

NATIONAL WILLS WEEK
GET A WILL, FREE
7-11 October 2013

Let an attorney write your will - FREE!

Drafting a basic will: Step-by-step checklist

1. Speak to the testator and get a clear picture of the value of his/her estate and liabilities. Determine if they have any assets held in companies, close corporations, trusts or outside South Africa.
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2. Obtain the testator's
 - full names
 - identity number
 - address

If possible, obtain a copy of the testator's identity book/card.

3. Confirm the testator's
 - marital status
 - full particulars of his/her spouse
 - married in or out of community of property
 - out of community of property
 - out of community of property with the accrual system.

If married in community of property, explain the consequences of this to the testator and if possible also get the spouse to co-operate to draft a will.

If possible, obtain a copy of the antenuptial or co-habitation contract to establish whether there are conditions that may override the will.

4. Ascertain who the heirs are.
 - Full names
 - Identity numbers
 - Marriage status and solvency status
 - Should their benefit be excluded from any future marriage in community of property?
 - If any heir predeceases the testator, to whom must that person's share go.
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5. Ascertain who will be the executor of the estate and or an alternative or successor to the executor.

Explain the advantages of the surviving spouse or an appropriate family member being nominated, or yourself, the attorney.

Obtain the executor's

- full names
 - identity number
 - address
 - marital status
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6. Is there immovable property involved?
If so, try to obtain a copy of the title deed.

- Is there a bond registered over the property?
- Should the property be transferred to the relevant heir subject to the bond or not?
- Is the insurance to cover the debt?

Are there any special bequests?

Who will be the residue heir/s?

7. Are there any conditions to be imposed on the heirs or specific instructions to the executor (liquidation of assets etc) ?

8. **THEN:**

- Draft the will.
 - Let the client read the will properly.
 - Discuss any uncertainties or alterations to be made.
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9. **Ensure that the will is signed by**

- the testator, at the end of the will and in the presence of two witnesses;
- two competent witnesses in the presence of the testator and of each other.
Avoid having family members or heirs signing as witnesses

If the will consists of more than one page, the testator must sign each page.

It is recommended that the witnesses also sign each page.

If the testator signs by the making of a mark, a commissioner of oaths must affix, date and sign his certificate that he has satisfied himself as to the identity of the testator, and that the will signed is the will of the testator. Ensure that every page of the will, other than the page on which the certificate appears, is also signed by the same commissioner of oaths, anywhere on each page. The commissioner's signature and certificate must be appended as soon as possible after the will has been signed by the testator and by two or more competent witnesses.

- Ensure that the will is dated and that it revokes all previous other wills and codicils.
- Give your client a copy of the will.
- Attach your card or compliment slip on which your full particulars appear and a statement that the original document is in your possession.
- File the original will.
- Diarise that you can follow up at least once a year with the client to check whether he/she requires any changes or updates to the will.

[Note: If there are any heirs who cannot manage their own finances or minor heirs, discuss the advantages and disadvantages of forming a trust and age or occasion when a beneficiary will receive his/her benefit. Remember that this is a *mortis causa* trust and has to be created in the will and trustees must also be appointed.]

This checklist is provided by the Law Society of South Africa only as a guideline to attorneys.

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