

Last Will and Testament

The Quran states:

"It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest....." (2:180).

The Prophet (PBUH) stated:

"it is not permissible for any Muslim who has something to will to stay for two nights without having his last will written and kept ready with him."

(Bukhari, Abu Dawud and Muslim).

Islamic Will Kit

for Muslims living in Australia

Updated October 2018

Warning: This is a general will kit. It may not be adequate for your specific circumstances.

Compiled by:

Ebrahim Iqbal Lambat CA, MBA, Dip Fin Planning



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P.O. Box 3437
South Brisbane BC, QLD 4101
AUSTRALIA
Email: axis_solutions@bigpond.com

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- Islamic and Australian laws of inheritance Part II – What to include in your estate for Islamic distribution
- Islamic and Australian laws of inheritance Part III – Shares your family will receive
- Islamic and Australian laws of inheritance Part IV – Distributing a deceased Muslim's estate in Australia

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Islamic will kit for use in Australia

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Iqbal Lambat MBA, CA Partner
Islamic Estate Planning
Mobile: 0410 786 227 Email: iqballambat@bigpond.com
176 Compton Road Woodridge 4114 PO Box 3437 South Brisbane BC Qld 4101

Farida Lambat BCom(Int), FICB(SA) Partner
Islamic Estate Planning
Mobile: 0439 327 432 Email: faridalambat@bigpond.com
176 Compton Road Woodridge 4114 PO Box 3437 South Brisbane BC Qld 4101

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About the Author



Ebrahim Iqbal Lambat (Iqbal) is a chartered accountant and holds a master's degree in business administration (MBA), majoring in project management and taxation. He also holds a Diploma in Financial Planning and is studying towards attaining a Graduate Diploma in Financial Planning and the Chartered Tax Advisor designation.

Iqbal is not a theologian, but he has a keen interest in Islamic law. He has, in the last decade, written a number of books about various aspects of Islam.

Iqbal and his family migrated to Australia from South Africa. He has held senior business roles in major corporations in South Africa (including company directorships) and Australia.

Iqbal's passion is estate planning. He authored a number of publications in Australia on the Islamic law of succession within the Australian context. He is a director of Islamic Estate Planning Pty Ltd, a company focussed on providing Islamic estate planning services.

Introduction

Sharia requires that you have a will

"It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest..." (Quran: 2:180).

The Prophet (PBUH) stated that it was not permissible for any Muslim to spend two nights without making a will if he has possessions:

Narrated Abdullah bin Umar: Allah's Apostle said, "it is not permissible for any Muslim who has something to will to stay for two nights without having his last will written and kept ready with him." (Bukhari, Abu Dawud and Muslim) ¹.

What is a will?

A will details how you want your assets/wealth to be distributed after your death. Get it wrong and you could have assets being distributed incorrectly with resultant family conflicts and/or hardships, transaction costs and taxation consequences.

Sharia dictates who will inherit from your estate

The Holy Quran very comprehensively outlines who your heirs are and what percentage they will receive from your estate. The statements of the Prophet (PBUH) corroborate the rules in the Quran. Over the centuries, many Islamic scholars have reinforced the principles outlined in the Quran and hadith.

Adhering to the inheritance principles contained in the Quran is considered mandatory for Muslims.

What you need to do as an Australian Muslim

Given that Islamic law is not recognised in Australia, it is obligatory for you, as an Australian Muslim, to make a last will in which you clearly state that your assets/wealth must be distributed in accordance with the Islamic law of succession/inheritance (and specify what this is or how it can be determined) or include a succession plan that complies with Islamic law. Dr. Muzammil Siddiqi, former President of the Fiqh Council of North America and a lecturer at a number of universities comments: "Muslims, who are living in countries where the Islamic Law of inheritance is not applied, are in a dilemma because their wealth will most likely not be distributed according to the Islamic Law. From here it becomes important that they make a will in which they should stipulate that their wealth is to be distributed according to the Islamic teaching."

Your will also needs to comply with Australian law to ensure that it is considered a valid will in Australia.

Is an Islamic will valid in Australia?

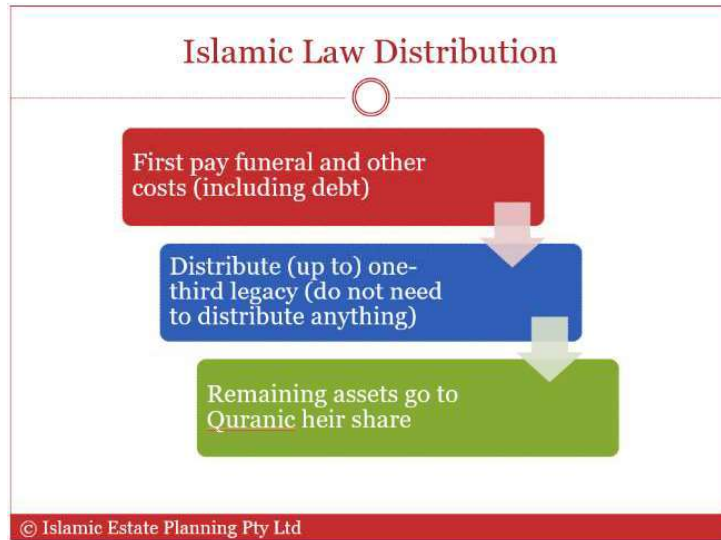
Under Australian law, you have the freedom to apply Islamic law to the distribution of your assets. Australian law gives you the freedom to choose your beneficiaries subject to potential court challenges from family members or dependants. Electing to distribute your assets in accordance with Islamic law is legally acceptable as you are exercising your freedom rights and electing to distribute your assets in accordance with Islamic law.

