

WILLS ACT, 1971 (ACT 360)

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

SUMMARY

- 1) A person who is 18 years or more can make a will.
- 2) The only property that can be disposed of in a will is;
 - one that belongs to the person making the will or
 - one that will become his/her property at the time of his/her death or
 - one that will become his/her property after his/her death
- 3) A person whose mental capacity is so affected such that he/she is not able to understand the nature and effect of a will is not a person who can make a will.
- 4) A will that is made fraudulently, by duress or by the application of undue influence is void.¹
- 5) A will must be in writing and must be signed by the person making it or for whom it is made.
- 6) Two witnesses must sign the will.
- 7) A will must name or appoint one or more executors² who must be at least 21 years of age.
- 8) If a will refers to a document, that document must be in existence before or at the time of signing the will and must be properly described in the will.
- 9) Changes made after a will is made must be clearly signed by the person making the will and two witnesses in the same manner as was done when the original will was made.
- 10) Members of the Armed Forces 'while engaged in active service' can make a will that does not have all the requirements of a normal will.
- 11) All property that have become the property of a testator after he/she has made a will are considered to be included in the will even though they are not mentioned in the will.
- 12) If a will disposes of property to a person and that person dies before the will becomes effective, that gift becomes invalid. But some gifts made in a will to a descendant³ will not lapse or become invalid if the beneficiary descendant has a surviving child.

¹ i.e. the law does not recognize a will that is made by a person unwillingly.

² executors are persons who are tasked to carry out the terms of a will.

³ "descendant" means a child or grandchild of the testator

- 13) A will becomes effective only at the death of a testator (the one who made the will).
- 14) A person can revoke his/her will at any time before his/her death. This can be done by destroying the will or invalidating it in a manner that shows voluntariness, decisiveness and is devoid of fraud.
- 15) A person who has possession of a will or any piece of writing belonging to another person who is dead that may be considered to be a will has a duty to deposit that document at the High Court or any other court. Failure to do so within 14 days of the death of the testator or after becoming knowledgeable of the existence of the stated document is an offence and a person may be fined or imprisoned or both.
- 16) The court may make a provision for a child⁴ under 18 years, a spouse or a parent out of the estate of a testator if adequate provision is not made for them in the lifetime of the testator or in a will provided the court is made aware of the situation within 3 years following the grant of probate to a will.
- 17) A life insurance policy taken by a testator for the benefit of a member of a testator's family⁵ is not included in the estate of a will unless the will specifically states otherwise.

⁴ "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

⁵ "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