

ISLAMIC WILLS

INFORMATION PACK



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Islamic Wills Made Easy



TO BEGIN ...

All praise is for Allah, Lord and Sustainer of one and all. We praise Him, seek His help and beg for His forgiveness. Indeed, Allah is the One who gives life, and He is the One who takes it, and to Him shall we return.

For Muslims, death comes with the need to carefully perform funeral rites for the deceased such as washing the body (ghusl), shrouding (kafn) and conducting the prayer for the dead (Salatul Janaza). However the same diligence is often not applied in distributing the deceased's assets in accordance with what Allah Subhanhuwatala has ordered. Most may not even know that the Qur'an contains a detailed set of rules about how assets should be distributed on one's death. To follow such rules is compulsory on all Muslims and is not something we should be heedless about.

Given the importance of distributing assets according to what Allah Subhanhuwatala has ordained, the writing of a proper Islamic Will without delay becomes of paramount importance, as none of us know when we will pass away. This is particularly true in Western Countries where there is the possibility of assets being distributed unIslamically if one passes away without a valid Will.

You can ensure you and your family members are prepared for death by making an Islamic Will that reflects the rules of inheritance as communicated to man by Allah Subhanhuwatala from above the Seven Heavens.

SHARIAH CONSIDERATIONS

It is certainly a mercy to mankind that Allah Subhanhuwatala has already decided how our assets should be distributed once we pass away. The main Shari'ah rules pertaining to the distribution of assets upon death are set out in Surah Nisa and can be summarised as follows.

- 1. Outstanding Debts.** All outstanding debts owed by the deceased should be repaid from the estate before distribution is made to the inheritors. If a persons debts exceed the assets left by the deceased, it is recommended that the family repay the shortfall to avoid the situation where the deceased is held to account for these debts on the Day of Judgement. However this repayment of debts is not an obligation on the family.
- 2. Funeral Expenses.** All funeral expenses should be paid from the assets of the deceased, if the expenses are not voluntarily met by the family of the deceased.
- 3. Bequests.** The Willmaker can make a bequest in their Will of up to one third of their net assets (that remain after deducting debts and funeral expenses if applicable) to be left to recipient(s) that are not otherwise entitled to receive a share of assets under the Shari'ah. Such bequests cannot be made to persons such as spouses, siblings, children and parents as they generally have their shares stipulated by the Shar'ah. Many Muslims choose to make a bequest to a charity as a means of ensuring some good deeds continue to benefit them after death (sadaqah jariyah). Making such a bequest is completely your choice, you do not have to if you do not want to.
- 4. Remaining Assets.** After deducting debts, funeral expenses and bequests (if applicable), the remaining assets are to be distributed according to the rules of inheritance as set out in the Qur'an. The actual distribution of assets depends entirely upon the number of surviving family members. We recommend that you consult an Islamic Scholar if you would like to find out how the Shari'ah will distribute your assets upon death.



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SHARIAH CONSIDERATIONS

Case studies: Who gets what?

Case 1:

Ahmad passes away leaving behind his wife and two children – a son and a daughter. Who gets what?

- Wife receives $1/8^{\text{th}}$
- Son and daughter receive the remainder at a ratio of 2:1

Case 2:

Safeeyah passes away leaving her husband, her mother, her father and two children – a son and a daughter. Who gets what?

- Mother and father receive $1/6^{\text{th}}$ each
- Husband receives $1/4^{\text{th}}$
- Son and daughter receive the remainder at a ratio of 2:1

Case 3:

Yousef passes away leaving behind a wife, a mother and a son. Who gets what?

- Wife receives $1/8^{\text{th}}$
- Mother receives $1/6^{\text{th}}$
- Son receives the remainder

LEGAL CONCEPTS

The following is an explanation of some legal concepts that you will need to know when preparing your Will.