But it is preferable to avoid general terms such as Islamic law of inheritance given that Islamic law is not recognised in Australia. It is preferable to be more specific.

Shares the Quran allocates to your beneficiaries

Under Islamic law, you are required to first pay for all your funeral expenses, estate administration expenses, and debts before any funds/assets become available for distribution to your heirs.

The Prophet (PBUH) granted a concession permitting you to distribute up to one-third (1/3) of your estate to any person or institution – but preferably not to any heir who will receive a share of your estate through a Quranic stipulation. There are rules for this concession.



The balance after deducting the above must be distributed to persons and in shares outlined in the Quran. The Quran states:

There is a share for men from what parents and near relatives have left, and a share for women, whether the property be small or large, - a determinate share. (4:7).

Exactly who benefits and in what shares, depends on who survives you.

Some of the shares outlined in the Quran are:

Relative	Share
Each surviving parent	1/6
Surviving husband (where children exist)	1/4
Surviving husband (no children)	1/2
Surviving wife (where children exist)	1/8
Surviving wife (no children)	1/4
Surviving son (where surviving sister(s) exist)	Son receives twice the share of a daughter
Surviving son (no sister)	Son(s) receive remainder of estate
Surviving daughter (where surviving brother(s) exist)	Daughter receives half the share of a son
Surviving daughter (no brother)	Only one daughter = ½ of estate Two or more daughters = they share 2/3 of the estate

Under certain circumstances your brothers and sisters can also inherit from your will.

Only Muslims can inherit the Quranic shares. If you have non-Muslim family members, you can only benefit them from the one-third concession.

The above is a very simplistic representation of the basic inheritance shares. There are many permutations and rules. Refer to my book, “**Australian and Islamic Laws of Inheritance Part 3**”, for an explanation of what shares your family will inherit from your estate. The book contains numerous examples which explain how the Islamic laws of inheritance work.

Each adult person needs to prepare their own will

Under Islamic and Australian law, each person is the owner of their own property with the result that each adult must have a will. A husband has no right to dictate to his wife how to distribute her assets and similarly a wife cannot dictate to her husband how he should distribute his estate. Dr. Muzammil Siddiqi, states: "In Islam, men and women both have the right of ownership. Allah says in the Qur'an, '**To men belong what they earn, and to women what they earn.**' (an-Nisa: 32). After marriage the property of a man or woman does not automatically become the property of his/her spouse, unless they both want and decide to have joint ownership. Just as a man is allowed to handle his property according to his judgment, so also a woman is allowed to handle her property according to her judgment. In a wife's property, her will is honoured and in a husband's property, his will is honoured²."

What happens if you do not have a will?

Firstly, your estate will not be distributed in accordance with Islamic law.

Each State and Territory has its own rules on how your estate would be distributed when you die. You do not have a say.

You also lose the opportunity to appoint executors, guardians, and trustees.

Australian legal requirements

There are requirements within the various State and Territory legislation that you need to comply with to ensure your will is valid in Australia. These requirements generally are:

- You need to be 18 years old to be able to have a will. This differs from Islamic law where you are required to have a will from the age of puberty.
- Your will must be written, signed and witnessed:
 - the will must be in writing;
 - each page of the will must be signed by you, in the presence of two witnesses, and the witnesses themselves should sign the will in your presence.

It is preferable that you and your witnesses are together when you sign and witness a will.

It is also preferable that no person who is benefiting from the will or holds a position in the will (such as an executor or guardian) be a witness.

- You can change your will at any time. It is advisable to update your will at least every two years.

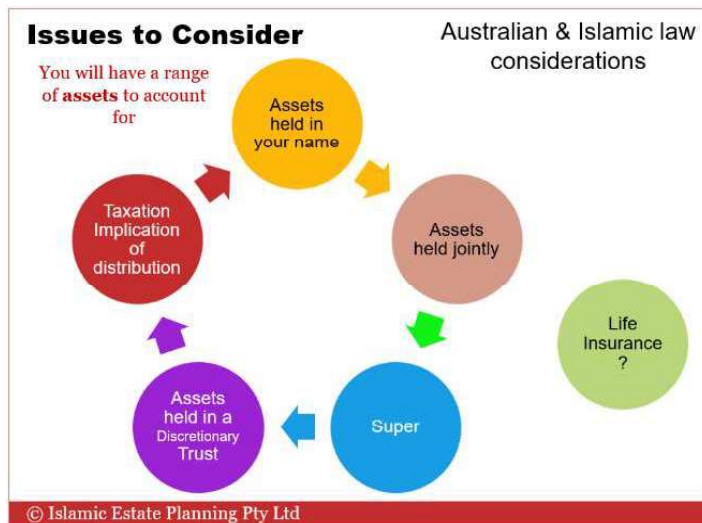
- You can revoke (cancel) your will at any time. Laws exist with regards to automatic revocations should you marry or get divorced after you have prepared a will. These laws differ between States. You need to bear in mind that you need to update your will should you marry.

Australian law of succession is complex and the above outlines the basic conditions.

