



# Hidden Issues You May Face in Business

## ‘The Importance of a Will’

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# THE IMPORTANCE OF A WILL



## What is a will?

A will is a legal document that sets forth your wishes regarding the distribution of your assets and the care of any minor children. It outlines how your assets - like property or money - are to be distributed after your death, as well as who will manage the property or money until its final distribution. In order to communicate your wishes clearly and precisely, it's important for you to create a will. If you die without a will, your wishes may not be carried out.

## Why should MSMEs or business owners write a will?

### 1. To protect your family

- If you rely on your business to provide for your family and you are no longer there to ensure that your family is looked after, a will becomes the legal document that protects your family members and ensures they are looked after and can acquire any assets or money from the business.

### 2. To protect your business and ensure it continues to thrive

- If you or a shareholder passes away, a business will is one way to ensure the smooth transition of business ownership after the event of death so that the business operations can continue as smoothly as possible.
- A business will can also ensure that your bank account does not become frozen. Any business or company should consider a business will to ensure continuation of the business or company.

## When should you write a will?

You should write a will if:

- You are at least 18 years old. This is the age requirement set under Jamaican law.
- You have children, whether biologically or by adoption. A will allows you to appoint guardianship and stipulate other ways to safeguard the wellbeing of your children.
- You own property, real estate, business interests and other major assets.
- You have a job, especially one that contributes to a pension scheme or in which you are permanently appointed.
- You have money in the bank in the form of savings or investments.



# THE IMPORTANCE OF A WILL



## What happens if you die without a will?

***“Intestate”*** - *Not having made a will before one dies (adjective); A person who has died without having made a will (noun).*

- Without a will in place, family members may not have a comprehensive list of the assets and interests of their loved one, and the government has to step in to apply its rules of intestacy to distribute the assets that are known or have been found.
- Aside from that, families are left with a host of decisions that could have been avoided if there was a will to make this part of bereavement that much easier.



# THE IMPORTANCE OF A WILL



## **LIVING AND RESTING IN PEACE**

Many persons delay preparing a will. Moreover, many of us do not pay any particular attention to how our affairs will be managed in the event we are alive but incapacitated. When we fail to put things in place it creates unnecessary complexities for our loved ones who are in many instances left scrambling to access finances to care for us if we are incapacitated or to manage our estate if we die.

**What should I be thinking about if I am scheduled to do e.g. major surgery:**

### **1) Ask yourself the question: Where are my documents?**

Car titles

House/property titles

Insurance documents

Any banking documents

Any key contracts

Any patents or other official documents

Do you have a fully executed will? Where is it? Ensure someone knows where to find it.

Do you have any transactions in process that are not yet completed that require signature or payments? E.g. House purchase or business acquisition.

Take some time to find all your documents and put them in a safe place. These include insurance certificates; share certificates; birth and marriage certificates.

### **2) Choose key people (one or preferably two)**

When it comes to our finances and business many of us are reluctant to share information with others. The fact is that, when we are incapable, due to illness to conduct our business, we need to have someone who can “get things done”. This person(s) should be someone you trust to pay attention to your affairs, have the capacity to manage it well and will not interfere with your finances. These persons must know where to find and have access to key documents.



# THE IMPORTANCE OF A WILL



What should I be thinking about if I am scheduled to do e.g. major surgery: (Cont'd)

### **3) Create a List of Recurring Expenses and make arrangements for payment.**

- Mortgage;
- Car Payments;
- Utilities – E.g. Electricity, Water, Cable. You may choose to prepay them or give the key person(s) access to funds to pay them. If bills are received electronically, you will need to provide access to the key person(s).
- Insurance- E.g. Health and Life  
If your life and health insurance are either not paid directly by your employer or by you via a standing order, make arrangements for payment. It is particularly important during illness that you do not cause them to lapse.
- Security
- Maintenance- E.g. For apartment or townhouse

### **4) Tax Payments**

Will property taxes or income tax be due while you are incapacitated? If so, make arrangements for payments.

### **5) Motor Vehicle**

Are all your car papers in order? E.g. Licence, fitness, insurance. Will you leave the car parked while you are incapacitated or is someone expected to drive it, and if so, are they on the insurance?

### **6) Support Team**

Do you have a housekeeper/ gardener? Put in place mechanisms to have them paid. While you are recuperating will you need care? Who will do this and how will they be paid?



# THE IMPORTANCE OF A WILL



**What should I be thinking about if I am scheduled to do e.g. major surgery: (Cont'd)**

## **7) Email and Permission to Open Snail Mail**

Do you need to provide access to emails? E.g. Responses to key clients or customers? If so, inform the key person what emails should be read and what response to be given. In addition, indicate which snail mail or email should be opened and read.

Is there a safe at the house? Determine if you will give access to the key person.

## **8) Access to Bank accounts**

Who has access; who should be given access?

If you are able to, transfer a sum of cash to someone that can cover any unexpected bills or any issues.

## **9) Passwords**

Determine whether the key person should have access to Passwords. E.g. Your phone, any emails to which bills are sent, online payment platforms, etc.

## **10) Charity**

Have you been helping anyone with any monthly expenses paying any school fees? If it is to continue, put something in place.

## **11) Who is your next of kin?**

Ensure this is clear to the hospital and all relevant doctors.

In what situations should persons not be permitted to visit you?

