WHAT IS A WILL?

According Section 2 of the Wills Act 1959, a Will means a declaration intended to have legal effect of the intentions of a testator with respect to his property or other matters which he desires to be carried into effect after his death and includes a testament, a condicil and an appointment by will or by writing in the nature of a will in exercise of a power and also a disposition by will or testament of the guardianship, custody and tuition of any child ("**Will**").

In other words, a Will is a legal document that sets forth the wishes of the deceased regarding the distribution of his estates and the care of his children. When an individual makes a Will, he shall be known as a testator and estates refers to all the movable and immovable property that the person owns which is left at his or her death.

To make a valid Will, the testator must:

a) be at least 18 years old;
b) be of sound mind;
c) having his Will in writing; and
d) sign his Will and witness by at least two (2) witnesses who CANNOT be the beneficiary or the spouse of the beneficiary of the Will.

Further, in *Williams on Wills*, it is stated that a testator has testamentary capacity if:

a) he understands he is giving his property to one or more objects of his regard;
b) he understands and recollects the extent of his property; and
c) he understands the nature and extent of the claims upon him by those who are benefitting and those who are not benefitting from his will.

WHAT HAPPEN WHEN YOU DIE WITHOUT A WILL?

Most people presume that all their assets will automatically go to their spouse, children and parents after their death. However, this is not true.

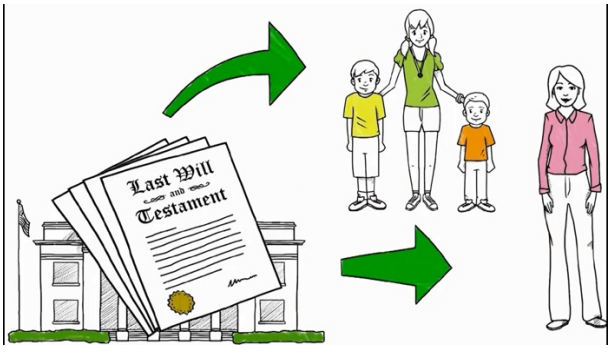
If a person dies without making a Will or his Will is invalid, he would have died 'intestacy' and the rights of the beneficiaries are not determined.

In view of intestacy, the court shall appoint an administrator after having regard to the rights of all persons interested in the estate of the deceased person pursuant to Section 30 of the Probate and Administration Act 1959 ("**PAA**"). The administrator shall then apply for a letter of administration before he or she administers the estate of the deceased.

The estates will be distributed according to the Distribution Act 1958 ("**DA**") (except for Muslim estates) and not according to the wishes or the needs of the administrators.

Distribution of the estates (according to Section 6 of DA)	
Spouse only alive (without children and parents)	The surviving spouse entitled to whole of the estates
Spouse, children alive, without parents	1/3 spouse, 2/3 children
Spouse, children, parents	½ children, ¼ spouse, ¼ parents
Spouse, parents, no children	½ spouse, ½ parents
Children, parents, without spouse	2/3 children, 1/3 parents
Children only	All to children equally
Parents only	All to parents

ADVANTAGES OF HAVING A WILL



By making a Will, a testator is able to determine who will be entitled to his estates. According to Section 3 of the PAA, an executor will be appointed by the testator in a Will and probate may be granted to the executor.

After the testator dies, the estates will be distributed according to the terms of the Will and the executor has the right to manage and administer the estates.

Having said the above, what do you do, as a family member of the deceased upon his death? Below is the application process for the deceased who has a Will.

APPLICATION FOR GRANT OF PROBATE

a) Preliminary Steps:

1. Get an extract of the Death Certificate from the Registrar of Births and Deaths.
2. Ensure that the Will is valid and conforms to the requirements in the Wills Act 1959.
3. If the Will is in a language other than Bahasa Malaysia or English, then a translation certified by a qualified Interpreter or verified by affidavit or a person qualified to translate it, must be annexed.
4. To ascertain the assets and liabilities of the deceased and to make an inventory list.

b) Application for grant of probate:

1. Every application for a grant shall be made by originating summons in Form 6 and supported by affidavit in Form 159.
2. The affidavit shall state whether prior rights have been cleared off and whether there are infant beneficiaries or life interests under the Will.
3. The Will and a certified true copy of the Will must be exhibited to the affidavit. The extract of the Death Certificate must also be exhibited to the affidavit.
4. The originating summons and affidavit together with other documents must be filed with the Registry of the High Court.
5. Once the Registrar has granted the probate, the executor can extract the probate.
6. Once probate is extracted, the executor can collect all the assets of the deceased into his possession to settle all debts or liabilities and then distribute the remainder of the estates to the beneficiaries in accordance to the terms of the Will.
7. After distribution of the estates, the executor must prepare a complete accounts of all assets that came into his hands and keep the accounts for future reference.

Now that you are aware of the importance of having a Will, it is always advisable for one to be prepared in order to save the hassle of your family members ascertaining the entitlement of your assets after your death.

All information in this Newsletter is correct as at **21 September 2019 unless otherwise stated.*

*The author to this newsletter is **Lee Jia Wei**. She is currently undergoing her pupillage with Donny & Ong.*

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CONTACT US

| T +603 6412 2216
| F +603 6412 2218
| A A1-7-12, Arcoris @ Business Suite, Jalan Kiara, Mont Kiara, 50480 Kuala Lumpur
| W www.donnyong.com
| E admin@donnyong.com

DONNY & ONG
ADVOCATES AND SOLICITORS
柯王律师事务所