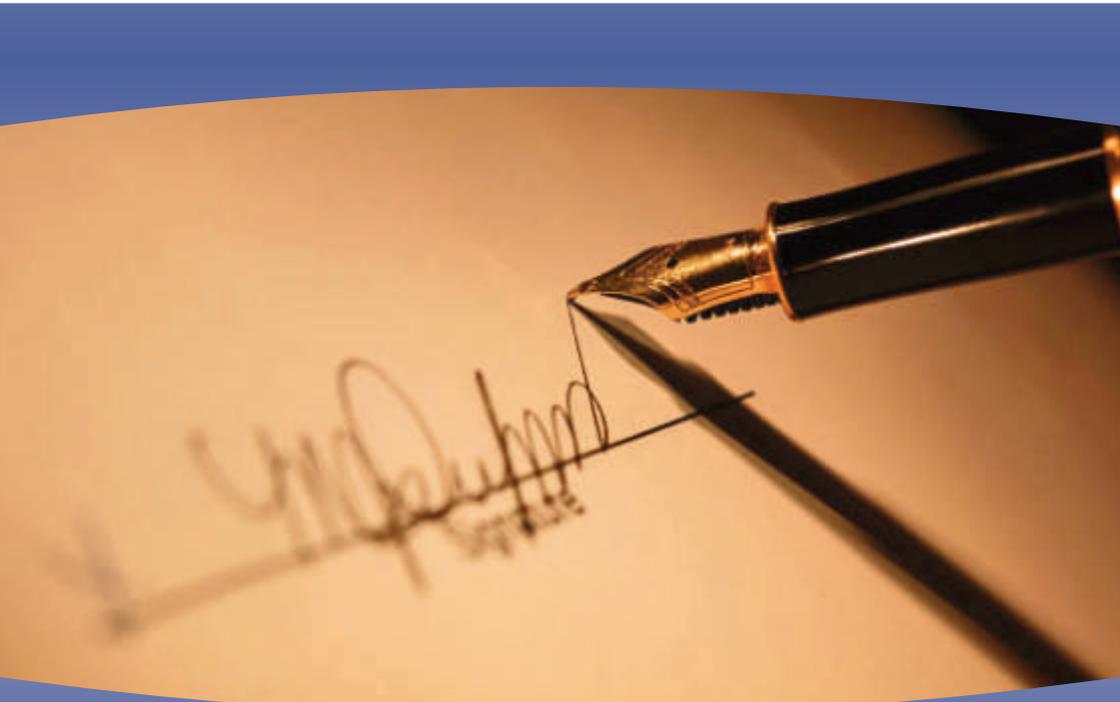




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What you need to know about a last will and testament



This brochure provides basic guidelines regarding Wills and the administration of deceased estates. It does not substitute any applicable laws and should not be used as a legal reference.

Why should I have a Will?

So that you can decide who your beneficiaries and the executor of your estate should be after you have passed away. It will also place you in a position to appoint a guardian of your choice to take care of your children.

Why do many people still die without a valid Will?

Some of the most commonly found reasons, though not valid at all times, are:

- **Inviting trouble** - many feel that if they think about writing a Will, they would actually cause their death or misfortune.
- **Good understanding among children** – others feel that their children are responsible enough to share the property and liabilities among themselves; therefore a Will is not important.
- **Property is not valuable enough** – some people feel that unless you have property worth millions, a Will is not needed.
- **There is enough time for drawing up a Will** – many people feel that they are too young to think about death. They feel that only people who are on their death beds should consider drawing up a Will.
- **Creates rift in the family** – drawing up a Will could cause conflict among family members.

What happens to your assets if you die without a Will?

If you die without a Will, your estate will be distributed in terms of the law of intestate succession. This may include beneficiaries whom you may not have wished to benefit or may exclude persons whom you would have preferred to benefit.

The Master of the High Court will appoint a tutor or curator to take care of or administer the property of your minor children and their inheritance will go to the Guardians Fund. A guardian, whom may be different to the person you would have not preferred to care for your children, may be appointed by the court for that purpose.

Finally, when a person dies intestate, the Master appoints an executor of the estate.

What are the duties of an executor of a Will?

The main tasks of the executor or executrix are to:

- Identify and list all the assets of the deceased;
- Receive payments that are due to the estate such as interest, dividends, investments and other income (e.g. unpaid salary, leave pay and other company benefits);
- Give notice to creditors to prove their claims;
- Pay funeral bills, outstanding debts, and valid claims against the estate;
- File and pay income and estate taxes;
- Identify who is going to get what and how much and distribute it as per the instructions set out in the Will; and
- Realise assets which require to be realised.

Who can draw up my Will for me?

It is important to have a person with the necessary knowledge and expertise to draw up your Will. A law firm, your bank, or a trust company can help you in drawing up a Will.

Once the Will is fully completed, you sign and date it in the presence of two witnesses in order for it to be valid. Both witnesses must be of the age of 14 or above and be competent to give evidence in a court of law. A person must be of sound mind as a test of his/her ability to give evidence in court. A beneficiary in a Will must not be involved in the drawing up or attesting to a Will as witnesses. A person who attests and signs a Will as a witness or is involved in the drafting of a Will is disqualified from benefitting under the Will.

Which documents do you need when drawing up a Will?

You need the following documents to draw up a Will:

- The name and identification details of the executor of your estate.
- The name and ID number of your spouse and how you are married (in community of property, out of community of property, etc.).
- Copy of a marriage certificate. Did you divorce recently? If so, a copy of the decree of divorce and settlement agreement will be required.
- The full names and ID numbers of all your children including adopted and stepchildren, you wish to benefit from your Will.
- The names and ID numbers of any grandchildren you would like included.
- The name and contact details of a guardian in case you have minor children.

- Details of the assets you wish to be donated to institutions such as a church, hospice, orphanage, *etc.*
- Details of any other party or institution you wish to benefit.
- Copies of title deeds in respect of immovable properties in South Africa or mortgage bonds thereof.
- Copies of insurance policies, such as endowment policies, life policies, credit life policies *etc.*
- An inventory of liabilities.

The above items will form part of your checklist which can assist you when drawing up your Will.

Are there any conditions that could be set in a Will?

In many instances, Wills are used to direct when and how the bequests should pass to the beneficiaries. You can arrange that your children be given control of their assets at stages of their lives. For example, the first one-third of their inheritance becomes available at the age of 21 with the remainder at the age of 25 years or, if there is a good reason, even later. Usually, these goals are achieved by setting up a trust in your Will. If you do, you will also need to provide the full particulars of a trustee and the terms of the trust. A Testator may include any and as many conditions in his will for so long as such conditions are not illegal or contrary to the good morals of society.

Frequently asked questions

What is the purpose of a trust?

The purpose of a trust is to protect the interests of your dependants at a stage where they are unable to do so themselves. A lawyer, a bank or a registered financial advisor can assist you to set up a trust. A trust can own property, receive donations and inherit money from your estate when you die. What makes a trust so secure is the fact that its decisions are taken by the trustees you appoint when you create it. The beneficiaries can only claim their benefit at the age or time provided in the Will.

Why can't I just use a book, or one of those computerised "will kits" I have seen in the bookstores and do my own will?

It is not a wise idea to do your own Will. Professionals should draft Wills. The Will must be clear, concise, represent the true intentions of the Testator and meet certain legal requirements for it to be valid. Wills drafted by those with little or no experience usually lead to problems. Remember: when a Will "speaks", the person who made it is no longer there!

What kind of taxes are payable on estates after one's death?

The government levies estate duty, which is a form of tax, on the estate after your death. No estate duty has to be paid if your estate, which may include property, insurance and money, is worth less than an amount of R 3 500 000. However, your estate will have to pay 20% estate duty on any net amount over R3 500 000. Estates are also subject to Capital Gains Tax.

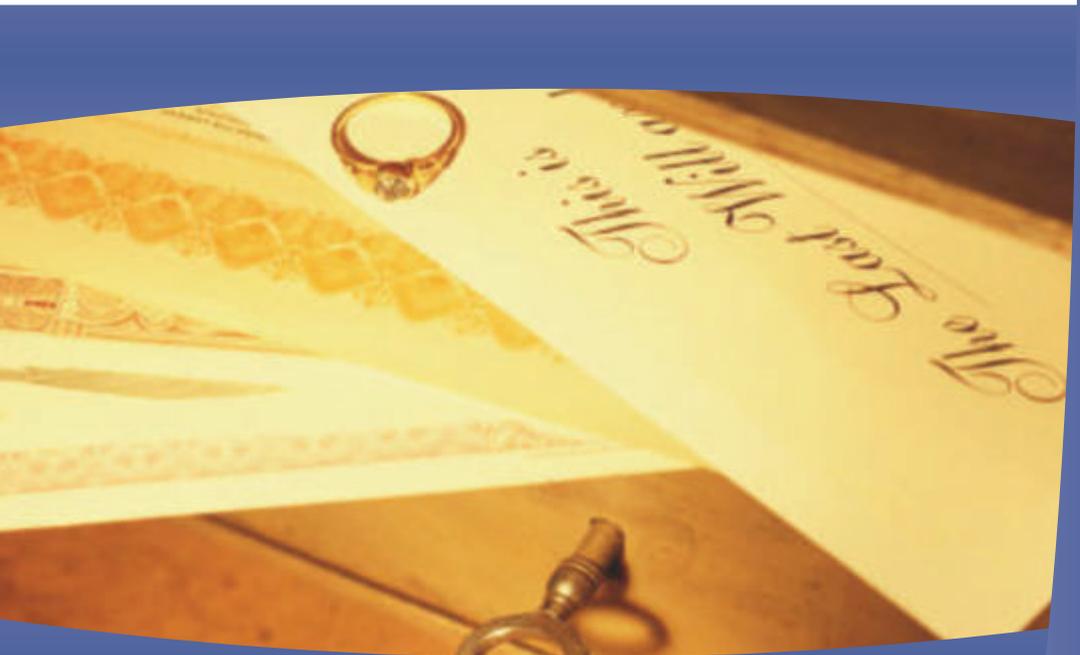
Where should I keep my Will?

