wholly revoked, is revived, the revival, does not extend to the part revoked before the revocation of the whole will unless an intention to revive that part is shown.

Subsequent conveyance or acts.

19. No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate referred to in the will (except an act which revokes the will in accordance with section 13 or 16), prevents

the operation of the will with respect to the estate or interest in that real or personal estate of which the testator has power to dispose by will at the time of his death.

Will speaks from death.

20. Every will shall be construed, with reference to the real and personal estate referred to in it, to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention appears by the will.

Lapsed and void devises.

21. Unless a contrary intention appears from the will, if a devise fails or is void by reason of the death of the devisee in the lifetime of the testator or by reason of being contrary to law or otherwise, any real estate or interest comprised or intended to be comprised in that devise is deemed to be included in the residuary devise (if any) contained in the will.

General devise.

22. A devise of the land of the testator, or of the hand 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 so as to include the leasehold estates of the testator or any of them to which such description extends as well as freehold estates, unless a contrary intention appears by the will.

General gift.

23. (1) A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed so as to include any real estate, or any real estate to which such description extends, as the case may be, which he may have power to appoint in any manner he may think proper, and operates as an execution of such power, unless a contrary intention appears by the will.

(2) A bequest of the personal estate of the testator, or any bequest of personal] property described in a general manner shall be construed so as to include any personal estate, or any personal]- estate to which such description extends, as the case may be, which he may have power to appoint in any manner he may think proper, and operates as an execution of such power, unless a contrary intention appears by the will.

Devise of real estate without words of limitation.

24. Where any real estate is devised to any person without any words of limitation, the devise shall be construed so as to pass the fee simple or other interest which the testator had power to dispose of by will in such real estate, unless a contrary intention appears by the will.

Construction.

25. (1) In any devise or bequest of real or personal] estate the expressions “die without issue”, or “die without leaving issue”, or “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, and not an indefinite failure of issue, unless a contrary intention appears 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.

(2) This Act shall not extend to cases where such words mentioned in subsection (1) import if no issue described in a preceding gift are born, or if there is no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Devise to trustees or executors.

26. Where any real estate is devised to any trustee or executor, such devise shall be construed to pass the fee simple or other 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 is thereby given to him expressly or by implication.

*Devise to trustee
without express
limitation.*

27. Where any real estate is devised to a trustee, without any express limitation of the estate to be taken by the trustee, and the beneficial interest in the real estate, or un the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life, but the purposes of the trust may continue beyond the life of such person, then the 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 are satisfied.

Devise of estate tail.

28. Where any person to whom any real estate is devised for an estate tail or an estate in quasi entail, dies in the lifetime of the testator leaving issue who would inherit under such entail and any such issue are hymn at the time of the death of the testator, then the devise shall not lapse, hut shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by tube will.

*Gift to child who
predeceases
testator.*

29. (1) Where —

- (a) a will contains a devise or bequest to a child or remoter descendant of the testator;
- (b) the intended beneficiary dies before the testator, leaving issue; and
- (c) issue of the intended beneficiary are living at the testator's death,

then, unless a contrary intention appears by the will, the devise or bequest shall take effect as a devise or bequest to the issue living at the testator's death.

(2) Issue shall take under this section through all degrees, according to their stock (per stirpes) in equal shares if more than one, any gift or share which their parent would have taken and so that no issue shall take whose parent is living at the testator's death and so capable of taking.

(3) This section shall have effect as if —

- (a) the reference to a child or remoter descendant of the testator includes a reference to every child on remoter

descendant whether or not born in wedlock; and.

- (b) the reference to the issue of the intended beneficiary includes a reference to any such issue whether or not born in wedlock.

(4) This section applies to any will whether made before, on or after the commencement of this Act, but does not apply to a will in respect of which, before the commencement of this Act, probate has been granted.

Devise of real estate to more than one person.

30. Where real estate is devised to more than one person as co-owners without any words to indicate that a joint tenancy subsists between such persons the devise shall be construed as the devise of a tenancy in common person.

PART III RECTIFICATION AND INTERPRETATION OF WILLS

Rectification.

31. (1) If a court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence —

- (a) of a clerical error; or
(b) of a failure to understand his instructions,

it may order that the will be rectified so as to carry out the testator's intentions.

(2) An application for an order under this section shall not, except with the permission of the court, be made after the end of the period of twelve months from the date on which representation with respect to the estate of the deceased is first taken out.

(3) This section shall not render the personal representative of a deceased person liable for having conveyed or distributed real or personal estate of the deceased or any part thereof after the end of the period of six months from the date on which representation with respect to the estate of the deceased is first taken out, on the ground that they ought to have taken into account the possibility that the court might permit the making of an application for an order under this section after the end of that period.

(4) Subsection (3) shall not prejudice any power to recover by reason of the making of an order under this section any part of the real or personal estate so conveyed or distributed.

