



THE POWER
OF INDEPENDENT ADVICE

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“ Brenthurst offers its clients assistance with the drawing up new wills, reviewing of existing wills and safekeeping of wills, estate planning and the winding up of deceased estates. ”

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NO WILL IN PLACE? IT WILL HAVE CONSEQUENCES

By Malissa Anthony FPSA® Fiduciary Specialist, Brenthurst Wealth Management

It has become clear that most South Africans do not believe that having a valid will in place is a fundamental priority, and this is based on the fact that 70% of South Africans do not have a will, according to the latest statistics obtained from the Master of Courts in South Africa. It can be assumed that the simple reason for this is that most individuals are not aware of the repercussions that are associated with having this vital document. In fact, a valid will is one of the most important documents a person needs and plays a vital role in securing one's financial affairs.

In life two things are certain - death and taxes. So, why is it that we so often neglect to plan for these inevitable occurrences, particularly when it can have detrimental consequences to your dependant's financial futures?

It is imperative to discuss the consequences of not having a valid will and a matching concise estate planning strategy. By having a will in place, you are able to plan your estate according to your own wishes and needs and ensure that the process of distribution of your assets to the beneficiaries is a quick and painless one.

WHO NEEDS A WILL?

South Africans are afforded with the right to freedom of testation, which essentially means that we have the ability to decide, within limits, exactly where our assets shall devolve on our demise.

Therefore, every person who has something to leave behind, should have a valid will in place to ensure that their estate is allocated to the beneficiaries of their choice, after having taken into consideration the various estate planning objectives.

WHAT HAPPENS IF YOU DIE WITHOUT LEAVING A VALID WILL?

In the event that a person dies without leaving a valid will, or where their will is declared partially or completely invalid, their estate will be distributed in accordance with the laws of the Intestate Succession Act 81 of 1987, as amended. Whilst the provisions of this Act are generally fair, ensuring that your assets are transferred to your spouse and children, there are a number of problems that may arise, namely: -

1. Your assets may not be left to the person of your choice;
2. It may take some time for an executor to be appointed, and in addition may not be someone you would have chosen for yourself – this person will be responsible for the winding up of your estate;
3. Extra and unnecessary costs are involved;
4. Any inheritance due to a minor must be deposited into the Guardian's Fund, a government run fund that safeguards the inheritance of a minor until they have reached the age of majority, currently set at 18 years of age; and
5. Conflicts may arise between your family members as no clear instructions have been made regarding the division of your estate.

WHAT RENDERS A WILL VALID?

The Wills Act 7 of 1953 stipulates certain formalities that need to be met for a will to be rendered as valid. In summary, a valid will must be in writing, a testator must be over the age of 16 and be capable of appreciating the nature of the effect of the act, the testator and witnesses must sign the will in the presence of each other and the witnesses must be over the age of 14 and not receive any benefit in the will.

A will requires specific and necessary clauses. Anyone drafting their own will should have it reviewed by a professional to make sure the requirements are met.

For instance, it must include clauses like the revocation of all previous wills, the exclusion of collation, naming of a residuary heir and exempting the executor from providing security, to name a few.

WHAT FACTORS SHOULD BE TAKEN INTO CONSIDERATION WHEN DRAFTING A WILL?

1. There are strict legal requirements that need to be adhered to when drafting a will, failing which could have an impact on the validity of your will.
2. Who will take care of your minor child (younger than 18 years) – one needs to be careful when leaving their assets to children under the age of 18, as they will require a guardian to sign any documents on their behalf. In this instance one should consider a testamentary trust to be created to administer assets in your child's best interests, whilst avoid having their inheritances being placed in the Guardians Fund which is administered by the Master of the High Court and which is only released to them on reaching the age of 18 years.

3. Have you done effective estate planning, which if done right could reduce estate duty tax and ensure that you have liquidity in your estate. Always ensure that you are able to provide for your loved ones in respect to immediate expenses that they would need to settle, e.g: funeral and household expenses and medical bills.
4. Changes to your personal circumstances – marriage/divorce, birth of a child or death of a loved one.
5. Know where your will is located and tell someone you trust where it can be found or who they are to notify in the case of your demise.
6. The possibility of negotiating a reduced executors fee.

WHY SHOULD YOU ALLOW QUALIFIED PROFESSIONALS TO ASSIST YOU IN DRAFTING YOUR WILL?

A qualified professional will have the required experience and knowledge in this field in order to ensure that your will adheres to the strict requirements with respect to drafting a valid will, as they keep up to date with estate planning information, changes to tax rules and trends on a global scale that may be relevant to your estate.

Qualified professionals are also able to identify issues that may arise and advise you accordingly to avoid such issues or mitigate them as far as possible, whilst also ensuring that the will complies with your express wishes and that your assets of your estate are allocated as you have intended.

By also nominating a qualified professional you are able to negotiate a reduction in executors fees, as opposed to imposing the maximum executors fee which is prescribed by the Master of the High Court, being a fee of 3,5% excluding VAT.

WHAT ROLE DOES THE EXECUTOR PLAY AND WHY ARE THEY PAID

An executor is responsible for the effective winding up of deceased estates, and their role includes, but is not limited to the following: -

1. Meeting with family, reading of the will, establishing and verifying the identity of beneficiaries – obtaining relevant documents necessary for submission to the Master and for estate management and distribution.
2. Responsibility of carrying out the directives in terms of the deceased's last will and testament.
3. Preparing and lodging all documentation in order to report the estate to the Master of the High Court and obtain Letters of Executorship.
4. Placing relevant advertisements in the local newspapers and Government Gazette in accordance with the Administration of Deceased Estates Act 66 of 1965, as amended.
5. Once Letters of Executorships obtained – an estate last bank account needs to be opened.
6. Pay Creditors.
7. Executor will also be required to pay out any special bequests to legacies and to pay any debts and obligations as and when they become due.

8. The executor may need to undergo selling assets in the event that there is not enough liquidity.
9. Dealing with SARS, registering the estate.
10. Calculate and pay relevant estate tax and ensure correct documentation is filed with SARS and the Master.
11. Drawing up of the Liquidation and Distribution account – which details all assets and liabilities and how the estate has been divided and distributed – this is then lodged with the Master and submitted to SARS, where it is assessed and thereafter lies open for inspection.
12. Another advertisement is then placed in the local newspaper and Government Gazette – notifying the public that the account is lying open for inspection.
13. Attending to any of the Master's queries during the finalisation stages, and requesting for permission to distribute.
14. Finalisation and distribution of the estate.
15. Closing of estate.

It is important to note that the winding up of a deceased estate, is no easy task, no matter how simple or complex the estate may be. A great deal of time is dedicated by the executor in trying to effectively wind up the estate as quickly and smoothly as possible and therefore their fees are well justified. A simple estate can take roughly 16 months to two years to finalise.

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