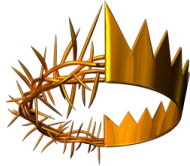




**EAST JAMAICA CONFERENCE**  
OF SEVENTH-Day ADVENTISTS  
STEWARDSHIP, PLANNED GIVING AND WILLS AND TRUST SERVICES  
DEPARTMENT



*2022-2026*

**WILLS & TRUST SERVICES MINISTRY**

President: Dr. Meric Dale Walker  
Executive Secretary: Pastor Melvin Francis  
Treasurer: Elder Michael Porteous  
Departmental Director: Pastor Carl Cunningham

## **JAMAICA UNION CONFERENCE**

### **FOUR PRINCIPAL AREAS OF THE TRUST SERVICES MINISTRY**

The Trust Services Ministry concerns itself with four (4) major areas of operation. These are:

- I. Trust:** This is a type of contractual agreement such as a trust of money deposited, where part or all comes to a Church organization. It might be a percentage of the interest on sums placed in Trust that the organization will receive.
- II. Wills:** Empowerment of members to make Christian Wills, making gifts to the church through a testamentary instrument which names the church as one of the beneficiaries.
- III. Annuities:** An agreement where the individual turns over assets or cash to the church in return for a stated amount for their lifetime and at their death; the remainder belongs to the Church.
- IV. Outright Gifts:** Any gift to the Church/Organization that is generated as a result of Trust Service activities.

#### **Duties of the Local Church Trust Services Leader:**

- 1. Build strong synergy with EJC counterpart.
- 2. Give leadership to Trust Services activities in the Church.
- 3. Chair the Trust Services Committee.
- 4. Promote the services of the Department to the members of the church.
- 5. Organize and be in charge of Trust Services programmes in the church on Trust Services Sabbath.
- 6. Organize seminars, retreats and other Trust Services training and educational programmes.
- 7. Encourage members to make their Wills and make investments in church sponsored financial programmes and institutions.
- 8. Provide special support ministry to the retirees within the church.
- 9. Encourage members to support the church through Outright Gifts, Wills, Trust, and Annuities.

10. Ensure that members of the church are educated in respect of legal procedures that will affect them from time to time.
11. Be in touch with suitable legal functionaries who are able to educate the membership.
12. Serve as a member of the Church Board and Stewardship Committee.
13. Promote the Legal Aid Clinic.

### **Local Church Trust Committee**

1. The Pastor shall establish a Trust Committee for each of his congregations.
2. The Committee should consist of at least three individuals including the Pastor.
3. It is advisable that the other two members should be drawn from any of the following: First Elder, Church Treasurer, Stewardship Director, Church Clerk, Head Deacon, and Head Deaconess.
4. Early in the First Quarter of each year, the Pastor acting as Chairman of the Local Church Trust Committee should meet and establish the current focus/target of the Church as it relates to:
  - a) A Trust Services Day
  - b) Members who will be contacted on an individual basis in so far as:
    - (1) making their Will.
    - (2) establishing a Trust Agreement with the Conference.

## **TRUST SERVICES STRATEGIC PLAN 2022 - 2026**

### Objectives

- To increase the number of members utilizing the services of the Trust Ministry.
- To have 50% of the work force prepare their Wills.
- To have 50% of the active church members commit themselves to making a Will.

## **PLANNED GIVING AND TRUST SERVICES 2022**

1. Organize Planned Giving and Trust Services Convention, St. Thomas.
2. Four (4) zonal Trust Services Seminars
3. Establish a Trust Services Committee in each church.
4. Bereavement facilitation and planning training
5. Family seminar on Estate Planning
6. Investment workshop and promotion

### Other Programmes

1. Education Trust promotion
2. Certification of Trust Leaders
3. Community Trust Outreach (conduct massive drive for members to make a Will)

## **OVERVIEW**

The department of Planned Giving and Trust Services is integral to the asset management and planning for the cycle of life of each member of the church and the wider community. Each Director at the Local Field is expected to:

1. ensure that in each Local Church a Planned Giving and Trust Services Secretary is appointed.
2. become familiar with the services offered by the department.
3. educate himself/herself in respect of those services or
4. get resource persons in those relevant areas.
5. conduct appropriate educational seminars for the members and community.
6. take initiatives where necessary to establish the relevant services.
7. Ensure that there is a functional committee that is giving leadership to planning and the implementation of those services at their level of the organization.

It is time to put additional momentum into Planned Giving and Trust Services:

It is time to educate!

It is time to inform!

It is time to activate!

It is time to implement!

Planned Giving and Trust Services. It is a partnership between the church and the individual for the future!

## **Services of the Planned Giving Ministry**

- Preparation of Wills
- Donations to special projects
- Gift administration
- Establishment of endowment funds
- Writing of proposals for grants to special projects
- Educational seminars on asset management
- Retirement plans
- Trust funds investments
- Establishing scholarship funds
- Fostering generational wealth building practice

## **Spiritual Counsel on Estate Planning**

Would your life help? Planning your estate should be a thoughtful, spiritual experience entered into with earnest prayer for divine guidance. Your Will can be a living, lasting testimony to your faith in Christ and your dedication to the gospel commission. Your affairs should be so arranged That they will express your will and purposes and those of your Lord and Master.

## **The Philosophy and Objectives of Trust Services.**

God is owner of all, yet through His mercy He allows us to act as stewards of His assets. Such stewardship makes provision for our personal and family needs, but it should always be remembered that we have nothing of our own and thus we are responsible to a loving Father for both that which we use during our lifetime and any residue which remains.

As individuals, we differ greatly. Parental influences, our training and the ideas formulated by us greatly influence our habits of giving and our subsequent support of church endeavours. Thus, the philosophy of Trust Services takes into consideration not only the principles of stewardship found in the Bible and other inspired writings, but is also prepared to meet constituents where they are in terms of their individual philosophies as regards stewardship.

The Trust Services Ministry is committed, through education as well as promotion, development, and administration to the constant nurture of constituents, while prayerfully considering how best to assist them as they consider their needs as well as the advancement of the work of God.