A will has restricted scope under Australian law

Under Australian law, there are certain assets that your will cannot distribute, yet you need to account for these assets under Islamic law. Typically, the following assets cannot be distributed by an Australian will:

- Jointly owned assets – these are assets held in conjunction with another person. Most family homes are jointly owned between spouses. Under Australian law, the survivor of any jointly owned asset automatically inherits the asset. But, under Islamic law, the deceased's beneficiaries have a right to inherit. This creates issues for the deceased as he/she has not fully complied with Islamic law.
- Assets held in a discretionary trust. Many businesses and investments are owned by discretionary trusts. Under Australian law, the assets are held by the trustees on behalf of the beneficiary. As a result, you cannot distribute assets held in a discretionary trust via your will. But, you need to account for these assets under Islamic law.
- Superannuation assets. These assets do not belong to you until you meet a condition of release which usually is retirement (above age 60) or death. Upon your death, the trustee of your superannuation fund has the discretion to distribute your superannuation to qualifying family members in shares that the trustee considers appropriate. This distribution may not be in accordance with Islamic law. To overcome this, you need to complete a binding nomination which will require the trustee to distribute your superannuation in accordance with your nomination. Binding nominations need to be renewed every three years.
- Life insurance policies – typically beneficiaries are nominated in the policy and if this does not follow Islamic law, then you have not complied with Islamic law.



You need to speak to a professional if you have any of the above assets. Do not rely solely on the attached will kit; it is inadequate if you have the above assets.

Be careful, you should try to specify who gets what asset and what share

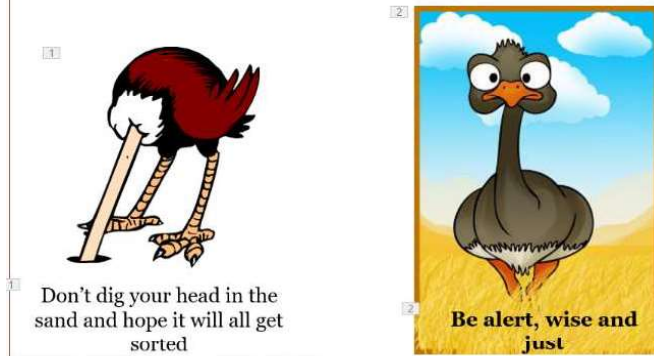
Under a simplistic Islamic will, a person is allocated a share. There is no specific distribution of assets. I encourage you to consider this when preparing your will or filling in a will kit. Many conflicts have arisen between beneficiaries disagreeing how to share the estate. For example, if you have an

investment property - do you want all your heirs to have a share in the one investment property? Can they all work together? Or do you consider dividing your estate in such a way as to minimise too many people owning one asset. Where you have multiple beneficiaries inheriting one asset, you need to consider the most appropriate structure to hold the asset – in their individual names, in trusts, etc.

Many families with young children, or with children in early adulthood, have the impression that the relatively tight bonds within the family will remain. Sadly this is not always the case. Many young couples mature as an individual family unit and place the interests of their own family unit above that of any extended family. The reality is that your family dynamics will change over the years and you need to consider this in planning your will and estate.

Address the difficult issues

You need to address all your family issues when compiling a will. Be transparent with your family.



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I have recently had an experience where a father, who inherited 1/6 of his son's estate, claimed his 1/6 share across all assets. One of these assets was the family home occupied by the widow and children of the deceased. The father, in his will, gave his share of the home to another son. This is how family conflicts arise.

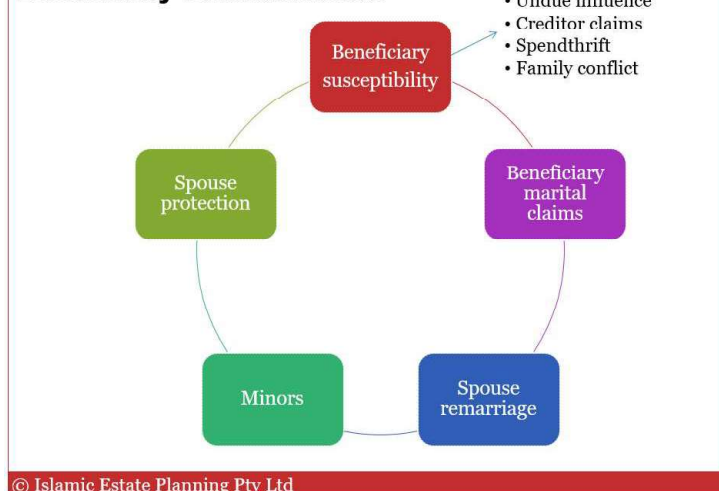
Issues you need to consider...

A will is one of the most important documents that you will prepare (or have prepared for you). You should invest in developing a will that considers Islamic law, Australian law, your family circumstances and the assets you own.

Issues you need to consider are:

- **General asset distribution.** How best to distribute your assets? What shares and what assets do beneficiaries inherit? Do all your beneficiaries inherit a share of a particular asset? Can they work together? What is the potential for conflict? (I discuss this in more detail later in this leaflet).
- **Predeceased child.** Under Islamic law, as long as you are survived by a son, the children of any predeceased child will not inherit under your will. But there are options to benefit these children and you need to consider these.
- **Asset protection and beneficiary considerations.** Do you need to safeguard your assets in case your spouse remarries? Do you have any special need

Beneficiary considerations



beneficiaries? Are any of them current or potential spendthrifts? Do any need protection against potential/unseen creditor claims? Do any beneficiaries need protection from potential marital claims?

