

## INTRODUCTION

A Will outlines the distribution of your assets and estate upon your passing. Creating a Will not only ensures that your wishes are carried out but also offers peace of mind to both you and your loved ones. In this article, we explore Wills and the crucial elements that you need to include in your Will. We discuss the legal requirements, steps to drafting your Will, taxes and fees applicable to deceased estates, and the importance of seeking professional advice. We conclude the article by asking: What happens if you die without a valid Will?

## LEGAL REQUIREMENTS

In South Africa, a valid Will needs to meet specific legal criteria, all of which are regulated by the Wills Act 7 of 1953. The main aspects to take note of are:

- + **Testator capacity:** The person who creates the Will is called the testator. Anyone older than 16 years can make a Will provided that they are of sound mind and understand the consequences of their actions at the time of signing the Will.
- + **Free and voluntary:** When you create your Will, you cannot be under any pressure or be coerced by anyone. The Will should reflect your true intentions and wishes.
- + **In writing:** Irrespective of whether the Will is handwritten, typed, or printed, the Will must be in written form and must be originally signed.
- + **Signature:** The testator must sign the Will in the presence of two witnesses.
- + **Witnesses:** The two witnesses cannot be beneficiaries in the Will or nominated to hold a position, such as an executor, guardian, or trustee. Your spouse cannot be a witness to your Will. The testator and witnesses must all be together at the same time and must sign the Will in each other's presence. Witnesses must be 14 years or older, of sound mind, capable of understanding the consequences of their actions, and be able to testify in a court of law.
- + **Codicils:** A codicil is an addition or supplement that explains, modifies, or revokes a Will or part thereof. You must ensure that every version of your Will is signed and kept in a safe place.

## STEPS TO DRAFTING YOUR WILL

### Step 1:

**Gather information:** Compile a list of your assets, including property, bank accounts, investments, and personal belongings. Be specific about the details: Are the assets in your name or are they jointly owned? Are they in a trust, closed corporation, or private company? Decide how you want to distribute these assets.

### Step 2:

**Select an executor:** Choose a reliable individual or trust company to act as your executor. The executor is responsible for executing the instructions in your Will.

### Step 3:

**Appoint guardians:** If you have minor children, your Will must designate guardians who will care for them. Guardians should live in the same country as the children. Discuss this nomination with your chosen guardians.

### Step 4:

**Draft the Will:** While you can draft your Will yourself, a legal expert can ensure that your Will adheres to all legal requirements.



## EXPLORING WILLS IN SOUTH AFRICA

### Step 5:

**Sign and witness the Will:** Your Will is only legal and valid if signed and witnessed correctly.

### Step 6:

**Keep the Will in a safe place:** Store your original, signed Will in a secure place: With your attorney, or in a secure home safe. Inform your executor about its location. If you use the services of a trust company as executor, they will keep the Will.

### UPDATING YOUR WILL

You should regularly review and update your Will. Especially after significant life-changing events, such as marriage, divorce, the birth of children, or when acquiring new assets. Changes can be made through a codicil or by creating an entirely new Will.

### TAXES AND FEES APPLICABLE TO DECEASED ESTATES

#### Income tax:

- + The executor of your estate will be responsible for filing the annual income tax return.

#### Estate duty:

- + The first R3.5 million of the nett value of the estate is exempt from estate duty.
- + The dutiable amount of an estate exceeding R3.5 million is 20% of the amount exceeding R3.5 million. On estates with a nett value above R30 million, it increases to 25%.
- + All inheritance to a spouse is exempt from estate duty.

#### Executor's fee:

- + The executor is entitled to 3.5% + VAT on the gross value of the estate, and 6% + VAT on income accrued and collected after the death of the deceased while the estate is under administration.
- + Executor fees are regulated by the government (the Master of the High Court).

#### Master's fee:

- + On an estate with a value between R250 000 and R400 000: R600.
- + On an estate with a value above R400 000: According to a sliding scale, up to a maximum of R7 000.

#### Transfer duty:

- + Depending on the value of the property, between 3% and 13%.

#### Capital gains tax:

- + Exclusion of R2 million on the primary residence, taxed in accordance with your relevant tax bracket.
- + R300 000 exemption available upon date of death.

#### Other possible taxes:

- + VAT.
- + Donations tax.

### THE IMPORTANCE OF PROFESSIONAL ADVICE

Although it is possible to draft a Will without professional advice, an estate planning specialist can provide guidance on structuring your Will to minimise potential disputes and to ensure alignment with both your wishes and the legal requirements.

Furthermore, it is essential to consult with a certified financial advisor. They can guide you through various estate duty obligations, such as the treatment of insurance policies, which are deemed as assets in your estate for estate duty purposes. Neglecting these obligations could lead to an insolvent estate and the forced sale of assets to cover expenses, which could possibly leave your loved ones without transport, accommodation, or other livelihood essentials.

### TO CONCLUDE: WHAT HAPPENS IF YOU DIE WITHOUT A VALID WILL?

If you do not have a valid Will in place when you pass away, your estate will be distributed in accordance with the Intestate Succession Act 81 of 1987. This law states how your assets are to be allocated among your surviving spouse, children, parents, or siblings in a predefined proportion. Drafting a Will is an essential step to ensure that your assets are distributed according to your wishes after you pass away. It is important to realise that a Will is possibly one of the most important documents that you will ever sign in your lifetime. By grasping the legal requirements and seeking professional advice, you can draft a Will that reflects your intentions and provides clarity to your loved ones during an already tragic period. Creating a well-structured and valid Will is your responsibility and the best way to ensure that you leave a stress-free legacy.

If you have any questions, please contact us:

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