## **The responsibilities of the Local Church Trust Services Leader/Estate Planning Committee**

1. To direct and coordinate the drive for members to prepare Wills.
2. To promote the needs of members to make bequests and special gifts to the Seventh-day Adventist Church.

3. Serve as chairman of the Trust Services Planning Committee.

### **Relationship of Church Trust Services Leader to the Local Church**

1. The Leader should be allowed to function like any other departmental Leader of the church.
2. The Leader should be appointed a member of the Church Board.
3. The Leader should be elected as a member of the Stewardship Committee.
4. Due to the technical nature of **Estate Planning**, the Leader should be appointed a minimum of two years.
5. The Leader should be elected as a member of the Trust Services Committee.

### **How the Trust Leader is appointed?**

The Trust Services Leader should be elected by the Church Nominating Committee at the time of the annual election of church officers.

### **Qualities of the Leader**

1. Patience and tact. The work is with people and many times the results are far into the future.
2. Knowledge in the legal, banking, accounting or insurance fields.
3. Ability to motivate his/her committee members to function effectively.
4. Confidentiality
5. Demonstrate faithful Stewardship

## **THE COMMITTEE ON ESTATE PLANNING**

In November 1997 at the West Indies Union (now Jamaica Union) yearend meeting, it was voted that ...the Trust Services Leader should have representatives at all levels of the Church organization – General Conference, Division, Union, Conference and Local Church, to be effective... A Committee on Estate Planning should be formed in each church.

### **How the Committee is appointed?**

The Estate Planning Committee should be appointed by the Church Board. Great care should be taken in selecting the persons to serve on this committee. The Pastor will be an ex-officio member. The size of the Committee should be from five to seven.

### **Personal Qualities to Consider for Membership**

1. Patience and tact. The work is with people and many times the results are far into the future.
2. Concern for people and their welfare.
3. Knowledge in the legal, banking, accounting or insurance fields. Desirable for at least one member of the Stewardship Committee.
4. Ability to communicate with the congregation the concerns raised by the Committee. This involves recognized leaders in the congregation who people will listen to readily.
5. Commitment to the Church and an understanding of how people respond to ideas and suggestions presented to them.

The Commitment must be very clear that its functions do not include the administration of gifts, trusts and bequests given to the Church. This is a function of the Church Board/Conference Committee.

The Estate Planning Committee's primary responsibility is to assist persons in planning for an adequate expression of their stewardship of accumulation. This Committee works closely with the Stewardship Committee.

### **The work of the Estate Planning Committee**

The primary functions of this task force or committee are to:

1. provide for an ongoing programme of emphasizing the value of Wills, Trusts, and special gifts.
2. provide materials on Wills for members and constituents of the congregation.
3. provide resources and information to assist families, as they plan for the future of their estate.
4. provide an opportunity through an organized emphasis on estate planning for people, to plan for their families' protection and for a fuller expression of their Christian stewardship, through the sharing of their accumulated resources with the Church.

In fulfilling these functions, the task force or committee should:

1. consider the size and make-up of the congregation in determining its programme strategy.
2. present the basic need for Wills in the protection of the family and the wise disposition of accumulated resources.

3. present Estate Planning as a developing plan for life rather than for death. It is a plan to care for persons as they cope with life constructively and creatively.
4. present the tremendous opportunities for Christian service awaiting funds implementation.
5. publish comments of church members about the importance of Wills and what bequests can make possible in the ministry of the Church.
6. request that the minister highlight the concept of the stewardship and accumulations in preaching, teaching, and pastoral care.
7. Publicize bequests that are received by the Church highlighting the person's love for, and service to the Church, along with the ministry it makes possible. *Caution* – be sure to check the feelings of the family before making a public announcement.
8. secure persons to make presentations to groups in the Church, taking into account the special interests of the participants.
9. utilize skilled persons in the local community to lead seminars on Estate Planning for the congregation.
10. stress the importance of writing Wills and updating them regularly.
11. study the subject of Trusts and present their value and benefits. Conference and area foundations can provide materials and counsel on Trusts.
12. arrange for displays of posters and information about Wills, Trusts and special gifts. Highlight the ministries they can make possible.
13. Sponsor financial planning seminars with particular emphasis on the care of the family now and in the future. Again, the Conference and the Union Directors can be of assistance.
14. arrange for a panel or representatives from church-related institutions in your Conference or area to show how best, Trusts and special gifts provide for ministries to people.
15. consider carefully the groups and organizations in the local church and inquire about the possibility of the task force or committee, making well planned presentations at these meetings, using the resource persons and materials mentioned.
16. Acknowledge limitations in the expertise of task force or committee. The task is to help persons think through what they want to do before going to an attorney to prepare or update their Wills or Estate Planning.



Each task force or committee member will add his/her particular innovations through an emphasis on Wills, Trusts and special gifts.

### **Emphasis upon the Stewardship Accumulations**

Placing an emphasis upon the Stewardship of accumulations should be seen in relation to the other parts of a Stewardship programme; programme budgeting, every member commitment plan, time and abilities programme, and Christian family financial planning. As an integral part of the Stewardship programme of the local church each year, members will be better prepared to be good stewards of their accumulations.

Establishing a Wills emphasis period during the year necessitates maintaining the long-range view. It is a yearly period of emphasis which raises the concerns and helpful resources. This emphasis is a part of the year-round task of keeping before the congregation the need for making a Will and for updating it in light of changing circumstances and increased commitment to the ministry and mission of the Church. *If the fights and quarrels that often rip families apart, were known to the deceased, many would plan their affairs properly before death.*

## **LEADERSHIP RESPONSIBILITIES**

### **How the Pastor and the Trust Services Leader can help the Trust Services Ministry.**

- i. Have a Christian Will of his own as leader protecting his assets and remembering the work of God.
- ii. Hold before the members the desirability of every member having a Christian Will which meets the need of their families and the greater family of God.
- iii. Preach one or more sermons on Stewardship each year; not technical, but deeply spiritual.
- iv. Place short statements in the Church bulletin from the Bible and Spirit of Prophecy on Stewardship in Estate Planning several times a year. Use one-liners like, "Does your Will include your gift to God?"
- v. Insert a cheerful note on the subject in your Church's newsletter like, Is the Lord's work one of your heirs?"
- vi. When making calls on members, the Minister and Trust Coordinator should care not only for spiritual needs, but for practical needs such as the future security of members' families in a Christian Will. Encourage them to invite a Trust Services representative to outline the benefits and services. (Of course, Trust Services visits are only by invitation.) There should be no pressure, no intrusion into personal affairs.

- vii. Statistically, husbands die earlier than wives. Widows and widowers should have a Christian Will as a plan in place to distribute their assets harmoniously and without family tensions.
- viii. Not all gifts are directed to the Conference for general purposes. Remember that the local church and school are part of God's cause. It is proper for members to remember the work of the local church in Wills or Trusts. It is proper for the Pastor and local Coordinator to publicize these matters in a balanced way. The decision is made by the donor in each case.
- ix. Announce from the pulpit when bequest has been received by the Church. This lets members know that gifts are appreciated and publicly acknowledged. It also reminds them that they may make similar gifts during life which brings deep satisfaction.
- x. In the Church business meetings and Board meetings, make specific suggestions for members to remember the Church or school in a definite way in their Wills. The Pastor should introduce the Trust Representative to the Church Board.
- xi. Remind parents of their responsibility to their children to name a Christian guardian in their Will. A judge-appointed guardian could be disaster for Adventist children.
- xii. Organize a Wills seminar for your church. Contact the Trust representative for literature, films, and Sabbath appointments. You will find them happy to help.
- xiii. Interview the Trust Leader before the church service when he brings a bequest cheque to your church. The Pastor can add strength to the Leader's words and show the Pastor's support for the ministry provided for the members' benefit.
- xiv. Use you bulletin board to post chippings from news-letters referring to bequests left to other churches.
- xv. Some members are motivated to make a Will when they wish to memorialize a beloved relative by providing some church building or facility.

### **LOCAL CHURCH TRUST COMMITTEE**

1. The Pastor shall establish a Trust Committee for each of his congregations.
2. The Committee shall consist of at least three individuals including the Pastor.
3. It is advisable that the other two members should be drawn from any of the following:  
  
First Elder, Church treasurer, Stewardship Director, Church Clerk, Head Deacon, and Head Deaconess.

4. Early in the First Quarter of each year, the Pastor acting as Chairman of the LOCAL Church Trust Committee should meet and establish the current focus/target of the Church as it relates to:
  - a) A Trust Services Day
  - b) Members who will be contacted on an individual basis in so far as:
    - i. making their Will.
    - ii. establishing a Trust Agreement with the Conference.

## **GENERAL APPROACH FOR A LOCAL CHURCH PRESENTATION**

1. The members should be made aware that making a Will is a guarantee that after death their asset is distributed in exactly the same way as they would like it to be distributed.
2. Differentiate between an ordinary and a Christian Will. A Will becomes a “Church Will” When an individual makes it an expression of stewardship, a tangible way of saying “thanks to God”. You can give without loving, but you cannot love without giving.
3. As was mentioned in an earlier section, there are different types of assets which may be accepted as an examination will now be made of how they are likely to be treated.

### **A) REAL ESTATE**

- 1) A member may assign a property to the church giving specific instruction that at death, the property should be sold and proceeds distributed. In this case, they say what percentage should go to the church. They may even say what department of the church.
- 2) The property may be rented to the Conference and the member advise how the monthly rental should be allocated.

### **B) CASH**

The member may give the Conference a sum of money and ask that it be invested, and that a portion of the return on investment be used for the work of church and the other portion be added to the original sum or given to them on demand.

In this case, the member has the option of deciding:

- (a) the type of investment to be used at the financial institution.
- (b) which financial institution to be used.
- (c) how much of the interest is to go to the Organization.
- (d) the particular area of work the funds are to be used in.

- (e) what if any portion of the Capital should be given to the Organization upon death.
- (f) who should receive the Capital at the time of death.

## **ACTUALLY WRITING THE WILL**

Any individual, 18 years and older, of a sound mind, can write his/her own Will. The following information must be included:

1. A statement that it is your last Will and Testament.
2. Your full name, address and the date of the Will.
3. A statement that you revoke all previous Wills made by you.
4. A statement as to the appointment of your Executor(s) /Executrix(ces).
5. A list of all pecuniary/monetary legacies headed "I give and bequeath the following pecuniary/monetary legacy/ies unto..."
6. A clause dealing with the residue of your estate. That is, any property or money remaining after all the gifts and payments of expenses in your Will have been made. This is very important as it will automatically include all assets not mentioned in the Will as well as assets which may be acquired by you between the time of the writing of the Will and your death.
7. Your usual signature.
8. The signature of two witnesses, their occupation and full postal address, neither of whom should be your spouse, children or anyone to whom you have given a gift in the Will. There must be a statement that they were both present at the same time and both saw you making your signature on the Will at the end thereof.

Please note the following:

1. The words and phrases used in a Will should be clear and precise. Where a gift or intention expressed is not clear, your intention may well be misrepresented and may not take effect on your death.
2. A witness or his/her spouse cannot benefit from a gift made under a Will.
3. Marriage automatically revokes a Will. If you get married or re-marry after a Will has been written, a new Will must be written by you.
4. A Will has no effect on property that is owned jointly by the Testator and another person. It will automatically go to the surviving party. Joint tenant(s), despite what you may

desire, if the property is owned as Tenants-in-Common with another person, then you can bequeath it to someone else.

