

WHAT EVERYONE SHOULD KNOW ABOUT HAVING A WILL

Why do you need a Will?

A last Will and Testament is a legal document that dictates how you wish your estate (your personal property and possessions) to be dealt with in the event of your death.

It identifies those individuals or charities you have chosen to inherit from you. If a person dies “intestate”, that is without leaving a valid Will, their closest relatives will inherit their estate, in accordance with the South African Intestate Succession Act, 1987. If no relative can be found, the entire estate of an intestate individual will pass to the State.

What is included in your Estate?

Your estate comprises your net worth at your time of death – including everything you own and everything you owe. Your estate also includes any shares in listed companies, any business interests held either in your own name or through a company or close corporation, and anything to which you hold the licence – that means even your social media accounts.

What makes a Will valid?

For a Will to be valid it needs to meet the following legal requirements of the South African Wills Act of 1953:

- Any person over the age of 16 years is legally entitled to make a Will
- The Testator (person making the Will), must be mentally capable of “appreciating the nature and effect of their act” of making a Will
- The Will must be dated
- The Testator must sign the end of the will – the Testator can sign through making a mark such as an X or a thumb print, but this mark must be certified by a commissioner of oaths
- If the document consists of more than one page, each page must be signed
- Two competent witnesses, over the age of 14, need to be present when the Will is signed
- The witnesses must also sign the document in the Testator’s, and each other’s presence. Witnesses cannot sign by making a mark.

Appointing an Executor

Your appointed Executor’s role is to administer your estate and implement the provisions of your Will when you die. An Executor may be any adult person you trust, such as your spouse, an adult child or a friend. You could also nominate a professional such as your

Lawyer or Accountant, or a Law Firm or Trust Company. If you die without nominating an Executor, or if your appointed Executor is not willing or able to take up his duties, your Beneficiaries must choose the person they would like to act as the Executor.

It is imperative that your Executor or duly Appointed Agent retains the original Will, as the Master's Office will not accept a copy and you will be deemed to have died intestate should the Original be misplaced.

If you have children, appoint a Guardian

Generally, the surviving parent is automatically the Guardian of minor children under the age of 18. However, if you have minor children it is advisable to appoint someone, in your Will, to act as Guardian in the event of both you and your spouse/partner's death.

What is a Living Will?

Unlike a last Will and Testament, which details your wishes regarding personal property after your death, a Living Will sets out your wishes, while you are still alive, relating to end-of-life circumstances in the event you are rendered incapable of surviving without medical support. This alleviates the need for your family to make difficult life-and-death decisions on your behalf.

Be prepared! Keep a file of important information and documents

Organise all your important information, documents and contact details into a file, as follows:

- A copy of your Will and Living Will
- A certified copy of your ID document
- Contact details (email and telephone number) of heirs named in the Will
- Bank account details
- A list of debt obligations and due dates
- A list of investment and retirement policies, with contact information of your Financial Advisor
- For security's sake keep a second copy of your file in another location.

Entrust a family member or friend with all your passwords and security codes, not forgetting the code for your electricity meter. At the same time supply them with the access codes to your social media pages and ask them to close down your accounts in the event of your death.

Should you require assistance preparing your Will and/or Living Will please do not hesitate to contact the team at NSV Attorneys at 021-870 1185 / 021-914 4481 / info@ngolaw.co.za