

## **The Islamic Will**

### **Instructions:**

- (1) Living under Non Muslim Government, should understand, that it is essential to make an Islamic Will, so as to ensure an Islamic Funeral, Burial & distribution of the estate to their rightful heirs, as stipulated by the Islamic Code of Inheritance.**
- (2) Essential points are pre-written in the Will. Use the blank space provided on the last page to write the Wasiyah (Bequest)**
- (3) A Wasiyah cannot be made for any Muslim heirs as such Islamically they inherit automatically in the estate of the deceased.**
- (4) A Wasiyah is valid only in one third of the balance of the estate after payment of funeral expenses.**
- (5) The Wasiyah paper must also be signed by the testator and the witnesses.**
- (6) Please consult an Islamic Jurist, Scholar of Islamic books or write to a recognised Islamic Institute for guidance on matters pertaining to distribution of estate to the rightful heirs.**
- (7) It is important for the Testator and Witnesses to sign the bottom of each page of the Will. All signatories must be present throughout the signing process. No signatory may leave the room until all signatories have signed each page. It is better to have it authenticated by a Notary Public.**
- (8) Keep the original copy in a safe place and carry a copy with you wherever you travel.**
- (9) If any changes are made, notify the Witnesses and all other parties concerned. Any delegation, addition or all alteration must be identified by the signatures of the (full signatures) of the testator and witnesses as described in No. 7 above.**
- (10) In countries where there is no provision for Islamic Laws in Courts, a mutual agreement should be signed by both Spouses, to agree to settle family estate and custody of children in accordance with Islamic Shariah.**

**THIS IS THE LAST WILL AND TESTAMENT**

Of me, \_\_\_\_\_

Of the, \_\_\_\_\_ of \_\_\_\_\_

In the Province/State of \_\_\_\_\_

Made this \_\_\_\_\_ day of \_\_\_\_\_

In the year two thousand and \_\_\_\_\_

**I REVOKE all former wills or other Testamentary dispositions by me at any time heretofore made and declare this only to be the only one which contains my last WILL and TESTAMENT.**

Mr/Mrs/Ms \_\_\_\_\_  
Of \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

**That I am a Muslim by faith and that I make this Will to conform with tenets of Islam and I ask all persons concerned to honour this document and not obstruct or change it in any way. Rather let my property be divided as I devise.**

- (1) I ordain that no autopsy or embalmment be done on my body unless by law, that without unjustified delay, my body be washed, wrapped in shroud free of any ornaments and other articles and then buried; which all should be by Muslims, in complete accordance with Islamic law.**
- (2) I ordain that absolutely no non Islamic religious service or observance shall be carried upon my death or body at the burial.**
- (3) I ordain that no pictures, crescents and star decorations, crosses, flags, any symbols- - Islamic or otherwise, or music be involved at any stage of the funeral process or ever be placed at the site of my grave.**
- (4) I ordain that my body shall not be transported over any unreasonable distance from the locality of my death, particularly when such transportation would necessitate embalming, unless when long distance transportation is required to reach nearest Muslim cemetery.**
- (5) I ordain that my grave be dug deep and in complete accordance with specification of Islamic practice.**
- (6) I ordain that, my body shall be buried without casket or any other encasement that separates the wrapped body from the surrounding soil. In the event, that, the local laws require casket encasement, or the earth is soft, then, I ordain that, such encasement be of the simple most modest type possible.**
- (7) I ordain that my grave be mounded in the length of two to three span, with no construction of any kind. The marking if necessary should be a tombstone at the head of the grave, but not on the grave, bearing my name and date of death.**

**WITNESSES:** \_\_\_\_\_

**INITIALS: TESTATOR** \_\_\_\_\_ **TESTATOR** \_\_\_\_\_

**DISTRIBUTION OF ESTATE:**

- (a) I direct that all trust properties shall be returned to the rightful owners. I further direct that my executor herein named, first apply the assets of my estate to the payment my burial expenses, then to my legal debts including any unpaid Mahr (Dowry) in accordance with Islamic laws. Then apply the remainder of my estate to the performance of my Wasiyah (Bequest). If Wasiyah is more than one third of my total Property or for any of my heirs; then it will not be enforceable unless all my heirs are sane and they wilfully agree to enforce it.
  
- (b) I direct and devise and bequeath the entire residue and remainder of my estate after the execution of article (a) only to my rightful heirs according to Islamic laws. The distribution of the estate shall be made strictly in accordance with Islamic code of Inheritance.
  
- (c) I direct and devise that my fetus conceived before my death whose relationship to me qualifies to be an heir according to Islamic law, shall be considered an heir. The actual amount to be given shall be determined by the Islamic code of Inheritance.
  
- (d) In the event there are no heirs according to article (b) & (c) then the residue and remainder of my estate be given in the following manner:
  - (a) To poor Muslims, living here or abroad,
  - (b) In the event that no poor Muslims can be located then it should be given to the following Muslim charitable Organisation:  
\_\_\_\_\_.  
which will be required to distribute it to the poor Muslims.

