

Your Will be Done

A general guide to writing a will

What is a Bequest?

Bequests can be specific or general.

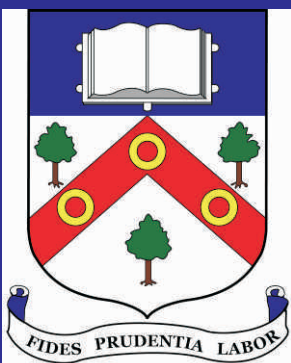
A *specific bequest* is the **gift of money or a particular item**, such as jewellery, a car, items of furniture, art, shares or bonds to a **particular** person (called a beneficiary), group of people or organisation. If the beneficiary to whom you leave the specific gift predeceases you or if an organisation you have identified to benefit from a bequest no longer exists, their benefit will become part of what is called your residuary estate, unless you make provision for alternative beneficiaries. The residue is the portion of the estate remaining after the payment of specific legacies, debts, taxes and other expenses have been paid, and is made up of the assets that you have not left to any named person or organisation, either in specific or general bequests. This residue can also be left to a person or organisation in the form of a *residuary bequest*. Either of these types of bequest could be also contingent on an event.

Be sure not to leave the same item to more than one beneficiary. In order to prevent this, when writing your general bequests, state that it is minus items already bequeathed.

General bequests are when you leave **categories of assets** to specific beneficiaries. Most people leave their house and contents to a surviving spouse. If the house is in joint names then you are free to deal with your share of the house as you please. Your share will not pass automatically to the other party. Note that where you bequeath a mortgaged asset without providing for assumption of liability by the beneficiary, this means they receive the bequest free from any equities and the estate would be liable to repay the bond. If it is not possible to pass that asset to them they are entitled to the value of the asset. Where the bequest is made subject to assumption of liability then either they must take the asset and pay the balance on the bond or take the value of the asset minus the value of the balance on the bond.

A car is not included in a bequest of household furniture and effects, so be sure to make provision for the bequest of your car. Categories such as your jewellery, clothing, furniture, garden equipment and books are examples of general gifts.

A bequest can also be made conditional upon something happening or not happening. These are called *contingent bequests*. For example, a bequest that takes effect only if the spouse of the donor does not survive the donor is a contingent bequest.



Why make a will?

Making a will is probably one of the most important things anyone can do. It is a sensible precaution to ensure that the people you love are well taken care of, and the causes you support can continue. A will need not be a complex document and most South Africans can make a will with basic legal information, although it is a good idea to seek professional advice if you remain unsure of the process or if you require estate planning advice.

A will is a legal document, which sets out how your assets will be distributed after your death. It explains where you want your money and belongings to go and makes provisions for loved ones when you are no longer there to provide for them yourself.

In writing your will now, you make the decisions before it's too late. Writing a will enables you to:

- Choose your own executor who will distribute your assets according to your exact wishes.
- Ensure that your children and dependants will be well taken care of.
- Save your family additional grief caused by the distribution of your estate by an appointed executor other than one of your choice.
- Choose who should benefit – be they family, friends, organisations or others - will give you peace of mind knowing that you have made the necessary provisions for those most in need.
- Make decisions regarding your funeral arrangements, who should look after your children if both you and your partner die and even who should look after your pets.

What happens if I don't make a will?

If you die without having made a will you are deemed to have died intestate and your estate will be distributed according to an inflexible formula provided by the law. You will have no say in how your possessions are distributed or who should benefit. Only blood relatives and married partners can inherit. Anyone else, such as close friends or organisations that are important to you, will not receive anything unless you have made provision for them in a valid will.

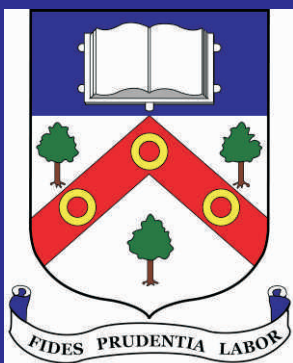
Any dispute about your estate is resolved in the courts. The legal costs of the case can be paid from your estate. Not leaving a will often results in contestation, a costly and wasted exercise.

