



# GUIDE TO YOUR LAST WILL AND TESTAMENT



**NR NAGEL**

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A Last Will and Testament may be the single most important document you will ever sign and a very important building block during estate planning. A Last Will specifies how your estate will be distributed after your demise with regards to your assets, investments and personal belongings. Without a Last Will there is no guarantee that your wishes will be carried out or that your family members will be provided for as you intended.

A Last Will is a specialized document, which should preferably be drawn up by an expert like a Legal Practitioner (Attorney) and due care and planning should be exercised with the drafting thereof.

### WHY SHOULD YOU HAVE A LAST WILL

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- 1** You decide how your assets, investments and personal belongings will be distributed at your demise. If you pass without a Last Will, there is no guarantee that your wishes will be carried out or that your family members will be provided for as you intended.
- 2** Parents of young children should be especially proactive in ensuring a valid Last Will is in place as that will allow you to make informed decisions with regards to the guardianship of your minor children in the event that you (or you and your spouse) pass prematurely. Without a Last Will, the Master of the High Court will take it upon itself to choose a suitable guardian for your minor children among family members or state-appointed guardians.
- 3** Having a Will in place enables you to appoint the Executor of your estate who assumes responsibility for the distribution of your assets and ensuring your last will is carried out. Without a valid Last Will, the High Court will appoint a Public Trustee on your behalf and the costs thereof will be deducted from your estate.
- 4** You can choose to place conditions on a beneficiary before they qualify to enjoy the benefit and you may determine how they may or may not use the benefit of their inheritance. A common restriction is to exclude the spouse of a beneficiary from any matrimonial claim on the inheritance.

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- 5** You can Minimize estate taxes and administration costs only by virtue of a sound estate plan in place.
  - 6** Having a well-crafted Last Will available at the time of your demise will help to speed up the administration process and will limit any potential disputes and conflicts among members of your family as there are clear instructions on how to distribute your assets.
  - 7** You can change your Last Will at any stage during your lifetime. Life changes, such as births, deaths and divorce create scenarios or opportunities where amendments to you Last Will is necessitated.

### **WHO IS COMPETENT TO MAKE A WILL?**

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Any person aged 16 years and older are competent to make a Last Will in order to determine how their estate should devolve upon their demise, unless they were mentally incapable of appreciating the consequence of their actions at the time of making or signing the will.

### **WHO IS COMPETENT TO ACT AS A WITNESS TO A WILL?**

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All persons 14 years of age and older are competent to act as a witness to a Last Will, provided that at the time they witnessed the signature to the Last Will, they were not incompetent to provide evidence in a court of law. This basically means that they should have appreciation for the deed that they are witnessing and subscribing unto.

A beneficiary to a Last Will should never sign as a witness, as he/she will then be disqualified from receiving any benefit derived from the said Last Will.

### **WHY AND HOW TO APPOINT AN EXECUTOR OF YOUR ESTATE?**

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By nominating your own Executor/Executrix, you ensure that someone you trust will take care of your estate and your heirs' interests after your demise. The administration process of a deceased estate is a complex process with many legal requirements and it is therefore of utmost importance that a qualified person is nominated as the Executor/Executrix of your estate

### **WHAT ARE THE REQUIREMENTS FOR A VALID WILL?**

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A Last Will has to be in writing and can be hand written, typed or printed. Your signature must be made in the presence of two competent witnesses and must appear at the end of the document. If the document consists of more than one page, each page is to be signed by the Testator.

The witnesses must attest and sign the Last Will in your presence (as Testator) and in the presence of one another. Although you must sign all the pages of your Last Will, only the last page of the document needs to be signed by the witnesses.

If you cannot sign your name, you may ask someone to sign your Last Will on your behalf or you can sign the will by making a suitable mark (being a thumbprint or a cross). In the event that the Last Will is signed by someone in your stead or by yourself by virtue of a mark, a Commissioner of Oaths must certify that he/she has satisfied him/herself as to your identity and that the Last Will so signed is indeed your true Last Will.

The Commissioner of Oaths must sign his/her certificate and he/she must also sign every other page of the Last Will, anywhere on the page. The Commissioner of Oaths must also be present when the Last Will is signed and must append his/her certificate as soon as possible after the Last Will has been signed, even if the Testator passes away soon after signing the document.

## HOW TO AMEND YOUR LAST WILL?

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Amendments to your Last Will can only be made while executing (signing) your Last Will or after the date of signature thereof and must comply with the same requirements.

## DO YOU NEED TO AMEND YOUR LAST WILL AFTER DIVORCE?

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Any bequest to your divorced or former spouse in your Last Will, which was made prior to your divorce, will not necessarily fall away after divorce. The Wills Act stipulates that, except where you expressly provide otherwise, a bequest to your divorced spouse will be deemed revoked if you die within three months of the divorce.

This provision allows a divorced person a period of three months to amend his/her Last Will, after the trauma of a divorce. Should you, however, fail to amend your Last Will within three months after your divorce, the deemed revocation rule will fall away and your divorced spouse will benefit as indicated in the Last Will and Testament.

## WHO WOULD BE DISQUALIFIED FROM INHERITING UNDER A WILL?

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Any person, or his/her spouse, who writes your Last Will, or any part thereof on your behalf, and/or a person or his/her spouse who signs your Last Will, on your instruction or as a witness.

Consult us for more information in this regard.

## CONCLUSION

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As mentioned at the start of this guide, a valid Last Will is in many ways the most important legal document you will sign during your lifetime. Without a Will, a lifetime's work could be undermined and your otherwise carefully constructed commercial and legal safeguards could be negated. What's more, your dependants, family and beneficiaries are likely to suffer the hardship of an uncertain financial future due to the inevitably long delay in winding up your estate.

Contact us to set up and appointment to safeguard your interests.

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## CONTACT YOUR PARTNER DEDICATED TO EXCELLENCE

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