

FAQs on Muslim Will, Wasiat

1. What is a *Wasiat*?

A *Wasiat* is an *Iqrar* (promise) or covenant by a person, while that person is alive, on his/her property or to complete a benefit for charity or any other reason that is allowed by *Syara'* (Islamic Law), which is to take effect upon his/her death.

2. What is the classification of rule in Islam or *Hukum* to draw up a *Wasiat*?

The classification of rule in Islam or *Hukum* to draw up a *Wasiat* depends on the situation. Below are the five *Hukum* to draw up a *Wasiat*:-

- a) *Wajib* – an obligation to be fulfilled if there are any Islamic obligations that need to be fulfilled by a person. For example, a *Wasiat* is drawn up to ensure that the Testator's duty of doing the *Hajj* be carried out by his/her rightful heir or beneficiary or anyone he/she appoints.
- b) *Sunat* – not obligatory for family members or any other persons that are not the rightful heirs for Allah's blessing. For example, to give property to an orphanage home for Allah's blessing.
- c) *Harus* – an action that is permissible in situations where property is bequeathed to a person(s) who is not family or to a rich person(s).
- d) *Makruh* – not obligatory for persons who do not have many properties and have many "rightful heirs" to inherit property.
- e) *Haram* – not allowed to do a *Wasiat* for *haram* matters (prohibited matters).

3. What are the *rukun* of a *Wasiat*?

Rukun Wasiat are:

- a) Testator
- b) Beneficiary
- c) Property
- d) *Sighah* – *Ijab* (Offer) & *Kabul* (Acceptance)

4. In what forms can a *Wasiat* be made?

A *Wasiat* can be made in writing, orally or through sign language. Although it is permissible to be made orally or in sign language, it is advisable to draw up a written form of *Wasiat*. In the **Second Schedule** of the Muslim Wills (Selangor) Enactment 1999, there is a form to prepare such a *Wasiat*. This form may be used, or any kind of written promise or instructions can be made into a *Wasiat*.

Nevertheless, if a *Wasiat* is done orally or through sign-language, this must be proven by two witnesses, who are credible in accordance with Islamic Laws.

5. Who can write or draw up a *Wasiat*?

A person with an understanding of a *Wasiat* and the legal impacts of having a *Wasiat* can prepare a written *Wasiat*.

6. What are the criteria of a witness in a *Wasiat*?

There shall be two male witnesses or one male and two female witnesses. This is in accordance with Section 86 of the Syariah Court Evidence (State of Selangor) Enactment 2003.

In addition, Section 83 of the same Enactment states that a witness must be a Muslim, *'aqil, baligh, 'adil*, has a good memory and is not prejudiced.

7. Who is a "testator" in a *Wasiat*?

A testator is someone who gives the promise or instruction in a *Wasiat*. A testator must also fit the following criteria:-

- a) 18 years old and above;
- b) a person who is not of unsound mind;
- c) a person who is acting on his/her own free will and without coercion; and
- d) a person who is not prohibited from administering his/her property.

8. What does "fatal disease" or *marad al-maut* mean?

A "fatal disease" or *marad al-maut* is when a disease fits the following criteria:-

- (a) the disease results in death;
- (b) the disease causes the fear of death in a patient's mind to the extent that it affects the patient's soundness of mind;
- (c) the disease possesses some external symptoms showing that the disease is severe; and
- (d) the disease is suffered continuously for a period not more than one year.

9. Can a person with a fatal disease make a *Wasiat*?

Yes. A person with a fatal disease or facing *marad al-maut* can make a *Wasiat* of his/her property(ies) to beneficiaries of up to one-third of his/her property(ies). Anything beyond one-third of his property(ies) shall only be distributed with the consent of all the rightful heirs after his/her death. This is in accordance with Section 6(4) of the Muslim Wills (Selangor) Enactment 1999.

A person who is ill but not of a fatal disease may also prepare his/her *Wasiat* as long as he/she is of sound mind and has good memory and understanding during the execution of the *Wasiat*.

10. Who can receive property from a *Wasiat*?

Anyone who is not related by blood to the Testator can receive property from a *Wasiat*. However, there are situations whereby certain "rightful heirs" are prevented from inheriting under *Faraid* due to the existence of "rightful heir" who has a stronger tie to the Testator. In this situation, the "rightful heir" who is prevented from inheriting from the Testator under *Faraid* can be included as a beneficiary.

11. Who is a "rightful heir"?

"Rightful heirs" are set out in the verses of Surah An-Nisa' of the Quran, who are as follows:

- a) Husband and Wife;
- b) Father and Grandfather; and that above Grandfather;
- c) Mother and Grandmother; and that above Grandmother;
- d) Children and Grandchildren; and the descendants;
- e) Siblings and Nieces/Nephews; and their offsprings;
- f) Uncles and Cousins; and their offsprings; and
- g) Baitulmal.

