

# Guide to Filling Out Your NAV Will

## Why Make a Will?

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Making a Will ensures that upon your death, your assets will be distributed in accordance with your wishes to those people whom you wish should benefit. It allows you to distribute your assets in the proportions that you intend to give to one or more beneficiaries and to give specific gifts of money or assets to individuals or companies. A Will is a useful way of recording your wishes and ensuring those who should benefit will benefit.

If you do not make a Will, the rules of intestacy will apply and depending in which country you live, these rules may vary. The property of a person who dies without leaving a valid Will, dies intestate and his assets will then be distributed in accordance with the law. Usually this means the assets will be divided among immediate close family members (i.e. spouse and children) in the proportions set out under the statutory regulations. While Intestacy Rules may assist your present financial position, they may not be appropriate as the years go by as you may become better off. It should be borne in mind that where no valid Will exists, if no next-of-kin can be traced, after a certain specified period the value of the Estate will pass to the Crown or government.

You may also wish to demonstrate expressly that you wish your assets to pass to particular persons in differing proportions even though they may be entitled under the Intestacy Rules. This can only be done by making a Will in their favour.

The next few sections explain the terminology of writing a will. When you have read and understood these, you should start collecting the information you need on the NAV Will Checklist.

## Testator Details

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The person making the will is called the Testator if they are male, or Testatrix if they are female. A valid will needs their Name, Address and ID or Passport Number. If you choose to fill in the Chinese name field, then you will need a computer capable of displaying Chinese fonts to print the document.

During the completion of your NAV will, if you are an existing NAV client, your details will be filled into this form from our database. If they are incorrect you can change them, but this will not affect the information in our database.

After completing this first page of personal information, you will be redirected to our payment gateway to enter your credit card details. After this you will be returned to the NAV website to complete the following information:

## Executors And Trustees

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The first thing you need to consider is who you wish to appoint as an executor/trustee. An executor/trustee is the person who will administer your estate for you on your death. That person will be responsible for taking all steps either himself or through Solicitors to list out all your assets, complete all forms necessary for the Inland Revenue Department and clear any estate duty payable and obtain a Grant of Probate. Upon obtaining a Grant of Probate, your executor will be able to distribute and administer your estate in accordance with your wishes set out in your Will.

This is not just a formality as it involves a lot of work and a great deal of responsibility. It would be unfair to inflict this job on someone who is unwilling or unable to carry out the task. A person cannot be compelled to act as an executor.

### Who should you appoint?

You may appoint an individual or individuals a firm of Solicitors, a bank or trust corporation but before you do so, you should consider the merits of each.

1. **INDIVIDUALS:** Usually a husband will appoint a wife as an executor and vice versa. One executor may be sufficient if there are no minors or if the children are all grown up. Alternatively, an adult son or daughter may be appointed, usually to relieve the burden on the surviving spouse. It is also

common to appoint the beneficiary who has the biggest stake in the Estate as that person may be more likely to administer the estate quickly and fairly.

2. **PROFESSIONAL ADVISERS:** If there are children involved, it is essential to have 2 executors. When an executor who is not a relation has been appointed, it may be wise to pay for his or her time for being involved. It is common for a Solicitor or Accountant to be appointed (if there is no other suitable family member) and in these circumstances, it is normal to include a charging clause in the Will.
3. **BANKS and TRUST CORPORATIONS:** A Bank or Trust Corporation can also be appointed as an executor particularly in cases where relationships or communication between family members can be difficult or where there is no other suitable executor. If you wish a Bank to be an executor, it will definitely charge you for the service and it would be prudent to ask the Bank to check the standard charging clauses contained in your NAV will.

## Beneficiaries

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Beneficiaries are the people who receive your assets on your death. Only people who are named as beneficiaries on your will may receive anything. Beneficiaries can include unborn children (the phrase to look for is *en ventre sa mere*), and executors. Beneficiaries **must not** also be witnesses of your Will otherwise any gift to that person will fail.

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## Assets

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As with anything in a will, the more accurately you can detail these, the greater the chances they have of going to the correct person. For example, mentioning "my house" or "gold ring" in a will is not specific enough. Supply as much detail as you can: "my property at 23 High Street, Pok Fu Lam, Hong Kong." and "24 carat gold ring with 3 emeralds arranged in a triangle." are much less ambiguous. There are four main methods of distributing Assets.

