



Wills & Deceased Estates



The Importance of a Last Will And Testament

- ▶ It is important to draft a **valid last will and testament (Will)** as it will ensure that clients exercise **freedom of testation** thus ensuring that their **assets** are distributed in accordance with their **wishes** after **death**.
- ▶ Dying **without a Will** can lead to internal family drama, as the assets will be distributed in accordance with **intestate succession**.
- ▶ It is also important that a testator does not try and “**rule from the grave**” –i.e. impose suspensive conditions for inheriting a specific asset.

Testate and Intestate Succession

▶ Testate vs Intestate

- ▶ When a person dies **without leaving a valid Will** , their estate will be administered in terms of Intestate Succession Act 81 of 1989 (“ **Intestate Succession Act** ”).
- ▶ However , if there is a **valid Will** then their estate must be administered and distributed in terms of the deceased’s Will.
- ▶ Only an **original Will** shall be accepted by the Master’s office.
- ▶ If there is **no original Will** or only a certified copy thereof, the estate will devolve according to **the Intestate Succession Act** .



Important Terms



▶ What is a deceased estate?

- ▶ A deceased estate includes **all assets and liabilities** which
- ▶ belong to the deceased person at the **time of his /her death** .
- ▶ The deceased estate may include properties such as furniture, household appliances, cars, house, shares in a company and debts.

▶ Who is a testator/ testatrix?

- ▶ A testator/testatrix is an **individual that makes a Will** .
- ▶ He/she must be **16 years or older**; and at the time of making the Will, must be **mentally capable of appreciating the nature and effect of his/her actions**



Important Terms(Cont.)

- ▶ **Who can be nominated as a beneficiary?**
 - ▶ A beneficiary is a person who has been **mentioned as an heir** (inheritor) in a Will or in terms of the governing rules of **intestate succession**.
- ▶ The following persons may be **nominated as beneficiaries** in a will:
 - ▶ **A minor:** a person under the age of 18 years. A guardian or curator may be appointed by a court to administer the benefit of the minor.
 - ▶ **An adult or a major:** a person of 18 years or older
 - ▶ **An unborn child** , however the child must be born
 - ▶ **Children born out of wedlock:** includes children born of adulterous, incestuous or extramarital relationships.

Important Terms(Cont.)

- ▶ **Person of unsound mind** : A *curator-bonis* may be appointed by a court to administer the bequeathed estate on the beneficiary's behalf.
- ▶ **An insolvent person** : their bequeathed property will be administered by a trustee for the benefit of their creditors.
- ▶ **Juristic persons** : a private company or non profit organisation
- ▶ There are circumstances which might give rise to the **disqualification** of persons from **inheriting**, which include:
 - ▶ An **unworthy person** or beneficiary who is directly or indirectly responsible for the cause of death of the deceased.
 - ▶ Certain **persons involved in the execution process** (for example: an individual who drafted the will on behalf of the testator/testatrix) of a will.

Important Terms(Cont.)

➤ Who is a guardian?

- A guardian is a person who must:
 - **administer** and **safeguard** the **child's property** and property interests;
 - assist or **represent the child** in administrative, contractual and other legal matters; or
 - **give** or **refuse** any **consent** required by law.

➤ Who is an executor?

- An executor is a person **nominated in a valid will** or by the heirs of the deceased if there is **no will**.
- The executor will **administer the deceased's estate** and it is recommended that if the executor is a lay person, that he/she seeks **assistance from appropriate personal** such as an **attorney or an accountant** .

➤ Who is a competent witness?

- A competent witness is any person of the age of **14 years or older; and**
- at the time he/she **witnesses is competent to give evidence in a court of law.**

Important Terms(Cont.)

▶ What is a testamentary trust?

- ▶ A testamentary trust is a trust **created by provisions of a Will** and in the legal framework of testate succession.

▶ Who is a trustee?

- ▶ The trustee of a testamentary **trust is nominated to administer and manage** the estate of the testator/testatrix on behalf of the beneficiary.

