A. NICOLAOU & ASSOCIATES L.L.C.

LAW FIRM

Newsletter

Wills and Legal Formalities: Protecting Your Legacy and Loved Ones

Why draw up a will?

The will is a useful legal tool which allows an individual to ensure that upon their death, their assets will be distributed to their loved ones in the manner they desired. Creating a will has been proven to be a very responsible move on the part of the testator (the person who makes the will) in ensuring the immediate path of succession of their property. It provides clarity, certainty and eliminates possible conflict amongst relatives and others; a not so foreign concept - especially in cases where the fate of multiple assets of value is at stake. Regardless, the function of the will is not limited to arranging the distribution of one's assets. It can extend to other matters; for instance, the will enables the testator to appoint the legal guardian for their disabled or incapacitated child. Whether one's inheritance is high in monetary value or consists of highly sentimental possessions, a will provides for peace of mind to the testator as it operates as a concrete piece of reassurance for both them and their loved ones.

Creating a legally valid will:

Invalidity with regard to form

Considering one of the purposes of the will is to help the deceased's family avoid lengthy and costly legal processes as well as the involvement of the court, it would be an oxymoron if the creation of a will was a complicated process itself. Fortunately, the law has provided for that. A legally valid will requires the fulfillment of a few legal formalities which ensure that the will document is indeed a product of the testator's wishes, while avoiding any unnecessary and excessive prerequisites.

The first point to discuss, is who is capable by law to draw up a will. The only two prerequisites are that the individual must be 18 years of age or more and must be sound of mind. If both requirements are met, the individual is capable of drawing up a will. The question that follows is, how does one create a will that is legally valid and enforceable? The relevant legislation to refer to, is the Wills and Succession Law (CAP. 195) which lays down all the formalities that must be met, for a will to be recognized as legally valid. The said formalities are the following:

Find us

Phone

00357 24 642156

Email

info@nicolaoulawfirm.com

Address

Ioanni Chakket 44, Merika House 3, 3rd floor, Office 6, 6045, Larnaca, Cyprus

Website

www.nicolaoulawfirm.com

- First and foremost, it would only be appropriate that a will is made is in writing; hence any wishes of the testator that are made orally and are not written down in the document, do not form part of the will.
- It follows that the will is signed by the testator personally, or in the case where the testator authorizes and directs a person to sign the document on their behalf, the will must be signed by that person, in the presence of the testator.
- The above signatures must be borne in the presence at least two witnesses. By law, a capable witness is a) of 18 years of age or more, b) sound of mind and c) capable of signing. The witnesses acknowledge and attest the signatures of the testator or the representative and countersign the will in the presence of the testator, and/or his representative, and of each other.
- In case the will consists of more than one sheet of paper, each sheet must bear either the full signature or the initials of all the abovementioned individuals.

Invalidity with regard to content

It is important to emphasize that while a will may be valid with respect to the aforementioned formalities, it may still be rendered invalid with respect to its content. For the purposes of maintaining certainty, integrity and practicality, the law is such that it invalidates a will that does not showcase the clear intent of the testator; thus, the wishes of the testator as to the fate of his property must be clearly ascertainable from his will. The law is also prepared to invalidate a will which purports to pass property to a person who is not in existence at the time of the testator's death, with the only exception being the testator's offspring. It should further be noted that any clause contained in a will which purports to pass property to an individual upon the fulfillment of either an impossible, illegal or immoral condition, is considered invalid. In the third case, the law only invalidates the specific clause; not the entire will.

Room for change

The Wills and Succession Law (CAP. 195) confers upon the testator the power to revoke his will after it has been finalized, in four ways. This can either be done directly by the testator by actively changing his will, or passively by engaging in certain conduct. To elaborate further, the testator can revoke his will by creating a new will which expressly states that it revokes its predecessor, or he can create a new will which contains clauses incompatible with the preceding will; revoking in this way the first, will only to the extent that the two are incompatible.

As already mentioned, the testator's will is also deemed to be revoked if he engages in certain conduct; namely if he gets married or has a child following the finalization of the will. Of course, this is not a hard and fast rule. Where the testator was able to foresee the said events and has drawn up the will with the prospect of marriage and/ or childbirth, the will remains unaffected, as it has already accounted for the new additions to the testator's family. .

Undoubtably, the will is an important legal instrument, the benefits of which outweigh any possible costs of setting it up; hence why wills are encouraged by lawyers and legal consultants - where they are deemed necessary. Considering the creation of a will is a rather simple procedure, flexible to the prospect of future changes, it is an attractive option for any individual who wants to ensure and crystallize the manner of the future distribution of their property.