However, some of these "rightful heirs" may not get their portion under *Faraid* because of the existence of other "rightful heirs" with stronger ties. For example, if a son dies, and the father is still alive; the existence of the father as a "rightful heir" will stop the deceased's paternal grandfather and grandmother, siblings, nephews, uncles and male cousins from inheritance. In this instance, if the deceased son had drawn up a *Wasiat*, the ones that were prevented from inheriting under *Faraid* by the father's existence can be named as beneficiaries in the *Wasiat*.

12. What is *Faraid*?

Faraid is a portion determined to a "rightful heir" in accordance with the Quran.

13. What is *Hibah*?

Hibah is a gift given by the owner of the property during the lifetime of the owner. The transfer of ownership of the property is made and completed during the lifetime of the owner. Any property that is to be given as a *Hibah* must be mentioned in the *Wasiat*.

14. Can an adopted child or a child from another marriage receive property from a *Wasiat*?

Yes. An adopted child or a child from another marriage is not related by blood to the testator. Therefore, a child in either of these two situations can inherit up to one-third of the net estate property through the *Wasiat*.

15. Can an unborn child receive property from a *Wasiat*?

Yes. This is possible subject to Section 24 of the Muslim Wills (Selangor) Enactment 1999, which states as follows:

Section 24. Bequest to a particular unborn child.

- (1) A *Wasiat* to a unborn person shall be valid in the following circumstances:
 - (a) if the testator makes an iqrar regarding the existence of the foetus at the time of making his will, then the child must have been born alive within the recognisable period according to the Islamic Law;
 - (b) if the testator does not make any iqrar regarding the existence of foetus and the child has been born alive within the recognisable period according to the Islamic law from the time of making his will, and if the pregnant woman is observing '*iddah talaq raji'e*' or she is observing '*iddah*' upon death of her husband or '*iddah bain*', then the child must have been born alive within the recognisable period according to the Islamic Law.
- (2) Subject to subsection (1) a *Wasiat* may be made to an unborn child of another person if such unborn child is of the legitimate descendent child of that other person.
- (3) The property of the unborn child shall be administered by his guardian of property or executor, as the case may be, until he is born and thereafter, such property shall be given to him when he is competent to receive it.

16. I am a *Muallaf*, a person who converted to Islam. Can my non-Muslim parents receive my property through a *Wasiat*?

Yes. Your non-Muslim parents can receive up to one-third of your properties. However, if you choose to give more than one-third of your properties, your rightful heirs must agree to this arrangement before and after your death.

17. What kind of property can be included in a *Wasiat*?

In accordance with Section 9 of the Muslim Wills (Selangor) Enactment 1999, a property should have the following characteristics:

- a) is capable of being inherited or a subject of a valid contract;
- b) can be valued;
- c) is transferable after the death of the Testator; and
- d) be in existence after the Testator's death.

These properties are split into two categories, moveable properties and immovable properties:

- a) Moveable properties
 - Money: Savings or Current Account
 - Tabung Haji
 - ASB
 - Unit Trusts
 - Motor vehicles: Cars, motorbikes
 - Jewellery
 - Gold bars
 - KWSP
- b) Immovable properties
 - Land
 - Houses
 - Buildings
 - Anything attached to the Land

There are properties that cannot be included to be bequeath in a *Wasiat*:

- Pension money
- Property that you borrow
- Property that is given by *Hibah*
- Property already *Wakaf*
- Perkeso money
- Money was given by people who visited the dead
- Gratuity Money or Insurance
- Property that was given or sold to others.

18. How much property can be bequeathed in a *Wasiat*?

One-third of the Testator's net estate property, which means that the property is computed after the payment of debts.

One-third of the Testator's net estate property is based on a narrated *Hadith Rasullullah S.A.W*, which d said, "*Sa'ad bin Abi Waqas* said: *Rasullullah S.A.W*. came to see me when I was in Mecca. I said, 'My *Rasullullah*, should I *wasiat* all of my property?' The Prophet replied, 'No.' I said, 'Part of it.' The Prophet said, 'No.' I said, 'One-third of it.' The Prophet responded, 'Yes, one-third. And that one-third is a lot. If you leave (property) to a wealthy heir is better than you leave them poor, asking from others with their hands'." (*Hadis Riwayat al-Bukhari and Muslim*)

19. What happens if the property bequeathed is more than the one-third limit in a *Wasiat*?

A *Wasiat* with more than one-third of the Testator's net estate property shall not take effect unless the rightful heirs agree to the further distribution of more than one-third of the Testator's net estate property.

20. Can I bequeath to my rightful heirs my property in equal shares in a *Wasiat*?

No. The rightful heirs would have their respective shares in accordance with *Faraid*. However, if you chose to do so, the *Wasiat* can only be carried out if all the rightful heirs are agreeable to the equal share distribution.