When should I make my will?

A will can be drawn up at any time but it is wise to review your will if your circumstances change, such as in the case of the birth of a child, marriage or divorce.

If anyone in the will changes their name, you should write a new will. If your relationship changes with any of the people to whom you have left bequests, you should also rewrite your will. This is also the case if your relationship changes with the person you have chosen to be your executor.

You can do this by either drawing up a new will or writing a short codicil, a document which amends your will. You can make as many codicils as you like, but if there are several changes it may be better to draw up a new will. Each codicil must be signed by two witnesses in the same way as your will, although they don't have to be the same people who witnessed your will. Neither they, nor their marriage partners, may be beneficiaries of your will or the codicil.



Where should I keep my will?

Keep your will where it can be easily found, especially if you have included your funeral arrangements.

A secure place to keep your will is in a safety deposit box at your bank or with your attorney. It is, however, advisable to have copies made of your will. Store one with your personal papers and another with the person you have named as your executor. If you make copies write "copy" on each of the copies, but do not write "original" on the original.

Who should I choose as my executor?

The executor must be over the age of 21 and must be willing to take on the role. Often it is preferable to have a family member together with a professional independent body, such as a firm of attorneys or auditors, since it saves an enormous amount of stress if your executor knows exactly what is required of him/her in terms of the Administration of Estates Act.

Executor's fees are set by tariff at 3, 5% of the value of your estate and an additional 6% of income accrued and collected after the date of the death of the Testator (A person who has made a legally valid Will). This may be varied by agreement between the executor and the heirs.

The person named as executor can decline the task, either before or after you die. If this happens before you die, it is necessary for you to write a new will. If this happens after you have died, then the executor must notify the Master of the High Court.

Always write the full name, occupation and address of the person named as executor in the will, so that it will be easy to identify and locate them.

You can also ask a professional to act as an executor, but it is important to note that you will have to pay for their services from the residue of your estate

Who should witness my will?

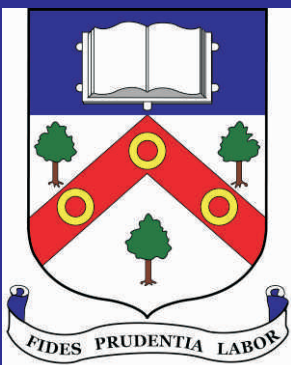
If the will is ever questioned after your death, it is the witnesses that are called on to verify its authenticity. It is important that the witnesses, or their marriage partners, are not beneficiaries. The witnesses must also be over the age of 18 and of sound mind.

Another important point to remember is that both the witnesses and the writer of the will must all sign the will together, in each other's presence.

How do I revoke my will?

You can revoke a will that you have drawn up at any time. This can be done in a variety of ways. The safest way is by stating in a later will that you revoke all previous wills, a standard clause in the most wills. It is however also advisable to revoke a will by destroying it, simply tearing up a will with the intention of revoking it. If you draft a new will without doing both of the above, the latest will will be considered to be valid unless someone alleges differently.

If you revoke your will, write a new one immediately, as until a new will is made you could die intestate.



Residue clauses

In order to prevent risking a “partial intestacy” it is important that you specify all your assets in your bequests. Partial intestacy means that the remainder of your will is deemed invalid and that part of the estate will be divided according to the laws of intestacy.

In order to prevent this it is common practice to include what is called a residual clause in a will. This clause gives away any residue or unspecified remainder of the estate to a named beneficiary, which can include an organisation. If any of the beneficiaries predecease you, their gifts will move into this area. If you have forgotten to specify any of your assets in your will, they will be part of the residue. Any items that you have acquired since you wrote your last will also become part of the residue.

Signing your will

Your will needs to be signed on each page as well as at the end in the presence of two witnesses, who must sign next to wherever you sign. The witnesses must be present throughout the signing of the will by you and throughout the witnessing thereof by each other. Neither should be beneficiaries or the spouses of beneficiaries. Try to use the same pen, preferably black or dark blue. Have the witnesses sign and print their full names at the end.

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