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Financial, Estate and Heritage planning system guides

Where there's a Will there's a Way

It's imperative to have a legal will. Here's why:

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Why do I need a will?

When you die, you might think that your estate won't matter much, but do you want to leave the fruits of your life's work in the wrong hands?

Everything that remains of your assets after all debts and administrative costs have been paid will be inherited through the laws of succession by your named beneficiaries. If you fail to draft a valid will, the assets in your deceased estate will be distributed in accordance with the Intestate Succession Act 81 of 1987. The courts will decide what happens to your cash, your house, all your other assets, your investments, and even what happens to your children!

You simply cannot allow this to happen!

Death is traumatic enough for those left behind. This is made far worse if the deceased person's financial affairs are not in order or worse still - there is no valid Will. A legal will is the only legal way to ensure that beneficiaries receive what you want them to receive.

The drawing up of a legal Will

It does not matter whether you are young or old there are significant benefits to being organised and ensuring that you have a legal Will in place. It is neither as daunting nor as macabre as you might think. Most of the tasks are easy enough to do alone as long as you have a checklist in mind, but the more technical aspects of dying require a professional degree of preparation. The right attorney can guide you through this process and make sure you get it correct the first time around.

The following basic steps can make a huge difference for the people you care about. Being assured that all your wishes are clearly stated and that your loved ones will be taken care of is an extremely important exercise. The Wills Act 7 of 1953 and Regulations thereof, sets out the requirements for a Will to be valid, as follows:

A Will must be in writing (typed or handwritten)

The testator (person who draws up the will) must be mentally capable of understanding the consequences of his or her actions at the time that the will was drafted. Wills or provisions that are proven to be drawn up under undue pressure, inappropriate influence or coercion will be deemed to be invalid. Convincing someone to include you in their will at gun point is not acceptable and the resulting provisions may be challenged in court. The responsibility of proving mental incapacity or lack of intention of the testator is entirely that of the person making such allegations.

Signing by the Testator

A Will must be signed by the testator (the person drawing up the Will) on every page. It is important, that on the last page, the signature be at the end of the text and as far down the page as possible. A significant gap between the last line of the will and a testator's signature may cause a will to be declared invalid. Furthermore, the following methods of signature are sometimes necessary if the testator is incapacitated or unable to sign. A testator may sign a will by making a mark or a thumbprint. The testator may request a person to sign on his or her behalf. In such event, the signature must be made in the presence of the testator, at least two competent witnesses, and a commissioner of oaths. The commissioner of oaths must certify the will and sign each of its pages.

Signing by the Witnesses

The signing of a Will must be witnessed by two competent witnesses. According to section 1 of the Wills Act, a competent witness is anyone over the age of 14 who is of sound mind and capable of understanding the consequences of his or her actions and can testify in court. We recommend that the witnesses sign each page. The witnesses' role is to witness the signature of the testator or the person signing on the testator's behalf.

It is not necessary for the witness to read the document or to even know that it is a Will, as his function is purely witnessing the signing of the testator.

NB: Witnesses may not sign by making a mark or thumbprint.

Very Important:

A beneficiary of a Will cannot sign as a witness to the Will. A beneficiary who signs a Will as a witness will be excluded from inheriting any benefit and therefore must not witness the Will.

Anyone who writes out a Will or who witnesses a Will is barred from receiving any benefit from that Will. Even the spouse of that person is disqualified. So it is important to select witnesses who are not beneficiaries or potential beneficiaries in the Will. It is also very important to note that anyone who witnesses a Will cannot be appointed as an executor.

It is not a legal requirement for a Will to be dated. However, it is HIGHLY recommended that a Will be dated to determine which Will is the latest version and to avoid any confusion in case of more than one Will being found.

Amending your Will

The law of testation states that a testator may revoke or change his or her will at any time before their death. So it is advisable to stay in their 'good books' if you are hoping to receive an inheritance, and bear in mind, no one has a fundamental right to inherit.

All amendments to a Will are regulated by section 2(1)(b) of the Wills Act. Amendments may include any deletions, additions or alterations. Any amendments made via a codicil, should be in the form of a schedule or annexure attached to the existing Will, and must adhere to the same rules as those governing a valid will. The witnesses to a codicil do not have to be the same as the witnesses of the original Will.

Amendments made on the Will itself must be identified by the signature of the testator or such person signing on his behalf. The signature must be made as close as possible to the amendment in the presence of two witnesses who are present at the same time. The

witnesses must also sign as close as possible to the amendment. If the amendment is signed via a mark, thumbprint or a delegated person, a Commissioner of Oaths must be present and attest to the positive identity of the testator and must also certify the amendment.

Divorce and the effect on a Will

The Wills Act allows newly divorced testators three months in which time it is assumed that the divorced parties no longer wish their ex-spouse to be a beneficiary. Accordingly, if the testator dies within three months of the date of the divorce, the will is interpreted as if the surviving party has died before the deceased, and the estate will be distributed accordingly. If however, a divorced testator fails to amend his or her Will, or draw up a new one within three months from the date of divorce, it will be understood that the testator wishes his or her ex-spouse to benefit as per the original Will.

Action required: It's very important that you have a Legal Will. Myprotector offers you a solution if you sign-up to the Estate Planning service. Alternatively, click on the 'Get Advice' button on the database template and the assigned financial advisor will help you.

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