

**Reprint
as at 5 December 2013**



Wills Act 2007

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Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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1 Title
This Act is the Wills Act 2007.

2 Commencement
This Act comes into force on 1 November 2007.

Part 1

Preliminary provisions

3 Purposes
The purposes of this Act are to—

- (a) replace the Wills Act 1837 of the United Kingdom Parliament with an Act in plain language; and
- (b) change aspects of the law contained in the Wills Act 1837; and
- (c) provide for other matters relating to wills.

4 Wills to which this Act applies
This Act applies to the wills of persons who die on or after 1 November 2007.
Compare: 1977 No 55 ss 2(5), 3(2)

5 Act binds the Crown
This Act binds the Crown.

6 Interpretation
For the purposes of this Act, unless the context requires another meaning,—

Armed Forces is defined in section 33

de facto relationship is defined in section 29A of the Interpretation Act 1999

disposition includes—

- (a) the creation by will of a power of appointment; and
- (b) the exercise by will of a power of appointment

document means any material on which there is writing

military or seagoing person is defined in section 33

movable property is defined in section 22(1) for the purposes of that section

operational service is defined in section 33

personal representative means administrator, executor, or trustee

property is defined in section 8(5) for the purposes of that section

seafarer is defined in section 33

valid is defined in section 7

will is defined in section 8

will-maker—

- (a) means a person who makes, changes, revokes, or revives a will; and
- (b) is the equivalent of **testator** and **testatrix**.

7 Meaning of valid

(1) A will is **valid** if—

- (a) it complies with section 11; or
- (b) it is declared valid under section 14.

(2) An exercise of a power of appointment by a will that complies with section 11 is **valid**, even if the exercise does not comply with a particular manner or a particular solemnity required by the power.

Compare: Wills Act 1837 ss 9, 10 (UK)

8 Meaning of will

(1) **Will** means a document that—

- (a) is made by a natural person; and
- (b) does any or all of the following:

- (i) disposes of property to which the person is entitled when he or she dies; or
 - (ii) disposes of property to which the person's personal representative becomes entitled as personal representative after the person's death; or
 - (iii) appoints a testamentary guardian.
- (2) When this Act refers to making, changing, revoking, or reviving a will, it means a will as defined in subsection (1).
- (3) When this Act refers to a will in any other context, it means whichever is appropriate of the following:
 - (a) a will as defined in subsection (1); or
 - (b) a document that changes a will as defined in subsection (1); or
 - (c) a document that revokes a will as defined in subsection (1); or
 - (d) a document that revives a will as defined in subsection (1); or
 - (e) a codicil to a will as defined in subsection (1).
- (4) A person who may dispose of property during his or her life by a document creating a valid power or trust may dispose of property by his or her will by creating a power or trust of the same kind.
- (5) In this section, **property**—
 - (a) includes—
 - (i) a contingent, executory, or future interest in property; and
 - (ii) a right of entry to property; and
 - (iii) a right of recovery of property; and
 - (iv) a right to call for the transfer of title to property; and
 - (b) does not include property of which a person is a trustee when he or she dies.
- (6) Section 108 of Te Ture Whenua Maori Act 1993 overrides this section.

Compare: Wills Act 1837 ss 1, 3 (UK)

Part 2

Wills

Subpart 1—Making, changing, revoking, and reviving wills

9 Persons who may make, change, revoke, and revive wills

- (1) A person of 18 years or over may make, change, revoke, and revive a will.
- (2) A person under 18 years may make, change, revoke, and revive a will if he or she—
 - (a) is married, in a civil union, or in a de facto relationship; or
 - (b) has been married, in a civil union, or in a de facto relationship.
- (3) A person under 18 years may make, change, revoke, and revive a will if he or she—
 - (a) is not married, in a civil union, or in a de facto relationship; and
 - (b) has never been married, in a civil union, or in a de facto relationship; and
 - (c) has not agreed with another person to marry him or her or enter a civil union with him or her; and
 - (d) satisfies a Family Court that he or she understands the effect of—
 - (i) making, changing, revoking, and reviving a will; or
 - (ii) doing whichever of those actions he or she asked the court to approve; and
 - (e) has an approval given by the Family Court, with or without conditions, to his or her—
 - (i) making, changing, revoking, or reviving a will; or
 - (ii) doing whichever of those actions he or she asked the court to approve.
- (4) A person under 18 years may make, change, revoke, and revive a will if, on the date on which his or her will complies with section 11, he or she—
 - (a) is a military or seagoing person; or

- (b) is about to comply with an order to train for or join the Armed Forces for operational service; or
- (c) is about to comply with an order to join a ship as a seafarer.

