



Introduction

We are all aware of the saying 'nothing is certain except death and taxes'.

As depressing as this may sound, there is never a happy time to start thinking about what will happen to your family or assets once you have passed on.

It is a common misconception that you only need a Will if you have many assets or a lot of money. However, a Will is necessary for everyone.

A Last Will and Testament is a legal document by which the testator (the person who writes a Will) expresses their wish as to how their property is to be distributed after their death. It stipulates the names of persons that will inherit under the Will. An Executor is appointed in a Will. The Executor manages the deceased estate until the final distribution is done. Where no Executor is appointed an interested party may approach the court for the appointment of an Executor of a deceased estate. A Will that communicates a person's final wishes pertaining to possessions and money to that of his/her dependants.





1. Who needs a Will?

A Last Will and Testament is not only for the rich. Any person older than 16 years who has assets, even if it is just a car or a bank account, can have a Will.

You should consider having a Will if you have a life partner, dependents, and an extended family or are passionate about a particular cause like a charity.

If you do not have a Will, there is the Law of Intestate Succession that will decide on who will inherit what from your estate.

The master of the high court will appoint a curator to take care of the property and a Guardian to take care of your minor children.

If you do not have a Will, there is a risk that people who you do not want to benefit from your estate, may indeed benefit. Example, if you did not want a brother to have access to your house or car, he may be able to get access to it now because you did not have a Will.

The order in which your estate will be distributed is as follows:

- Primarily the spouse (This will depend on the type of marriage contract that was entered into. If the marriage contract was entered into by means of in community of property, the spouse is legally entitled to half of the deceased estate. If the marriage contract was entered by means of Ante-nuptial contract without accrual then the surviving spouse may not inherit unless specifically named in the Will. In marriage contracts entered into by means of an ante-nuptial contract with accrual, the property and assets of a person before the marriage was entered into does not fall part of the joint estate, and the testator can give to any one he/she pleases) and children of the deceased.
- If a parent of minor children dies, without a Will and the other parent is unable to provide care, the state will have the power to determine who will become the guardian of the children, and the property/money they will inherit.
- If there is no spouse or children, the surviving parent(s) will benefit.
- If the parents are predeceased, the closest blood relatives will benefit, provided that they are mentioned on the Will and that they were not involved in the death of the predeceased.
- If no surviving blood relatives are found, the estate will be converted to cash and will be paid into the Guardians Fund. A Guardians Fund is a fund created to hold and administer funds which are paid to the Master of the High Court on behalf of various persons known or unknown, for example, minors, persons incapable of managing their own affairs, unborn heirs, missing or absent persons or persons having an interest in the moneys of a person who has died without a Will.
- If the money is not claimed by a person entitled thereto within 30 years, then the money is forfeited to the state.

1.1 Why do we need a Last Will and Testament?

Having a Last Will and Testament ensures that you have chosen the executor of the estate, the person in charge of making sure all your bequests are carried out. Without a Will, a court will appoint someone to administer your estate, and that person may not be someone you would choose.

Moreover, in your Will you can name a guardian for your children as well as set aside funds to ensure for their support and comfort as they grow up. You may also choose to provide for the care of pets after your death in your Will. You make the choices.



2. Writing a Last Will and Testament

You may draft a Will on your own accord as long as you ensure that you comply with the requirements of a valid Will. It is, however best to contact a professional which may include your financial advisor, a banking institution, a Trust Company or an attorney who can assist you in drafting a Last Will and Testament.

If a banks' fiduciary department assists you with a Will, they may charge you a yearly fee to keep a record of your Will.

Note: It is important to use an authorised financial advisor. You can find a list on the FSCA website.

Keep the following in mind:

- Who do you want to manage your Will – who do you trust?
- What do you have to leave behind?
- Who do you need to leave something for?
- What about your children? Ensure that you appoint a guardian in respect of minor children. Ensure that you make provision to set up a Trust Fund to manage the finances of your minor children.
- Which charity do you want to leave your assets or money to?
- Make provision for the appointment of an Executor to your estate.
- Stipulate specific requests that you may have with respect to the Trust Fund. At what age will your minor children obtain their inheritance? (18, 25, 30) Most people choose 25.
- Stipulate when the Trust can be approached for finances to enable your minor children to further their education and living expenses.
- Consider setting a base line amount to be retained in the Trust Account so that the money in the account will not be depleted before your minor children reach the date of their full inheritance.

Documentation that will need to be provided to the executor of the Will:

- Death certificate
- ID of the deceased
- ID of the surviving spouse/children, dependants etc. (if applicable)
- Marriage certificate (if applicable)
- Marriage contract (if applicable)
- Details of all assets and the value thereof, including bank accounts, pensions, stocks and shares, property (movable and immovable)
- Tax details
- Medical aid
- Life insurance information
- Banking Details
- Pension, retirement annuities and other benefits provided by your employers which can be accessed after death by your beneficiaries.

