

- they have helped or arranged for another person to do any of the above.

### Removal and substitution of executors

The court can remove an executor if it is satisfied that it is desirable to do so and can appoint another executor in their place. A person interested in the estate can apply to the court for the removal of an executor.

If an executor dies, the court can appoint another executor in their place.

### Revocation of wills

A testator can revoke a will by destroying it or by making a new will in accordance with the requirements of the *Wills Act* [Cap 55].

If a person marries after making a will, the marriage automatically revokes the will.

### Safe keeping of wills

A testator can forward their will to the Registrar of the Supreme Court of the District Commissioner for safe keeping.

### Procedure when a testator dies

When a person dies, the District Commissioner must make enquiries to determine whether the person had made a will. Note that it is an offence to conceal or to fail to disclose the whereabouts of a will of a deceased person. This offence is punishable by a fine of up to 20,000VT and/or imprisonment for up to 6 months.

If the District Commissioner locates the deceased's will, he or she must notify the executors named in the will and publish the will by reading it in open court in the area in which the testator had resided.

The executor(s) can apply to the court to grant probate. This allows the executor(s) to deal with the deceased's property in accordance with the will and any directions of the court.

The applicants for the grant of probate must advertise on radio, and do all other things reasonably necessary to bring the application to the knowledge of people with an interest in the deceased's property or who might oppose

the grant of probate.

The court will grant probate to the executor(s) that has applied if the court is satisfied that:

- the will makes adequate provision for the maintenance of the deceased's spouse and children under 18 years of age; and
- the application for the grant of probate is not opposed.

If the court is not satisfied that the will makes adequate provision for the deceased's spouse and children under 18 years of age, it will order that such part of the deceased's property as it thinks fit be given to the spouse and children.

### Interfering with the estate of a deceased testator

It is an offence to wilfully interfere with the estate of a deceased testator for a purpose other than preserving the estate or dealing with it in accordance with the instructions of the testator or an order of the court. The penalty is a fine of up to 50,000VT and/or imprisonment for up to 2 years.

### For more information, contact:

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The information contained in this brochure is only intended as a guide to the law and is not a substitute for obtaining legal advice. If you have any further questions we strongly suggest you seek legal advice.

Note: This information applies to people who live in, or are affected by, the law as it applies in Vanuatu.

The information in this brochure is current as at 30 June 2006.  
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**WILLS**



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## What is a will?

A will is a legal document that sets out how a person wants their property to be shared or given out after they die.

## What happens if I do not have a will?

A person who dies without a will is said to have died 'intestate'. Their property will be divided and given out in accordance with the law. In Vanuatu, the relevant law is the *Succession, Probate and Administration Regulation 1972* (UK).

## Definition of legal terms

The following legal terms are often used when talking about wills:

- **Testator** – The testator is the person who makes the will. After a testator dies, they may also be referred to as 'the deceased'.
- **Estate** – The estate is all of the property of the deceased.
- **Executor** – The executor is the person who is appointed by the testator to divide the testator's property in accordance with the will. An executor can also be a beneficiary under the will.
- **Beneficiary** – A beneficiary is a person who has been appointed to benefit from the will. In other words, he or she is a person that will be given property of the deceased in accordance with the will. A beneficiary can also be an executor under the will.
- **Witness** – A witness is a person who witnesses the signing of the will by the testator. A witness to a will should not be a beneficiary under the will.

## Who can make a will?

Any person who is over 21 years of age can make a will provided that they are of sound mind, memory and understanding.

## Formal requirements for wills

A will can be in any form or language, but in order to be legally valid, it must:

- be in writing; and
- be signed or thumb printed by the testator at the foot of every page and at the end of the will in the presence of at least 2 witnesses.

## Land

A testator can leave land to a person or persons by their will but only if:

- the testator is entitled to dispose of the land on death in accordance with custom; or
- the land is registered in the testator's name alone.

## Construction of wills

It is important that wills are as clear as possible to ensure that they reveal the testator's intention. The property to be delivered, the person(s) to receive the property, and the manner in which the property is to be divided and delivered should be clearly identified.

If part of a will is unclear, the parts of the will that reveal the intention of the testator will be given effect, even if the rest of the will cannot be given effect.

If there is any doubt as to the validity or the meaning of a will, one or more of the executors or any person with an interest in the will may apply to the court to have the validity determined or the will construed.

## Witnesses

Witnesses to a will must be at least 21 years of age, of sound mind and able to sign their name.

Witnesses to a will must witness the signature or thumb print of the testator and only then sign the bottom of every page and the end of the will. The address or place of origin of every witness must be written opposite their signature.

Witnesses to a will do not need to know the contents of the will, but they must know that they are witnessing a will.

Beneficiaries under a will should not be witnesses to the will. Any person who witnesses a will knowing that they are a beneficiary under the will loses any benefit they would otherwise have been entitled to under the

will.

## Executors

A testator can, in his or her will, appoint up to 4 persons to be an executor or executors of the will. Executors must be at least 21 years of age and must be of sound mind.

If the testator does not appoint an executor, or if the appointed executor cannot act as executor by reason of disability or death or is unwilling to act as executor, the court may appoint any person or up to 4 persons to act as executors.

Executors have a legal duty to collect all the property of the testator after their death, to discharge the deceased's debts and obligations, and to then carry out the directions of the deceased as set out in the will.

Executors are only liable for the debts of the testator that they are aware of and that can be covered by the property of the deceased that they have authority to deal with. Executors are not liable for anything done in good faith in accordance with the will, the document giving them authority to deal with the estate, or a direction of the court.

It is an offence for executors to wilfully mismanage an estate or any part of it that he or she is entitled to deal with.

## Beneficiaries

A testator can, by their will, leave their property to anyone they want to. However, after the testator's death, the court may order that such part of the deceased's property as it thinks fit be given to the deceased's spouse and children under 18 years if it is of the view that the will did not make adequate provision for them.

Beneficiaries under a will are not entitled to benefit from the will if:

- they have been convicted of the murder or manslaughter of the deceased;
- they used coercion, fraud or undue influence to make the deceased make a will or to prevent the deceased from making or revoking a will; or