- 1. The Executor:** This is the person who will be responsible for administering your estate after your death. Whilst you can appoint anyone you like, it is important that you appoint someone that you trust and is able to identify your surviving family members easily. Your executor must be over the age of 18 at the time that you pass away. You should also notify this person that you are appointing them as your executor and get their agreement before doing so in your Will.
- 2. The Guardian:** This is an adult designated to care for a child in case both parents die before that child reaches adulthood. If you do not choose a guardian, a Court will appoint someone to act as guardian. Unless you specifically name a guardian in your Will, anyone can step forward and ask for the job, and a judge will decide who gets custody. If you and your spouse have separate Wills, it's best to name the same person as the guardian of your child to avoid conflicts. Many parents also name an alternate guardian in case their first choice is unwilling or unable to accept the responsibility. You should also notify the person you select that you are appointing them as your child's Guardian and get their agreement before doing so in your Will.
- 3. Intestacy:** If you die without a Will, your assets may be subject to the **laws of intestacy**. Laws of intestacy are a common feature in most countries. Essentially they hold that if a person passes away without a legally valid Will, their assets are to be distributed to people and shares as set by the local law. The shares set by local law are unlikely to be in accordance with the Shari'ah. If you would like more detailed information about the laws of intestacy in your country, we recommend that you seek advice from a local legal practitioner.



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ISLAMIC WILL VS SECULAR WILL

	Secular Will	Islamic Will
Burial	No restrictions.	You are able to stipulate the conditions of your burial according to the Qur'an & Sunnah and dictate that an autopsy not be conducted over your body.
Distribution of Wealth	Depends on local legislation. However, in general there are no restrictions and you are entitled to choose who the beneficiaries should be and the amount they are entitled to receive.	You are entitled to distribute up to 1/3 of your wealth to beneficiaries who are not otherwise entitled to inherit under Islamic law. The remaining 2/3 must be distributed to the beneficiaries stipulated and in the proportions specified in the Qur'an & Sunnah.
Debts	Does not necessarily concern itself with the payment of outstanding debts.	An Islamic Will directs that your debts be paid from your estate prior to distribution of assets. It also includes payment of outstanding obligations between yourself and Allah Subhanahuwatala as a debt to be paid (eg, unperformed Hajj, outstanding Zakat etc).



WHY GET AN ISLAMIC WILL?

As the saying goes, *the only certainty in life is death*. However, as we do not know when that exact moment will be it is important that we do not delay in preparing a Will.

Here are some reasons why you should prepare your Islamic Will today.

- 1. Fulfilling your obligations to Allah Subhanhuwatala.** If paradise is indeed our intended destination, then we must be earnest in seeking to fulfil the commands of Allah Subhanhuwatala. Having an Islamic Will in place is the easiest way to ensure that following your death your assets are handled in accordance with the Qur'anic injunctions.
- 2. Avoid laws of intestacy.** The laws of intestacy specify the distribution of assets in a way that is not consistent with the Shari'ah. An Islamic Will ensures that your assets are not subject to the laws of intestacy, but rather are handled Islamically in a way that is most pleasing to your Lord.
- 3. Protect your body.** In Islam our bodies are sacred and deserve to be treated as such. An Islamic Will allows you to ensure that your body and your burial rights are conducted in an Islamic manner. In particular, you are able to make provisions in your Will that an autopsy is not to be conducted over your body and that your burial be performed in accordance with the Qur'an and Sunnah.
- 4. You decide who oversees your affairs.** Without a valid Will, the Court in your country will decide who oversees the distribution of your assets and who looks after your children. You can decide these matters in your Islamic Will.

KEY FEATURES OF AN ISLAMIC WILL

The following are the main sections you will find in an Islamic Will.

1. **Preamble:** In this section the Willmaker declares their faith & calls upon his/her surviving relatives and friends to fear Allah Subhanhuwatala.
2. **Burial:** In this section the Willmaker gives direction and instruction to his/her surviving relatives and friends about how to conduct their funeral and burial. It covers the washing (ghusl), funeral prayer (janaza) and burial as prescribed by the Qur'an and Sunnah.
3. **Debts:** In this section the Willmaker directs and instructs the executor to pay all outstanding debts before making distribution to his/her heirs. This include payment of debts due to Allah Subhanahuwatala (eg. an unperformed hajj or payment of Zakah).
4. **Discretionary Distribution:** In this section the Willmaker can direct and instruct the executor to distribute up to 1/3rd of his/her estate to a person or charity that is not otherwise entitled to inherit by the Shari'ah. This is an optional section of the Will.
5. **Residuary Distribution:** This section of the Will sets out the distribution of the remainder of your estate in accordance with the Shari'ah. It includes a schedule that demonstrates various scenarios of your surviving family members that your executor can refer to when executing your Will.