



SAMOA

WILLS ACT 1975

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WILLS ACT 1975

1975

No. 12

AN ACT for the amendment and consolidation of the law with respect to wills, and for related purposes.

[Assent and commencement date: 23 December 1975]

**PART 1
PRELIMINARY**

- 1. Short title** – This Act may be cited as the Wills Act 1975.
- 2. Interpretation** – In this Act, unless the context otherwise requires:
 - “personal estate” includes any interest in personal property and things which in law or according to custom and usage, are movable;
 - “real estate” includes any interest in land, except that with respect to customary land it shall extend only to interests in leases or licences granted under the authority of the Leasing and Licensing of Customary Land Act 1965;
 - “will” means any instrument by which a person makes a disposition of his or her property to take effect after his or her death, and includes a codicil, an appointment by will in exercise of a power, and any other testamentary disposition.

**PART 1A
GENERAL PROVISIONS
ON WILLS**

- 3. Property which may be disposed of by will** – A person may devise, bequeath, or dispose of, by his or her will executed in the manner required under this Act, all real estate and all personal estate which the person is entitled to, either at law or in equity, at the time of the person’s death.

4. Wills of minors – (1) A minor who is of or over the age of 18 years, may make a valid will or revoke a will as if the minor were of full age.

(2) No will made by a person under the age of 18 years is valid.

5. Form of will – A will must be in writing and signed by the testator or some other person in the testator's presence and by his or her direction and such signature shall be made or acknowledged by the testator in the presence of at least 2 witnesses as his or her will and the witnesses shall sign their names to the will in the presence of the testator and in the presence of each other at the same time

6. Attesting witness may not benefit – If the execution of a will is attested by a person to whom or to whose spouse a gift is made under the will, the gift so far as it concerns the person or the spouse of the person or a person claiming under them is void but the person so attesting shall be admitted as a witness to prove the will.

7. Revocation of wills by marriage – A will made by a man or woman (except a will expressed to be in contemplation of marriage) is revoked by his or her marriage.

8. Manner of revocation of will – (1) No will or codicil, or any part of the will or codicil, is revoked otherwise than as provided in this section.

(2) A will or codicil, or any part of the will or codicil may be revoked by:

- (a) another will or codicil executed in the manner set forth in this Act; or
- (b) some writing declaring an intention to revoke the the will or codicil and executed in the manner in which a will is required to be executed by this Act; or
- (c) the burning, tearing, or otherwise destroying the will or codicil by the testator, or by some person in his or her presence and by his or her direction, with the intention of revoking the will or codicil.

9. Alteration in a will after execution – No obliteration, interlineation, or other alteration made in any will after the execution of the will is valid or has any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless the alteration is authenticated by the signature or initials of the testator and the witnesses in the margin or on some other part of the will opposite or near to the alteration or by a memorandum referring to the alteration written at the end or some other part of the will and duly signed by the testator and the witnesses.

10. Revival of revoked will – No will or codicil, or any part of will or codicil, which is in any manner revoked, shall be revived otherwise than by the re-execution of the will or codicil or by a codicil executed in the manner required under this Act and showing an intention to revive the same.

11. Wills to speak from death of testator – A will is to be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

12. Residuary devises include estates comprised in lapsed and void devises – Unless a contrary intention appears by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise contained in such will, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

13. General devise of land to include leasehold as well as freehold land – A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his or her will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate if the testator had no

freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator, or his or her leasehold estate, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention appears by the will.

14. Devise of real estate without any words of limitation – If a real estate is devised to a person without any words of limitation, the devise is to be construed to pass the whole estate or interest which the testator had power to dispose of by will in the real estate, unless a contrary intention appears by the will.

15. Statutory substitutional gift – (1) Unless a contrary intention appears by the will, if a person is a child of the testator to whom (whether as a named or designated person or as a member of a class) any property is devised or bequeathed in terms that would enable that person to take the property for any estate or interest not determinable at or before the death of that person if that person survived the testator, and that person dies in the lifetime of the testator (whether before or after the testator makes the will) leaving any child or children living at the time of the death of the testator, the devise or bequest takes effect as if the will had contained a substitutional gift devising or bequeathing the property to such of the children of that person as are living at the time of the testator's death and if more than one of them then in equal shares among them.

