

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).

Will Kit – Shafi, Maliki and Hanbali Law

**For Muslims Living in Australia
Version 2**

Compiled by:

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Note: two versions of the will kit have been published.

Version 1: is a simplistic will kit that caters for all situations.

Version 2: is a more complex will kit that expands on version 1 by including the following:

- Debts to be carried forward to a beneficiary
- Legacies to grandchildren in the event of the death of a child
- Superannuation and life assurance
- Trusts

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Published by: The Lambat Trust

INTRODUCTION

You should read the book: “Australian and Islamic laws of Inheritance – Part I” prior to completing this Will Kit. The book contains information on the requirements of a valid will in Australia and information on the roles and types of persons you should be appointing as witnesses, executors, trustees and guardians. In the chapter: “Issues to Consider” the book outlines a number of estate planning issues for you to consider when preparing your will.

You need to update your will on a regular basis and should at least revisit your will on an annual basis. The review will not necessarily lead to a rewrite of your will, but it will focus you on your affairs. You need to update your will as soon as there are changes to your executors and legatees.

HOW TO COMPLETE THE WILL FORM

General Principle: You can delete any clause from the attached will. In the event of a deletion, ensure that both you and your witnesses initial next to the deletion. You can also add additional clauses – once again, both you and your witnesses need to initial next to the added clauses.

Both you and your witnesses need to sign each page of the will and the last page of the will.

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 physical address after the word “of”.
Example:

THIS IS THE LAST WILL AND TESTAMENT of me:

ABDUL EBRAHIM

of: 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:

AE	2.3 I urge you, my kith and kin and friends to maintain communication among you. Beware of
RL	disunity and enmity. Do not desist from promoting good deeds and cautioning against bad
ZL	ones.
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 appointed executor(s) predecease you or for some reason cannot act as your executor(s).
Example:

AE I appoint:

RL	My wife, Farida Ismail
ZL	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, executrices 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.

Ensure that you appoint persons that you TRUST. Refer to the book, “Australian and Islamic laws of Inheritance – Part I”, for information on the role of executors and the issues you need to

consider in appointing executors. You should also read the book: “Australian and Islamic laws of Inheritance – Part IV” for the duties of an executor and ensure that any person you appoint satisfies the criteria for executors stipulated by Islamic law.

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 as well. 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.
6. **Clause 5** contains instructions for your burial. You can delete any clause you do not want or add additional clauses.
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 contains a clause specifying that the mortgage should not be repaid but, instead, the debt is inherited by the beneficiaries inheriting the asset mortgaged. From an Islamic law perspective, the share of the beneficiaries will be calculated on a net basis – that is the asset value less the debt. For example: if the market value of the asset is \$250,000 and \$200,000 is outstanding on the mortgage – for inheritance purposes the asset will be valued at \$50,000.

Should you wish to pay all your debts, delete the following words from clause 6.2: “excluding the following secured debts” and delete the table and the words immediately below the table.

Clause 6.3 instructs your Executor/Trustee to pay any amounts you owe for religious obligations not performed be deducted (fidya, zakat, etc).

8. Include in **clause 7** any legacies you wish to pay. You have freedom to distribute up to 1/3 (one-third) of your net estate (after deducting debts). You can pay these legacies to any person who is not a Shariah heir – Muslim or non-Muslim. If you have grandchildren from a predeceased child and **if** the grandchildren are excluded from inheriting then you should include your grandchildren in this section, should you wish to give them something.
9. **Clause 8** states that the remainder of your estate be distributed in accordance with Islamic law. A number of options exist and you need to delete those that you do not want or insert your own. This is a personal decision, some people are committed to the schools of thought (madhabs) and some are not. Example:

The distribution of the residue and remainder of my estate shall be made strictly in accordance with:

AB *the Islamic law of succession.
RL *the Shafi law of Islamic succession.
ZL *the Maliki law of Islamic succession.
 *the Hanbali law of Islamic succession
 *the Islamic law of succession as contained in the books by Ebrahim Iqbal Lambat titled: “Australian and Islamic Laws of Inheritance”.
 [*delete inapplicable]

Instead of the above you could append, to your will, the distribution rules in accordance with the Shariah. This is popular in North America. You could refer to the book *Australian and Islamic Laws of Inheritance – Part 111 – Distributions in Accordance with the Shariah*. My recommendation would be to cancel all others except the Islamic law of succession. The differences between the various schools (madhabs) are minor.