- **Business succession.** How will your business/investment assets be distributed? Who will manage the business/investments? Is there potential for conflict? Is it better to sell?
- **Will appointments.** Who do you appoint as Executor of your will? Who will be the guardians should you and your spouse be survived by minor children? Who should be the trustees of any trusts created out of the will?
- How to distribute assets that you have loans over – example a home loan. How would you like these assets treated? Do you wish to use life insurance policies to pay off the loan? If you do not have life insurance, would you like your beneficiary to inherit the outstanding loan and continue payments as part of their inheritance of the asset?



Given the magnitude of the impact of your estate distribution on your family...you need to carefully consider what assets you own and what your family dynamics are and whether there are any special needs, when preparing your estate plan and will.

The attached will kit may not be suitable for your specific requirements.

You need to consider taxation

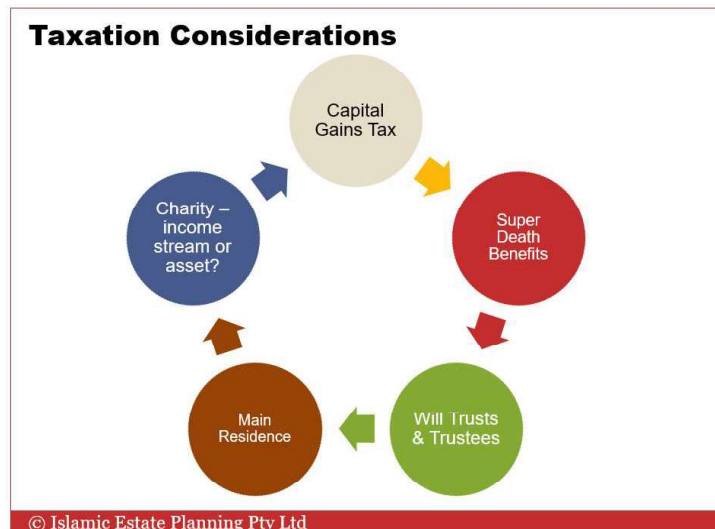
Ignoring taxation can be costly. Where possible you need to minimise the impact of taxation on your deceased estate and your beneficiaries.

You also need to take advantage of tax concessions that are available.

You should consider tax advantages of a testamentary trust for minor children.

You should consider the impact of capital gains taxation (CGT) in making distribution choices. Whilst no CGT is applicable upon your death, your beneficiaries inherit your unrealised gains and losses and CGT will impact them if they choose to sell.

There are also CGT concessions for main residences that need to be considered.



This is all too hard, can I leave everything to my spouse and he/she will sort it out after I pass away?

The first issue you will encounter is that your spouse may pass-away before you.

The second issue is that, depending on the type of assets, your spouse will incur transaction costs and taxation implications. This is a very inefficient way of distributing your assets.

In addition, from a theological perspective, until the full sharia distribution occurs, you have not satisfied your obligation to God.

Act justly when you prepare your will

You need to act justly when preparing your will. Islam does not recognise the concept of 'black sheep of the family'. You cannot favour one beneficiary more than another – this is not permitted under Islamic law unless all the other beneficiaries agree to it.

Under Australian law, your will can be challenged

Australian law allows a spouse/child/dependant to challenge a will in the Courts if insufficient assets have been left for them to maintain themselves. For example, if you have a child that is dependant upon you, but you, in the opinion of the child, leave too little for the child, the child can challenge your will in Court to have it adjusted so that he/she can receive more. The Court will only amend your will if it believes that your will does not properly look after the needs of the child. In doing so, the Court will consider a number of issues (size of your estate, your relationship with the child, the financial needs of the child, etc.) before actually adjusting your will.

Some years ago, a Muslim woman contested her mother's Islamic will in the Australian courts on the basis that inadequate provision was made for her as she received half the share of her brother. The courts found that the mother had dementia when she signed a will kit and ruled the will invalid, and hence did not actually rule on the daughter's claim.

This is a complex area of Australian law and is an issue that I often raise when persons consult me on their wills and/or estate plans.

You need to consider potential claims against your estate when planning your estate and will.

Islamic Estate Planning: It's more than just a will...

Depending upon the type of assets you have in your estate and your family dynamics, a will may not be adequate to ensure your estate is distributed in accordance with Islamic law. You need to consider:

- Your entire estate and not just the estate that Australian law (your will) recognises. Your heirs have a right to assets held in trusts, superannuation, and jointly owned assets. You need to calculate your entire estate and then calculate how an Islamic distribution will occur based on the one-third concession and Quranic shares.

- How best to distribute your assets so that you avoid family conflict and at the same time make provision for beneficiaries in need and provide asset protection where required.
- How to benefit yourself post your death by establishing charity income streams from your estate as part of the 1/3 concession.
- The impact of taxation on your estate and on your beneficiaries.
- Who will manage any business or investment assets, versus who will be silent beneficiaries of these businesses and investments.
- What structures need to be created to hold assets where multiple beneficiaries are inheriting shares in the same asset.
- How to develop succession in a discretionary trust.
- Protection of aged pension.

One way of consolidating all the above is by compiling an estate plan. This is a plan that captures all your assets, identifies all your issues and identifies how you will resolve them, and calculates the Islamic distribution. This document is not a will – it sits above a will, given that a will in Australia only distributes a portion of your estate. It is an invaluable document for your family and your executors.

