



IMPORTANCE OF A WILL

It may surprise you to hear that more than 70% of the South African population do not have a will that reflects their personal circumstances, financial situation, and final wishes on how they would like to dispose of their property. When people say, “I don’t have anything to leave to anyone”, they may not realise that anything they own forms property, a house, the household contents, a car, jewellery, among other items. These may have to be sold from the estate for division to surviving family members. Without a will, any verbal instructions given, if not acted upon, cannot be enforced, without being written into a will.

The COVID-19 pandemic leaves many of us working from home surrounded by our families and loved ones; it is inevitable that we start to think about how well we are prepared for our futures.

A will is the only way of making sure that your savings and possessions go to the people and causes you care about. A properly drafted will should prevent any disagreements or disputes after your death. Disputes over inheritances can cause arguments among family members and they may even need legal assistance to resolve them. Leaving a will should remove any doubt as to who benefits from your estate.

A will can ensure that assets are kept within the family and are passed on down the generations. Many people are concerned that new spouses or second families will inherit their assets in the future, and a well-structured will can help to ensure that all family members, from both first and second marriages, are looked after.

When do I need a will?

We recommend that you create or review your will when your circumstances change. This could mean after you have bought property, are contemplating marriage or divorce, having young children or obtaining assets such as investments. Particularly in the current climate, many people are creating or reviewing their wills because of the increased risk of illness during the COVID-19 pandemic.

Why do I need a will?

It is entirely up to you whether you want to create a will, but it is important to be aware of the consequences of not having one. Without having a will in place by the time you die, there are certain rules, known as the ‘Rules of Intestacy’, which apply to your estate and are beyond the control of those around you. These rules can result in people not benefiting from your will that you would otherwise have wanted to benefit.

While the prime purpose of a will is to ensure your estate reaches the right people, having a will also enables you to protect your estate in certain ways and provide the opportunity to review your current tax position.



Protecting your estate

For many, making a will is something to be considered much later in life. The assumption that we are not old enough, own nothing of significant value, or the simple belief that our loved ones will inherit our assets, are just some of the reasons that so many people in South Africa do not have a will.

It is important that your estate be protected as best it can be after your death. Various trusts can be created in your will that act to protect your estate in accordance with your intentions. Trusts also have the potential of being tax efficient.

If you wish to leave an inheritance for a member of your family that is vulnerable, such as someone under the age of 18, a trust can ensure the minor is adequately provided for without them overseeing the inheritance before they reach the age of 18. Drafting a will might assist with the aforementioned by creating a testamentary trust, which forms part of the will drafting process by including such clauses in your will.

How does social distancing affect the creation of my will?

Social distancing will not affect the drafting of your will but can cause inconveniences in executing your final will.

To finalise your will, you will need to sign it in the presence of two independent witnesses. This must take place in person and your witnesses cannot be people named in your will. This can cause some inconvenience while we are being asked to remain at home with our families. The best guidance on this is to sign your will in the presence of neighbours, in an open space, such as a garden, where your neighbours can still visibly see you sign the will, and vice versa.

So, should I create a will?

Our advice is that everyone should have a will, no matter their circumstance. Especially during uncertain times, as now in the COVID-19 pandemic, it is important we all feel secure that our families will be suitably cared for when the time comes, and creating a will is an effective way of doing this.

It is a myth that if you make a will something is bound to happen to you. However, it is surprising how life often throws up problems and surprises for us. Knowing your will has been made, according to your wishes, is important.

DON'T DELAY – CONTACT LEGATEE TRUST SERVICES – AND DRAFT YOUR WILL WITH US.