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10. **Clause 9** specifies that the proceeds from your superannuation funds should be included in your estate for distribution in accordance with Islamic law. Some scholars are of the opinion that superannuation proceeds can be ignored as they are received after death. The preferred option is to include the proceeds in your estate. Refer to the book: “Australian and Islamic laws of Inheritance – Part II – What to include in your estate” for an explanation of superannuation funds.

Clause 9 also specifies that the proceeds from your superannuation funds should be paid to your dependants – this is for tax efficiency purposes.

11. **Clause 10** identifies the persons you wish to appoint as heirs to your life assurance proceeds. Scholars differ with regards to whether life assurance proceeds should be included in your estate. One school of thought is that it should – you have established the income pool by contributing to it in your life time. The second school of thought is that it should not on the basis that the income is received after your death. You need to decide which option you wish to adopt and identify your heirs accordingly.

Clause 10 provides you with the option of adopting any of the two options. If you are of the view that insurance proceeds should not be included in your estate, then under the beneficiaries column indicate your beneficiaries. As you are of the opinion that the insurance proceeds do not form part of your estate, you can distribute the funds to any person – the Islamic distribution does not apply.

If you are of the view that the proceeds should be included in your estate for distribution in accordance with Islamic law, then in the legacies section indicate whom you wish to pay legacies to (up to a maximum of one-third) and in the residue column indicate that you wish the residue to be distributed in the same way as section 8. Insert the words: “distribution in accordance with section 8.”

11. **Clause 11.** It is common for trusts to identify a lead trustee/appointer, etc 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 state that the substitute should be appointed by the Lead trustee/appointer. This clause allows you to appoint a successor should you hold such a post.
12. **Clause 12** outlines the power of your executor/trustee. You can delete or add to these powers.
13. **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.

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LAST WILL AND TESTAMENT

THIS IS THE LAST WILL AND TESTAMENT of me:¹

of²

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. Do not yearn for the world and do not be seduced by it. 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. Beware of disunity and enmity. I urge all my heirs and legatees to avoid disagreements and arguments over the distribution of my estate.

2.4 My family and friends, do not dwell on my death, but rather prepare for your own.

3. APPOINTMENT OF EXECUTORS

3.1 I direct that only Muslims shall be executors and trustees of this will.

3.2 I appoint³:

and

My Signature

Witness Signature

Witness Signature

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, executrices 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 following⁴:

4. GUARDIANSHIP OF MINOR CHILDREN

4.1 If my spouse does not survive me for at least 30 days, I appoint⁵:

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 following⁶:

5. FUNERAL AND BURIAL RITES

5.1 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.

5.2 I direct that absolutely no non-Islamic religious service or observance shall be conducted upon my death, or on my body.

5.3 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 Trustee.

5.4 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 (the direction of the City of Mecca in the Arabian Peninsula towards which Muslims face during prayers).

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

My Signature

Witness Signature

Witness Signature

5.6 I direct that in the event of any legal difficulties in the execution of my burial request, I direct my Trustee seek counsel from⁷ _____.

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 once all funeral costs are paid, that my Trustee apply the assets of my estate to the payment of all debts excluding the following secured debts:

Name of person/organisation	Description of debt

It is my direction that the excluded debts be inherited by the beneficiaries of the assets and the debts continue to be paid by the beneficiary(ies). Clause 8 of this will identifies my beneficiaries.

6.3 I direct my Trustee to pay any "obligations to Allah" (Huquq Allah) that are binding on me according to the tenets of Islam such as, but not limited to, any unpaid Zakat, Kaffarat, Fidyah or unperformed pilgrimage (Hajj). At the time of writing this will my religious debts were as follows:

Religious debt

6.4 I direct that all trust properties in my possession be returned to their rightful owners.

7. LEGACIES

7.1 I direct that legacies specified in clause 7.2 not exceed 33 per cent (one-third) of my estate (after deducting all liabilities). Should the total quantum of legacies exceed one-third, I direct that the benefits specified in clause 7.2 be pro-rated to the nominated beneficiaries from the remainder available.

7.2 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.