Estate plans can be simple – some can be complex. It all depends on your asset holdings and family dynamics. Not everyone needs an estate plan, but everyone needs a will.

The outputs of an estate planning exercise are:

- An **estate plan** that covers all assets, and beneficiaries. This is the master plan and a will is a small part of this plan;
- **Wills** that are compliant with Australian and Islamic laws;
- A **business (including, investment) succession plan**, including shareholder agreements (if applicable);
- **Executors with clear instructions** on their role and how they are required to act;
- **Guardians** for minor children or persons with disabilities, with clear instructions on how to act;
- **Binding nominations** to your superannuation fund;
- **Letters of wishes** for the on-going management of non-estate assets such as discretionary trusts and nominee held assets;
- **Re-structured trust deeds**;
- **Power of Attorneys**; and
- Transfer of assets to more appropriate vehicles (if required).

This will complies with Australian and Islamic law

When you complete the attached will form correctly, you will have complied with both Australian and Islamic law. Instructions on how to complete the form are outlined in the section below. But you need to ensure you have a good understanding of the limitations of a will under Australian law and the broad requirements for a will under Islamic law to effectively utilise the attached kit.

Warning:

This is a general will kit.

**It may not be appropriate for your particular family circumstances
or for your assets.**

How to complete the will form

General Principle: You can add to or delete any clause from the attached will. Where you do add or delete a clause, ensure that both you and your witnesses initial next to the addition/deletion.

It is preferable that both you and your witnesses sign each page of the will and the last page of the will in the presence of each other.

The will contains references to footnotes requesting you to insert information. Follow the number referencing to ascertain what you have to fill in. Included below are general guidelines on completing the will:

1. Enter your name on the line after the word “me”. Enter your full name as it appears on your passport, drivers licence or birth certificate. Enter your birth date and passport number – this is optional. Thereafter, enter your physical address. Example:

THIS IS THE LAST WILL AND TESTAMENT of me: ABDUL EBRAHIM	
Born on: 23/12/1972	Passport Number: Australian Passport: M678453
Residing at: 4 ROSEWOOD CRESCENT, KURABY QLD 4112	

2. **Clause 1** is a **revocation clause** – revoking all your previous wills. If you have wills in other countries then you need to state that you are only revoking any previous Australian wills.
3. **Clause 2** contains a preamble that reinforces your belief in the Almighty and contains advice to your family and friends. You are free to delete any section of this preamble that you are not comfortable with. Make sure that both you and your witnesses initial any deletions. Example:

2.2 ~~My advice to you, my family and friends is for you to be conscious of Allah and steadfast in your religion. Be sincere in your actions. Do not desist from promoting good deeds and cautioning against bad ones.~~

AE
RL
ZL

4. In **clause 3** you need to appoint your **Executors**. You can appoint one or more. If you appoint only one, then delete the blank second row. You should also appoint alternate executors should your preferred executor(s) predecease you or for some reason cannot act as your executor(s). Example:

I appoint:

My wife, Fathima Moosa
and

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RL
ZL

to be my executor(s) and trustee(s) of this Will. The expression “my Trustee” whenever used in this Will means and includes my executors and trustees for the time being. If there is more than one Trustee at any time, my Trustees must act by majority vote in all respects.

An executor takes control of all your assets, pays all your funeral expenses and debts and distributes your estate in accordance with what you have stated in your will. It is advisable that an executor has financial knowledge and experience as he/she may be managing your assets for a period of time.

This is one position you need to make sure you select with care. You need to appoint a person that you can TRUST. Before you nominate your Executor you should discuss it with them and obtain their agreement for the significant responsibility they will be taking on.

Whilst it is important to have Executors who has financial understanding – it is also important to select a person who cares. The surviving spouse, parent, children will need comfort and advice – therefore in your choice either choose two persons or choose a person who has both financial knowledge and a care personality.

It is unanimously accepted by all Islamic scholars that it is preferable to appoint Muslim Executors.

5. In **clause 4** you need to appoint a **guardian(s)** to look after any minor children. The same comments as 4 above apply here. Islamic law identifies those that qualify to be guardians of your minor children. Refer to the section on Guardians in the book “Australian and Islamic laws of Inheritance – Part 1” for more information. Ultimately, under Australian law, the Family Court will decide who the guardian will be, but indicating your preference is advisable.
6. **Clause 5** contains instructions for **your burial**. You can delete any clause you do not want or add additional clauses. Generally, these clauses will only apply if you die in an area that has no knowledge of Islamic law or if there is a difference of opinion amongst your survivors about your burial intentions/requirements.
7. **Clause 6** instructs your executor(s) to **deduct your debts** – this is in accordance with rulings in the Quran and hadith where it is stated that debts should be paid before any distributions are made.

You may not have sufficient cash to pay your debts, especially mortgages. To retain the property without selling it to pay the outstanding mortgage, the attached Will needs to be expanded to add clauses specifying that the mortgage should not be repaid but, instead, the debt is to be inherited by the beneficiaries inheriting the asset mortgaged. You should consult with a professional if this applies to you.

Clauses that you could add are:

6.4 I direct that any secured debts to be paid by the person taking the property encumbered:

6.4.1 If I die possessed of, or entitled to, or under a general power of appointment I dispose of, an interest in property which at the time of my death is charged with the payment of any debt, whether by way of mortgage, charge or otherwise, legal or equitable (including a lien for unpaid purchase money), the interest so charged is, as between the different persons claiming through me, primarily liable for the payment of the debt; and every part of the said interest, according to its value, bears a proportionate part of the charge of the whole thereof; and

6.4.2 If my executors pay or are liable to pay a greater proportion of the debt than their interest in the property would justify, my executors are entitled to contribution from the others who hold interests in that property.

