

ACT 360**WILLS ACT, 1971****ARRANGEMENT OF SECTIONS****SECTION**

1. Power to make a will.
2. Execution of a will.
3. Executors and witnesses.
4. Incorporation of other documents.
5. Alteration of a will.
6. Armed Forces wills.
7. Rules of construction.
8. Lapsed dispositions.
9. Revocation of a will.
10. Revival of revoked will.
11. Custody of wills.
12. Deposit of wills found after death of testator.
13. Provision for dependants.
14. Disposal of life insurance money.
15. Wills made outside the Republic.
16. Change of domicile.
17. Ascertainment of internal law.
18. Interpretation.
19. Statutes ceasing to apply and savings.
20. Commencement.

ACT 360**WILLS ACT, 1971¹**

AN ACT to regulate the making of wills and to give effect to the provisions of a will and to provide for related matters.

1. Power to make a will

(1) A person of or above the age of eighteen years may in writing and in accordance with this Act, make a will disposing of the property

- (a) of that person, or
- (b) to which that person will be entitled at the time of death, or
- (c) to which that person may be entitled after death.

1. The Act was assented to on 3rd July, 1971.

(2) A person suffering from insanity or infirmity of mind so as to be incapable of understanding the nature or effect of a will does not have capacity to make a will during the continuance of that insanity or infirmity of mind.

(3) A will, or a provision of a will, obtained by fraud or made under duress or undue influence, is void.

2. Execution of a will

(1) A will is not valid unless it is in writing and signed by the testator or by any other person at the direction of the testator.

(2) A signature is not operative to give effect to a disposition or direction which is underneath or which follows it, or which is inserted after the signature has been made.

(3) The signature of the testator shall be made or acknowledged by the testator in the presence of two or more witness present at the same time.

(4) A signature by any other person at the direction of the testator shall be made by that other person in the presence of the testator and two or more witnesses present at the same time.

(5) The witnesses shall attest and sign the will in the presence of the testator, but a form of attestation is not necessary.

(6) Where the testator is blind or illiterate, a competent person shall carefully read over and explain the contents of the will before it is executed, and that competent person shall declare in writing on the will that the will had been read over and its contents explained to the testator and that the testator appeared perfectly to understand the will before the will was executed.

3. Executors and witnesses

(1) A person of or above the age of twenty-one years and having capacity to enter into a contract may be appointed an executor of a will.

(2) A person appointed by a will to be an executor may attest the will.

(3) A creditor of the testator may be an attesting witness although by the will the property of the testator is charged with the payment of the debts.

(4) A beneficial disposition of or affecting a property, other than charges or directions for the payment of a debt, given by a will to a person who attests the execution of that will, is void unless the will is duly executed without that person's attestation and without the attestation of any other person.

4. Incorporation of other documents

(1) A will may not incorporate another document unless that document was in existence at the time the will was executed and is sufficiently identified in the will.

(2) Oral evidence may be admissible for the purpose of identification.

5. Alteration of a will

(1) An alteration made in a will does not have effect

- (a) unless it is separately executed in the manner that is required for the execution of the will, or
- (b) unless it has been made valid by the re-execution of the will or by the subsequent execution of a codicil to the will.

(2) Despite section 2 (2), a separate execution of an alteration is sufficient if it is apparent on the face of the will that the testator intended to give effect by the execution to the alteration.

6. Armed Forces wills

(1) Despite a provision of this Act to the contrary, a member of the Armed Forces of whatever age may, while engaged on active service, make a will

- (a) in written and unattested form, if the material provisions and signature are in the handwriting of the testator, or
- (b) in written form, whether or not in the handwriting of the testator, and attested by one witness, or
- (c) orally before two witnesses.

(2) A beneficial disposition of or affecting a property, other than charges or directions for the payment of a debt given by a will made under this section to a witness to that will, is void unless the will is duly executed, if written, or witnessed, if oral without attestation and without the attestation of any other person.

(3) A will made in accordance with this section remains valid even though the testator ceases to be a member of the Armed Forces.

(4) A will made in accordance with this section may be revoked by another will made in accordance with this section or by means of a revocation provided in section 9.

(5) A will made in accordance with this section may revoke an earlier will made by the testator in accordance with section 2.

7. Rules of construction

(1) A will shall take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears from the will.

(2) A disposition of immovable property without words of limitation shall pass the whole of the estate or interest in the estate which the testator has power to dispose of by will.

(3) A general disposition of the land of a testator or of the testator's land at a place, or in the occupation of a person or otherwise described in a general manner, includes lands of any estate or tenure, unless a contrary intention appears from the will.