- 1) **SHARED ASSETS:** Where assets are identified they can be dealt with in two ways
  - a) On a percentage basis (eg. 25% of my property at 23 High Street, Pok Fu Lam, Hong Kong)
  - b) On a share basis (eg a quarter share in my Royal Life Portfolio, account number 2333335)

[The NAV will allows you to do the first of these, but due to the complexities of language, cannot offer you the second option.]

- 2) **SPECIFIC GIFTS:** Examples: property, a watch, an item of jewellery, a car etc. Remember that if you give specific gifts and at the time of your death this has been sold, the gift will fail and the beneficiary will get nothing. To do this in your NAV will, you write the asset description as fully as you can, and then allocate it 100% to your chosen beneficiary.
- 3) **GENERAL LEGACIES:** This relates generally to gift of money of a specific amount. To do this in your NAV will, when entering your assets, write the amount, in words if possible, and where the money is to be taken from if relevant. Eg. Ten thousand pounds Sterling to be taken from Nat West Account 3887762. Then allocate this as 100% to a single beneficiary.
- 4) **GIFT OF RESIDUE:** Also known as Residual Assets. This is the balance remaining of the value of the estate and all ungifted assets after payment of all specific and general gifts and charges for the will. It is essential to include a gift of residue to avoid those assets not specifically allocated falling under the Intestacy Rules. Only NAV will types 2 and 4 require this.

## Estate Duty and Administrative Expenses

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Estate Duty and expenses related to administering the will, are paid from the assets of the testator before they are distributed. Unless otherwise specified, they will be taken from the gift of residue first. If that is insufficient, then they will be taken from any gifts of money. If that is still insufficient, then it is taken from the specific gifts.

## Clauses

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Wills may contain hundreds of subsidiary clauses, and if you have any specific requirements, you must arrange this with a lawyer. Here are some of the more common ones which will ensure that your estate is properly distributed.

### 1) BENEFICIARIES PREDECEASING TESTATOR

- a) If you make a gift to your spouse and he or she dies before you, you may direct that any assets intended for them to go to another person or persons. To do this in your will you need to check the relevant box in the Clauses section.
- b) If you make a gift to one of your children, and they die before you, you may wish to nominate someone else to receive them. If you wish the gift to descend down the family tree (e.g. a gift to your son will be re-allocated to your son's children, then you need to insert a clause to say so. (the legal language for this is *per stirpes*)

### 2) THE HANDLING OF MINORS: If you should die before any or all of your children come of age you can assign trustees to keep and invest what is meant for your children and distribute it when they are of the correct age. Under this Clause, it is usual to assign your executors as Trustees to be in charge of the assets. To do this in your NAV will, you will need to check the relevant box in the Clauses section.

After answering the Clauses questions in the NAV will, you will be assigned a reference number, and the completed will will be sent to the supplied email address within 24 hours in Word format. You will be able to make any amendments if you desire, and then print it out yourself. We don't recommend that you make changes to the will unless you are confident that you know that they won't affect the validity of the will.

## Signing The Will

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Once the will has been drafted to your satisfaction, and is as clear and unambiguous as possible, it must be signed. For this you need two witnesses, and you must all be in the same place at the same time. As is mentioned above, the witnesses **must not** be beneficiaries in the will. The procedure is as follows:

- 1) You sign your Will first, and initial each page.
- 2) The first witness initials each page, signs the bottom of the will, and prints their name, along with any other identifying information, preferably address and ID/Passport number. This must be done in the presence of yourself and the second witness.
- 3) Witness 2 repeats the process.

## Preparing and Storing the Will

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- 1) Your Will should be stapled together (if more than 1 page) once only and there should be no other pin marks or holes in the Will which would give rise to queries on proving the Will.
- 2) If possible your Will should be placed in a sealed envelope and deposited in a safe place – usually bank deposit box. At the very least, you should keep two copies of your will, one in your home, for reference, and one outside of your home in case of a disaster which destroys it.
- 3) If you have made your Will in general terms, it would be useful to make a list of all your assets, giving details of whereabouts to enable your executors to identify them easily. If no one knows where or what you have, your beneficiaries stand to lose and/or impede the speedy administration of your estate. This list ought to be placed near your Will but separately as your assets can change over time and it allows you to replace the list without changing your Will.

## Changes

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You are allowed to make minor changes or deletions to your Will after it has been created. If you make changes, you must sign in the margin next to the changes or deletions, and your signature must be witnessed by two witnesses. The two witnesses must be present at the time of the alterations and also need to sign in the margin next to your signature. If you want to make major changes, it is better to seek professional advice.