

THE LAW FIRM OF OMAR T. MOHAMMEDI, LLC
ATTORNEYS AT LAW NEW YORK, NY



Islamic Estate Planning

Woolworth Building
233 Broadway · Suite 801 · New York, NY 10279
Telephone: 212-725-3846 · <http://www.otmlaw.com> · info@otmlaw.com



Tradition of the Prophet (s.a.)

It is related from 'Abdullah ibn 'Umar that the Messenger of Allah, may Allah bless him and grant him peace, said, "It is not right for a Muslim man who has anything to bequeath to spend two nights without having a written will in his possession."

Sahih Bukhari, No. 2587



Lifetime and Estate Planning

It is important to plan ahead for the security and peace of mind of your family.

This presentation will outline the most important Lifetime and Estate planning instruments including:

- Wills;
- Trusts;
- Health Care Proxies; and
- Living Wills

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Wills

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A will gives instructions to an executor on:

- How to distribute wealth, real estate, and other personal property
- Instructions for the payment of any debts to avoid complications

If someone dies intestate (without a will):

- Creditors are paid
- The estate is distributed according to New York or New Jersey state law and not Shariah if not living in an Islamic country such as the US.
- It is important to execute a will if you would like to follow the Shariah inheritance law.



Intestate Distribution

If someone dies intestate (without a will):

- All creditors are paid first;
- The surviving spouse takes \$50,000 plus one-half the remaining estate
- Children share proportionately in the remaining half

- Example:
- T dies intestate, survived by his spouse, S, and two children, A and B. T had an estate of \$100,000 and no outstanding debts.
- S gets \$75,000
- A and B get \$ \$12,500 each.



Requirements for a Validly Executed Will

(Islamic Will is not an exception)

- Testator must be over 18 and of sound mind
- Testator must sign the will
- The signature must appear at the end of the document
- There must be at least two attesting witnesses
- Testator must declare to witnesses that the document is his will
- Testator must sign or acknowledge his signature in the presence of each witness
- Will must be executed within 30 days after the first witness signs
 - In New Jersey, executed within a “reasonable” time



Amendment of a Will

- A will can only be amended by a codicil
- The codicil must be executed the same way as a will
- Adding words or clauses do not constitute a valid amendment

Revocation of a Will

- A will can be revoked by a new will or by a physical act
- Physical acts include burning, mutilating or cancelling
- There is no partial revocation



Testamentary Capacity

- Testator must be 18 years old
- Must understand the nature of his act
- Must understand the nature and approximate value of his assets
- Must understand natural objects of his bequests
- Must understand the dispositions he was making



Grounds for Challenging a Will

- Invalidly Executed
- Validly Revoked
- Lack of Testamentary Capacity
- Undue Influence
- Fraud
- Mistake



No Contest Clause

- A No Contest Clause makes it difficult to challenge a will
- Any party that challenges the will loses his whole bequest under the will
- An Islamic Will may be protected in a non-Muslim country



Shariah Compliant Will

Quran declares specific amount to specific heirs after Wasiya debt and funeral expenses (preamble)

Spouse is not entitled to special property

Shariah provides for a surviving spouse in terms of a % of the decedent's estate, and that % depends on factors including the gender of the surviving spouse:

- Surviving husband takes 1/2 of his deceased wife's (no surviving children). (1/4 if surviving children)
 - A surviving wife takes 1/4 (no children)
 - 1/8 (children (Nisa Verse 11-112))
- Sura an Nisa Verses 7-14 (distribution of wealth)
- Custody of Minor Children and Guardian

NY and NJ State Will

- With the exception of the spouse, NY/NJ laws allows for any heir to inherit any amount-or none at all (no protection to heirs).
- Elective Shares for spouses (1/3 or \$50,000 whichever is greater)
- Waiver to Right of Election
- Tenancy in Common and Joint Tenancy (Operation of Law)



Wasiya

Mus'ab b. Sa'd reported on the authority of his father. I was ailing. I sent message to Allah's Apostle (may peace be upon him) saying: Permit me to give away my property as I like. He refused. I (again) said: (Permit me) to give away half. He (again refused). I (again said): Then one-third. He (the Holy Prophet) observed silence after (I had asked permission to give away) one-third. He (the narrator) said: It was then that endowment of one-third became permissible.

