CHAPTER 340
WILLS ACT

• Act • Subsidiary Legislation •

ACT

Amended by

Act No. 14 of 2011

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CHAPTER 340
WILLS ACT

An Act respecting wills.

[Amended by Act No. 14 of 2011.]

[27*th October*, 1874.]

1. Short title

This Act may be cited as the Wills Act.

2. Meaning of "will"

In this Act, "will" extends to a testament and to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power.

3. All property may be disposed of by will

It shall be lawful for every person to devise, bequeath, or dispose of by his or her will, executed in manner hereinafter required, all real estate and all personal estate which he or she shall be entitled to at the time of his or her death, and which, if not so devised, bequeathed or disposed of, would devolve upon the heir at law of him or her, or (if he or she became entitled by descent) of his or her ancestor, or upon his or her executor or administrator; and the power hereby given shall extend to estates *pur autre vie*, whether there is or is not any special occupant thereof, and whether they are freehold or of any other tenure, and whether they are a corporeal or incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same may become vested, and whether he or she may be entitled thereto under the instrument by which the same were created or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken and other rights of entry; and also to such of the same estates, interests, and rights and other real and personal estate as the testator may be entitled to at the time of his or her death, notwithstanding that he or she may become entitled to the same subsequently to the execution of his or her will.

4. Estates *pur autre vie*

If no disposition by will is made of any estate *pur autre vie* of a freehold nature the same shall be chargeable in the hands of the heir if it comes to him or her by reason of special occupancy as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy, or by virtue of this Act, it shall be assets in his or her hands and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

5. No will of a minor valid

No will made by any person under the age of eighteen years shall be valid.

6. When signature to a will shall be deemed valid

No will hereafter made shall be valid unless it is in writing, and signed in the manner hereinafter required by the testator or by some other person in his or her presence and by his or her direction; and unless the signature is made or acknowledged by him or her in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in his or her presence; but no form of attestation shall be necessary. The testator's signature shall be so placed at or after or following or under or beside or opposite to the end of the will that it shall be apparent on the face of the will that the testator intended to give effect by such his or her signature to the writing signed as his or her will; and no such will shall be affected by the circumstance that the signature shall not

follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will, whereupon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written, to contain the signature. The enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made.

7. Appointments by will to be executed like other wills

No appointment made by will in exercise of any power shall be valid unless the same is executed in manner hereinbefore required, and every will executed in manner hereinbefore required shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of the power should be executed with some additional or other form of execution or solemnity.

8. Publication not to be requisite

Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

9. Will not void by incompetency of witness

If any person who attests the execution of a will shall at the time of execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, the will shall not on that account be invalid.

10. Gifts to an attesting witness to be void

If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) is thereby given or made, such devise, legacy, estate, interest, gift or appointment shall so far only as concerns the person attesting the execution of the will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, but the person so attesting shall be admitted as a witness to prove the execution of the will or to prove the validity or invalidity thereof, notwithstanding the devise, legacy, estate, interest, gift or appointment mentioned in the will.

11. Creditor attesting to be admitted a witness

In case by any will any real or personal estate is charged with any debt or debts, and any creditor or the wife or husband of any creditor whose debt is so charged shall attest the execution of the will, such creditor notwithstanding the charge shall be admitted a witness to prove the execution of the will, or to prove the validity or invalidity thereof.

12. Executor to be admitted a witness

No person shall on account of his or her being an executor of a will be incompetent to be admitted a witness to prove the execution of the will, or to prove the validity or invalidity thereof.

13. Will to be revoked by marriage

Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator, or the person entitled as his or her next-of-kin under the statute of distributions).

14. No will to be revoked by presumption

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

15. In what cases wills revoked

No will or codicil or any part thereof shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same and executed in the same manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his or her presence and by his or her direction, with the intention of revoking it.

16. No alteration in a will shall have any effect unless executed as a will

No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before the alteration shall not be apparent, unless the alteration is executed in like manner as hereinbefore is required for the execution of the will, but the will with the alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to 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.

17. How revoked will shall be revived

No will or codicil or any part thereof which is in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which is partly revoked and afterwards wholly revoked shall be revived, the revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

18. When a devise not to be rendered inoperative

No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which the will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his or her death.

19. A will to speak from the death of the testator

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

20. What a residuary devise shall include

Unless a contrary intention appears by the will such real estate or interest therein as shall be comprised or intended to be comprised in any devise in the will contained which fails or is void by reason of the death of the devisee in the lifetime of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise, if any, contained in the will.

21. What a general devise shall include

A devise of the land of a testator or of the land of the testator in any place or in the occupation of any person mentioned in his or her 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 to include the leasehold estates of the testator or his or her leasehold estates to which the description extends, as the case may be, as well as freehold estates, unless a contrary intention appears by the will.

22. What a general gift shall include

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 or her will, or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which the description extends (as the case may be) which he or she may have power to appoint in any manner he or she may think proper, and shall operate as an execution of the power, unless a contrary intention appears by the will; and in like manner a bequest of the personal estate of the testator or any bequest of personal estate described in a general manner shall be construed to include any personal estate or any personal estate to which the description extends (as the case may be) which he or she may have power to appoint in any manner he or she may think proper, and shall operate as an execution of the power, unless a contrary intention appears by the will.

23. How a devise without words of limitation shall be construed

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

24. How the words "die without issue" or "die without leaving issue" shall be construed

In any devise or bequest of real or personal estate the words "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 or her lifetime or at the time of his or her death, or an indefinite failure of his or her 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 his or her 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:

Provided that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who

shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

25. Effect of devise to trustee or executor

Where any real estate is devised to any trustee or executor, the devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in the real estate, unless a definite term of years absolute or determinable, or an estate of freehold, is thereby given to him or her expressly or by implication.

26. Trustees under unlimited devise, etc., to take the fee

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 in 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, the devise shall be construed to vest in the trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in the real estate, and not an estate determinable when the purposes of the trust are satisfied.

27. Devise of estate tail to person dying in testator's lifetime

When 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 be inheritable under the entail, and any such issue is living at the time of the death of the testator, the devise shall not lapse, but 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 the will.

28. Gift to children or other issue, who leave issue living at the testator's death

Where any person being a child or other issue of the testator, to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator leaving issue, and any such issue is living at the time of the death of the testator, the devise or bequest shall not lapse, but 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 the will.

29. Executors to be trustees of the undisposed residue for persons entitled

When any person has by his or her will, or any codicil thereto, appointed any person to be his or her executor, such executor shall be deemed to be a trustee for the persons (if any) who would be entitled to the estate under the statute of distributions in respect of any residue not expressly disposed of, unless it appears by the will or any codicil thereto that the person so appointed executor was intended to take the residue beneficially.

30. Right of executor to undisposed residue not to be affected where there is no person entitled to the estate under the statute of distributions

Nothing herein contained shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled in cases where there is not any person who would be entitled to the testator's estate under the statute of distributions in respect of any residue not expressly disposed of.

CHAPTER 340
WILLS ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation