

## WORDSCAPE: WILLING WORDS

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Most of the legal language encountered in wills is not obsolete, but it isn't necessarily part of our daily vocabulary.

We should begin our discussion with words that rarely appear in wills themselves, although they may be encountered in subsequent documents processing the will. The person writing the will is the *testator* (male) or *testatrix* (female), and we say that he or she died *testate*. We also might refer to that person as the *maker* of the will.

### ORGANIZATION AND STRUCTURE

The preambles in wills are largely boilerplate, but may have individual and interesting elements. Although the existence of some regional differences in wording have been suggested, local custom seems to be the predominant factor determining the wording. Thus, some preambles contain wording such as "In the name of God, Amen," or "I recommend my soul into the hand of almighty god," but others do not.

Unlike deeds, in which the date often occurs at the very end of the document, wills almost always have the date at the beginning, followed immediately by the name of the testator or testatrix, which is frequently modified by occupation (for men), marital status (for women), and/or place of residence. Next may come statements explaining why the will is being made: "not knowing the day of my death, being stricken in age, desiring to put my house in order, knowing I must shortly put off [f] this frail Tabernacle" or the more common "uncertainty of this mortal life." Occasionally we learn that the testator is about to undertake a journey, often back to Europe or to march off to war.

The preamble contains statements as to the maker's physical and mental health. The most common wording is "being sick and weak in body but of perfect mind and memory thanks be to God." Needless to say, the maker's mental health was always excellent, no matter how good or bad his or her physical health was, because if he or she were not *of sound mind*, the terms of the will could be challenged.

The preamble concludes with the standard phrase, "do make and ordain this my last Will and Testament in manner and form following." The phrase *Will and Testament* simply refers to a written expression (testament) of the desire (will) of the maker.

Those desires were usually clearly structured. The words creating the structure (*Videlicet*, *Imprimis*, *Item*) often were written in abbreviated form such as *Viz*, *Imp*, or *It*. They can be difficult to recognize in handwritten form because they begin with letters we rarely find as capitals. *Viz* means "to-wit" or "specifically" and is usually followed by enumerating details such as the names of all the children. *Imprimis* means first. Each bequest is usually an *Item*.

Technically *devise* means to give *realty* (real property, land), but in older wills you will find it used synonymously with *bequeath*, which today is reserved for *bequests of personalty* (personal property). *Devisee* refers to the person receiving the property. You may also see recipients referred to as *legatees* (usually referring to personal property) or *beneficiaries*, especially after the testator has died.

Near the end of a will you often find the phrase *all the rest, residue, and remainder*. This covers anything not included in specific items. The person(s) then named are called *residual* or *residuary heirs* or *beneficiaries*. I have noted that when many children are named, they are often named in birth order (youngest to oldest or oldest to youngest, often with boys and girls separate).

### WIVES AND WIDOWS

Remarriage following the death of a spouse was common in most parts of early America. If a testator says that his wife may keep *that which she brought with her*, it most commonly means that she has been married before. Less often it indicates an inheritance from her father, prior to the time of her marriage. (Any inheritance during her marriage would have gone to her husband.) Technically, it could include clothing and household items, but these were usually long since worn out and not worth mentioning in a will. (Her dowry went to her husband and was not hers; we'll discuss that another time.)

A man might want to ensure that his property or the *benefit* of his property (referring to the use of property or income from the property, both real and personal) did not fall into the hands of a subsequent husband of his wife, and would therefore limit such use to during *the term of her widowhood*, which would end if she remarried.

### CHILDREN

We should begin this section by discussing another word that does not appear in wills: *primogeniture*. This was the principle of English common law under which the eldest son inherited real property (land). Technically, it means that he had the right to the property (i.e., it couldn't be willed by the father to other persons). The degree to which it applied in the colonial period (it was abolished after the American Revolution) varied by colony and over time. Virginia, for example, had a law stating that an eldest son could challenge a will in which his father had devised real property. We use the term more generally, to refer to property that passes silently to the first son without being mentioned in the will.

You might see married daughters described as *intermarried with*, rather than *wife of*, as in "my daughter Margaret intermarried with William Jones." The terminology had no special meaning in wills.

#### DON'T READ TOO MUCH INTO IT

When a testator or testatrix says that he or she is *hereby revoking all former wills made by me*, this does not mean he or she has made any previous wills. Nor when it refers to the *last* will, does it preclude the possibility of making future wills.

#### OTHER PARTIES

The testator was supposed to *ordain, constitute, and appoint* one or more persons, as *executor* or *executrix*. In general, there was not a specific age that an executor had to be, but since other roles, such as the ability to sell land, were determined by age, at least one executor should have been an adult. An underage child may have been named, in anticipation that those duties would be assumed later. Likewise, one or more *overseers* or *trustees* might be

appointed to help, especially if there is an executrix or minor children.

Above the names of the *witnesses*, you may see the word *Teste*, which means *attest* or witness. You may find a statement that witnesses or the testator *affirmed*. Quakers did not swear oaths, so this suggests the individuals may have been Quakers. You should certainly investigate this. Occasionally, in an area where the recorders and residents were primarily Quaker, this wording may have been simply from force of habit.

#### SIGNING

When a will is signed, it is said to have been *executed*. (Why the word "signed" is insufficient is beyond me, but I'm sure there must be a valid legal reason for it.)