

THE WILLS ACT

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*WILLS*

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## THE WILLS ACT

[1840.]

Cap. 414.  
Act  
1 of 1979,  
1st Sch.

1. This Act may be cited as the Wills Act.

Short title.

2. In this Act—

Interpreta-  
tion.

“will” shall extend 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; and also to a disposition by will and testament or devise of the custody and tuition of any child, and to any other testamentary disposition;

“real estate” shall extend to messuages, lands, rents, tenements, and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate right or interest (other than a chattel interest) therein;

“personal estate” shall extend to leasehold estates and other chattels real, and also to moneys, shares of Government and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein.

3. It shall be lawful for every person to devise, bequeath, or dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death, and which if not so devised, bequeathed or disposed of, would devolve upon the heir-

What may  
be devised  
or be-  
queathed  
by will.

at-law or customary heir of him, or if he became entitled by descent, of his ancestor, or upon his executor or administrator; and the power hereby given shall extend to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold or of any other tenure, and whether the same shall be a corporeal or an 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 respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively 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 respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Estates  
*pur autre*  
*vie.*

4. If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature the same shall be chargeable in the hands of the heir, if it shall come to him 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 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 made by any person under the age of eighteen years shall be valid.

Wills of  
minors.  
1/1979,  
1st Sch.

6. No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person, in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and subscribe the will in presence of the testator, but no form of attestation shall be necessary. Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within this Act, if the 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 signature to the writing signed as his 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

Execution  
of wills.

whereupon no clause or paragraph, or disposing part of the will shall be written above the signature; or by the circumstance that there shall appear 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; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under this Act 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 shall be made.

Appoint-  
ments made  
by wills.

7. No appointment made by will in exercise of any power shall be valid, unless the same be 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 such power, should be executed with some additional or other form of execution or solemnity:

Provided always, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

Publication  
not  
necessary.

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

Will not to  
be invalid  
for in-  
competency  
of attesting  
witness.

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

10. 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), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such 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; and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Gift to attesting witness to be void.

11. In case by any will any real or personal estate shall be 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 such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Creditor attesting will may be a witness to prove its execution.

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

Executor may prove execution of will.

13. 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, customary

Will revoked by marriage.

heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions.

What shall  
not revoke  
will.

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

Revocation.

15. 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 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 presence and by his direction, with the intention of revoking the same.

Provision  
as to  
alterations  
made in will.

16. 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 such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witness be made in the margin, or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

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

17. No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof or by a codicil executed in the manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked,

shall be revived, such 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 shall be shown.

**18.** 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 such will shall be 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 death.

Conveyance subsequent to execution of will.

**19.** 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.

Will to speak from death of testator.

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

Lapsed or void devises.

**21.** A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his 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,

Leasehold estates.

or his leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

General gift of real or personal estate shall include real or personal estate.

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

Devise without words of limitation to be construed to pass the fee.

**23.** Where any real estate shall be devised to any person without any words of limitation such 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 such real estate, unless a contrary intention shall appear by the will.

How certain words are to be construed.

**24.** 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 lifetime or at the time of his death, or an indefinite failure of his 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 issue, unless a contrary intention shall appear 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.** Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee, or executor, such 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 such real estate unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly, or by implication.

Real estate devised to trustee or executor.

**26.** Where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Real estate devised to trustee without express limitation.

Devises of  
estates tail.

**27.** Where any person to whom any real estate shall be devised for an estate tail or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such 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 shall appear by the will.

Gifts to  
children  
who die  
leaving issue  
living at  
death of  
testator.

**28.** Where any person being a child of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such 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 shall appear by the will.

Re-execution  
of will by  
codicil.

**29.** Every will re-executed or re-published or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, re-published or revived.