



# Key Considerations When Drafting a Will in Malaysia

By Alan Yee on **May 31, 2023**

## INTRODUCTION

A last will and testament (Will) is an essential legal document that outlines how a person's property and assets will be distributed after their death. In Malaysia, the law governing the drafting of a Will is the Wills Act 1959 (Wills Act). The Wills Act is applicable to non-Muslims only, as Muslim inheritance is governed under Syariah law in Malaysia.

In this article, we aim to provide an overview of the legal requirements and the key considerations when drafting a Will in Malaysia.

## LEGAL REQUIREMENTS

### Capacity

The first requirement for drafting a valid Will in Malaysia is that the Testator (the person who has made a Will) must have the capacity to make the Will. This means that the Testator must be of sound mind and be at least 18 years old.

If the Testator is not of sound mind, or is under 18 years old, any Will made may be challenged as invalid. If there is any doubt about the Testator's capacity to make a Will, it may be necessary to obtain a medical certificate from a registered medical practitioner to confirm his/her mental state.

### Testamentary Intention

Secondly, the Testator must have a testamentary intention. This means that the Testator must have the intention to create a legal document that will take effect after their death. If the Testator did not have a testamentary intention when making the Will, the Will may be challenged as invalid.

### Formalities

Finally, in order for the Will to be legally valid in Malaysia, the Will must be in writing and signed by the Testator. The signature must be made or acknowledged by the Testator in the presence of at least two witnesses of sound mind over the age of 18 (also in the

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presence of at least two witnesses of sound mind over the age of 18 (also in the presence of each other), who must sign the Will and declare that they believe the Testator to be of sound mind when he/she signed the Will. The witnesses must not be beneficiaries or their spouses, as this could raise questions regarding the validity of the Will.

## KEY CONSIDERATIONS

### Executor

The Testator must appoint an executor (Executor), i.e., the person responsible for administering the estate of the deceased person and distributing the assets according to the terms of the Will. It is crucial to appoint a trusted, responsible, and capable person over 18 years old as the Executor.

Those who wish to appoint trustee services as executors should be wary of the terms and conditions imposed by such services as the estate and/or the beneficiaries will have to comply with i.e. the cost of their executor fees when enforcing the Will.

### Beneficiaries

The Testator should identify the beneficiaries who will receive his/her assets upon their death and specify the assets that each beneficiary will receive, including any conditions or restrictions regarding the distribution of those assets. Beneficiaries may include family members, friends, charities, or other organizations.

It is important to ensure that provisions relating to the distribution of assets are clear and unambiguous to avoid any potential disputes or challenges to the Will.

### Revocation

A Will can be revoked in several ways. The Testator can revoke their Will by creating a new Will that expressly revokes the previous Will. The new Will must be executed in accordance with the formalities set out in the Wills Act 1959. A Testator can also revoke their last Will by destroying it or by declaration.

*Note: Whilst a divorce will not affect the **validity** of a Will, a Will is automatically revoked upon conversion by a non-Muslim person to Islam and/or marriage. If necessary, a Testator may wish to expressly include a 'contemplation of marriage' clause so as to circumvent the invalidity of a Will pursuant to a marriage.*

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## REVIEW

Finally, it is important to review and update a Will periodically (every 3 to 5 years) to ensure that it reflects any changes in the Testator's testamentary intentions or wishes and covers any changes in the Testator's personal life, financial position, and assets.

## CONCLUSION

In conclusion, a Will is an essential legal document that outlines how a person's assets will be distributed after their death in Malaysia. This important process requires careful consideration of a number of legal requirements and key considerations as set out above. By ensuring that the Will is legally valid and enforceable, the Testator can provide peace of mind for themselves and their loved ones in the event of their death.

*This article is intended for general information purposes and may be time sensitive. It should not be regarded as legal professional advice. If you have any queries pertaining to this update or require legal advice on estate planning or will drafting, please feel free to contact us ([apy@apylaw.com.my](mailto:apy@apylaw.com.my)).*

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