WITNESSES: \_\_\_\_\_

INITIALS: \_\_\_\_\_  
TESTATOR TESTATOR

**EXECUTOR AND GUARDIAN**

I hereby nominate and appoint following two persons named hereunder to be the executors of my last Will and Testament.

1) Name: \_\_\_\_\_  
Address: \_\_\_\_\_

2) Name: \_\_\_\_\_  
Address: \_\_\_\_\_

In the event that, any one of them shall be unwilling or unable to act as a executor the other one can appoint a second Muslim person to act as executor of my last Will.

I give my executors herein named power to guide and instruct my Heirs named and assist in the execution of my last Will and Testament, especially for the settlement of any claim for or against my estate; and for distribution of my property among my heirs strictly in accordance with the injunctions of Islam.

I hereby nominate and appoint:

\_\_\_\_\_ Of the city of \_\_\_\_\_  
In the province/state of \_\_\_\_\_ to be the Guardian of the persons and estates of such of such of my children as shall be minors and after my death, during their minority, so long as said guardian remains an upright and practicing Muslim of sound mind and judgement. In the event that

\_\_\_\_\_ Shall be unwilling or unable to act as guardian, I nominate and appoint \_\_\_\_\_ Of the city of \_\_\_\_\_ in the Province/State of \_\_\_\_\_ to be the Guardian.

**SEPARABILITY**

I direct and ordain that if any part of this last Will and Testament is determined invalid by a court of competent jurisdiction, the other parts shall be valid and enforceable.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ OF THE YEAR \_\_\_\_\_ (ISLAMIC DATE): \_\_\_\_\_ DAY \_\_\_\_\_ MONTH \_\_\_\_\_ YEAR

LEGAL NAME \_\_\_\_\_

We hereby certify that the foregoing document was on the date thereof signed, sealed, published and declared by the Testator: \_\_\_\_\_, as and for his last Will and Testament in our presence, who at his/her request and in his/her presence and in the presence of each other, have hereinto subscribe our names as witnesses thereto believing said Testator at the time of signing to be of sound mind and memory.

## **Appendix**

**Here are some of the key points you should know:**

### **Estate Planning Check points:**

Consider your Legacy  
Ensure you have a current Will  
Plan for incapacity  
Decide on who will be your Power of Attorney for your healthcare and finances  
Prepare a blue print for your POA ,Executor and others involved with your estate  
Protect the value of your estate  
Remember Digital Assets  
Start the conversation

### **Consider your Legacy**

Identify who will be your heirs and who has been gifted with any asset in your life time

### **Ensure you have a current Will**

It is a key document to navigate the distribution of your assets and it should clearly outline your wishes. Make sure your Will is current- review it every five years.

### **Plan for incapacity**

Should you become incapacitated physically or mentally, outline your wishes, regarding Home care, disconnecting life support, etc.

Decide on who will be your Power of Attorney for your healthcare and finances

**What happens if you die without a will?** The legal term is intestate. It means that since you have not expressed your wishes, the government and the legal system decide who gets what.

You need to satisfy the court that there is no will. That means making all reasonable searches for evidence of a will. You may need legal advice to confirm what searches are reasonable. A previous lawyer may need to be contacted and evidence collected that the deceased had not destroyed any wills in their possession.

First if the deceased person had a married spouse, that person needs to apply to the court for a Certificate of Appointing an Estate Trustee Without a Will and would inherit everything if there were no children. If there is no spouse children of the deceased can apply for the certificate and each child will inherit equal portion of the estate.

In situations where the deceased had spouse and children, the surviving spouse receives a preferential share of first \$375,000 of assets with anything left over being divided between the spouse and any children.

“if the deceased had a one or more children, the spouse and children will split the remaining assets pursuant to the Ontario Succession Law Reform Act.”

People who die without a spouse or children have their estate go up to their parents and those without a spouse, children or parents will have their assets divided among any brothers and sisters they have. In the absence of them will have their distributed to the closest blood relatives.

What is the outcome when someone dies who doesn't have a Will nor known living relatives? The assets are given to the Ontario Government. It is a very rare that scenario arises, but it is sometimes seen in cases where a property has been abandoned and all owners have died. Unless next of kin can be found, the land goes to the Crown.

As to what happens if the parent of a minor child dies without a Will? Determinations vary.

When a child has two parents who are both recognized as Guardians, should one parent die without a Will, the surviving parent takes on all responsibilities of the child. If the child has two parents but only one is the child's guardian, and the guardian parent dies without a Will, and that guardian parent dies without a Will, then the remaining parent does not automatically take on responsibilities. In this case Court could depending on the circumstances look at appointing a guardian.

Laws vary from province to province. In Ontario, the Succession Law Reform Act sets out how the estate is distributed if there is no will.

**In most cases, you don't need a lawyer.** You can write your own will or use an online service offered by companies like Epilogue. You can even find a basic will form available at no cost at [lawdepot.ca](http://lawdepot.ca).

However, if you have a complex estate, family dynamics that need to be handled in a very particular way, or want to engage in sophisticated tax planning, hiring a competent estate lawyer is advisable, says Mr. Klug.