In a narrated *Hadith*, it is said that *Rasullullah S.A.W* said, "Do not leave a *Wasiat* to rightful heirs except with the consent of rightful heirs." (*Riwayat Ad-Daruqutni – 4295*)

21. My property is still charged/mortgaged/assigned to a bank. Can I still include this in a *Wasiat*?

Yes. In your *Wasiat*, it is best to give all details of the charge/mortgage/assignment to ease the *wasi* (executor) to proceed with the settlement of the debt.

22. How does a *Wasiat* become invalid?

A *Wasiat* becomes invalid when one of the situations in Part III of the Muslim Will (Selangor) Enactment 1999 happens; which are as follows:

- (a) the Testator becomes of unsound mind and dies in that state;
- (b) the beneficiary dies before the Testator's death;
- (c) the specific subject or usufruct of the *Wasiat* is destroyed;
- (d) the Testator revokes the *Wasiat*;
- (e) the Beneficiary causes the death of the Testator, whether directly or indirectly. The Beneficiary could have acted as the principal, accomplice or accessory or was a false witness whose testimony led to the execution of death of the Testator.

Usufruct means the legal right of using and enjoying the fruits or profits of something belonging to another.

23. Can a *Wasiat* be revoked?

Yes. The Testator can revoke a *Wasiat*.

24. How is a *Wasiat* revoked?

According to Section 15 of Part IV of the Muslim Will (Selangor) Enactment 1999, a *Wasiat* can be revoked in the following manner:-

- (a) a *Wasiat* can be revoked expressly or impliedly, or by way of a subsequent will, which overrides the former *Wasiat*;
- (b) a *Wasiat* is deemed revoked if:-

- i. the testator conducts any actions or creates circumstances that reflect that he revoked the *Wasiat*; or
- ii. the testator transferred, sold or in any way exhausted the property that he/she bequeathed.

25. Can a *Wasiat* be challenged after my death?

A *Wasiat* can be challenged by the rightful heirs after your death, especially if your *Wasiat* bequeaths more than one-third of net estate property or if the *Wasiat* gives the property to an existing rightful heir.

26. What if I don't have any property, do I still need to draw up a *Wasiat*?

A *Wasiat* would assist you to confirm the appointment of a *Wasi*, who will gather the properties that you may not know you have or properties that you may have thought you do not have and distribute the same according to your wishes and *Faraid*. If you elect to not have a *Wasiat*, your properties that you may not know you have would be frozen and held up without any distribution. Properties that may be overlooked include local or overseas bank accounts, KWSP, insurance and distribution of pension money, if any.

Other than the appointment of a *Wasi*, a *Wasiat* would also help you to appoint a guardian for your child who has yet to attain the age of majority. A *Wasiat* would spell out all the guardians' responsibilities, such as to create a trust for your child and the distribution of your property to your child. If you decide not to appoint a guardian for your underaged child, your property will be held by AmanahRaya Berhad for the distribution to your child after he/she attains the age of majority.

27. If everything is distributed by way of *Faraid* to my rightful heirs, why would I need to prepare a *Wasiat*?

A *Wasiat* needs to be prepared by a person of the Muslim faith for the following reasons:

- a) identifying the rightful heirs for the distribution of *Faraid*;
- b) appointing a *Wasi* to distribute the property to the beneficiaries (if any) and the rightful heirs;
- c) appointing a legal guardian for underaged children;
- d) identifying the properties of the testator;
- e) to ensure a faster distribution of the properties, whether through *Faraid* or through *Wasiat*, or both ways combined.

28. Who is a *Wasi*?

A *Wasi* is an executor. The *Wasi* will carry out all the matters set out in your *Wasiat* and is appointed by Court to do so.

29. What happens if I do not prepare a *Wasiat*?

- a) Your properties become frozen until an application for distribution is made;
- b) Properties are kept in AmanahRaya Berhad because there is no guardian appointed;
- c) It may take more than 3 years to distribute your properties;
- d) Some properties may not be identified and may then be transferred to AmanahRaya Berhad or Baitulmal after a certain number of years;
- e) Particular beneficiaries such as adopted children, stepchildren, and non-Muslim parents may not be able to inherit any property from the Testator without a *Wasiat*;
- f) there would not be an appointment of legal guardian of the Testator's choice for the underage children.

30. What happens to my properties if I do not prepare up a *Wasiat*?

If you decide not to prepare a *Wasiat*, there is a possibility of an inability to transfer and distribute your properties efficiently and expediently. Your properties would first be frozen regardless whether the property is in joint names or not. The administration of the properties would be done many years after your death, thus causing confusion as to the "rightful heirs" as there may be some "rightful heirs" who have passed away after your death. Above all, without a *Wasiat*, you may cause hardship to your immediate family, being your spouse, your children, your parents, and your siblings, due to the non-distribution of your properties.