(4) A general disposition of the movable or immovable property of a testator includes a property to which the testator may have power to appoint in a manner the testator thinks fit.

(5) A general or residuary disposition shall operate to confer a power to exercise a power of appointment, unless a contrary intention appears from the will.

(6) A residuary disposition includes property comprised in lapsed and void dispositions, unless a contrary intention appears from the will.

(7) Where a testator and a beneficiary under the will, die in circumstances

- (a) in which it appears that their deaths were simultaneous, or
- (b) rendering it uncertain which of them survived the other,

the beneficiary shall be deemed to have survived the testator for any purposes affecting the entitlement to property under the will of that testator; but for the purposes of the entitlement of the testator to that property under a will of that beneficiary, that beneficiary shall be deemed to have survived that testator, unless a contrary intention appears from the will.

8. Lapsed dispositions

(1) A disposition made to a person who predeceases the testator or which is contrary to law or otherwise incapable of taking effect shall lapse and fall into residue, unless a contrary intention appears from the will.

(2) Despite subsection (1), a disposition made by a testator to the testator's descendant, other than for an estate determinable at or before the death of that descendant shall not lapse where that descendant predeceases the testator leaving issue surviving the testator, but shall take effect as a disposition to the issue *per stirpes* unless a contrary intention appears from the will.

9. Revocation of a will

(1) A will may be revoked by tearing or any other physical destruction by the testator or by any other person in their presence and by the direction of the testator with the intention of revoking it.

(2) A will may be revoked by a written declaration of intention to revoke, executed in the same manner as a will.

(3) A will may be revoked by the execution of another will which is expressed to revoke the previous will.

(4) A will which is not expressed to revoke a previous will shall not revoke that previous will except to the extent that it is inconsistent with the previous will.

(5) The destruction of a will does not revoke that will where the testator destroys the will

- (a) as a result of fraud or undue influence, or
- (b) under a mistake of fact or law intending to make any other disposition of the property which is not validly made.

10. Revival of revoked will

(1) A will or a part of a will which is revoked shall not be revived otherwise than by its re-execution or by a written declaration of intention to revive it, executed in the same manner as a will.

(2) Where a will which is partly revoked and afterwards wholly revoked is revived, the revival shall extend to the whole will.

11. Custody of wills

A person may deposit for safe custody in the High Court the will of that person sealed up under the seal of that person and the seal of the Court.

12. Deposit of wills found after death of testator

(1) A person who has possession or under control a paper or writing of a deceased person, being or purporting to be testamentary, shall immediately deposit it with the High Court or any other Court.

(2) Where the Court with which a paper or writing is deposited is not the High Court it shall forthwith cause it to be transmitted to the High Court.

(3) A person who fails to deposit that paper or writing as required by subsection (1) within fourteen days after having knowledge of the death of the deceased, commits an offence and is liable on conviction to a fine not exceeding two thousand penalty units or to a term of imprisonment not exceeding ten years or to both the fine and the imprisonment.

13. Provision for dependants

(1) If, on an application made, not later than three years from the date on which probate of the will is granted, the High Court is of the opinion

- (a) that a testator has not made reasonable provision whether in life or by will of the testator for the maintenance of a father, mother, spouse or child under eighteen years of age of the testator, and
- (b) that hardship will be caused,

the High Court may, taking account of the relevant circumstances, despite the provisions of the will, make reasonable provision for the needs of the father, mother, spouse or child out of the estate of the deceased.

(2) Without prejudice to the generality of subsection (1), the reasonable provision may include

- (a) payment of a lump sum, whether immediate or deferred, or grant of an annuity or a series of payments, and
- (b) grant of an estate or interest in immovable property for life or a lesser period.

14. Disposal of life insurance money

(1) Despite anything in this Act or any other enactment, where a person takes out a policy of life insurance on that person's life for a sum of money which is expressed on the face of the policy to be for the benefit of a member of that person's family then, unless the nomination of that member is expressly revoked by a will duly made in accordance with this Act or in any other manner approved by the contract of insurance, on the death of the insured person, the sum of money assured shall not form part of the estate but shall, subject to this section, be paid to the member who is nominated.

(2) A nomination to which subsection (1) applies shall become void if the member nominated predeceases the insured person.

(3) Subsection (7) of section 7 shall, with the modifications that are necessary, apply to the nomination as it applies to a disposition in a will.

(4) Subject to subsections (5) and (6) of this section, an insurer who, in good faith and without notice of a revocation referred to in subsection (1) of this section pays the sum of money assured to or for the benefit of the member nominated in respect of the policy is for the purposes of this Act, duly discharged in respect of that sum of money.