Compare: 1955 No 94 s 6(b), (c); 1969 No 40 s 2(1)–(3); 2005 No 25 s 6

10 Persons under 18 who agree to marry or enter civil union

- (1) A person under 18 years may make, change, revoke, and revive a will if—
 - (a) he or she and another person have agreed to marry each other or enter a civil union with each other; and
 - (b) either—
 - (i) the will expressly says that it is made in contemplation of the marriage or civil union; or
 - (ii) the will does not expressly say that it is made in contemplation of the marriage or civil union but the circumstances existing when it was made show clearly that it was made in contemplation of the marriage or civil union.
- (2) The will is effective if the marriage or civil union occurs.

Validity

11 Requirements for validity of wills

- (1) A will must be in writing.
- (2) A will must be signed and witnessed as described in subsections (3) and (4).
- (3) The will-maker must—
 - (a) sign the document; or
 - (b) direct another person to sign the document on his or her behalf in his or her presence.
- (4) At least 2 witnesses must—
 - (a) be together in the will-maker's presence when the will-maker—
 - (i) complies with subsection (3); or
 - (ii) acknowledges that—
 - (A) he or she signed the document earlier and that the signature on the document is his or her own; or

- (B) another person directed by him or her signed the document earlier on his or her behalf in his or her presence; and
 - (b) each sign the document in the will-maker's presence.
- (5) As evidence of compliance with subsection (4), at least 2 witnesses may each state on the document, in the will-maker's presence, the following:
- (a) that he or she was present with the other witnesses when the will-maker—
 - (i) signed the document; or
 - (ii) acknowledged that he or she signed the document earlier and that the signature on the document is his or her own; or
 - (iii) directed another person whose signature appears on the document to sign the document on his or her behalf in his or her presence; or
 - (iv) acknowledged that another person directed by him or her signed the document earlier on his or her behalf in his or her presence; and
 - (b) that he or she signed the document in the will-maker's presence.
- (6) No particular form of words is required for the purposes of subsection (5).

Compare: Wills Act 1837 s 9 (UK)

Section 11(3): replaced (with effect on 1 November 2007), on 25 February 2012, by section 4 of the Wills Amendment Act 2012 (2012 No 22).

Section 11(4): replaced (with effect on 1 November 2007), on 25 February 2012, by section 4 of the Wills Amendment Act 2012 (2012 No 22).

Section 11(5): inserted (with effect on 1 November 2007), on 25 February 2012, by section 4 of the Wills Amendment Act 2012 (2012 No 22).

Section 11(6): inserted (with effect on 1 November 2007), on 25 February 2012, by section 4 of the Wills Amendment Act 2012 (2012 No 22).

12 Witnesses

- (1) The person appointed as executor of a will may witness the will.
- (2) The validity of a will is not affected by the fact that a witness did not know that the document he or she was signing was a will.

Compare: Wills Act 1837 ss 13, 17 (UK)

13 Witnesses affected by dispositions made to them

- (1) A disposition of property in a will is void if—
 - (a) the disposition is to a witness; or
 - (b) the disposition is to a witness's wife, husband, civil union partner, or de facto partner; or
 - (c) the property would go to a person claiming under a person described in paragraph (a) or (b).
- (2) Subsection (1) does not apply if—
 - (a) the will has at least 2 witnesses who are not described in the subsection; or
 - (b) the disposition is the repayment of a debt to a person described in the subsection; or
 - (c) all the persons who would benefit directly from the avoidance of the disposition—
 - (i) consent in writing or electronically to the distribution of the property; and
 - (ii) have legal capacity to give consent; or
 - (d) the High Court is satisfied that the will-maker—
 - (i) knew and approved of the disposition; and
 - (ii) made the disposition voluntarily.

Compare: Wills Act 1837 ss 15, 16 (UK); 1977 No 55 s 3(1); 2005 No 25 ss 3, 4, 7

14 High Court may declare will valid

- (1) This section applies to a document that—
 - (a) appears to be a will; and
 - (b) does not comply with section 11; and
 - (c) came into existence in or out of New Zealand.
- (2) The High Court may make an order declaring the document valid, if it is satisfied that the document expresses the deceased person's testamentary intentions.
- (3) The court may consider—
 - (a) the document; and
 - (b) evidence on the signing and witnessing of the document; and
 - (c) evidence on the deceased person's testamentary intentions; and
 - (d) evidence of statements made by the deceased person.

*Changing, revoking, and reviving***15 Changes**

A valid will, or part of a valid will, may be changed, but only by one of the following means:

- (a) the change is—
 - (i) written on the will; and
 - (ii) signed and witnessed as described in section 11(3) and (4), with the signatures written beside, or near to, the change; or
- (b) the change is described in a note—
 - (i) written on the will; and
 - (ii) signed and witnessed as described in section 11(3) and (4); or
- (c) the change is the obliteration of words in the will in such a way as to prevent their effect being apparent; or
- (d) the change is declared valid under section 14; or
- (e) the change is done under section 34(2).