2.1 Details in a Last Will and Testament


Before drafting your Will, you need to have specific important information.

- Identify a list of assets and liabilities.
- Investments and bank accounts need to be specified should they be left to someone in particular.
- Leaving property to more than one individual, although completely valid, could cause potential practical problems when it comes to the estate of that individual. Furthermore, if an individual owns



immovable property abroad, it is important to consider the possible necessity for a foreign Will (depending on the laws regulating the division of land in that particular country).

- The most important to be considered in the case of property is the case of farms. A farm (any property over 18 hectares) may only be registered in one person/legal entity's name. Therefore, if you would like to leave a farm to more than one heir, it must be inherited by a company, where the shareholders are two heirs, for example, in equal parts. If the owner does not set this up in his or her Will, the only solution is to enter into a redistribution agreement (buyout) or have the executor sell the property to the company. If this is the case, transfer duty applies, which can be heavy. Any number of people can own residential or commercial property under 18 hectares. This clause is no longer applicable. Engage the services of a conveyancer who specialises in the transfer of immovable property. This will ensure that all requirements regarding the legal transfer to the owners are met.

 Note: If a house is left to a dependant, the dependant will need to pay transfer costs to get the house registered in their own name.

- Property should be described accurately and clearly referenced to the title deed of the fixed property, investment contract numbers, etc. that will make sure that the right asset is bequeathed to the right heir. The Deeds Registrar will have a description of the property to be transferred to the new owner. Peruse the description to ensure that the property is accurately described.

2.1.1. Considerations when writing your Will

A male in a polygamy marriage must indicate if the money is left to his first wife or all his wives. If this is not stipulated then the estate will be broken down into percentages between all the wives.


If you are married a husband and wife may have a joint Will.

It is important to have a line of successors listed in your Will. In the event that the first one has passed on, you nominate no. 2

You can leave your money in a trust for young children, to which a guardian will apply for the release of funds for the child's needs.

3. Safeguarding your Last Will and Testament

It is advised that the executor of the estate keeps the original Last Will and Testament. In the case of the Executor being a financial institution the original Will resides in their offices.

 Note: An executor is someone named in a Will, or appointed by the court, who is given the legal responsibility to take care of a deceased person's remaining financial obligations. This means taking care of everything from disposing of property to paying bills and taxes.

It is important to keep the original Will in a safe place as the Master of the High Court who oversees the Executor Will only accept an original Will complying with all the statutory formalities of drawing a Will.

Most attorneys have a securities safe-keeping facility that is indexed and fireproof. It is best that the testator retains a copy and leaves a copy with someone they trust with clear instructions as to where the original is located.

The biggest difficulty that some encounter is that on death the family cannot locate the Will. Make sure



your family knows where the Last Will and Testament is kept.

4. **Updating your Last Will and Testament**

Whenever there are any major changes, your Last Will and Testament should be top of mind. These include:

- A marriage
- The birth of a child
- Divorce
- Purchasing or sale of new assets such as property.
- Death of a beneficiary or executor.

Your Will must be adapted to fit your circumstances. For example, when your children no longer are minors, you may no longer require the provisions that you had in place for guardians and trusts to administer their inheritance. It is important to update your Will after a change in marital status, particularly after a divorce. If you do not change your Will after a divorce, your ex-spouse is still entitled to inherit from your estate if you die within three months of the divorce being finalised.



Note: It can take 1-3 years, if not longer, to wind up an estate.



Last Will and Testament

I, the undersigned, (full names) _____
(Identity number) _____
of (residential address) _____

I hereby declare this to be my Last Will and Testament. I hereby revoke all previous Wills, or testamentary writings made by me.

I nominate (full name) _____
Address _____

to be the Executor of my Estate. Should he/she be unwilling or unable to act?

as executor, I nominate (full name) _____
address _____

I direct that the executor of my estate shall/shall not be required by the Master of the High Court or other competent authority to give security for proper performance of his duties. Sometimes the Master may require that Executor provide security on evaluation of the situation after death. This may over rule the Testator's request in the case of conflict. (Give details of security to be given or draw a line through if not applicable).

Signed by TESTATOR: _____

WITNESS 1. _____ WITNESS 2 _____

I direct that my estate shall devolve as follows:
Special Bequests: _____

After my special bequests I bequeath the residue of my Estate to:



Financial
PROTECTION



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Last Will and Testament

In witness whereof I have signed this Will in (place) _____

on the _____ (day) of _____ (month) ____ (year) in the presence of the undersigned witnesses who in my presence and in the presence of each other have signed this Will as witnesses.

Testator Signature: _____ Date: _____

Witness 1 Name: _____ Date: _____

Witness 1 Signature: _____ ID Number: _____

Witness 2 Name: _____ Date: _____

Witness 2 Signature: _____ ID Number: _____



Note: It is always best to have a Will drafted formally than using an online option