

WILLS

A will is a statement made by a person concerning what is to be done to his or her properties after he or she dies. Its main purpose is to provide for the distribution of a person's properties when that person dies. A will, if properly made, tells us how much property a person had, how it should be divided up, and who gets what and how much.

A will takes effect only upon the death of the person who made it. Thus, if the will says "My golden bracelet shall go to Maria," the bracelet does not go to Maria until the person who made the will dies. In general, the person who makes a will has the right and power to change it, revoke it, or do whatever he or she wants to do with it or to it during his or her lifetime. After a person who has made a will dies, his or her will is presented to a court which looks at it and makes a decision according to the terms of the will and the laws. The law says certain requirements must be met before the terms of a will are enforced. One requirement is that the person who makes a will must be of a certain age and mental state. In Palau the applicable law at this time says that any person of sound mind and at least 18 years of age can make a will. "Sound mind" simply means that the person who is making the will must know and understand what he or she is doing. The question of whether or not a person was or was not of sound mind when he or she made the will is a question which a court will have to decide when the will is presented to it for consideration. In any event, unless

a will meets the requirements of "sound mind" and the age of at least 18 years, it is not good under the law and a court will not enforce its terms. A will can be challenged or opposed on this basis.

Another requirement is that when a person makes a will he or she must intend, at the moment the will is made, that the will is his or hers. If the person who makes the will does so as a joke, or is tricked or forced into signing it, or mistakenly signs it, there is no intent to make a will and the will is no good. A will can also be challenged or opposed on this basis.

The third requirement for making a good will is really not a single requirement but a series of requirements which the law imposes, depending upon the type of will contemplated.

There are several different types of wills that can be made and the law requires different things, in addition to the ones mentioned already, on their making. For example, a will, other than one handwritten by its maker or made orally, such as a typewritten will, must meet certain formal requirements at the time of its making. Thus, under this law, four steps must be completed in executing the will. First, the person making the will must show or tell the witnesses to the will that the will is his; second, the maker of the will must sign or acknowledge his signature already made, or, at his direction and in his presence, have someone else sign his name for him; third, steps one and two must be performed in the presence of at least two witnesses; and fourth, at least two witnesses must sign in the presence of the

maker of the will, and in the presence of each other. To prevent any challenges to the will it is best that none of the witnesses to the will be a person who will receive something under the will when the maker of the will dies. Failure to follow these steps may make the will a bad one and subject to attack by those opposed to its terms. Thus, it is very important that the steps required by the law be followed carefully.

A will can also be handwritten by the person making it. The requirements for handwritten wills are: (1) the signature and the important provisions of the will must be in the handwriting of the maker of the will and (2) the handwriting must be proved by two witnesses to be the handwriting of the person whose will it is.

There is another form of will, an oral or spoken will, which is rare in Palau but authorized by law. A person whose death is certain to occur due to a particular cause can make a spoken will disposing of his personal properties (such as money or other objects, but not land) whose total value is not more than one thousand dollars. The will is good only if the will maker dies from the particular cause which motivated him to make the will. The will must be said by the will maker as his will before two witnesses who get nothing under the will, and the will must be given to the court within six months after the death of its maker unless the court, for good reason, permits it to be submitted later.

Finally, a will may often be made orally in accordance with local custom. Where such is the case, and where there is no written will, a court will often enforce a spoken will if enough evidence is presented to support it.

Now what if you want to change or revoke the will.

We begin with an example. Suppose last year you made a will in which you gave all of your money totaling \$20,000 to your good friend, Eve. However, this year you meet another person, Adam, who also becomes a very good friend of yours, and to show your appreciation for his friendship, you also want to give Adam some money. The problem you face is that you have already given all of your money in your will to your friend Eve and now you have no more left to give your friend, Adam. So, what do you do?

Remember the person who makes a will generally has the right and power to change it up until the time that he dies? Well, that same idea can be applied to our example here. What you want to do now is change your will so that some of your money can go to your friend, Eve, and the rest can go to your other friend, Adam. So the question is: How do you change your will?

You can change all or part of a will by simply making a new will, putting in the changes you want to make. In our example, if you want to change your will so that \$10,000 of your money goes to Eve and the other \$10,000 goes to Adam, you can do so by making another will containing these new terms. Basically, what you are doing is making a new will, and you must remember that the law requires you to do certain things in order to make a good

will.

Sometimes you may want to change only a certain provision in a will and do not wish to re-do the whole will. In the case of a written will, you can make certain changes in the will without re-writing the whole will by preparing a separate additional paper containing the desired changes. In our example, instead of writing a new will, you can prepare a separate paper saying \$10,000 of your money shall go to Adam. However, as already mentioned, you must follow the same requirements you followed when you made the first will, or the paper will be no good. When you follow the requirements in making the paper, it will be considered, under the law, as part of the will and the court will follow what it says.

We have discussed the different ways a will can be changed. Now, suppose after you make a will you completely change your mind and decide you want to revoke it. In our example, suppose after you make your will giving all of your money, \$20,000, to Eve, you change your mind later and want to give it all to your new friend, Adam. What you want to do is do away with your old will. You want to revoke it. We now discuss the different ways a will can be revoked, the final topic of our program on wills.

A later will, if properly made, which contains terms that are inconsistent with the terms of a prior or older will automatically revokes the older or prior will. For example, if in your first will you gave all of your money to Eve and then later on you made a second will giving all of your money to Adam,

the second will revokes the first one so that Adam gets to have all of your money when you die and Eve gets nothing. The two wills are inconsistent because if you give all of your money to Adam there's no money left to give to Eve. This is one way a will can be revoked.

You can also revoke a will by tearing it up, burning it, erasing the writings in it, or doing some other act to it - such as cancelling the writings in it - that would make it impossible to know what the will says or who made it.

These are the various ways a written will may be revoked. For the revocation to be good, the person revoking his will must intend to revoke the will at the time he makes the revocation. So, if a person accidentally revokes his will the revocation wouldn't be good since the person doesn't actually intend to revoke.

Spoken wills, made pursuant to local custom, can be revoked in accordance with local custom

Please remember that the information in this website is general in nature and may not apply to every fact situation. If you think you have a legal problem, see a lawyer for advice.