Compare: Wills Act 1837 s 21 (UK)

16 Revocation

A valid will, or part of a valid will, may be revoked, but only by one of the following means:

- (a) the will-maker makes a later valid will; or
- (b) the will-maker writes a document that—
 - (i) makes clear his or her intention to revoke the will or the part; and
 - (ii) complies with section 11; or
- (c) the will-maker marries or enters a civil union and the will or the part is not saved by any of section 18(2) to (4); or
- (d) the revocation is done under section 34(2); or
- (e) the will-maker, with the intention of revoking the will or the part, destroys the will or the part; or
- (f) the will-maker, with the intention of revoking the will or the part, directs another person to destroy the will or the part in the will-maker's presence; or
- (g) the will-maker does anything else in relation to the will that satisfies the High Court that the will-maker intended to revoke the will; or

(h) the revocation is declared valid under section 14.

Compare: Wills Act 1837 s 20 (UK)

17 Revival

(1) A valid will, or part of a valid will, that has been revoked under any of section 16(a) to (d) may be revived, but only by one of the following means:

(a) the will or the part complies with section 11 again; or

(b) the will-maker makes a codicil that—

(i) makes clear his or her intention to revive the will or the part; and

(ii) complies with section 11; or

(c) the revival is done under section 34(2).

(2) If a will or part of it is revived under subsection (1)(a), the will or part is treated as having been made on the date on which it complied again with section 11.

(3) If a will or part of it is revived under subsection (1)(b) or (c), the will or part is treated as having been made on the date on which it was first made.

(4) If a will or a part is partly revoked and then wholly revoked and then revived, the revival does not apply to the provisions that were partly revoked.

(5) Subsection (4) does not apply if the revival makes it clear that the will-maker intended the partly revoked provisions to be revived.

Compare: Wills Act 1837 s 22 (UK) ; 1955 No 94 s 16(8); 1977 No 55 s 2(4); 2005 No 25 s 8(2)

Effect on wills of marriages and civil unions starting and ending and will-makers dying

18 Effect on will of will-maker marrying or entering civil union

(1) A will is revoked if the will-maker marries or enters a civil union.

(2) Subsection (1) is—

(a) overridden by section 10; and

(b) overridden by subsection (3); and

(c) qualified by subsection (4).

- (3) Subsection (1) does not apply if—
- (a) either—
 - (i) the will expressly says that it is made in contemplation of a particular marriage or civil union; or
 - (ii) the will does not expressly say that it is made in contemplation of a particular marriage or civil union but the circumstances existing when it was made show clearly that it was made in contemplation of a particular marriage or civil union; and
 - (b) the marriage or civil union that occurs is the contemplated one.
- (4) The exercise by will of a power of appointment is not revoked by the will-maker marrying or entering a civil union if the property appointed would not go to the will-maker's personal representative if the will-maker did not exercise the power.
- Compare: Wills Act 1837 s 18 (UK); 1955 No 94 s 13(1)

19 Effect on will of will-maker's marriage or civil union ending

- (1) This section applies when—
- (a) a will-maker makes a will; and
 - (b) after the will-maker makes the will, an order of a kind described in subsection (2) is made to which the will-maker is a party; and
 - (c) the order is in force when the will-maker dies; and
 - (d) the will contains a provision of a kind described in subsection (3).
- (2) The orders are—
- (a) an order made under Part 3 of the Family Proceedings Act 1980; or
 - (b) an order made under section 42 of the Family Proceedings Act 1980; or
 - (c) an order or decree corresponding to an order described in paragraph (a) or (b) made under an earlier corresponding enactment; or
 - (d) an order, decree, or enactment corresponding to an order described in paragraph (a) or (b) made outside

New Zealand that is recognised by the courts in New Zealand.

- (3) The provisions are—
- (a) the appointment of the will-maker's spouse or partner as executor or trustee or advisory trustee of the will-maker's will; or
 - (b) the appointment of the will-maker's spouse or partner as a trustee of property disposed of by the will to trustees on trust for beneficiaries who include the spouse's or partner's children; or
 - (c) a disposition to the will-maker's spouse or partner, except for a power of appointment exercisable by the spouse or partner exclusively in favour of the spouse's or partner's children; or
 - (d) a disposition for the payment of a debt secured on—
 - (i) property that belongs to the will-maker's spouse or partner; or
 - (ii) property that devolved by survivorship on the will-maker's spouse or partner.
- (4) The following apply to a provision of a kind described in subsection (3):
- (a) the provision is void; and
 - (b) in relation to the provision, the will must be read as if the will-maker's spouse or partner died immediately before the will-maker.
- (5) Subsection (4) does not apply if the will makes it clear that the will-maker intended—
- (a) the provision to be effective even if an order of the kind described in subsection (2) were made; and
 - (b) in relation to the provision, the will not to be read as if the will-maker's spouse or partner died immediately before the will-maker.

Compare: 1977 No 55 s 2(1)–(3)

20 Effect on will of will-maker dying

- (1) A will's words disposing of property apply to circumstances as they are when the will-maker dies.

- (2) Subsection (1) does not apply if the will makes it clear that the will-maker intended the words to apply to circumstances as they are at a different time.

