

HOW WATERTIGHT IS YOUR WILL?

According to the Master of the High Court, more than 70% of working South Africans don't have a valid will. Dying without a will (dying intestate) can involve a lengthy and emotional process to wind up an estate, often creating animosity and frustration among family members and heirs.

Sarah Love is a fiduciary specialist at Private Client Holdings, a multi-Family Office based in Cape Town, where she deals with a range of fiduciary matters including the drafting of wills. She points out that your will is one of the most important documents you will ever sign. "Unfortunately, the eventual interpretation of your will and the implementation of your wishes is only revealed after your death. If your will was not drawn up by a fiduciary practitioner, your wishes may not be carried out as you had intended," says Love.

Love cautions that when drawing up a will, there will be terms and phrases, which you may not be familiar with. "It's important to ask as many questions as necessary to ensure you are 100% happy with the contents of your will before you sign it," she advises. We are far from the days of needing to impress with long wills full of "legalese", we focus on content and ease of interpretation.

Some top tips when drafting a will

1. Does your Will have a revocation clause?

A revocation clause states that the will you are signing is your last will and testament and that all previous wills should not be considered when determining your wishes. If you do not have this clause in your will and depending on the contents of your will, it may be necessary to read all your wills together. This can lead to family feuds in trying to determine what your real intentions were and will certainly lead to confusion. It is critical to speak to a professional when there are multiple Wills across jurisdictions, as you may unintentionally revoke a will that needs to be in place.

2. Who is your Executor?

The Executor of your estate is the person you nominate to administer your estate once you have passed away. Depending on the complexity of your estate you could appoint a family member or trusted friend or preferably a professional Executor. The more complex your estate, the longer it will take to wind up. "Friends and family may not have the time or expertise needed to carry out

these duties so you should consider appointing a professional Executor,” advises Love. “Naming a professional Executor will relieve family members from making difficult decisions that could potentially create family conflict,” she adds.

3. *Who are your heirs?*

Appointing your heirs may seem straightforward, but if there are minor heirs, it’s important to specify whether a trust should be set up, if the payment must be made to a guardian, etc. Love recommends that you review and update your will when your personal circumstances change, i.e. you get married, divorced, have children, etc. “This will ensure that your spouse is not disinherited in a Will that still names an ex-spouse,” says Love.

4. *Making sense of some Will terminology*

- Per capita and per stirpes: These terms determine the way in which your heirs inherit, either equally per person (per capita) or each family unit inherits equally regardless of the number of people within the family units (per stirpes).
- Collation: The basis for collation is that a parent is presumed to have intended that his estate will be equally distributed to his children. Substantial gifts or advances of money given to a child from the testator during his lifetime must be considered in the distribution of that child’s inheritance. The child must either restore the property given to him or allow a deduction of its value at the time it was given from his inheritance. “Collation automatically applies to your will or your intestate heirs if you die without a will. If you want to release any of your heirs from the obligation to collate, you must clearly state this in your will,” says Love.

Love and the Private Client Holdings fiduciary team have seen the consequences of inadequate or ambiguous wills where family members have been left dissatisfied and distraught. “If you have a will, please read it thoroughly and update it if necessary. If there is anything you don’t understand talk to a professional. If you don’t have a will, please consider getting a professional to help you draw it up and prevent heartache and conflict for your heirs,” says Love.

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About Private Client Holdings

Private Client Holdings was founded as a corporate tax consultancy in Cape Town, South Africa in 1990. Since then, the company has developed into a full spectrum Asset and Wealth Management Company and multi-Family Office with six specialist divisions: Wealth Management, Portfolio Management, Financial Services, Fiduciary Services, Cash Management and Risk Management.

If you need assistance drawing up a will or have any other fiduciary needs, contact Sarah Love on Sarah@privateclient.co.za or visit www.privateclient.co.za.

Private Client Holdings are taking the lead in Southern Africa when it comes to providing high net worth families with an all-inclusive wealth management solution and were awarded TOP WEALTH MANAGER: BOUTIQUE in the INTELLIDEX TOP PRIVATE BANKS & WEALTH MANAGERS AWARDS 2021



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