

## WHAT IS A LAST WILL AND TESTAMENT?

A Last Will and Testament is the main vehicle through which you can express your wishes with regards to how your hard-earned assets are distributed after you have passed on, and how these assets are administered after you have passed on.

The main aim of a Will is to give effect to the wishes of the testator / testatrix by regulating how the deceased estate and other affairs are to be managed. The testator / testatrix can choose, in a Will, who will administer the estate, this being the executor of the deceased estate. In turn, the Will gives direction to the executor regarding the devolution of the deceased estate's assets. Thus, the importance of a Will comes from its centrality in governing the devolution of the deceased estate and ordering of affairs according to the wishes of the deceased.

### What happens if I don't have a will?

If you don't have a will in place, the South African Law of Intestacy prescribes what would happen to your assets on your death. You will have no control over who inherits the assets accrued in your Estate. If you have minor children, any portion of inheritance due to them would be paid over to the guardian's fund. The court would appoint the guardian for them and place them in the care of someone they are not familiar with. Also, you will have now say who will be appointed as the executor in your estate.

### What should be included in a will?

A typical Will should at minimum include the following provisions:

- Revocation of Previous Wills;
- Appointment of Executor(s) and Administrator(s) of the deceased estate;
- Specific Bequests;
- Provision for the event of a beneficiary pre-deceasing the testator/ testatrix or simultaneous demise;
- Provision for the event that there is a minor beneficiary;
- The appointment of a Guardian;
- Compliance with all formalities as set out in the Wills Act 7 of 1953;

In most instances a basic Will can encapsulate the expressed wishes of the testatrix/ testator, where including the minimum provisions can prevent further stress in a difficult time for loved ones. However, there are instances, where a more in depth and technical Will may be advisable in order to best set in place the right structure to take care of loved ones.

There are many formal requirements that must be met for a will to be valid and recognised. If any of these requirements are not met, your will – or a portion of it – could be invalid. Qualified professional assistance in drafting your will is therefore important.

### The importance of an executor

It is important to choose and appoint a trusted person (or representative of a company) as the executor of the estate. You can appoint more than one executor in your estate. The administration of a deceased estate can get complex and requires a lot of work, which is why appointing a professional executor is better.

The executor will have control over the deceased estate's assets, being able to, inter alia, transact on behalf of the deceased estate and charge a fee for the work completed. An executor may charge up to 3.5% of the value of the gross assets of the estate, as well as a commission of 6% on all income collected after death to the date of wrapping up the estate. However, in most instances, this fee is negotiated and can be agreed upon upfront.

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