



# Guide to Wills in The Bahamas

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# Preface

Under Bahamian Law persons domiciled in other jurisdictions may make a Bahamian Will which governs their assets located in The Bahamas. However when drafting a Bahamian Will there are certain issues discussed below which should be borne in mind. Persons who wish to make a Bahamian Will can expedite the process by providing the information highlighted in this Guide.

Higgs & Johnson strongly recommends that legal advice from professional advisors in the country of residence of a would be testator be obtained in relation to what is sought to be achieved by using a Bahamian Will. Higgs & Johnson will not provide advice on legal or other ramifications relating to the use of a Bahamian Will, insofar as the laws of any foreign jurisdiction are concerned. Our professional advice will be provided within the context of the laws of The Bahamas.

## TESTATOR WILL REQUIREMENTS

Whilst it is possible for a testator or testatrix to make a Will which deals with his or her assets located in The Bahamas care must be taken in the drafting of such a Will. Given that Bahamian Law will govern the validity of the testator's Will in so far as it pertains to Bahamian immovables, a separate Will, (a "**Bahamian Will**") is highly advisable in respect of immovable property located in The Bahamas. Furthermore, it is likely that the Bahamian Will will be admitted to probate more swiftly than a foreign will.

It is important to bear in mind that when drafting a Will, a subsequent Will may revoke a prior Will. In light of this Higgs & Johnson will draft a Bahamian Will in a manner that avoids the revocation of prior Wills or limits such revocation to that which is intended to be revoked. Likewise Higgs & Johnson recommends that there be disclosure of any existing Bahamian Will to the legal representative drafting any later testamentary documents so that the later testamentary documents may be drafted with the existing Bahamian Will in mind. Also, it is recommended that the would be testator's legal representative consult this firm or a Bahamian Attorney-At-Law concerning the Bahamian Will before drafting the later testamentary document to ensure that Bahamian Law with respect to the formalities of a Will are noted.

By providing the following information, a testator can facilitate the drafting of a Bahamian Will:

- The full name of the person making the Will;
- The name and address of the executor and substitute executor;
- Whether the testator would like a trustee, this is

especially useful if there are minor beneficiaries;

- Whether the executor and/or trustee will be remunerated;
- Who is to benefit from the Will and also their names and addresses;
- In what circumstances and in what portions are the beneficiaries to benefit;
- Which of the beneficiaries will receive personalty and which will receive land;
- Whether the beneficiaries are to take as joint tenants with rights of survivorship or tenants in common;
- Who is to benefit if a beneficiary predeceases the testator or testatrix;
- Who will be the residuary beneficiary (or residuary beneficiaries if more than one);
- If there are minor beneficiaries who will be appointed guardian; and
- Provide copies of other testamentary documents.

## PROBATE OF WILLS

As a matter of Bahamian Law the probate of any will admissible to proof may be granted in The Bahamas to the executor appointed either expressly by the will or impliedly by the will i.e. according to its tenor. However, it should be noted that although the testator may appoint as many executors as he wishes, no more than four will be permitted to prove the will at any one time.