Compare: Wills Act 1837 s 24 (UK)

Subpart 2—Administering wills

21 Disposition of land

- (1) A disposition in a will of land must be read as referring to the interest in the land to which the will-maker is entitled when he or she dies.
- (2) A disposition in a will of land that has not been brought under the Land Transfer Act 1952, if made without any words of limitation, must be read as referring to the fee simple of the land.
- (3) A disposition in a will of an interest that has not been registered under the Land Transfer Act 1952, if made without any words of limitation, must be read as referring to the whole interest to which the will-maker is entitled when he or she dies.
- (4) This section does not apply if the will makes it clear that the will-maker intended the disposition to be of a particular kind of interest.

Compare: Wills Act 1837 ss 26, 28 (UK)

22 Disposition of movable property

- (1) In this section, **movable property**—
- (a) includes—
- (i) a charge on, or an interest in a charge on, land in New Zealand; and
- (ii) an interest in the proceeds of sale of land in New Zealand; and
- (b) does not include a leasehold interest in, or an interest in a leasehold interest in, land in New Zealand.
- (2) Subsection (3) applies to a disposition of movable property in a will that—
- (a) is made in New Zealand; and
- (b) is made by any person, whatever his or her domicile when—
- (i) the will was made; or

- (ii) he or she died.
- (3) The disposition meets the requirements for being admitted to probate in New Zealand if the will—
 - (a) complies with section 11; or
 - (b) was made as required by the law of the place where the person was domiciled when the will was made; or
 - (c) was made as required by the law of the place where the person was domiciled when he or she died.
- (4) Subsection (5) applies to a disposition of movable property in a will that—
 - (a) is made outside New Zealand; and
 - (b) is made by any person, whatever his or her domicile when—
 - (i) the will was made; or
 - (ii) he or she died.
- (5) The disposition meets the requirements for being admitted to probate in New Zealand if the will was made as required by—
 - (a) the law of the place where the will was made; or
 - (b) the law of the place where the person was domiciled when the will was made; or
 - (c) the law in force, when the will was made, in the place where the person had his or her domicile of origin; or
 - (d) the law of the place where the person was domiciled when he or she died.
- (6) A disposition in a will of movable property in New Zealand is not revoked, does not become void, and is not interpreted differently only because the will-maker's domicile changes later.
Compare: 1955 No 94 s 14(1)–(4)

23 Disposition to child

- (1) This section applies when—
 - (a) a will-maker makes a will disposing of property to a child (**child**) of the will-maker; and
 - (b) the disposition is to the child as a named beneficiary or as a member of a class; and
 - (c) the child dies—
 - (i) before or after the will-maker makes the will; and
 - (ii) before the will-maker dies; and
 - (d) the child leaves a child (**grandchild**); and

- (e) the grandchild is alive when the will-maker dies.
- (2) The will must be read as disposing of the property—
 - (a) to the grandchild; or
 - (b) among the grandchildren in equal shares, if more than 1 is alive when the will-maker dies.
- (3) Subsection (2) does not apply to a disposition—
 - (a) that is expressly or impliedly stated to be conditional on the child being alive—
 - (i) at or after the time when the will-maker dies; or
 - (ii) at a time or event that will occur after the will-maker dies; or
 - (b) that is expressly or impliedly stated to be conditional on the fulfilment of any other contingency, if the contingency has not been fulfilled before the will-maker dies; or
 - (c) that is a specific disposition of personal chattels, as defined in the Administration Act 1969; or
 - (d) that is to a person as one of 2 or more joint tenants.
- (4) Subsection (2) does not apply if the will makes it clear that the will-maker intended to dispose of the property other than to the grandchild or grandchildren.

Compare: Wills Act 1837 s 33 (UK); 1955 No 94 s 16(1)–(4)

24 Disposition to issue

- (1) This section applies when a will disposes of property to the will-maker's issue without limitation as to the remoteness of the issue.
- (2) The property is to be held in the same manner as section 78 of the Administration Act 1969 provides for the issue of an intestate.
- (3) Subsection (2) does not apply if the will makes it clear that the will-maker intended the property to be held in a different manner.

25 Disposition to unincorporated association of persons

- (1) This section applies when a will disposes of property—
 - (a) to an unincorporated association of persons that is not a charity; or

- (b) to or on trust for the purposes of an unincorporated association of persons that is not a charity; or
 - (c) to or on trust for the present and future members of an unincorporated association of persons that is not a charity.
- (2) The will-maker's executor must do one of the following with the property that is the subject of the disposition:
 - (a) transfer it to the association; or
 - (b) pay it into the general funds of the association, if necessary after turning it into money.
- (3) The transfer of the property is an absolute discharge to the executor for the transfer of the property, if all the following apply:
 - (a) the transfer is to 1 or more persons; and
 - (b) the persons are designated in writing or electronically; and
 - (c) the designation is by any 2 persons doing the duties of president, treasurer, or secretary of the association.
- (4) A receipt issued by a person doing the duties of treasurer of the association is an absolute discharge to the executor for the payment into the general funds of the association.
- (5) Subsections (3) and (4) do not apply as follows:
 - (a) subsection (3) does not apply if the will makes it clear that the will-maker intended the transfer to be handled in some other way;
 - (b) subsection (4) does not apply if the will makes it clear that the will-maker intended the payment to be handled in some other way.
- (6) The following are not objections to the effectiveness of a disposition to an unincorporated association of persons:
 - (a) that a list cannot be compiled of the association's members at the time when the will-maker died; or
 - (b) that the association's members have no power to divide the association's assets beneficially amongst themselves.
- (7) Section 61B of the Charitable Trusts Act 1957 overrides this section.

