

## **WILLS and PROBATE**

McGrath Tonner specialises in providing legal advice arising from a variety of estate administration matters.

### **Wills and Probate frequently asked questions (FAQ)**

#### **1. What is a will and why do I need one?**

A will is the expression by a person (testator) (the **deceased**) of his wishes.

A will is not valid in the Cayman Islands unless:

- it is in writing; handwritten or typed is acceptable;
- signed by the testator or some other person in his/her presence at his/her direction. A will has to be signed at the end;
- the testator must sign the will in the presence of two witnesses present at the same time, or the will must be signed on his behalf in front of two witnesses.

A will can:

- appoint an executor (male) or executrix (female);
- appoint a trustee(s) where there is a trust arising under the will;
- appoint guardian(s) to look after minor children;
- revoke previous wills;
- give directions as to the funeral wishes of the deceased, e.g. burial, cremation etc.

However, directions on burial wishes are only desires and cannot legally be enforced.

A will does not take effect until a person dies. A beneficiary (a person entitled by the will to receive assets left by the deceased) does not have any interest in a testator's assets while he/she is alive.

Where a will has been created and properly executed by a testator, upon the testator's death, the executor can make an application to the Grand Court for the grant of probate.

If a person dies without making a will, then this is referred to as the person dying 'intestate'. In such circumstances, the deceased's estate devolves to his family members in accordance with section 29 of the Succession Act (2006 Revision). Where a person dies without a will, the appropriate individual identified with reference to the Succession Act, will apply for letters of administration of the estate.

#### **2. What are the benefits of having a will?**

The principal benefits of having a will are that it dictates how your assets are divided amongst your beneficiaries on your death, provides certainty for your family and dependents, and allows you to plan for their financial futures.

### **3. Can my will be challenged?**

A will can be challenged by a person who believes that they are entitled to be a beneficiary or having such other interest in the deceased's assets. In order to challenge a will, a claimant must file a caveat with the Grand Court.

### **4. Who can witness my will?**

There are no requirements in the Wills Act as to who can be a witness save that any witness has to be mentally competent. A blind person is incapable of witnessing a will since the will has to be witnessed (signed) in his/her 'presence' and he/she is unable to 'witness' the act

### **5. Where do I keep my will?**

You can keep your will in a safe place or if you have a trusted friend or family member you can have them keep your will.

If we draft your will, normally, we retain your will in a safe and provide certified copies to you and any executor/executrix.

### **6. How long does a will last for?**

A will is valid until either it is revoked or until probate has been granted by the Grand Court. Upon the grant of probate, the executor has one year to administer, divide and distribute the deceased's estate in accordance with the terms of the will, the Succession Act and the Probate and Administration Rules.

### **7. How can I revoke my will?**

A will by its very nature can be revoked. There are four methods of revocation:

- marriage or civil partnership, except a will made in the exercise of a power of appointment;
- burning, tearing or otherwise destroying of a will or codicil by the testator with the intention of revoking it;
- drafting of another will or codicil executed in the manner required by law; and
- duly executed writing by the testator declaring an intention to revoke.

No will, when revoked, will be revived otherwise than by re-execution or codicil.

### **8. What happens to any assets that I left for my child(ren) who have died before me?**

Where a will named a testator's child as a beneficiary and that child dies before the testator but left a child(ren) of their own, that child(ren) will be entitled to receive their parent's share of the estate.

## **Our services**

### **The drafting of your will**

McGrath Tonner is able to draft wills for both residents of the Cayman Islands and those non-residents who have assets in the Cayman Islands. The complexity of your will (and therefore its cost) will likely be determined by (a) the value of your estate and (b) how simple or complicated the arrangements for the distribution of your assets.

## The Grant of Probate

We also represent executors of wills in obtaining the grant of probate. An executor must make an application for the grant of probate within 6 months of the deceased's death. Upon receipt of the grant of probate, which takes between 1 or 3 months, the executor will prepare a true inventory of the said estate and exhibit and file the same in the Probate Registry; and

Within one year of such grant, the executor will administer the said estate according to the nature of the will and the directions, if any, of the Grand Court and file in the Probate Registry a general account accounting for the whole of the assets of the said estate.

An inventory is the entire value of the deceased's estate in dollar amount.

The obtaining of probate is a necessary step in for example transferring the deceased's real estate. The Cayman Islands Land Registry will not permit a transfer of land by transmission to an executor without a grant of probate having been obtained. The same applies where the deceased left no will; a grant of letters of administration has to be obtained through the court.

## Letters of Administration

If a person dies without leaving a will, an identified person who has been deemed to be entitled as per Cayman law can make an application to the court to be appointed as an administrator. The process of obtaining letters of administration is similar to that of an application for grant of probate **except** with application for letters of administration, the applicant must provide a bond of surety in the amount of twice the value of the estate. However, the Grand Court can waive this requirement upon an application.

## Conclusion

Contact McGrath Tonner today to have your will drafted. It is very important to set your affairs in order, to prevent hardship on your family when you die and for your own peace of mind that you have properly provided for them.

## Key Contacts:



**David McGrath, Managing Partner**  
[dmcgrath@mcgrathtonner.com](mailto:dmcgrath@mcgrathtonner.com)



**Angelique McLoughlin, Attorney**  
[amcloughlin@mcgrathtonner.com](mailto:amcloughlin@mcgrathtonner.com)