***If a Trust is to be established, it can only be done between the Conference and a member in good and regular standing in a church in the jurisdiction of the Conference.***

**Note** It is best to employ the services of a lawyer.

## **THE TRUST AGREEMENT**

The Trust is a contract binding both trustor(s) and the trustee to the terms of the Trust. It defines the rights, duties and obligations of all parties to the Trust. Trust can be funded or unfunded. An unfunded Trust is one that holds no assets. It is called a “Dry Trust.” In some jurisdictions, a Trust must have assets if it is to be valid. A Trust may be funded with many types of assets including, but not limited to, the following:

1. Cash
2. Securities
3. Real Estate
4. Notes Receivables
5. Accounts Receivables
6. Bank and Savings Accounts

The Trust Committee examines each asset before it is accepted to ensure that the asset is acceptable to ensure that the asset can be held by the Trustee in the Trustee’s own name, without disclosing the trust relationship or “as trustee under trust. No ..... date.....”

The Trust document clearly indicates that all income and benefits are to be retained for or passed on to the Trustor(s) by the Trustee. The Trust document should allow for the withdrawal of assets from the Trust, by the Trustor(s) only. When a withdrawal is made, a “Withdrawal from Trust” form should be signed by the Trustor(s). The Trust document provides for the Trustor’s right to amend the Trust. This amendment must, however, be acceptable to the Trustee. The Trust document authorises the Trustor(s) to have the power to revoke the Trust. This power is personal to the Trustor(s) and not subject to exercise by any person acting on behalf of the Trustor(s) in any capacity.

The Trust document states specifically what is to occur should the Trustor(s) become incapacitated and unable to give instructions to the Trustee. The document indicates what standard will be used to determine incapacity. Provision is made for Trusts to become irrevocable during the Trustor’s incompetency and not subject to withdrawal.

The Trust document defines the Trustee’s investment powers. By policy, all revocable Trusts are to be Trustor directed. The Trustee must obtain the Trustor’s instructions in writing indicating

what investments are to be made. The Trustee merely carries out the instructions of the Trustor(s). Investment instructions are to be kept in the Trust file. **The Trust should allow for the investment.** The Trust document allows the Trustee to sign, giving the Trustor(s) the right to select a successor Trustee.

The Trust document defines the limit of the Trustee's responsibility, usually limited by the amount of assets in the Trust. It should also give the Trustee the right to reimbursement for any fund advanced to the Trust by the Trustee.

The Trust document should define the limitations which apply to the beneficiary(ies) in anticipating his/her share of the assets indicating that the beneficiary(ies) has no rights until the death of the Trustor(s). The Trust document clearly explains who the beneficiary(ies) is, how much or what percentage he/she is to receive and under what conditions, if any, he/she is to take his/her benefits.

### **Record Keeping**

The Trustee has a duty to keep accurate records of all duties and transactions performed on behalf of the Trustor(s). These records are available to the Trustor(s) while living and to the beneficiary(ies) thereafter. Records indicate the cost basis of all assets subject to appreciation.

### **Duty to Protect**

The Trustee has a duty to protect all assets held in Trust. This includes the duty to ensure that the property is adequately insured against fire, theft and liability with the trustee named as an additional insured. The Trustee has a responsibility to pay taxes due on assets held in the Trust in order to avoid a tax sale, unless the Trust document relieves the Trustee of this responsibility. Such matters as stock subscription right, etcetera, must be carefully reviewed with the Trustor(s) for instructions.

### **Commingling**

Assets of the Trust are commingled with assets of the Trustee or assets of other Trusts, but must be segregated and identified as belonging to a specific Trust.

### **Benefits of a Revocable Trust**

- i. Generally, assets properly held in a Trust do not become part of the probate assets of the descendant. This may result in some cost savings as well as a speedier disposition of the Trust assets. For example, a car or cash formerly transferred to the Trustee by a Trustor will be passed over to the beneficiary on the death of the Trustor without any legal involvement.
- ii. The Trust will not normally need to be made a part of any public record, and it is, therefore, more likely that it will remain a confidential document.

- iii. The Trust can provide that the Trustor(s) will retain virtually all management responsibilities (a Trustor directed Trust); however, in the event of the disability or incompetency of the Trustor(s), the Trustee would use the Trust assets for the benefit of the Trustor(s). This provision will normally avoid the necessity of the appointment of a guardian.

***Any individual, 18 years and older, who owns any assets, should make a Will.***

***Estate planning is the business of making the necessary preparations for disposing of one's assets and liabilities after death.***

**Rights** – fair claim

**Testate** – died leaving a Will

**Beneficiary** – A person who is entitled to the income or enjoyment of property; the title which is held by another Trustee.

- The person to whom Life Insurance Policy is payable
- A person who receives a gift under a Will.

**Minor** - A person under the legal age of 18 years old.

**Joint Tenancy** – ownership of an asset by two or more persons, each of whom has an undivided interest with the right of survivorship. Upon the death of one of the owners, the ownership rights fall to the survivor.

**Tenancy-in-Common** - ownership of realty by two or more persons, each of whom has an undivided interest with the right of survivorship. Upon the death of one owner, the ownership share of the descendant is inherited by the party or parties surviving; descendants who are entitled thereof according to law.

**Letters of Administration** – A legal document granted by the Probate and Administration Division of the Court to a person to settle the estate of the deceased person who died without leaving a Will.

**Partial Intestacy** – This occurs where a person dies having made a Will, but the Will disposes of only a part of his property. In this case, the property disposed of by the Will is distributed in accordance with the terms of the Will. The remainder of the property will devolve according to the rules of intestacy.

**The Nature of Wills.**

A Will is a document in writing by which the Testator or Testatrix, the person making it, provides for the distribution for administration of property after his death. This document may revoke previous Wills and appoint executors, trustees and guardians.

A Will must be executed with certain formalities prescribed by law. A Will is a testamentary document which speaks from death. A Will is revocable during the lifetime of the testator. A Will is described as being ambulatory. This means that it has no effect until the testator dies. It cannot confer benefits whilst the testator is alive, hence, the expression “a Will speaks from death.” *Will Act s.19*

### **The Making of Wills. Form, Wills Act, s.6**

A Will must be in writing. This does not apply to a privileged Will. Section 3 of the Jamaican Interpretation Act states that “writing” includes printing, lithography, typewriting, photography and other modes of representing and reproducing words or figures in visible form.

