

WILLS ACT, 1971 (ACT 360)

ARRANGEMENT OF SECTIONS

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THE THREE HUNDRED AND SIXTIETH

ACT OF THE PARLIAMENT OF THE REPUBLIC OF GHANA

ENTITLED

THE WILLS ACT, 1971

AN ACT to regulate the making of wills and to give effect to provisions therein.

DATE OF ASSENT: 3rd July, 1971

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows:—

Section 1—Power to Make a Will.

- (1) Any person of or above the age of eighteen years may in writing and in accordance with this Act make a will disposing of any property which is his or to which he will be entitled at the time of his death or to which he may be entitled thereafter.
- (2) No person suffering from insanity or infirmity of mind so as to be incapable of understanding the nature or effect of a will shall have capacity to make a will during the continuance of that insanity or infirmity of mind.
- (3) A will, or any provision of a will, obtained by fraud or made under duress or undue influence, shall be void.

Section 2—Execution of a Will.

- (1) No will shall be valid unless it is in writing and signed by the testator or by some other person at his direction.
- (2) No signature shall be operative to give effect to any 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 him in the presence of two or more witnesses present at the same time.
- (4) A signature by some 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 no form of attestation shall be necessary.
- (6) Where the testator is blind or illiterate, a competent person shall carefully read over and explain to him the contents of the will before it is executed, and shall declare in writing upon the will that he had so read over and explained its contents to the testator and that the testator appeared perfectly to understand it before it was executed.

Section 3—Executors and Witnesses.

- (1) Any 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) Any person appointed by a will to be an executor may attest that will.
- (3) A creditor of the testator may be an attesting witness notwithstanding that by the will the property of the testator is charged with the payment of debts.

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

Section 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 shall be admissible for the purpose of identification.

Section 5—Alteration of a Will.

(1) No alteration made in a will shall have effect unless it is separately executed in the same manner as is required for the execution of the will, or unless it has been made valid by the re-execution of the will or by the subsequent execution of some codicil thereto.

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

Section 6—Armed Forces Wills.

(1) Notwithstanding any provision of this Act to the contrary, any member of the Armed Forces of whatever age may, while engaged on active service, make a will in any of the following forms:—

(a) written and unattested, if the material provisions and signature are in the handwriting of the testator;

(b) written (whether or not in the handwriting of the testator) and attested by one witness;

(c) orally before two witnesses.

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

(3) A will made in accordance with this section shall remain 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 any of the means of 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.

Section 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 any words of limitation shall pass the whole of the estate or interest therein which the testator has power to dispose of by will.

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

(4) A general disposition of the movable or immovable property of a testator shall include any property to which he may have power to appoint in any manner he may think 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 shall include property comprised in lapsed and void dispositions, unless a contrary intention appears from the will.

(7) Where a testator and a beneficiary under his 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 all purposes affecting the entitlement to property under the will of that testator; but for the purposes of the entitlement of such testator to that property under any will of the aforementioned beneficiary, that beneficiary shall be deemed to have survived the aforementioned testator, unless a contrary intention appears from the will.

Section 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) Notwithstanding subsection (1), a disposition made by a testator to his 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 such issue per stirps, unless a contrary intention appears from the will.

Section 9—Revocation of a Will.

(1) A will may be revoked by tearing or other physical destruction by the testator or by some other person in his presence and by his direction 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 be deemed to have revoked that previous will except to the extent that it is inconsistent with the previous will.

(5) Where a testator destroys a will—

(a) as a result of fraud or undue influence; or

(b) under a mistake of fact or law intending to make some other disposition of his property which is not validly made, such destruction shall not be deemed to have revoked the will.

Section 10—Revival of Revoked Will.

(1) No will or any part of a will which is in any manner revoked shall 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) Whenever a will which is partly revoked and afterwards wholly revoked is revived, the revival shall extend to the whole will.

Section 11—Custody of Wills.