26 Disposition may encompass power of appointment

- (1) A disposition in a will that is capable of including property over which the will-maker has a power of appointment must be read as—
- (a) including the property; and
 - (b) being an exercise of the power.
- (2) Subsection (1) does not apply if the will makes it clear that the will-maker—
- (a) intended the disposition not to include property over which he or she had a general power of appointment; or
 - (b) intended the disposition not to be an exercise of the power.

Compare: Wills Act 1837 s 27 (UK)

27 Disposition of property already partly disposed of

- (1) This section applies when a will-maker—
- (a) makes a will; and
 - (b) later disposes of an interest in property disposed of by the will.
- (2) The will applies to any interest in the property to which the will-maker is entitled when he or she dies.
- (3) Subsection (2) does not apply if the will makes it clear that the will-maker intended the disposition in the will to be void.

Compare: Wills Act 1837 s 23 (UK)

28 Disposition in fractional parts

- (1) This section applies when—
- (a) a will disposes in fractional parts of—
 - (i) all the will-maker's property; or
 - (ii) the will-maker's residuary estate; and
 - (b) a part fails.
- (2) The failed part goes—
- (a) to the part that does not fail; or
 - (b) if there is more than 1 part that does not fail, to all those parts proportionately.

- (3) Subsection (2) does not apply if the will makes it clear that the will-maker intended a part that fails to be disposed of differently.

29 Residuary estate

- (1) If a disposition of property in a will is unable to take effect, the property falls into the residuary estate.
- (2) Subsection (1) does not apply to property over which the will-maker has exercised a power of appointment by will.
- (3) Subsection (1) does not apply if the will makes it clear that the will-maker intended the property not to fall into the residuary estate.

Compare: Wills Act 1837 s 25 (UK)

30 Mutual wills

- (1) This section applies when—
- (a) 2 persons make wills in which each—
 - (i) disposes of property on which the 2 persons have agreed; and
 - (ii) makes the disposition in a way on which the 2 persons have agreed; and
 - (b) each promises the other that he or she will not—
 - (i) revoke the will without making another will that keeps the agreement in the same or a better way; or
 - (ii) change the will in a way that fails to keep the agreement in the same or a better way; or
 - (iii) dispose, during his or her life, of some or all of an item of property that the will specifically disposes of; and
 - (c) the first of them to die (**person A**) keeps the promise; and
 - (d) the second of them to die (**person B**) does not keep the promise.
- (2) A person who would have received a benefit from person B's will if person B had kept the promise may claim from person B's estate any part of the benefit that person B's estate does not provide.

- (3) The agreements referred to in subsection (1)(a), and the promise referred to in subsection (1)(b), may be made orally, in writing, or electronically.

31 Correction

- (1) This section applies when the High Court is satisfied that a will does not carry out the will-maker's intentions because it—
- (a) contains a clerical error; or
 - (b) does not give effect to the will-maker's instructions.
- (2) The court may make an order correcting the will to carry out the will-maker's intentions.

32 External evidence

- (1) This section applies when words used in a will make the will, or part of it,—
- (a) meaningless; or
 - (b) ambiguous on its face; or
 - (c) uncertain on its face; or
 - (d) ambiguous in the light of the surrounding circumstances; or
 - (e) uncertain in the light of the surrounding circumstances.
- (2) The High Court may use external evidence to interpret the words in the will that make the will or part meaningless, ambiguous, or uncertain.
- (3) External evidence includes evidence of the will-maker's testamentary intentions.
- (4) The court may not use the will-maker's testamentary intentions as surrounding circumstances under subsection (1)(d) or (e).

Subpart 3—Military or seagoing persons

33 Definitions for this subpart

- (1) For the purposes of section 9(4) and this subpart,—
- Armed Forces** is defined in section 2(1) of the Defence Act 1990

military or seagoing person means a person who, at a material date, was—

- (a) a member of the Armed Forces—
 - (i) on operational service; or
 - (ii) at sea; or
- (b) a seafarer at sea; or
- (c) a prisoner of war who, immediately before he or she was captured or imprisoned, was described by paragraph (a) or (b)

operational service is defined in section 15(3) of the Burial and Cremation Act 1964

seafarer is defined in section 2(1) of the Maritime Transport Act 1994.

