

## Creating a Will

Will is a written document by which a person, the testator expresses his/her wishes as to how his/her properties (*the estate*) are to be distributed at death to one or more beneficiaries (*the legatee*). The testator may name in the will one or more persons (*the executor*) to manage the estate until its final distribution.

Will may be written in the hand of the testator (*holographic will*), and sealed and entrusted in the notary office (*mystic or secret will*), or may be made in public form and prepared by a notary public (*notarial or authenticated will*).

### ➤ What a will is?

By a will, you may:

- transfer your property (personal property and real property) at your death and decide on its distribution among the beneficiaries
- designate a person in charge of executing your will (the executor)
- recognize a child
- disinherit a child for ingratitude (unworthy heir)
- indicate your other wishes (such as organisation of funeral, etc.).

### ➤ Who can make a will?

To make a will, you must:

- have sufficient legal and mental ability to make and revoke a valid will (be of sound mind)
- be over the age of majority, or be over 16 years old and cease to be under the control and responsibilities of your parents or guardian
- have capacity to dispose of your property.

*Note: Certain people such as those under general guardianship, or in imminent danger of death, or in custody, a deaf-mute person, or a Cambodian citizen living abroad, can make a will in a condition that specific formalities imposed by law are observed.*

➤ **How to write a will?**

Your will must be written. You can create your own will or let it be drawn up by a notary public.

***Creating your own will (holographic will)***

To be valid, the will must be entirely written, dated (day, month, and year) and signed in your own handwriting.

You may also make your will secret (*mystic or secret will*). You sign your will, seal it in an envelope, and give to a notary public in the presence of two witnesses, along with a statement that it is your will.

***Will drawn up by a notary public (notarial or authenticated will)***

You dictates the provisions of your will to a notary public in the presence of two witnesses. Once the will have been read by the notary public in your presence and the witnesses', all sign the will in each other presence.

➤ **What are in the estates?**

Your will must only relate to the property you personally own:

- Movable (vehicles, shares, money, etc.)
- Immovable (lands, houses, apartments, etc.)

We note that the law reserves a portion of the estate (*the reserved portion*) to certain categories of heirs (*the mandatory heirs*). Thus, in the presence of mandatory heirs, only the available portion (portion exceeding the reserved portion) that can be freely given to anyone.

The reserved portion allows the protection of close family and guarantees the respect of minimal succession equality. The rate of the reserved portion varies according to the number of the mandatory heirs.

➤ **How to revoke a will?**

You may at any time revoke your will in whole or in part by:

- making a new will which revokes the previous
- transferring or destroying the estate
- intentionally destroying the holographic will (burn or tear the will etc.)

\* *To avoid any risk of invalidation, you may ask our HBS NOTARY PUBLIC for an advice to write your will.*

*Our team has extensive experiences in assisting client in this matter. Do not hesitate to contact us if you have any question.*

**HBS Law**

*The information provided is for information purposes only, and is not intended to constitute legal advice.*

## AUTHORS' PROFILES



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During his academic life, Mr. MUN attended various overseas legal courses in France, Switzerland, Belgium, and other European countries.

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