## **12) Secure confidential documents**

Are there any documents or things that should be immediately secured in the event of any extended recovery period?



# THE IMPORTANCE OF A WILL



## Checklist for the Preparation of a Will

1) Create a list of all your assets, these include:

- Land (with volume and folio numbers), location of titles;
- Bank accounts and name of financial institutions and the account numbers (e.g. bank, credit union);
- Insurance policies that have estate as beneficiaries, including the name of the insurance company;
- Share certificates, and the names of the companies in which they are held;
- Other proofs of ownership of assets, for example, in a locked drawer, a safe, a bank vault, jewellery, paintings, etc.

2) Who will be your beneficiaries and what will they receive? Include their relationship to you, so that they can be easily identified.

3) The names, addresses, and occupations of two trusted persons to be executors.

4) Who will take care of your minor children?

- The name, address, and occupation of any person who is to be appointed as the legal guardian of minor children.

5) List your debts and liabilities to date.

How will debts and funeral expenses be paid?



# THE IMPORTANCE OF A WILL



**Your will may be typed or handwritten, it just must be in writing.**

You will normally see the following phrases in a will (although no specific form of words are needed)

- "This is the last will and testament of me, ...".

This is where you fill in your name as the testator. If you have any aliases E.g. Boysie, Precious include them (aka).

- "I appoint ...".

This is where you include the name, address, and occupation of executor or guardian to be your executor or guardian.

- "I give and devise ..."

This is where you describe what we call any real property that is being given away, the name or names of the beneficiaries and the proportions in which they are to share the property. This is for e.g. the house and land owned by you.

- "I give and bequeath ...".

This is where you set out any personal property, such as cash at bank, jewelry, etc. and the name of the beneficiary.

- A residuary clause: "I give devise and bequeath the rest, remain, and residue of my estate . . .".

This is an important section of your will as it takes care of any property that you have not identified and the name of the beneficiary.

- "In witness whereof I have hereunto set my hand this [write in the date]"

TESTATOR SIGNS

- "Signed by the said [YOUR NAME AS TESTATOR] as and for her/his last will and testament in the presence of us both being present at the same time, who at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses" .

To be followed by spaces for two witnesses to sign, for their names, addresses and occupations to be written.



# THE IMPORTANCE OF A WILL



## **Note the following:**

- 1) The testator must sign first in the presence of the witnesses.
- 2) Then, each witness signs in the presence of the testator.
- 3) The section for signing (signing clauses) must not be on a separate page from the body of the will.
- 4) The will must be dated.
- 5) Initial each page (by all the persons who signed).
- 6) It is highly recommended that you make a copy of your will and include the list with all your documents and the locations. Your will is your business, so put that copy in a sealed envelope and indicate where the original will is located. Give it to somebody trusted so they know where to find your will and documents.
- 7) Ensure the original is in a sealed envelope and stored safely.

**PLEASE NOTE THAT ALL THE STEPS OUTLINED ABOVE ARE NOT INTENDED TO SUBSTITUTE FOR LEGAL ADVICE FROM AN ATTORNEY-AT-LAW THAT YOU CHOOSE. IN ADDITION, STEPS ARE DIFFERENT FOR TESTATORS WHO ARE UNABLE TO WRITE, ARE BLIND OR ILLITERATE.**



# THE IMPORTANCE OF A WILL

## CHECKLIST BY WILL AND TOMORROW(1):



### WILL-MAKING PREP LIST

#### Executors

These are two people (that you trust) who you'll ask to lead out in honouring the wishes found in your will and seeing to it that they are carried out.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Have you asked them to be an executor?  Yes

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Occupation: \_\_\_\_\_  
Have you asked them to be an executor?  Yes

#### Guardians

If you have minor children, who, other than other parent, do you want to be responsible for them in your absence?

Name: \_\_\_\_\_  
Have you asked them to be a Guardian?  Yes

Name: \_\_\_\_\_  
Have you asked them to be a Guardian?  Yes

#### Beneficiaries

These are individuals and organizations (like charities) that are important to you and to whom you want to leave an asset or gift. List usually includes partner, children, other family members.

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# THE IMPORTANCE OF A WILL

## CHECKLIST BY WILL AND TOMORROW(2):



### Assets

Make a list of all that you own - real estate, personal property (art, family heirloom, etc.), motor vehicles.  
Also list your bank accounts - just the name of the bank, branch and account type.

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### Final Arrangements

How would you like your family to honour your memory? Anything special you would like to happen?  
Have a think about kind of memorial service you would like.

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### It's Will-making Time

You are now ready to enter this info in our app or via a phone-in session. Visit our website  
or call us to get started today.



# RESOURCES



**Andre Robb** - CEO & Founder, Will and Tomorrow

- Email: [hello@willandtomorrow.com](mailto:hello@willandtomorrow.com)
- Website: <https://www.willandtomorrow.com>

## Will and Tomorrow “Will-Making Prep List”

- [Click to Download Your Will-making Prep List](#)

## Why Small Business Owners Need Business Wills

- <https://www.capitalspace.co.uk/Information/Latest-News/20233-/Why-small-business-owners-need-Business-Wills>

## Wills for Business Owners

- <https://www.irwinmitchell.com/personal/wills-trusts-estates/wills/guide/business-will>

## Drafting a Will: Estate Planning for Small Business Owners

- <https://www.score.org/resource/drafting-will-estate-planning-small-business-owners>