

## Cayman Wills during COVID-19

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If COVID-19 has taught us anything, it's that life can be completely unpredictable. It is not possible to know what is around the corner and we are currently living through significant uncertainty and change to which we are all having to swiftly adapt.

Among myriad other things, the situation demonstrates the absolute importance of having an up-to-date, valid will - and with those who are not frontline and essential workers spending their time in lockdown with families or in self isolation, in addition to remote working we are also more likely to have the time to catch up with this life admin task.

But with the restrictions in place, doing this is likely to take a different format to normal.

### **What are the questions you should ask yourself when considering making a will?**

Many of us are likely to be spending more time with those that we live with, or be communicating on a more regular basis with those that we don't. It's an opportunity to have conversations that would usually be considered difficult, and discuss topics relating to estate planning such as:

- Who do you want to appoint as your executor, what does this involve and would they be willing to act
- Who are your beneficiaries and will this cause any issues
- Are you making any gifts of money or items to anyone or to charities and will this have any impact on the balance of the estate that you have left to distribute
- Which of your assets are held jointly, or should any held in your sole name be converted into joint names as part of your succession plan
- Who will be the guardian of your minor children
- Where are your assets and do you need advice in any other jurisdictions in this regard

- What are your wishes in the event that you lose capacity with respect to your treatment and care
- Do you have any particular funeral wishes that you wish to make known

Having these kinds of conversations now can alleviate uncertainty and family disparities in the future. If your family are aware of your wishes and the reasons behind them then there will be no surprises to them in due course which can help during a difficult time.

Due to the restrictions that COVID-19 has placed upon us, the usual methods of putting wills and Advance Health Care Directives in place are having to be adapted. However, you can instruct your attorney on these matters by video call, telephone or e-mail. Despite much of the workforce currently working remotely, the relevant documents can still be properly prepared and then discussed with clients and all the usual advice given.

### **Requirements to sign a will in Cayman**

In the Cayman Islands, a will must be executed according to the formalities laid down in section 6 of the Wills Law (2020 Revision) (the Wills Law) in order for the will to be valid. This section is very prescriptive. Accordingly, a will is void unless (a) it is executed in writing, (b) it is signed by the testator/testatrix or some other person in his/her presence and by his/her direction, (c) the testator/testatrix signs the will in front of two witnesses present at the same time or the will is signed on the testator's/testatrix's behalf and at his/her direction in front of two witnesses, (d) the testator/testatrix acknowledges his/her signature and (g) the witness attests the will in writing in the presence of the testator/testatrix.

During a time like this, the signing and witnessing of wills does prove challenging. However, while the requirements may seem to be strict, the witnesses can, for example, arrange to do all of this through a window and maintain the social distancing requirements together with taking all relevant hygiene precautions. If clients have any questions at all regarding the signing and witnessing of wills, it is important that you seek legal advice from your attorney.

### **Electronic wills in Cayman – not yet**

Electronic wills are widely used in other parts of the world. However the Cayman Islands does not yet recognise the validity of electronic wills or wills executed by any form of electronic means. This would be a significant milestone for the Cayman Islands and the international private client world generally, especially at a time of global crisis such as this, but unfortunately it seems to be some way into the future.

Currently, section 3(1) of the Electronic Transactions Law (2003 Revision) (2003 Law) precludes the use of electronic signatures in testamentary instruments and therefore, stands as a significant obstacle to the development and recognition of electronic wills in the Cayman

Islands. Section 3(1) provides that the 2003 Law "shall not apply to any rule of law requiring writing or signatures for the creation, execution, variation or revocation of a will or other testamentary instrument."

## Conclusion

COVID-19 has forced us to re-think the way that we do ordinary day-to-day tasks, from conducting business to going grocery shopping and putting gas in our cars, things that we would usually take for granted. But keeping up to date with these changes and government guidelines, and adapting accordingly, is something that, as humans, we are surprisingly adept at doing.

During this time when online news reports, television and social media report daily about the rising death toll from the global pandemic we are all facing, know that having a will does provide peace of mind that your loved ones will be provided for in the event of your passing.

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