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e-ISSN: 2811-3462



LAST WILL
AND
TESTAMENTADMINISTRATION AND
DISTRIBUTION
OF A DECEASED'S
PROPERTIES

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Family disputes over the properties of the deceased are norms. Many did not know the law of inheritance since it is not a subject learned in school. The disputes over properties will be referred to courts where heirs and beneficiaries claim rightful ownership over those properties. Therefore, one should at least learn the basic knowledge of the rights of deceased property.



Upon death, the properties of the deceased, if any, will be distributed to the heirs and beneficiaries according to the will of the testator or the inheritance law. The deceased will leave assets (both tangible and intangible) and debts or liabilities, if any. All these possessions (assets and liabilities included) are referred to as the 'estate' of the deceased. A deceased's estate will be administered by an executor or an administrator (either party can also be referred to as 'personal representative') appointed according to either a Grant of Probate or a Letter of Administration respectively. The personal representative will settle all debts, pay taxes, and distribute the remaining assets to the rightful heirs or beneficiaries.

A person who dies leaving a valid will is called 'testate' and if a person dies without leaving a valid will is referred to as 'intestate'. There is another scenario where there might be partial intestacy where there is a will, but the will does not include all the assets of the deceased. The administration of the estate of the deceased can be within the jurisdiction of the High Court or Small Estate Distribution Unit under the Director General of Land and Mines Department or Public Trust Corporate Berhad (Amanah Raya Berhad) (Ismail et al., 2014) depending on whether the deceased died testate or intestate and the types of assets whether the assets are movables or immovables or having both movables and immovables.



The law of inheritance in Malaysia is governed by several statutes such as the **Distribution Act 1958 (Act 300)** which outlines the rules for the distribution of an estate to heirs and beneficiaries in the absence of a valid will. Upon the death of a testate, a will empowers an executor (person named in the will to administer the deceased's estate) to administer the estate of the deceased. The executor can apply to the High Court for a Grant of Probate.

If a deceased died intestate, an application can also be made to the High Court for the issuance of a Letter of Administration where an 'administrator' will be appointed to administer the deceased's estate. The process of administering and distributing estate for Muslims and non-Muslims is governed by the **Probate and Administration Act 1959 (Act 97)**.

In the event the deceased's estate is valued below RM2 million and consists of movable and immovable properties, the administration of the estate is governed under the **Small Estates (Distribution) Act 1955 (Act 98)** by the Small Estate Distribution Unit under the General Director Land and Mines Department.



If the deceased died leaving estates with the total value of the total estates does not exceed RM600,000 and consisting only movable property, the jurisdiction for the administration of the estates will be under the purview of Amanah Raya Berhad.

Act 300 which applies to an intestate governs the distribution of the deceased's estate to the spouse, children, parents, and siblings of the deceased. In **Act 300**, the succession of non-Muslim properties is governed by **section 6** after payment of the expenses of due administration, for example, if an intestate dies leaving a spouse and no children or parent, the surviving spouse shall be entitled to the whole of the estate. **Section 6** listed the distribution of the legal heirs entitled to the estate.

For Muslims, the distribution of the deceased's estate is within the jurisdiction of the Syariah Court where the personal representative shall obtain a distribution order known as Sijil Faraid from the respective Syariah Court. The Sijil Faraid will list the beneficiaries under the Islamic law of inheritance pursuant to **verses 11 and 12 of Surah An-Nisa'** which stated as follows:



Verse 11, Surah An-Nisa':

“Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two or more females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth - after the fulfilment of bequests and debts. Be fair to your parents and children, as you do not fully know who is more beneficial to you. This is an obligation from Allah. Surely Allah is All-Knowing, All-Wise.”

Verse 12, Surah An-Nisa':

“You will inherit half of what your wives leave if they are childless. But if they have children, then your share is one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister from their mother's side, they will each inherit one-sixth, but if they are more than one, they all will share one-third of the estate - after the fulfilment of bequests and debts without harm to the heirs. This is a commandment from Allah. And Allah is All-Knowing, Most Forbearing.”



For the purpose of ascertaining the value of the estate of the deceased, any property held on trust is not included. The value of the estate will be the value at the date of the filing of a petition for Grant of Probate or Letters of Administration. It will be the responsibility of the personal representative to collect all information relating to the deceased's assets and liabilities. Personal representative will pay all the debts of the deceased estates including burial expenses before distributing the balance to the beneficiaries according to the Distribution Order or Sijil Faraid.

There are situations where the personal representative died intestate or became incapacitated before the deceased's estate has been distributed. In such a situation, any of the deceased's heirs can apply for 'letters of administration de bonis non' to the court. There are a lot of duties and responsibilities of a personal representative. They can decline or resign from being a personal representative. In order for a personal representative to discharge his or her duties, an administration account listing all the assets, liabilities, receipts and payment should be prepared.

Each of us should familiarise ourselves with the law of inheritance to ensure that the properties will be inherited by the rightful heirs and beneficiaries and to avoid disputes amongst siblings, parents or interested parties to a deceased's properties. One can refer to the following video <https://www.youtube.com/watch?v=3QLiQotJ6ps> for a clearer picture of the administration and distribution of the deceased's properties.

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