8. Include in **clause 7** any **legacies** you wish to pay.
 - You have the freedom to distribute up to 1/3 (one-third) of your net estate (after deducting debts). This is a concession granted by the Prophet (PBUH).

Payments out of the 1/3 concession are referred to as legacies.

You can pay these legacies to any person who is not a sharia heir – Muslim or non-Muslim. If you have non-Muslim family members, you can distribute a legacy to them.

The recipient of a legacy can be a person, a charity, or a religious organisation.

- You should include your outstanding religious liabilities in this section. These will include unpaid zakah, unperformed hajj, fasts not kept (fidya), etc.
9. **Clause 8** specifies how the remainder of your assets after deducting legacies is to be distributed. In the will kit, a broad Islamic law distribution clause is used. If you wish to get more specific on asset distributions (highly advised) then you need to add to this clause.

Clause 8 makes allowances for unborn children and for the distribution of assets via trusts. There are tax and asset protection advantages in using testamentary trusts.

10. **Clause 9** specifies that, where you have not made a binding nomination, the proceeds from your superannuation funds should be included in your estate for distribution in accordance with Islamic law.

Note that if you have not made a binding nomination, the effect of your will is to request the trustee of your Fund to pay the proceeds of your superannuation into your estate. The trustee of the superannuation fund has the power to decide how they wish to distribute your entitlement ('death benefit') and can legally disregard your will.

11. **Clause 10** identifies the persons you wish to appoint as heirs to your life insurance proceeds if you have not already specifically named a beneficiary in your life policy contract.
12. **Clause 11** It is common for trusts to identify a person (commonly referred to as Appointor or Principal) with the power to approve trustee appointments, distributions of income and capital, acquisition and disposal of assets, etc. Normally upon the death of such a person, a substitute needs to be appointed. Most trust deeds recognise an appointment made in a will. This clause allows you to appoint a successor should you hold such a post.
13. **Clause 12** outlines the power of your executor/trustee. You can delete or add to these powers.
14. **Clause 13** requests your heirs/dependants to respect your decision to follow the Islamic law of succession and not challenge your will. The book, "Australian and Islamic laws of Inheritance – Part I", contains a section on challenging wills that you should read. Usually for a challenge to be successful the person challenging your will must have been reliant on you for financial support and in the opinion of the Court, is still in need of financial support over and above what you have provided for them in your will. The Court will amongst other issues, review your relationship with the person prior to making a ruling on the matter.

LAST WILL AND TESTAMENT

THIS IS THE LAST WILL AND TESTAMENT of me:³

Born on:⁴ dd/mm/year

Passport Number:⁵

Residing at:

1. REVOCATION

I revoke all prior wills, codicils and other testamentary writings previously made by me and declare this to be my last Will and Testament.

2. PREAMBLE

- 2.1 I bear witness that there is none worthy of worship besides Allah. He is alone. He has no partner, and I bear witness that Muhammad (peace and blessings upon him) is His servant and messenger.
- 2.2 My advice to you, my family and friends is for you to be conscious of Allah and steadfast in your religion. Be sincere in your actions. Do not desist from promoting good deeds and cautioning against bad ones.
- 2.3 I urge you, my kith and kin and friends to maintain communication amongst you. I urge all my heirs and legatees to avoid disagreements and arguments over the distribution of my estate.

3. APPOINTMENT OF EXECUTORS

- 3.1 I direct that only Muslims shall be executors and trustees of this will.
- 3.2 I appoint⁶:

and

to be my executor(s) and trustee(s) of this Will. The expression "my Trustee" whenever used in this Will means and includes my executors and trustees for the time being. If there is more than one Trustee at any time, my Trustees must act by majority vote in all respects.

- 3.3 Should any person be unable or unwilling to assume office as trustee, then I appoint the following⁷:

My Signature

Witness Signature

Witness Signature

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- 3.4 Where my executors comprise more than one person and they disagree, the decision of the majority prevails. If there is no majority, then I direct that the decision of:⁸
_____ shall carry.

4. GUARDIANSHIP OF MINOR CHILDREN

- 4.1 If my spouse does not survive me for at least 30 days, I appoint⁹:

_____ and _____

to be the testamentary guardian(s) of my minor child or children ("my Children").

- 4.2 Should any person be unable or unwilling to act as the testamentary guardian(s), then I appoint the following¹⁰:

- 4.3 Should the issue of guardianship of my minor children be challenged in court, I request the Court to consider my choice for guardians. In making this choice, I have evaluated all potential candidates and I am of the opinion, that my selected guardians are best placed to raise my children.

5. FUNERAL AND BURIAL RITES

- 5.1 I direct that my body be buried in accordance with Islamic law.
- 5.2 I direct that no autopsy or embalming be done on my body unless required by law, that without unjustified delay my body be washed, wrapped with cloth free of any ornaments and other articles, prayed for, then buried, which all should be done by Muslims in complete accordance with Islamic tenets.
- 5.3 I direct that absolutely no non-Islamic religious service or observance shall be conducted upon my death, or on my body.
- 5.4 I direct that my body shall not be transported over any unreasonable distance from locality of my death, particularly when such transportation would necessitate embalming, unless when long distance transportation is required to reach the nearest Muslim cemetery, or any other cemetery selected by my Executor/Trustee.
- 5.5 I direct that my grave be dug deep into the ground in complete accordance with the specifications of Islamic practice, that it faces the direction of Qiblah.
- 5.6 I direct that my body shall be buried without a casket or any encasement that separates the wrapped body from the surrounding soil. In the event local laws require casket encasement I ordain that such encasement be of the simplest, the most modest, and the least expensive type

My Signature

Witness Signature

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possible. I further ordain that the encasement be left open during burial and filled with dirt unless prohibited by law.

- 5.7 In the event of any legal difficulties in the execution of my burial request, I direct my Trustee seek counsel from¹¹ _____ or from any Imam.

6. DEBTS

- 6.1 I direct that my Trustee apply first the assets of my estate to the payment of all my funeral costs.
- 6.2 I direct that all trust properties in my possession be returned to their rightful owners.
- 6.3 I direct that once all funeral costs are paid, that my Trustee applies the assets of my estate to the payment of all debts excluding secured debts which are to be inherited by the person who inherits the assets over which the debt is secured.

7. LEGACIES

- 7.1 I direct that legacies specified in clauses 7.2, 7.3, and 7.4 below not exceed 33 per cent (one-third) of my estate (after deducting all liabilities).
- 7.2 I direct my Trustee to pay any "obligations to Allah" (religious debts) that are binding on me according to the tenets of Islam such as, but not limited to, any unpaid Zakah, Kaffarat, Fidya, or Hajj.¹²

My Trustee shall endeavour to ascertain what amount, if any, is due by me in respect of my religious liabilities and obligations in accordance with the tenets of the Islamic faith until the date of death. Such amounts are to be paid from my estate to institutions/persons who qualify to receive such payments.

- 7.3 I direct my Trustee to pay the following amounts and make the following gifts from the remainder of my estate (subject to clause 7.1) after paying all the debts and expenses mentioned in clause 6 above, to the person/s or organisation/s named below.

Name of person/organisation	Gift (money or assets)

My Signature

Witness Signature

Witness Signature

8. REMAINDER OF ESTATE

- 8.1 I direct, devise, and bequeath the entire residue and remainder of, my estate (after the payment of debts and legacies) only to my Muslim heirs whose relation to me, whether ascending or descending or sibling has occurred through Islamic or lawful marriage at each and every point. The distribution of the residue and remainder of my estate shall be made strictly in accordance with the Islamic law of succession.
- 8.2 I direct that adopted, step and foster children, and all relatives through them do not qualify for any benefits under clause 8.1.
- 8.3 I direct that my Trustee prepare a list of my qualifying beneficiaries as applicable under Islamic law and table the schedule with this Will as part of the application for probate.
- 8.4 I direct that in the event of a disagreement over the distribution of the residue of my estate; that my Trustee obtains a schedule outlining the shares that my heirs are entitled to under the Islamic law of succession from an Imam. Failing that, I direct that the book: Australian and Islamic Laws of Succession, authored by Ebrahim Iqbal Lambat be used to determine the final inheritance shares. I direct that my Trustee distribute the residue of my estate in accordance with the schedule obtained or the book referred to.
- 8.5 I direct that should I die as a result of murder, that the adjured murderer, principal or accessory in the murder, shall be disqualified from receiving any part of my estate.
- 8.6 I direct and devise that any child, conceived before my death, whose relationship to me qualifies it to be an heir according to the Islamic law of succession shall be considered as an heir under clause 8.1, if the child is born alive. Should my Trustee/Executor wish to distribute my estate and the child is not yet born, then I direct that the largest potential share that the unborn child can receive be held back from the distributions. My Trustee/Executor can make adjustment payments once the child is born, if required.
- 8.6 My Trustee/Executor can choose to distribute assets under clause 7 and 8 directly to the beneficiaries or create trusts for some or all of the assets in favour of the beneficiaries and their children and grandchildren.

9. SUPERANNUATION FUNDS

- 9.1 Where I have not made a binding nomination or where the binding nomination is not valid, I request the Trustee of my Superannuation Funds to pay all death benefits into my estate for distribution to my heirs in accordance with Islamic law.
- 9.2 I direct that my trustee/executor distribute any superannuation payments received in a manner that minimises any taxation payable on the superannuation death benefits inherited by heirs.
- 9.3 At the time of writing this will, I have the following superannuation funds:

Fund number	Fund Manager/Trustee

10. BENEFICIARIES OF MY INSURANCE POLICIES

10.1 At the time of writing this will, I have the following life assurance policies:

Policy number	Insurer

10.2 I direct that the proceeds from the above policies be included in the assets of my estate (if there are no named beneficiaries in the policies themselves).

11. TRUSTS

11.1 I direct that any fixed interests I have in any trust formed shall be included in the assets of my estate.

11.2 I direct that for any trust where I have been appointed in a role where I have to authorise certain decisions made by the trustees (for example the role of an Appointor or Principal); that upon my death Mr/Mrs/Ms _____ act in that capacity.

12. POWERS OF TRUSTEE

12.1 In addition to the powers conferred on him or her by Australian law, my Trustee shall be entitled to exercise all such powers to deal with the assets of the estate and from any trust arising from it, as a natural person possessed of full legal capacity would have over his or her own property.

12.2 Without limiting the generality of the above, my Trustee shall be entitled, in his or her discretion:

- (a) To retain any assets or to realise them and to open and operate banking, and other accounts.
- (b) To settle accounts with persons indebted to my estate and give receipts or releases; to carry on or discontinue any business or partnership which forms part of my estate.
- (c) To pay any debt they consider due, negotiate any composition, decide whether any security is sufficient, waive or allow time for payment of any debt, and abandon, compromise or submit to arbitration any debt or claim.
- (d) To make payments to any beneficiary of any portion of my estate either in cash, or in specie, or partly in cash or partly in specie, with power to assign a value to the specie as he or she deems appropriate. His or her decision in this regard shall not be subject to question.
- (e) To postpone the payment of any legacy and the distribution of any assets for as long as and on such conditions as he or she thinks fit.

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- (f) To establish trusts for the benefit of beneficiaries. My executors have the discretion to ward benefits directly to the beneficiary or hold them in trust for the benefit of the beneficiary and their children.
 - (g) To purchase immovable property, including a property as a dwelling house for use by any person entitled to benefit in the estate whether absolutely or contingently, and to provide for the purchase price by expenditure of cash or by loans or mortgage bonds on the security of estate assets; and in the same manner to purchase movables for the benefit of those so entitled and similarly to provide for the purchase price.
 - (h) To purchase any form of movable property for the benefit of the estate. To exercise any voting power attached to any share or loan security held by the estate or a trust arising from the estate.
 - (i) To decide whether expenditure should fall under capital or income.
 - (j) To grant powers of attorney to a trustee or any person to carry out all or any of his duties as such and to cancel such powers of attorney at any time.
 - (k) To institute or defend legal proceedings.
 - (l) To borrow money for the purposes of the estate and any trust arising from it, on terms and conditions they deem appropriate, and to mortgage or pledge any estate asset for such purposes.
 - (m) To apply for the maintenance, education or advancement or otherwise for the benefit of any beneficiary as my Trustee in his or her absolute discretion thinks fit, the whole or any part of the capital or income of that part of my estate to which the beneficiary may be entitled or may in the future be entitled. My Trustee may pay those funds to the guardian for the time being of the beneficiary, without being bound to see the application of those funds.
 - (n) To decide any matter of doubt or as to competing claims or as to any other difference between beneficiaries or otherwise, and give final and binding decisions thereon which shall not be open to question.
- 12.3 My Trustee will not be liable for any loss or damage arising from the exercise or failure to exercise any power however the loss or damage may arise (other than dishonesty). My Trustee must be indemnified for all costs, expenses and losses incurred in respect of my estate.
- 12.4 I declare that it shall not be necessary for any of my Trustee or any administrator, or assumed or substituted trustee/executor or administrator to furnish security to any official for the discharge of their duties; and I exempt every administrator and trustee, whether appointed under this will or assumed or substituted, from the furnishing of security for the due and faithful performance of his/her duties as such.
- 12.5 My Trustee and administrators, nominated, assumed or substituted, shall have power to nominate a person or persons to assist them in winding-up my estate or in handling any trust, that is to say, they shall have the power of assumption.

My Signature

Witness Signature

Witness Signature

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12.6 I direct that the powers granted to my Trustee shall be exercised by them in any part of the world.

13. CHALLENGING MY WILL

13.1 I ask all my dependants, family, relatives, friends, and all others, whether you choose to believe as I believed or not - to honour my rights to these beliefs. I ask you to honour this document which I have made, and not to try to obstruct it or change it in any way. Rather, see that I am buried as I have asked to be buried and let my assets be divided as I wanted them to be divided, in accordance with the Islamic law of succession.

13.2 I ask any Court of Law in any country that is hearing a challenge to this will to respect my decision to adopt the Islamic law of succession. This is a requirement of a Muslim. Each heir's share is outlined in the Quran, the word of God. I am fully cognisant that my children will not receive equal shares (a son inherits twice that of a daughter) and that my wife inherits either one-eighth or one-quarter depending upon whether I am survived by my children.

14. ADDITIONAL CLAUSES

My Signature

Witness Signature

Witness Signature

LAST WILL AND TESTAMENT

DATED _____ 20_____.

THIS WILL WAS SIGNED BY ME AND EACH OF THE WITNESSES IN THE SIGHT AND PRESENCE OF ALL OF US:

My Signature

Witness Signature	Witness Signature
Witness's Full Name	Witness's Full Name
Witness's Residential Address	Witness's Residential Address

Neither witness nor his/her spouse receives any benefit under this will.

¹ Bukhari – volume 4, book 51, number 1; Muslim - book 13, hadith number 3987

²Islamonline – fatwa section

³Insert your full name

⁴ Insert your date of birth – this is voluntary

⁵ Insert the nationality and number of your passport – this is voluntary

⁶Insert the names of your Executor(s). You can elect more than one Executor.

⁷Insert alternative names.

⁸ Insert the name of the Executor you wish to have the final say should there be a deadlock in decision making.

⁹ Insert the names of your Guardian(s).

¹⁰Insert alternative names.

¹¹ Insert the name of an Islamic organisation, an Imam or a friend to make decisions on how you are to be buried should any problems arise.

¹²If you are deleting clause 7.2 then you should also delete the references to clause 7.2 in clause 7.1. Clause 7.1 should then state: “Should the total quantum of legacies exceed one-third, I direct that the benefits specified in clause 7.3 should be pro-rated to the nominated beneficiaries.”