Sahih Muslim, 13, No. 3994



Wasiya

Narrated Abu Hurairah:

I heard the Apostle of Allah (peace be upon him) say: Allah has appointed for everyone who has a right what is due to him, and no bequest must be made to an heir.

Sunan Abu Dawud, 11, No. 2864



Wasiya

- Gift of property contingent upon donor's death. Limited up to 1/3, unless heirs consent to more
- Decedent may gift to organizations or people outside Qur'anic heirs
- No bequest to heirs (Non-Muslim wife or adopted child are entitled to inherit through Wasiya).



US Courts Interpretation of an Islamic Will

US Courts interpret will according to the intent of the testator or testatrix even if it is against public policy (precedents)

- Intent of Testator (clauses must be precise)
- Ambiguity of the Will (it cannot say according to Shariah)
- Arbitration Clause: Islamic Tribunal (The US Court can enforce the arbitration decision as binding)



Wills and Religious Clauses

The Prophet Muhammad (PBUH) ordered Muslims to have their last will and testament drawn up (Sahih Al Bukhari)

- Muslims testators who wish to comply with Islamic laws must be precise and unambiguous; an NY or NJ judge is unlikely to be familiar with the Shariah and Islamic terminology
- Courts can adjudicate disputes concerning Islamic wills so long as the dispute is over a secular aspect of the will and not over Shariah interpretations Such as undue influence, fraud...etc.
- Religious clauses that might seem against public policy at first blush have been upheld i.e. Roman Catholic and Jewish Orthodox Traditions
- Examples next page

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Trusts

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Trusts

If the testator feels the children or parents will not be able to make wise use of the money. He may create a trust (waqf) so long as they receive their rightful shares.

- Trustee holds legal title to specific property
- Trustee has duty to manage, invest, and safeguard the trust assets for the designated beneficiary



Trusts Under NY and NJ Law **procedural requirements apply to Islamic Trust**

Revocable Trusts

- Living trusts
- Allows grantor to make changes to, add, or remove assets.

Irrevocable Trusts

- Living Trusts
- Can't be changed by grantor and ownership lies with trustee

Charitable Trusts

- Grantor places property in trust until grantor's death
- The trust then donates the property to a charity



What Types of Trusts are Available Under Islamic Law?

Waqf al-Ahli

Created for the financial welfare of close relatives of the one creating the trust (waqif)

Waqf al-Khayri

Created for, social justice, philanthropy or public welfare.

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Healthcare Proxies and Living Wills

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Health Care Proxies and Living Wills

- Appointing an agent to make health care decisions for you in the event that you are incapacitated and unable to make decisions for yourself.
- You can either trust the decision of the appointed agent or leave specific instructions for the agent to follow.
- A living will may provide instructions regarding what type of medical treatment you may or may not want
- In a living will you do not name an individual to make a medical decision; you expressly direct your doctor on what you want to be done

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Federal and State Taxes

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Federal Estate Tax

- Taxable Estate = Gross Estate – Deductions
- Deductions include expenses such as the cost of funeral and other administrative costs
- Federal estate tax in 2008 is 45% for any estate over \$2 million (estates under \$2 million pay no taxes)
- In 2011, the estate tax will be 55% for any estate over \$1 million!
- Very important for large estates to have a strategy to protect assets from excessive taxation especially since Congress is expected to act on estate taxes in the future.



State Estate Tax: New Jersey

- Taxable Estate = Gross Estate – Deductions
- Deductions include expenses such as the cost of funeral and other administrative costs
- In New Jersey, only estates under \$675,000 are protected from taxation.
- Even if you do not owe any federal estate tax, you may still owe NJ estate tax
- Very important to have a state specific strategy
- If you drafted your will in New Jersey before 2002, you must plan again because this law came in effect after 2002.



State Estate Tax: New York

- Taxable Estate = Gross Estate – Deductions
- Deductions include expenses such as the cost of funeral and other administrative costs
- In New York, only estates under \$115,000 are protected from taxation.
- Even if you do not owe any federal estate tax, you may still owe NY estate tax
- The tax rate ranges from 2%-21% based on the total estate value.
- Anyone who qualifies for the 21% bracket will be paying a total of 60% state and federal estate tax!



This presentation is intended for informational purposes only. It does not intend to offer any legal advise. For further advise on a case by case basis:
Please do not hesitate to contact:

Omar Mohammadi, Esq.

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