### **Writing**

The authorities allow great latitude. Any permanent visible form or combination of permanent visible forms will suffice. There are no restrictions as to the language in which it may be written or the material on which it may be written.

### **Capacity**

**Will Act s.5** – No Will made by any person under the age of 18 years shall be valid.

### **Mental Requirement**

To make a valid Will, a Testator must have testamentary capacity, that is:

- the mental capacity to make a Will;
- must know and approve of the contents of the Will.
- must not have made it at the result of undue influence or fraud of another person.

The Testator must have attained the age of 18 years and complied with the statutory formalities for making a Will, except in the case of privileged Wills. He/she must have a “sound mind, memory and understanding.” **Banks vs Goodfellow (1870) L.R.5**

A Testator’s Will is not invalid merely because he disinherits his children or gives his property to strangers or he is motivated by spite or malice.

### **Burden of Proof of Testamentary Capacity**

It is for the person propounding a Will to satisfy the Court that the Will is valid and that the requisite mental capacity was present when the Will was made. If the Will is rational on its face, the person attacking it will have to prove lack of mental capacity.



**Note** – A Will may be made during a lucid interval. The capacity to make a Will may also be affected by drugs, drink, illiteracy, blindness and old age and infirmity.

### **Knowledge & Approval**

The Testator must know and approve of the contents of the Will. He needs not know its legal effect. It is for the person propounding the Will to prove that the testator knew and approved of its contents at the time of its execution.

When the Testator is blind or illiterate, there is a burden of proof on the person propounding the Will to show that the Testator understood its contents. This may be done by showing that the Will was read over to the Testator prior to execution and that he appeared to understand and approve its contents.

### **Undue Influence and Fraud**

If a Will is made by the Testator as a result of the influence or fraud of another person it is not valid. In Probate Law, undue influence means coercion – it may vary from actual violence to putting pressure on a weak and feeble Testator. Fraud or undue influence may affect the whole or part of a Will.

Fraud involves misleading a Testator whereas undue influence involves coercing hi. The proof of undue influence or fraud lies upon the person alleging it.

### **Devises**

A devise is a gift by Will of realty. A gift by Will or personality is called a bequest or legacy. The use of the word “devise” or “bequeath” is not necessary to pass real or personal estate respectively as any words which indicate a clear intention to pass the specified interest will suffice. The word “gift” is frequently used to cover both a devise and a bequest.

### **Types of Devises**

**Specific Devise** – example, a gift of my two-acre lot of land at Byndloss. This is a specific part of the Testator’s real property which is severed or distinguished from the general mass of his estate.

**General Devise** - example, I given all my freehold land to my son, Patrick. This is a general gift or realty.

**Residuary Devise** - example, All my freehold land not otherwise disposed of by this Will, I give my son, Patrick.

**Legacy** – Legacies or bequests are gifts of personal property by Will. The donor is called legatee.

**Specific Legacy** - example, I give Patrick the sum of \$1,000. This is one payable or provided for only out of the general assets of the Testator's estate.

**Demonstrative Legacy** - example, A gift of \$600.00 out of my savings account with N.C.B. This is a gift of general or non-specific nature directed to be paid primarily out of a specific fund.

**Pecuniary Legacy** - example, The gift of the sum of \$500.00 to Patrick. This is a gift money. It may be general, specific or demonstrative.

**Residuary Legacy** – This is a gift by the Testator of the residue of his personal estate, that is, personal estate which remains after payment of all debts, liabilities, expenses and other legacies.

Annuities – An annuity is a legacy of money payable by instalments or a series of legacies payable at intervals.

### **Failure of Gifts**

The following are situations in which a gift may **not** take effect:

#### **Forfeiture**

There is a rule based on public policy that a person who is guilty of the murder or manslaughter of the Testator or intestate will not be permitted to benefit under the Will or intestacy – unless the person is insane.

#### **Gift to Attesting Witness**

Wills Act, s10 - The Wills Act provides that an attested witness and his spouse (any person claiming under the witness or spouse) are deprived of any benefit under the Will attested by the witness.

#### **Ademption**

Where an asset given by the Testator in his Will ceases to exist as part of the Testator's property at his death or to conform to the description given to it in the Will, it is said to be deemed. A gift which is deemed fails.

#### **Abatement**

Abatement of legacies is the receipt by the legatees of one or part only of their legacies owing to insufficiency of assets.

#### **Lapse**

General rule – if a beneficiary under a Will dies before the Testator, the gift will be no effect – it will lapse. If a legacy other than a gift of residue lapses, it devolves as on intestacy.

NB. Where the gift is to two or more, persons as joint tenants, no lapse occurs unless all the beneficiaries predecease the Testator. The rule applies, however, to tenants-in-common. Thus, if there is a gift to “A”, “B” and “C” equally and “A” predeceases the Testator, a third will lapse.

### **Uncertainty**

Both the subject matter and the object of the gift must be stated with sufficient certainty to enable the Court to enforce it, or the gift will fall for uncertainty. Although the Court strive to save gifts which appear to be vague, a gift will fall if the Court is unable to identify the subject or object of the gift.

### **Renunciation**

An executor may renounce probate before he has proved the Will or done any executorial act. The executor may be allowed to renounce after he has done executorial acts if he can give a satisfactory explanation for having done the acts, for example, the doing of mere acts of humanity like arranging for the burial of the corpse or feeding the Testator’s animals.

### **Executor de son Tort**

An “executor de son Tort” is a person who, not being the executor or administrator of the estate, acts as if he had been appointed executor, that is, by receiving payment of debts due by the deceased, carrying on his business or selling his property as if he were an executor which makes him liable as “executor de son Tort.” If he does so out of humanity or necessity, this does not make him an “executor de son Tort.” An “executor de son Tort” may be liable to creditors and beneficiaries.