(5) In considering for the purposes of this section when representation with respect to the estate of a deceased person was first taken out, a grant limited to trust property shall be left out of account, and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(6) Nothing in this section affects the will of a testator who dies before the commencement of this Act.

Interpretation of wills.

32. (1) This section applies to a will -

- (a) in so far as any part of it is meaningless;
- (b) in so far as the language used in any part of it is ambiguous on the face of it;
- (c) in so far as evidence, other than evidence of the testator's intentions, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.

(2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation.

(3) Nothing in this section affects the will of a testator who dies before the commencement of this Act.

Gifts to spouses.

33. (1) Except where a contrary intention is shown, it shall be presumed that if a testator devised or bequeaths real or personal estate to his spouse in terms which in themselves give an absolute interest to the spouse, but by the same instrument purports to give his issue an interest in the same estate, the gift to the spouse is absolute notwithstanding the purported gift to the issue.

(2) Nothing in this section affects the will of a testator who dies before the commencement of this Act.

PART IV
WILLS EXECUTED OUTSIDE THE BAHAMAS

Definitions for Part IV.

34. (1) In this Part —
“internal law” in relation to any territory or state means the law which would apply in a case where no question of the law in force in any other territory or state arose;
“state” means a territory or group or territories having its own law of nationality;
“will” includes any testamentary instrument or act, and
“testator” shall be construed accordingly.

(2) Where under this Part the internal law in force in any territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows —

- (a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that shall be followed;
or
- (b) if there is no such rule, the system shall be that with which the testator was most closely connected at the relevant time, and for this purpose the relevant time is the time of the testator’s death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.

(3) In determining for the purposes of this Part whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account

being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

General rule for formal validity.

35. A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national.

Additional rules.

36. (1) Without prejudice to section 35, the following shall be treated as properly executed -

- (a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the territory with which, having regard to the registration (if any) and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;
- (c) a will so far as it revokes a will which under this Part would be treated as properly executed or revokes a provision which under this Part would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated;
- (d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

Certain requirements to be treated as formal.

37. Where (whether in pursuance of this Part or not) a law in force outside The Bahamas falls to be applied in relation to a will, any requirement of that law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated, notwithstanding any rule of that law to the contrary, as a formal requirement only.

Change of domicile of testator.

38. The construction of a will shall not be altered by reason of any change in the testator's domicile after the execution of the will.

PART V MEMBERS OF DEFENCE FORCE, MARINERS AND SEAMEN

Members of defence force, mariners and seamen.

39. Any member of the Royal Bahamas Defence Force being in actual naval, military or air force service, or any mariner or seaman being at sea, may dispose of his real and personal estate without complying with the formalities for the execution of a will as set out in section 5.

Explanation of section 39.

40. In order to remove doubts as to the construction of section 39, it is hereby declared that the said section 39 authorises and always has authorised any member of the defence force being in actual military service, or any mariner or seaman being at sea, to dispose of his personal estate though under the age of eighteen years.

Extension of section 39.

41. Section 39 shall extend to any member of the naval or marine forces not only when he is at sea but also when he is so circumstanced that if he were

a member of the defence force he would be in actual military service within the meaning of that section.

*Validity of
testamentary
dispositions of real
property.*

42. A testamentary disposition of any real estate made by a person to whom section 39 applies, shall, notwithstanding that the person making the disposition was at the time of making it under eighteen years of age or that the disposition had not been made in such manner or form as was at the passing of this Act required by law, be valid.

*Power to appoint
testamentary
guardians.*

43. Where any person dies having made a will which is, or which, if it had been a disposition of property, would have been rendered valid by section 39 any appointment contained in that will of any person as guardian of the infant children of the testator shall be of full force and effect.

PART VI GENERAL

Application of Act.

44. (1) Except where otherwise expressly provided, this Act applies to wills made before, on or after the commencement of this Act, where the testator dies after such commencement.

(2) Every will which is re-executed, republished or revived by codicil is, for the purposes of this Act, made at the time of the re-execution, republication or revival.

*Repeals.
Second Schedule.*

45. The Acts specified in the Second Schedule are hereby repealed.

FIRST SCHEDULE

(Section 5(5))

Structure of A Will

THIS WILL is made by me

of

(1) I REVOKE all previous wills

(2) I APPOINT

to be my executor

(3) I GIVE

(a)

(b)

(4) I GIVE the rest of my estate (after payment of my debts, testamentary expenses and the gifts in clause (3) of this will) to

DATED this

day of

20

SIGNED by the above-mentioned

As his last will in our joint presence and then by us in his

SECOND SCHEDULE

(Section 45)

Repeals

Wills Act, Chapter 101

Wills Act Amendment Act, Chapter 102

Wills (Soldiers and Sailors) Act, Chapter 103