- (2) For the purposes of this subpart,—

informal testamentary action means an action that—

- (a) is one of the following:
 - (i) making a will; or
 - (ii) changing a will; or
 - (iii) revoking a will; or
 - (iv) reviving a will; and
- (b) produces an informal will

informal will means a will that is not valid

prisoner of war means a protected prisoner of war as defined in section 2(1) of the Geneva Conventions Act 1958.

Compare: 1955 No 94 ss 3, 4

34 Military or seagoing persons may do informal testamentary actions

- (1) A military or seagoing person of any age may make an informal will containing any provision that may lawfully be contained in a valid will.
- (2) A military or seagoing person of any age may change, revoke, or revive a valid will or an informal will by any words, written or oral, as long as they show an intention to change, revoke, or revive the will.
- (3) Section 108 of Te Ture Whenua Maori Act 1993 overrides this section.

Compare: 1955 No 94 ss 5(1)–(3), 6(a)

35 Oral informal testamentary actions

- (1) Subsection (2) applies when a military or seagoing person orally makes, changes, revokes, or revives an informal will.
- (2) The will, change, revocation, or revival has effect only if the will-maker dies within 12 months after making the will or doing the change, revocation, or revival.
- (3) Subsection (4) applies when—
 - (a) a prisoner of war orally makes, changes, revokes, or revives an informal will; or
 - (b) a person becomes a prisoner of war within 12 months after orally making, changing, revoking, or reviving an informal will.
- (4) The will, change, revocation, or revival has effect only if the will-maker dies—
 - (a) while he or she is a prisoner of war; or
 - (b) within 12 months after he or she ceases to be a prisoner of war.

Compare: 1955 No 94 s 9

36 Proof of informal testamentary actions

Informal testamentary actions may be proved by any evidence that the High Court considers sufficient, regardless of any provision to the contrary in any other enactment.

Compare: 1955 No 94 s 5(6)

37 Certificate as to application of this subpart

- (1) A certificate may be given under subsection (2) as to a fact that has to be proved to establish one of the following:
 - (a) that at a material date a person was a military or seagoing person; or
 - (b) that at the material date a person was entitled under section 9(4) to make, change, revoke, or revive a will.
- (2) A certificate given under this subsection must be given,—
 - (a) in the case of a person who at the material date was a member of the Armed Forces, by an officer of the Armed Forces; or

- (b) in the case of a person who at the material date was a seafarer on a ship or had received orders to join a ship as a seafarer, by an officer of the ship.
- (3) The following apply to a certificate given under subsection (2):
 - (a) the certificate is sufficient evidence of the fact, in the absence of proof to the contrary; and
 - (b) judicial notice must be taken of the appointment and signature of the officer giving it.

Compare: 1955 No 94 s 6A

38 Modification of provisions in application to wills of military or seagoing persons

- (1) Section 13(1)(a) and (b) do not apply to a valid will or an informal will if the will-maker was a military or seagoing person when he or she made the will.
- (2) Section 15(a) and (b) do not apply to a change to a valid will or an informal will if the change is made—
 - (a) while the will-maker is a military or seagoing person; and
 - (b) by—
 - (i) the will-maker; or
 - (ii) another person directed by the will-maker who makes the change in the will-maker's presence.
- (3) Section 16(f) applies to the revocation of a valid will or an informal will by a military or seagoing person as if the words "in the will-maker's presence" did not appear.

Compare: 1955 No 94 s 7

Subpart 4—Transitional and amendment provisions

39 Wills of persons who die before 1 November 2007

- (1) Schedule 1 of the Imperial Laws Application Act 1988 is amended by omitting "The Wills Act 1837: sections 1, 3, 6, 9, 10, 13 to 31, and 33." and substituting "The Wills Act 1837: sections 1, 3, 6, 9, 10, 13 to 31, and 33, for persons who die before 1 November 2007."
- (2) Schedule 1 of the Imperial Laws Application Act 1988 is amended by omitting "The Wills Act Amendment Act 1852:

sections 1, 3, and 4.” and substituting “The Wills Act Amendment Act 1852: sections 1, 3, and 4, for persons who die before 1 November 2007.”

- (3) Amendments to the Wills Act 1837 of the United Kingdom Parliament made by the New Zealand Parliament and in force when this Act commences continue to apply to the wills of persons who die before 1 November 2007.