(2) In this section, "child" means any child, whether legitimate or illegitimate, provided that an illegitimate relationship between a father and his child is not recognised unless there is proof that the paternity of the father has been acknowledged by or established against the father while both the father and child were living.

16. Execution of wills made abroad – A will made outside of Samoa is held to be well executed for the purpose of being admitted in Samoa to probate if made as required by the law of the place where the will was made, or by the law of the place where the person was ordinarily resident when the will was made.

PART 2
WILLS OF SERVICEMEN AND SAILORS

17. Interpretation – In this Part, unless the context otherwise requires:

“formal will” means a will made in accordance with section 5;

“informal will” means a will which is expressed in any form of words whether written or spoken and which is not made in accordance with section 5;

“privileged person” means a person who is declared by section 18 to be a privileged person.

18. Privileged persons may make informal wills – (1) Subject to the provisions of this Part, a privileged person may make an informal will.

(2) A privileged person may revoke any previous formal or informal will by any words whether written or spoken declaring an intention to revoke the same.

(3) Subject to the provisions of this Part, all the provisions of this Act (except section 5) apply to informal wills.

(4) Despite anything to the contrary in any other enactment, an informal will may be proved upon such evidence as the Court may consider sufficient.

19. Wills of minors who are privileged persons – Despite anything to the contrary in section 4(2), an informal will made by a privileged person who is under the age of 18 years shall be as valid as it would have been if the testator had been over that age.

20. Modifications of Act in relation to wills of privileged persons – (1) Nothing in section 6 causes to be null and void any gift to a person who attests the execution of any will or to the spouse of any such person, if at the date of the execution of the will the testator was a privileged person.

(2) Despite anything to the contrary in section 8, where any testator who is a privileged person directs or authorises (either in writing or

orally) any other person to burn or tear or otherwise destroy any will of the testator with the intention of revoking the same, any burning, tearing or other destruction effected pursuant to the direction or authority shall (notwithstanding that it does not take place in the testator's presence) be as effective to revoke the will as it would have been if it had taken place in his presence.

(3) Nothing in section 9 requires any obliteration, interlineation, or alteration made in any formal or informal will to be executed in accordance with that section if the obliteration, interlineation, or alteration was made by the testator or by some person in his presence and by his direction, and while the testator was a privileged person.

21. Will by oral declaration to become void unless testator dies within 12 months – (1) If any testator who dies after the commencement of this Act has (whether before or after the commencement of this Act) made a valid informal will which has not been validly revoked and which was not either expressed in writing and signed by the testator, or wholly written by the testator, at a time when he or she could make a valid informal will, the will shall not have any force or effect unless the testator dies within 12 months after he or she made the will.

(2) In this section, “will” includes any words declaring an intention to revoke a will.

22. Repeals – The enactments specified in the Schedule are repealed as part of the law of Samoa.

SCHEDULE
Section 23

- The Wills Act 1837 (United Kingdom)
- The Wills Amendment Act 1852 (United Kingdom)
- The Wills Amendment Act 1955 (New Zealand)
- The Wills Amendment Act 1958 (New Zealand)
- The Wills Amendment Act 1960 (New Zealand)
- Part VIII of the Samoan Land and Titles Ordinance (No.2) 1934
- Section 368 of the Samoa Act 1921 (New Zealand)

The reference to the Samoan Land and Titles Protection Ordinance (No.2) 1934 has been substituted for a reference to the Land and Titles Protection Ordinance (No.2) 1934 pursuant to s.3 (f) of the Reprint of Statutes Act 1972.

REVISION NOTES 2008 — 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 to 2022 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Insertion of the commencement date.
- (c) updated references to other Acts referenced in this Act.
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”
 - “shall have” changed to “has”
 - (iii) Use of plain language
 - “notwithstanding” changed to “despite”
 - “where” changed to “if”
 - “herein” “hereof”, changed to plain language
 - (iv) Numbers in words changed to figures

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Act is administered by
the Ministry of Justice and Courts Administration.*