### **Transmission of Office**

Generally, the office of a sole or last surviving proving executor passes to his executor who proves his Will. This is called the chain of representation. The chain is broken by an intestacy, the failure of an executor to himself appoint an executor or the failure of an executor to obtain Probate of a Will.

### **Renunciation of an Executor**

It is general principle that an executor, like a trustee, is not entitled to any remuneration for the work he does and is accountable for any profit. This is to prevent a conflict of interest and duty from arising. There are three exceptions to this general rule:

- i. where there is expressed authority for remuneration in the will;
- ii. where it is allowed by the Court;
- iii. where it is allowed by the statute.

### **Statutes**

See the following:

Administrator General  
Jamaica S.48 Trustees  
Attorneys and Executors  
(Accounts & General) Act, s.11

### **Residuary Clause**

A residuary clause should be included in a Will to “catch” the property which the Testator may have acquired after the date of the Will or which he forgot that he had at the date of the Will. Property not mentioned in the Will are automatically included though not listed in the Will.

### **Signature**

See Wills Act, s.6

The Will must be signed by the Testator or someone in his presence or by his direction. Instead of signing his name, the Testator may sign the Will by making some mark intended by him to be his signature; it may be by a stamp bearing his signature by his initials, by an “X”, and even by an ink-smudged thumb as in “Re Finn (1935)” 105.LJP 36.

### **Position of his Signature**

The Wills Act requires the Testator’s signature to be affixed “at the foot or end” of the Will. The cases have interpreted this requirement literally. The Will is deemed to be valid if the signature is placed at, after, under, beside or opposite to the end of the Will that it shall be apparent on the face of the Will that the Testator intended to give effect by his signature to the writing signed as his Will.

The validity of the Will is not affected where the signature does not immediately follow the end of the Will or where a blank space intervenes between the disposing part of the Will and the signature, or where the signature is on a page containing no clause, paragraph or disposing of the Will where there is sufficient space in the preceding page for a signature.

No signature is operative to give effect to any disposition which is underneath it or which follows it, or to any disposition or direction inserted after the signature. Words physically beneath or following the signature may, however, be construed to be above it either because of the manner of writing, the use of asterisks or the signs of interpolation.

Where several sheets comprise a Will, it is not necessary to sign all the sheets but at the time of execution, all sheets must be attached in some way though not necessarily mechanically, for example, by being pressed together on a table by the Testator or held together by the Testator’s thumb and finger.

**NB.** The Will should be dated.

### **Acknowledgement of Signature**

The statute requires that the Testator's signature be made or acknowledged by the Testator in the presence of two or more witnesses present at the same time and that such witness shall describe the Will in the presence of the Testator. Acknowledgement involves the doing of any act or speaking of any word by the Testator which indicates that the signature is his. The Testator needs not inform the witnesses of the nature of the document or its content since it is the signature, not the Will, which must be acknowledged.

### **Presence**

It is not necessary that the testator actually see the witnesses sign, nor need they see him sign. It is good enough if the person in whose presence the signature is made could have been seen the signing if he wished to do so. It is not sufficient if a witness leaves before the Testator completes his signature.

### **Gift of Witness**

A gift in a Will of a beneficial interest to a witness or to a witness's spouse is void. The witness is, however, a good witness – so the Will is not invalid for this reason. (*See section 10, Jamaica Wills Act.*) A gift to a witness merely as a trustee is good.

### **Attestation Clause**

An attestation clause is desirable although not essential. The statute states that no form of attestation is necessary. The presence of an attestation clause raises a stronger presumption that the Will was duly executed than if the Will contained no such clause. This is useful where the witnesses are dead or where a witness' memory is lacking.

### **Superfluous Attestation**

Where more than two persons sign the presumption, they do so as witnesses so the gifts to them are void but if after the execution is complete another person adds his name, the Court will not, without cogent evidence, conclude that he signed as a witness. The presumption that any person, except the Testator, whose signature appears at the end of a Will, signed as an attesting witness, can be rebutted.

### **Alterations, Interlineations and Obliterations**

Wills Act, s.16

The law distinguishes between alterations, interlineations and obliterations made before execution of a Will and those made after execution.

#### **Alterations made Before Execution of a Will.**

Where alterations, etcetera are made before the execution of the Will, then it is valid and the Will takes effect.

### **Revocation by Marriage**

Wills Act, s.13

This is an example of revocation by operation of law. A Will made by a man or woman is revoked by his or her marriage. The marriage must be a valid marriage.

### **Republication**

This is a process whereby a Will is confirmed and made to effect as if it had been executed, not at the date when it was originally executed but at the subsequent date. That is, the date of republication. It requires the same formalities which are required for making a Will.

### **Revival**

A Will for codicil which has been revoked may be revived by a Testator. Section 17, Jamaica Will Act, Jamaica. Three elements are required to effect revival:

- i. Existence of the document to be revived; the revoked Will or codicil must be physically in existence. If it has been destroyed, it cannot be revived.
- ii. Formal act of revival.
- iii. Intention to revive.

### **Intestacy**

Where a person died intestate, that is, without leaving a Will, a Grant of Letter of Administration must be obtained from the Local Court before most of the deceased's assets can be dealt with. A report has to be made to the Administrator General's office and its consent must be obtained before the relevant papers can be filed at the Local Court to obtain the Grant of Letters of Administration.

At present, where the beneficiaries are in agreement, it takes a least three to four months to obtain the Letter of Consent from the Administrator General's office and another three to six months thereafter to obtain the Grant of Letters of Administration from the Local Court.

If all the beneficiaries are not willing to consent to the application for a Grant of Letters of Administration, then the matter will fall into the hands of the Administrator General who then is under a duty by Law to administer the Estate.

In a case where the Intestate dies leaving minors, the delay is even more substantial. In this case, the Administrator General is under a duty to administer the Estate. This is a procedure that can take at least two to six years based on the conditions at the Administrator General's Department. The Administrator General, however, can make an application to the Supreme Court for an Order that a trust Company be appointed Administrator of the estate.