40 Wills made before 1 November 2007

- (1) The subsections in this section must be applied cumulatively. This means, for example, that subsections (2), (3), and (4) apply to a will made in 1969.
- (2) For wills made before 1 November 2007,—
- (a) section 8(4) does not apply; and
 - (b) section 9(2) must be read as if it said “of 16 or 17 years”, not “under 18 years”; and
 - (c) section 9(3) must be read as if it said “of 16 or 17 years”, not “under 18 years”; and
 - (d) section 9(3)(c) does not apply; and
 - (e) section 9(3)(d) must be read as if—
 - (i) it said “District Court or Public Trust”, not “Family Court”; and
 - (ii) it said “making or revoking a will”, not—
 - “(i) making, changing, revoking, and reviving a will; or
 - “(ii) doing whichever of those actions he or she asked the court to approve
 - (f) section 9(3)(e) must be read as if—
 - (i) it said “District Court or Public Trust”, not “Family Court”; and
 - (ii) it did not contain the words “, with or without conditions,”; and
 - (iii) it said “making or revoking a will”, not—
 - “(i) making, changing, revoking, or reviving a will; or
 - “(ii) doing whichever of those actions he or she asked the court to approve
 - (g) section 9(4) must be read as if it said “of 16 or 17 years”, not “under 18 years”; and

- (h) section 10 does not apply; and
 - (i) *[Repealed]*
 - (j) section 13(2)(c) and (d) do not apply; and
 - (k) *[Repealed]*
 - (l) *[Repealed]*
 - (m) section 16(c) must be read as if it did not contain the words “or enters a civil union”; and
 - (n) section 16(g) does not apply; and
 - (o) section 18(1), (3), and (4) must be read as if they did not contain the words “or enters a civil union”, “or civil union”, and “or entering a civil union”; and
 - (p) section 18(2)(a) does not apply; and
 - (q) section 19 must be read as if—
 - (i) subsection (2)(a), and the references to it in subsection (2)(c) and (d), did not appear; and
 - (ii) the words “in relation to the dissolution of a marriage” appeared at the end of subsection (2)(b); and
 - (iii) subsections (3) to (5) did not contain the words “or partner” and “or partner’s”; and
 - (r) sections 24, 25, 28, and 30 do not apply.
- (3) For wills made before 26 April 2005,—
- (a) section 9 must be read as if subsections (2) and (3) did not contain the words “, in a civil union, or in a de facto relationship” and “or enter a civil union with him or her”; and
 - (b) section 13(1) must be read as if it said “witness’s wife or husband”, not “witness’s wife, husband, civil union partner, or de facto partner”.
- (4) For wills made before 1 January 1970, section 9 must be read as if—
- (a) subsections (1) and (4) said “21 years”, not “18 years”; and
 - (b) subsections (2) and (3) did not appear.
- (5) For wills made before 1 January 1959, section 23 must be read as if—
- (a) subsections (2)(b) and (3) did not appear; and
 - (b) subsection (4) did not contain the words “or grandchildren”.

- (6) For wills made before 27 October 1955, section 22 does not apply.
- (7) For wills made before 5 December 1944, section 18(2)(b) and (3) do not apply.

Compare: 1955 No 94 ss 11(5), 13(2), 14(5), 16(6), (7); 1969 No 40 ss 2(4), 5; 1977 No 55 ss 2(5), 3(2), 4; 2005 No 25 s 8(1)

Section 40(2)(i): repealed (with effect on 1 November 2007), on 25 February 2012, by section 5 of the Wills Amendment Act 2012 (2012 No 22).

Section 40(2)(k): repealed (with effect on 1 November 2007), on 25 February 2012, by section 5 of the Wills Amendment Act 2012 (2012 No 22).

Section 40(2)(l): repealed (with effect on 1 November 2007), on 25 February 2012, by section 5 of the Wills Amendment Act 2012 (2012 No 22).

Section 40(2)(n): replaced (with effect on 1 November 2007), on 25 February 2012, by section 5 of the Wills Amendment Act 2012 (2012 No 22).

40A Application of Wills Amendment Act 2012

- (1) Sections 11 and 40 as amended by the Wills Amendment Act 2012 apply (instead of those sections as in force before they were amended by that Act) in making after the commencement of that Act (in this section called the **commencement**) a determination whether a document is, or can and is to be declared by order of the High Court to be, a valid will.
- (2) Subsection (1) applies whether or not the determination—
- (a) is made by the High Court, a Judge of the High Court, a Registrar or Senior Deputy Registrar of the High Court, a personal representative (as defined in section 6) of a person who has died, or any other court or person:
 - (b) arises from, or without, an application for administration (whether without notice, or in solemn form) made before or after the commencement (including, without limitation, one in solemn form made before or after the commencement and following one without notice made unsuccessfully before the commencement):
 - (c) arises from an application made before or after the commencement for a review by the High Court or a Judge of the High Court of a determination made by a Registrar or Senior Deputy Registrar of the High Court made before or after the commencement.
- (3) But this section and sections 11 and 40 (as amended by the Wills Amendment Act 2012) do not affect the validity or con-

sequences of the following to the extent (if any) that they are based on sections 11 and 40 (as in force before they were amended by that Act):

- (a) a grant of administration (as defined in section 2(1) of the Administration Act 1969) made before the commencement:
- (b) a payment made or other action taken before the commencement and that an enactment authorised without a grant of administration (as so defined).

Section 40A: inserted, on 25 February 2012, by section 6 of the Wills Amendment Act 2012 (2012 No 22).

Section 40A heading: amended, on 5 December 2013, by section 4 of the Wills Amendment Act 2013 (2013 No 138).