Any person may, in his lifetime, deposit for safe custody in the High Court his own will, sealed up under his own seal and the seal of the Court.

Section 12—Deposit of Wills Found After Death of Testator.

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

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

(3) Any person who fails to deposit any such paper or writing as required by subsection (1) of this section within fourteen days after having knowledge of the death of the deceased, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$10,000 or to imprisonment not exceeding ten years or to both.

Section 13—Provision for Dependants.

(1) If, upon application being made, not later than three years from the date upon which probate of the will is granted, the High Court is of the opinion that a testator has not made reasonable provision whether during his lifetime or by his will, for the maintenance of any father, mother, spouse or child under 18 years of age of the testator, and that hardship will thereby be caused, the High Court may, taking account of all relevant circumstances, notwithstanding the provisions of the will, make reasonable provision for the needs of such father, mother, spouse or child out of the estate of the deceased.

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

(a) payment of a lump sum, whether immediate or deferred, or grant of an annuity or a series of payments;

(b) grant of an estate or interest in immovable property for life or any lesser period.

Section 14—Disposal of Life Insurance Money to Member of Family by Nomination.

(1) Notwithstanding anything in this Act or any other enactment, where a person takes out a policy of life insurance on his life for a sum which is expressed on the face of the policy to be for the benefit of a member of his 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, upon the death of the insured person, the sum assured shall not form part of his estate but shall, subject to the provisions of this section, be paid to the person so nominated.

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

(3) Subsection (7) of section 7 of this Act shall, with such modifications as may be necessary, apply to any such nomination as it applies to a disposition in a will.

(4) Subject to subsections (5) and (6) of this section, any insurer who, in good faith and without notice of any revocation referred to in subsection (1) of this section pays the sum assured to or for the benefit of the person nominated in respect thereof shall be deemed to be duly discharged in respect of that sum.

(5) Where a person nominated as entitled to receive any moneys 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 him unfit to manage his own affairs, the High Court may, upon application made to it for the purpose, appoint any person to administer the aforesaid moneys in accordance with the order of the Court and on behalf of such nominee.

(6) Without prejudice to the provisions of subsection (5), the powers conferred upon the High Court by that subsection may be exercised:—

(a) by a District Court, in any case where the sum assured does not exceed two thousand new cedis;

(b) by a Circuit Court, in any case where the sum assured exceeds two thousand new cedis but does not exceed four thousand new cedis.

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

(8) This section shall apply to all sums 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 such commencement.

(9) In 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 upon any life or lives or upon any event or contingency relating to or depending upon any life or lives;

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

Section 15—Wills Made Outside Ghana.

(1) A will shall be deemed to be 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, he was domiciled or had his habitual residence or in a state of which he was 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 aircraft of any description, if its execution conformed to the internal law in force in the territory with which having regard to its registration if any and 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 would be deemed to be properly executed or revokes a provision which under this Act would be deemed to be comprised in a properly executed will, if the execution of the later will conforms to any 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 the essential validity of the power.

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

(4) Where a law in force outside Ghana falls to be applied in relation to a will, any requirement of that law whereby—

(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, notwithstanding any rule of that law to the contrary.

Section 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 any subsequent change of domicile of the testator.

Section 17—Ascertainment of Internal Law.

(1) Where under this Act the internal law in force in any 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 there is no such rule, 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 his 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, regard shall be had to the formal requirements of that law at the time of 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.

Section 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 any enactment for the time being in force relating to adoption, any person recognised by the person in question to be his child or to whom he stands in loco parentis, and in the case of a Ghanaian, includes also any person recognised by customary law to be the child of such person;

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

“internal law” in relation to any territory or state means the law which would apply in a case where no question of law in force in any other territory or state arises;

“property” includes movable and immovable property and any right, benefit, expectancy or 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.

Section 19—Statutes Ceasing to Apply and Savings.

(1) The English statutes relating to wills as they apply in Ghana 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.

Section 20—Commencement.

This Act shall come into force on the first day of June, 1971.