It was reported in an article in the Daily Gleaner in the 1990s, that the Acting Administrator General, Mr. Andrew Gyles, reported that his office was short-staffed and was handling over 16,000 Estates valued at \$5.6 billion in Investment assets which comprised an estimated \$5.5 billion in Real Estate, \$60 million in liquid assets (cash) and \$45 million in Investment assets.

According to reports, Mr. Gyles 1993 further reported that his department was attempting to carry out its duties with an average of one staff member to every 180 Estates, adding that Administrators themselves each dealt with 800 Estates, while private sector Trust Companies dealt with an average of 50 Estates per company.

### **BENEFICIARIES ON INTESTACY**

Where a person dies Intestate, the beneficiaries of the Estate and their entitlement are as follows:

1. The spouse is entitled to:
  - a) The sum of \$10,000 or a sum equal to ten percent of the net value of the Estate (excluding personal chattels) whichever is greater and ten percent interest on this amount until the same is paid; and
  - b) All Personal Chattels absolutely.
2. If the Intestate dies leaving one child, then the spouse will get two-thirds of the residue of the Estate and the child will get one-third of the residue of the Estate and the child will get one-third of the residue of the Estate.
3. If there is more than one child, then the spouse gets one-half of the residue of the Estate to be shared equally between them.
4. If there is a spouse and no children, the spouse gets two-thirds of the residue of the Estate and the surviving parents get one-third of the residue of the Estate.

It is important to note that the word “spouse” in the Intestates’ Estates and Property Charges Act is defined to include a single man or woman who has lived with and cohabited with a single woman or man as husband or wife, for a period of not less than five years immediately preceding the date of his/her death either of them being a party to any subsisting marriage. Single man or woman includes a widower, widow or divorcee and there can be one spouse for the purpose of the Act.

Of course, all Jamaicans having been over exposed to the Suits and Countersuits involved in the Bob Marley Estate must appreciate the necessity of making a Will. Perhaps it bears mentioning that the Estate wasn’t settled until ten years after Marley’s death, after a long court battle as many persons came forward claiming to be his children. The Estate was settled among his wife, Rita, and his 11 legal children in 1991.

### **PROPERTY OWNERSHIP**

Property which is owned jointly does not form a part of the deceased’s Estate for the purpose of Administration. A distinction must be made here in the case of real Estate which may be owned by one or more persons either as Joint Tenants or as Tenants-in-Common. Where the property is owned as Joint Tenants, on the death of one owner, the property automatically passes to the

survivor. In the case of Tenants-in-Common, each person owns a distinct one-half share in the property, which can be disposed of in a Will. On the death of one of the Tenants-in-Common, his one-half share will form a part of his Estate to be distributed in accordance with the terms of his will, or the Laws of Intestacy as the case may be.

Where a person who owns real property as Joint Tenants with another does, an application to note the fact of the death on the Title to the property will have to be made. Transfer Tax of seven and one-half percent (7.5%) on one-half of the net market value of the property is due and must be paid before the Application to Note the Death can be filed at the Office of Titles. As mentioned before, the only exception to this is if the property is used as the principal place of residence of the deceased and his spouse up until the time of this death, then no Transfer Tax will be payable on his one-half share of the property.

At present, the Stamp Office requires a spouse to have survived the deceased before the exception can apply. Therefore, the matrimonial home will not be exempted from tax when a widow dies leaving the matrimonial home to her children.

## **SHARES**

Strictly speaking where shares are owned jointly, Transfer Tax is due and payable on one-half of the net value of the shares on the death of one of the joint owners. At present, both public and private companies do not require proof of payment of the tax and are willing to remove the deceased share owner's name from the old certificate and issue a new share certificate to the surviving owner.

## **BANK ACCOUNTS**

The proceeds of bank accounts which are joint pass automatically to the survivor on the death of one of the joint owners, this is so by operation of law and therefore the provisions in a Will are not relevant and the bank does not require a Grant of Representation to deal with the proceeds of the accounts.

## **THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1993**

The ability for an individual to dispose of his assets on his death as he or she wishes has been restricted by The Inheritance (Provision for Family and Dependents) Act 1993 which was recently laid before and passed by the Senate of Jamaica and the Jamaica House of Representatives on the 23<sup>rd</sup> of April and the 11<sup>th</sup> of May 1993 respectively and came into effect on May 20, 1993. The Act is not retroactive in effect and its provisions relate only to the Estates of persons dying after May 20, 1993. The following is a summary of the Act:-

### **1. OBJECTIVES OF THE ACT**

The Act was enacted to allow certain eligible dependents the right to apply to the Court for reasonable financial provision for maintenance on the basis that the disposition of the deceased's



Estate effected by his Will of the laws relating to Intestacy do not adequately provide for maintenance. Any application for an Order under Section 6 of the Act, however, should be made within six months after the date that a Grant of Probate/Letter of Administration has been obtained, unless specifically extended by the Court.

## **2. PERSONS WHO HAVE THE RIGHT TO APPLY FOR AN ORDER**

The following persons are entitled to make Application to the Court:-

- (A) A husband or wife of the deceased which includes common-law husband or wife of the deceased;
- (B) A child of the deceased under the age of 18 years old, which includes:-
  - i) Any adopted child by the deceased in accordance with Jamaican law or the law of any foreign country which is recognized by Jamaica;
  - ii) A child en ventre sa mere (an unborn child) at the deceased death;
  - iii) A child of the deceased's husband or wife who had been accepted as one of the family by the deceased; and,
  - iv) A child under the age of 23, who is pursuing academic studies or receiving trade or professional instructions.

It is important to note, however, that in special circumstances (including physical and mental disability) the Court may disregard the age limit.

- (C) A parent who is in loco parentis to the deceased immediately before his death, who is being maintained or is legally entitled to be maintained by the deceased; and,
- (D) A former wife or husband of the deceased who has not remarried and who was being maintained by the deceased. It is important to note that any Order made by the Court under Section Six of the Act to a former wife or husband terminates on the remarriage of the former wife or husband.