There is no specific formal place to keep a Will. However a Will must be kept in a safe place. Most banks, accountants, trust companies, lawyers and registered financial advisors keep Wills on behalf of their clients.

It is advisable to make a copy of your Will, marked clearly with the word "Copy". Also make a note on the copy where the original is kept. Importantly, make sure you inform the executor where the Will is kept.

Is it necessary to revise my Will?

Wills need to be revised from time to time, especially if important events have taken place in the life of the Testator. These events may include the birth of a child, marriage, divorce, death of a beneficiary or executor, gaining of property that is not part of the existing Will, etc.



Terminology Definition

Asset	It may include items such as your house and contents, cars, shares, investments, retirement benefits, etc.
Beneficiaries	Are the persons and/or organisations you name in your Will to inherit in the event of your death.
Bequest	It is a gift or benefit made by the testator of property such as money, jewellery or a house to a person or organisation.
Capital Gains Tax	It is a tax paid on the resale of assets and the happening of other events such as the death of a person, on the growth of those assets.
Estate	It refers to everything you own; all your assets (movable property and immovable property) as well as your liabilities (debts).
Estate duty	It is a tax payable from the estate left by a deceased person before the estate is distributed amongst the beneficiaries. This applies only to large estates.
Executor	A person appointed by the testator who is tasked to carry out the testator's wishes, after his/her death.
Fiduciary	A fiduciary is someone or a legal entity (bank, law firm or a trust company) that accepts the responsibility of taking care of the property or needs of another person, to the benefit of that person. The person will place their trust in the fiduciary to be accountable and manage for that person, not for the benefit of the fiduciary. There is a huge element of trust involved, especially if the person receiving services becomes ill, frail, incapacitated or dies.
Intestate	It means that you die without leaving a valid Will.
Liabilities	These are items such as outstanding debts, funeral costs, estate duty, etc.
Settler	The person who sets up a trust.
Testate	If a person has a valid Will at the time of death.
Testator	The owner of a testament or a Will.
Trust	It is an institution where your assets can be controlled and administered before they are distributed to the beneficiaries.
Trust company	A legal entity that acts as fiduciary, agent or trustee on behalf of a person or business entity for the purpose of administration, management and the eventual transfer of assets to a beneficial party. A trust company does not own the assets its customers assign to its management, but it may assume some legal obligation to take care of assets on behalf of other parties.
Trustee	Is the person or entity such as a bank or trust company that controls the trust and is responsible for managing the trust assets until they are distributed to the beneficiaries.
Will	It is also known as a testament. A Will is a legal document in which you indicate what should happen to your money and property when you die. In other words, a Will gives you a say even after your death as to how your estate should be distributed or who should benefit from it.

Contact details of places to get more advice about Wills:

The Law Society of South Africa

Tel: 012 338 5800

Fax: 012 362 0969

PO Box 1493; PRETORIA; 0001
123 Paul Kruger Street; PRETORIA; 0001

Tel: 021 443 6700

Fax: 012 443 6700

PO Box 4528; CAPE TOWN; 8000
29 & 30th Floors; Absa Centre; 2 Riebeeck Street;
CAPE TOWN; 8000

Tel: 033 345 1304

Fax: 033 394 9544

PO Box 1454; PIETERMARITZBURG; 3200
200 Hoosen Haffejee Street; PIETERMARITZBURG; 3200

Tel: 051 447 3237/8

Fax: 051 430 7369

PO Box 319; BLOEMFONTEIN; 9300
139 Zastron Street; BLOEMFONTEIN; 9300



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