41 Consequential amendments

The enactments specified in the Schedule are consequentially amended in the manner indicated in the Schedule.

Schedule

Consequential amendments

s 41

Family Courts Act 1980 (1980 No 161)

Section 11(1): insert after paragraph (gc):

“(gd) the Wills Act 2007.”

Life Insurance Act 1908 (1908 No 105)

Section 66C(1)(a)(iii): omit and substitute:

“(iii) dispose of the policy by will in accordance with section 9 or 10 of the Wills Act 2007 or section 2 of the Wills Amendment Act 1969 or section 6 of the Wills Amendment Act 1955.”

Maori Trustee Act 1953 (1953 No 95)

Section 12A(7): omit and substitute:

“(7) An election may be filed under this section relating to a written informal will to which subpart 3 of Part 2 of the Wills Act 2007 or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.”

Property (Relationships) Act 1976 (1976 No 166)

Section 64(a): omit “and the deceased spouse or civil union partner dies intestate” and substitute “when the deceased spouse or civil union partner dies”.

Protection of Personal and Property Rights Act 1988 (1988 No 4)

Section 55(5): omit and substitute:

“(5) The following provisions apply to a testamentary disposition authorised and executed under this section:

“(a) it is valid despite—

“(i) section 11 of the Wills Act 2007; and

“(ii) sections 9 and 10 of the Wills Act 1837 of the United Kingdom Parliament; and

“(b) it has the same effect for all purposes as it would have had if the person subject to the property order—

“(i) had had testamentary capacity; and

Protection of Personal and Property Rights Act 1988 (1988 No 4)—*continued*

“(ii) had executed the testamentary disposition in the manner required by the applicable section.”

Public Trust Act 2001 (2001 No 100)

Section 93(8): omit and substitute:

“(8) An election may be filed under this section relating to a written informal will to which subpart 3 of Part 2 of the Wills Act 2007 or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.”

Simultaneous Deaths Act 1958 (1958 No 37)

Section 3(1)(e) to (h): omit and substitute:

- “(e) if any of 2 or more possible beneficiaries under a will or trust or other disposition have died as described, and would be given property under the will or trust or other disposition if any of them could be shown to have survived the other or others, the following provisions apply:
- “(i) the will or trust or disposition takes effect as if the property were given to those possible beneficiaries as tenants in common in equal shares; and
 - “(ii) the property passes accordingly; and
 - “(iii) subparagraphs (i) and (ii) do not apply if the will or trust or disposition shows a contrary intention; and
 - “(iv) subparagraphs (i) and (ii) do not apply if paragraph (c) or (f) applies:
- “(f) if any of 2 or more persons who have died as described could have exercised a power of appointment over property if any of them could be shown to have survived the other or others, the following provisions apply:
- “(i) the power may be exercised as if an equal share of the property had been set apart for appointment by each of the persons; and
 - “(ii) the power may be exercised as if each of the persons had the power of appointment over the share of the property set apart for him or her; and

Simultaneous Deaths Act 1958 (1958 No 37)—*continued*

- “(iii) the share passes in default of appointment by him or her in the manner in which the property would have passed in default of appointment by him or her if he or she had been the survivor of the persons; and
- “(iv) subparagraphs (i) to (iii) do not apply if the instrument creating the power shows a contrary intention; and
- “(v) subparagraphs (i) to (iii) do not apply if paragraph (c) applies:
- “(g) if property is given or appointed by a will or other testamentary instrument to the survivor of 2 or more of the testator’s children or issue, and all or the last survivors of the children or issue are persons who have died as described, section 23 of the Wills Act 2007 or section 16 of the Wills Amendment Act 1955 takes effect as if the gift or appointment were in equal shares to the children or issue who—
 - “(i) have died as described; and
 - “(ii) have a child or children living at the testator’s death:
- “(h) if the persons who have died as described include a testator and 1 or more of the testator’s issue, the following provisions apply for the purposes of section 33 of the Wills Act 1837 of the United Kingdom Parliament:
 - “(i) the testator is treated as having survived, but died immediately after, all the testator’s issue who have died as described; and
 - “(ii) a gift by the testator to any of the testator’s issue who has died as described or has already died in the testator’s life time (**donee**) takes effect under section 33 if any of the donee’s issue is living at the testator’s death and is not a person who has died as described; and
 - “(iii) subparagraphs (i) and (ii) do not apply if the testator’s will shows a contrary intention.”.

Trustee Companies Act 1967 (1967 No 35)

Section 36(8): omit and substitute:

- “(8) An election may be filed under this section relating to a written informal will to which subpart 3 of Part 2 of the Wills Act 2007

Trustee Companies Act 1967 (1967 No 35)—*continued*

or the Wills Amendment Act 1955 applies. This section does not apply to any other informal will.”

Reprints notes

1 *General*

This is a reprint of the Wills Act 2007 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Wills Amendment Act 2013 (2013 No 138)

Wills Amendment Act 2012 (2012 No 22)