## **3. FACTORS TO BE CONSIDERED BY THE COURT**

Some of the factors which the Court is bound to take into account in cases where an application is made under Section Six of the Act, in exercising its powers are:-

- (A) the size and nature of the net Estate;
- (B) the financial resources and needs, actual or potential, of the Application, any other Application and any beneficiary of the deceased;

- (C) the obligations and responsibilities which the deceased had towards any Applicant or any beneficiary of his Estate;
- (D) the conduct and relationship of the Applicant towards the deceased;
- (E) the physical or mental disability of any Applicant;
- (F) the deceased's reasons (if they are ascertainable) for making or not making adequate provision for any person by his Will; and,
- (G) Any other factors which the Court may consider relevant.

#### 4. ORDERS

Under the Act, certain family members and dependants may apply to the Court for any one or more of the following:-

- (A) The periodic payments or lump sum payment to the applicant from the net Estate of the deceased for such term as may be specified in the Order. The words "Net Estate" under the Act refers to all the assets which the deceased was competent to dispose of on his death in Jamaica (and overseas where the deceased was domiciled in Jamaica) less the amount of his funeral, testamentary and administration expenses, debts and liabilities including any transfer or other tax payable on his death;
- (B) The transfer of property from the net Estate to the applicant; and,
- (C) The establishment of a Trust for the benefit of two or more persons from the net Estate.

#### 5. DISPOSITIONS INTENDED TO DEFEAT THE PROVISIONS OF THE ACT

THE Act also empowers the Court in situations where there is sufficient evidence to satisfy the Court that the deceased took steps to dispose of his assets prior to his death with the intention of defeating an application for reasonable financial provision under the Act. The standard of proof here is based on the balance of probabilities and the Court must consider all the circumstances in which and disposition was made including any valuable consideration which as given and the relationship between the deceased and the donee.

In the decision of *Moody versus Stephenson* (1991) Independent, 17<sup>th</sup> September, the Claimant was a widower and his wife had made no provision for him in her Will and had declared this was because he had adequate resources of his own. He was living in a house owned by the deceased worth £45,000.00 and his own resources were limited to about £6,000.00 of savings.

Lord Justice Mustill determined that an objective stand was to be adopted, rather than a subjective judgement from the point of view of the deceased. He held that in deciding a claim made by a spouse under the 1975 UK Act, the Court should have regard to the provision which might have been made for the Applicant had the marriage ended by divorce rather than by death. He held that the Court should address itself to three questions.

Firstly, what provision could a Family Court judge have ordered had the marriage ended in divorce? Secondly, what would be the effect of any other of the factors mentioned in Section three of the 1975 UK Act (which is the equivalent of Section seven (1) of the Jamaica Act)? Thirdly, in the light of the answers to these two questions, the question of reasonableness of the provision made by the Will or Intestacy could be addressed.

Under Section three of the Act, the factors that can be taken into account include inter alia sources and needs, actual or potential, of the Applicant and any other Applicants, and any other matter including the conduct of the parties as the Court may consider relevant.

His Lordship held that the provision was not reasonable; had there been a divorce, the court would have given the husband a right of occupation of the property and would also have ordered part of the husband's £6,000.00 to be transferred to the wife.

The Order was that the property should be settled on terms that would enable the Applicant to go on living there as sole occupant, for so long as he was able to do so, but subject to his putting his stepdaughter in funds to compensate for deterioration of the property during the period of his occupancy. It will be interesting to see how the Courts in Jamaica will interpret the Sections of the Inheritance (Provision for Family and Dependence) Act.

## **CONFERENCE OFFICE PROCEDURES**

Regardless of the size of the operation or the number of personnel involved, the requirements for operating an office are similar. The responsibility of administration, from the initial contact to the satisfaction of the member is carefully managed. The following procedures will give a general field for what happens at the Conference level.

For the purpose of this document, we shall refer to the Trust Director in the Local Church as the "Field Representative." It is to be clearly noted that under no circumstance should the Field Representative collect any original title to property, or cash from any member of the church. If a photocopy of the original is available, then same may be taken provided a receipt for same is left with the member.

### **1. THE REQUEST**

In most cases, the names of individuals interested in Trust Services are received after a church promotion, by letter or telephone. It is essential that a record of this request for information or interview be retained in the Trust file as evidence that there was no undue influence.

Acknowledgement of all requests is done by sending the inquirer a letter with a copy to the designated Field Representative. Provision is made for prompt follow-up. If the request is received by telephone, a confirmation letter is sent so that something in writing is on file.

## 2. GENERAL GUIDELINES FOR FIELD REPRESENTATIVES

- i. The activities of the Field Representative must be carefully coordinated by the Trust Director of the Conference.
- ii. The Field Representative should confine his activity only to his pastoral district.
- iii. There should be a response to all inquiries with prompt follow-up (within 48 hours, if possible).
- iv. The Field Representative should make an appointment with the interested individual for a confidential discussion of all the services and benefits of Trust Services.
  - a. Determine firstly, what Trust Services can offer the member to help solve his/her Estate Planning needs.
  - b. Once the member indicates an interest in having Trust Services' help, contact should be made with the Trust Services Director of the Conference.

## 3. FOLLOW-UP VISIT – DETAILED INFORMATION AND ASSETS

After the Trust has been accepted by the Trust Committee and, (if necessary), voted by the Conference Committee, a follow-up visit should be scheduled to gather any further information needed to:

- i. complete the Estate Worksheet.
- ii. complete the appropriate Asset Inventory Forms.

## 4. PREPARATION OF FILE RECORDS AT THE CONFERENCE LEVEL

A file system adequate to contain the main important papers and documents such as Trust Agreements, Wills, and general correspondence is the most important requirement for the Conference.

Mismanagement or negligence is greatly avoided by having a successful and proper record of all members' information. A Will file is established similar to that used for a Trust.