(5) Where the member nominated who is entitled to receive money under a policy of life insurance after the death of the person insured is a minor, or of unsound mind or suffering from any other disability rendering the member unfit to manage the member's own affairs, the High Court may, on application made to it for the purpose, appoint a person to administer that money in accordance with the order of the Court and on behalf of the member.

(6) Without prejudice to subsection (5), the powers conferred on the High Court by that subsection may be exercised

- (a) by a District Court where the sum of money assured does not exceed the monetary jurisdiction of the District Court;
- (b) by a Circuit Court where the sum of money assured is within the monetary jurisdiction of the Circuit Court.

(7) This section has effect without prejudice to section 5 of the Contracts Act, 1960 (Act 25).

(8) This section applies to the sums of money assured which are to be paid after the commencement of this Act whether the policy or nomination in question was taken out or effected before or after the commencement.

(9) For the purposes of this section,

"member of family" means a spouse, child, parent, grandparent, parents' child, brother's child, sister's child, grandchild, parents' brother or sister, parents' brother's child, parents' sister's child, step brother or sister or step child;

"policy of life insurance" means a policy issued by an insurer on any life or lives or on any event or contingency relating to or depending on any life or lives;

"sum of money assured" includes the moneys payable by an insurer in respect of a policy which has lapsed.

15. Wills made outside the Republic

(1) A will is properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where at the time of its execution or of the testator's death the testator was domiciled or had habitual residence or in a state of which the testator is a national at either of those times.

(2) Without prejudice to subsection (1), the following shall be deemed to be properly executed:

- (a) a will executed on board a vessel or an aircraft of any description, if its execution conformed to the internal law in force in the territory with which having regard to its registration and any other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;
- (b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated;
- (c) a will so far as it revokes a will which under this Act is, or would be deemed to be properly executed or revokes a provision which under this Act is or would be deemed to be comprised in a properly executed will, if the execution of the later will conforms to a law by reference to which the revoked will or provision would be so deemed;
- (d) a will so far as it exercises a power of appointment, if the execution of the will conformed to the law governing essential validity of the power.

(3) A will so far as it exercises a power of appointment is not improperly executed by reason only that its execution was not in accordance with a formal requirement contained in the instrument creating the power.

(4) Where a law in force outside the Republic falls to be applied in relation to a will, a requirement of that law of which

- (a) special formalities are to be observed by testators answering a particular description, or
- (b) witnesses to the execution of a will are to possess certain qualifications,

shall be deemed to be a formal requirement only, despite a rule of that law to the contrary.

16. Change of domicile

A will shall not be held to be revoked or to have become invalid, and its construction shall not be altered, by reason of a subsequent change of domicile of the testator.

17. Ascertainment of internal law

(1) Where under this Act the internal law in force in a territory or state is to be applied in the case of a will, but there are in force in that territory or state two or more

systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows:

- (a) if there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or
- (b) if that rule is not in force, the system shall be that with which the testator was most closely connected at the relevant time; and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at the testator's death, and the time of execution of the will in any other case.

(2) In determining, for the purposes of this Act, whether or not the execution of a will conformed to a particular law, account shall be taken of the formal requirements of that law at the time of the execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

18. Interpretation

In this Act, unless the context otherwise requires,

“**active service**” has the meaning given to it by section 98 of the Armed Forces Act, 1962 (Act 105);

“**child**” includes a person adopted under an enactment relating to adoption, any person recognised by the person in question to be the child of, or to whom, that person stands *in loco parentis*, and in the case of a Ghanaian, includes also a person recognised by customary law to be the child of that person;

“**descendant**” means a child or grandchild of the testator;

“**internal law**” in relation to a territory or state means the law which would apply in a case where a question of law in force in any other territory or state does not arise;

“**property**” includes movable and immovable property and a right, benefit, an expectancy or any other interest;

“**spouse**” means the wife or husband of a deceased person;

“**state**” means a territory or group of territories having its own law of nationality;

“**will**” includes a codicil and any other testamentary instrument, and “**testator**” shall be construed accordingly.

19. Statutes ceasing to apply and savings

(1) The English Statutes relating to wills as they apply in the Republic shall cease to apply.

(2) This Act shall only apply to wills made after the commencement of this Act.

(3) This Act shall not affect the validity of oral testamentary dispositions made in accordance with customary law.

20. Commencement

*Spent.*²

2. The section provides 1st June, 1971 as the day on which the Act shall come into force.

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