My Signature

Witness Signature

Witness Signature

Name of person/organisation	Gift (money or assets)

7.3 I direct that in the event of any of my children predeceasing me and his/her children (should my predeceased child be survived by children) do not qualify for any benefits in terms of the Islamic law of succession; then clause 7.2 above is cancelled and I direct that the difference between the _____⁸ of my net estate and my religious debts be paid equally to my surviving grandchildren.

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. I further direct and ordain that out-of-Islamic-or-legal-marriage, adopted, step and foster children, and all relatives through them be disregarded and disqualified, as if they do not exist, with regard to the distribution of the remainder of my estate, except for the following: legatees I specifically named and a person whose relation to me goes through his/her biological mother, even if it is out of wedlock. The distribution of the residue and remainder of my estate shall be made strictly in accordance with:

- *the Islamic law of succession.
- *the Shafi law of Islamic succession.
- *the Maliki law of Islamic succession.
- *the Hanbali law of Islamic succession.
- *the _____ law of succession
- *the Islamic law of succession as contained in the books by Ebrahim Iqbal Lambat titled: "Australian and Islamic Laws of Inheritance".
- [*delete inapplicable]

8.2 I direct that in the event of a disagreement over the distribution of the residue of my estate, that my Trustee obtain a schedule outlining the shares that my heirs are entitled to under the Islamic law of succession from⁹_____.I direct that my Trustee distribute the residue of my estate in accordance with the schedule obtained.

8.3 I direct that should I die as a result of murder, I direct that the adjured murderer, principal or accessory in the murder, shall be disqualified from receiving any part of my estate.

8.4 I direct and devise that any foetus, 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 if the following two conditions are fulfilled: the foetus must be born alive within no

My Signature

Witness Signature

Witness Signature

more than 46 weeks from the day of my death; and, it is not proven illegitimate by a DNA test. I further direct and devise that, whenever there exist a foetus that may become an heir according to this section, the largest potential share of the foetus out of the residue and remainder of my estate after the payment of debts and legacies, must be set aside until the said conditions are satisfied. Furthermore, I direct and devise that any other heir whose share may be affected should the foetus be born alive before my death, must be given the lesser of the two potential shares and the difference should be set aside too. Should the foetus be born, but qualifies for a lesser share, or should it not be born alive within the 46 weeks or should it be proven illegitimate, any surplus of the set aside amounts/property must be returned to the estate and distributed according to the Islamic law of succession as if the foetus never existed at all.

9. SUPERANNUATION FUNDS

- 9.1 I direct that all proceeds from my superannuation funds be included in my estate for distribution to my heirs.
- 9.2 I direct that when the shares of my heirs are calculated in accordance with section 8 of this will, that the superannuation funds be applied to my dependants – that is, once the shares of my various heirs have been calculated, the superannuation proceeds be used to pay my dependants first and any amounts still due be settled with other assets.
- 9.3 At the time of writing this will, I have the following superannuation funds:

Policy number	Insurer

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 distributed as follows:

Policy number/Insurer	Legacy	Residue

My Signature

Witness Signature

Witness Signature

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; 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:
 - 12.2.1 To retain any assets or to realise them and to open and operate banking, and other accounts.
 - 12.2.2 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.
 - 12.2.3 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.
 - 12.2.4 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.
 - 12.2.5 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.
 - 12.2.6 To establish trust funds for the benefit of minor children.
 - 12.2.7 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.
 - 12.2.8 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.

My Signature

Witness Signature

Witness Signature

12.2.9 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.

12.2.10 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 by my Trustee in respect of my estate.

13. CHALLENGING MY WILL

13.1.1 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.

13.1.2 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.

My Signature

Witness Signature

Witness Signature

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 Insert your full name
² Insert your residential address
³ Insert the names of your Executor(s). You can elect more than one Executor.
⁴ Insert alternative names.
⁵ Insert the names of your Guardian(s).
⁶ Insert alternative names.
⁷ 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.
⁸ Insert percentage. The percentage cannot be higher than 33.3%. Therefore, if you wish to distribute the maximum that you are allowed as legacies to your grandchildren, then insert 33.3%. If you wish to distribute less then insert a lower percentage. Instead of a percentage, you could amend the clause and specify actual dollar values.
⁹ Insert the name of an Islamic body or a specific person.