10447 - How to Write a Will in Islam

the question

I checked the Holy Quran in regards to how to make a will. It's kind of complicated for me, that's why I am hoping you can help me Insha Allah.

Can you please advise on how to make an Islamic will for a married woman:

1. Personal savings account. 2. Home & other real estate investment shared with spouse. 3- Personal belongings such as jewelry etc.

I have a husband, father, brothers, sisters, nephews and nieces. Can you specify for me how to distribute everything? Does everything need to be distributed in shares or can I give some things to a favorite niece for example just because I want to, would that be going against the quranic law?

Summary of answer

A will in Islam it is a set of instructions on how (one’s property) is to be disposed of after one’s death or how it is to be given away after one’s death.
Writing a will may be obligatory with regard to the dues one owes to others where there is no proof, lest they be lost or neglected.
It is recommended for a man to write a will that some of his wealth be used for charitable purposes, so that the reward for that may reach him after his death.
It is permitted to write a will concerning one third or less of one’s wealth.
The will comes into effect when the person dies. It is permissible for the person who writes the will to revoke it or cancel it or revoke part of it.
You do not have the right to state how your personal belongings should be distributed after you die because the share of each heir has been defined by Allah.

Detailed answer

Praise be to Allah.

What is a gift in Islam?

There is a difference between a will and a gift. Property that is willingly given away while one is alive is considered to be a gift, which does not come under the same rulings as a will. However, it should be noted that it is not permissible for a person to give a gift to some of his children and not others, or to favour some of them over others in gift-giving . Rather they must be treated fairly, because of the hadith of An-Nu`man ibn Bashir, who said that his father brought him to the Prophet (peace and blessings of Allah be upon him), when he gave him a gift, to ask the Prophet (peace and blessings of Allah be upon him) to bear witness to it. The Prophet (peace and blessings of Allah be upon him) asked, "Have you given something similar to all your children?" He said, "No." He said, "Then take it back." Then he said: "Fear Allah and treat your children fairly." (Narrated by Al-Bukhari, Al-Hibah, 2398)

What is a will in Islam?

With regard to the will , it is a set of instructions on how (one's property) is to be disposed of after one's death, or how it is to be given away after one's death.

The evidence that this (writing a will) is prescribed in Islam is found in the Quran and Sunnah, and the consensus of the scholars. Allah says (interpretation of the meanings):

"It is prescribed for you, when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon the pious." [Al-Baqarah 2:180]

"(The distribution in all cases is) after the payment of legacies he may have bequeathed or debts." [An-Nisa' 4:11]

The Prophet (peace and blessings of Allah be upon him) said: “Allah was being generous to you when He allowed you to give one-third of your wealth (in charity) when you die, to increase your good deeds.” (Narrated by Ibn Majah, Al-Wasaya, 2700; classed as sound by Al-Albani in Sahih Sunan Ibn Majah, no. 2190)

The scholars unanimously agreed that writing a will is permissible.

How to write a will in Islam

Writing a will may be obligatory with regard to the dues one owes to others where there is no proof, lest they be lost or neglected. The Prophet (peace and blessings of Allah be upon him) said: “It is not permissible for any Muslim who has something concerning which a will should be made to stay for two nights without having his last will written and kept ready with him.” (Narrated by Al-Bukhari, Al-Wasaya 2533)

It is recommended for a man to write a will that some of his wealth be used for charitable purposes , so that the reward for that may reach him after his death. So Allah granted permission for a person to dispose of one third of his wealth for that purpose when death approaches.

It is permitted to write a will concerning one third or less. Some of the scholars said it is preferable for it to be less than one-third, and the will does not apply to any of the heirs . The Prophet (peace and blessings of Allah be upon him) said: “No bequest is to be made to an heir.” (Narrated by At-Tirmidhi, Al-Wasaya, 2047; classed as authentic by Al-Albani in Sahih Sunan At-Tirmidhi, 1722). If the will is intended to harm the heirs or make things difficult for them, then that is prohibited, because Allah says (interpretation of the meaning):

“…so that no loss is caused (to anyone).” [An-Nisa’ 4:12]

The will comes into effect when the person dies. It is permissible for the person who writes the will to revoke it or cancel it or revoke part of it. Carrying out the will is an important matter which was confirmed by Allah and mentioned before other things, and there is a stern warning issued to those who change it.

With regard to the distribution of personal belongings, he does not have the right to state how they should be distributed after he dies , because the share of each heir has been defined by Allah, and He has explained who inherits and who does not inherit. So it is not permitted for any person to transgress the limits set by Allah, because Allah has warned against doing that. Allah says in Surat An-Nisa' (interpretation of the meaning):

"Allah commands you as regards your children's (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise.

In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.

These are the limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and His Messenger (Muhammad) will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success.

And whosoever disobeys Allah and His Messenger (Muhammad), and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment." [An-Nisa'

4:11-14]

And Allah knows best.

For more information, please see Al-Mulakhkhas Al-Fiqhi by Salih Al-Fawzan, 2/172-182

There is no reason why you should not give your nephews and nieces whatever you want of your wealth while you are alive. As they are not your own children, you are not obliged to give to them all equally. You can give gifts to those whom you love and to whomever you wish, or to whoever among them is according to his or her need. Try to give to those who are religiously committed in ways that will help them to obey Allah. It is also permitted to bequeath to them one-third or less of your wealth so long as they are not your heirs.

And Allah knows best.