▶ Who is the Master of the High Court?

- ▶ The Master of the High Court **manages the administration and winding up of the deceased estates , and protects the financial interest** of the beneficiaries/heirs.

▶ What is a letter of executorship?

- ▶ Is **issued by the Master of the High Court by which a person named therein is authorised to act as the personal representative or executor** of the deceased estate.
- ▶ Issued in the instance that the deceased estate is valued at **R250 000 or more**

▶ What is letter of authority?

- ▶ A letter of authority is **issued by the Master of the High Court** where the value of the deceased's assets is **less than R250 000**.

A Valid Will

- ▶ In order for a Will to be **valid** , it must satisfy the following the grounds:
 - ▶ the Will must be **signed at the end thereof** by the **testator/testatrix** or by some other person in their presence and by their direction. The signatures must be done in the presence of **two or more competent witnesses**
 - ▶ two or more competent witnesses must **attest and sign** the **Will**, in the **presence of the testator/testatrix**
 - ▶ the Will needs to be **signed on each page** by the testator/testatrix. The Will can be signed anywhere on the page, except for the final page, which requires the signature to be at the **end of the Will**
 - ▶ if the Will is signed by the testator/testatrix with **a mark or thumb print** , the Will must be marked in the presence of a **Commissioner of Oaths**. The Commissioner of Oaths must sign their certificate and each page of the Will;
 - ▶ the testator must be **16 years or older** ; and
 - ▶ the Will must be in **writing**.

Duties of an Executor

- ▶ Check the **validity of the Will**
- ▶ Establish **who the beneficiaries** are in terms of the Will and ascertain what the **rough estimate of assets and liabilities** are
- ▶ Complete an **Inventory of Assets form from the Master of the High Court** and indicate whether the estate is valued at **more than R250 000.00**.
- ▶ Should the estate be valued **at less than R250 000.00**:
 - ▶ **No Liquidation and Distribution Account**; and
 - ▶ **No advertisement** for potential creditors required.
- ▶ The Executor must **complete an Acceptance of Trust Form** and take it to the Master of the High Court. At the Master of the High Court the Executor must apply to be **formally appointed** as per the wishes of the testator/testatrix in their Will.
- ▶ In order to be formally appointed, the Executor will have to submit the requisite documents to the Master of the High Court, such as an original will, marriage certificate etc.

Duties of an Executor(Cont.)

- ▶ The documents **must be posted to, or handed** in at the Master's office.
 - ▶ **Faxed** reporting documents are **not acceptable**.
- ▶ If the documents are completed correctly and lodged with the Master/Magistrate (whatever the case may be), **a file is opened in the name of the deceased**.
 - ▶ Once the file is **opened** the documentation is **perused by an examiner** for correctness and the Will (if any) is **considered by the assistant Master** and either **accepted or rejected**.
- ▶ Once the application is **accepted** , The Master of the High Court will grant either a Letter of Executorship or a Letter of Authority for the Executor to be appointed. Subsequently:
 - ▶ The Executor must **advertise** in the Government Gazette and a local newspaper for creditors to **submit their claims against the estate** to the **Executor within a specified period (the period cannot be less than 30 days)**.
 - ▶ The Executor must **close the deceased's accounts** (this is accomplished by paying in full any outstanding accounts of the deceased and closing these accounts) and **open a bank account**.
 - ▶ Please note, the bank **may require certified copies** of the Letter of Executorship/ Letter of Authority in order to open up the account .

Duties of an Executor(Cont.)

- ▶ The Executor must (if required depending on estate value) **prepare a Liquidation and Distribution Account** (the account reflects all assets and liabilities as well as all income and expenditures in the estate) (hereafter referred to as the “ **Account** ”).
- ▶ The Executor must submit **the Account to the Master and to SARS.**
- ▶ The Executor **must advertise the Account** in the Government Gazette and a local newspaper for a period of **21 days to allow for inspection of the Account**
 - ▶ at the **Masters Office and a duplicate of the Account at in the Magistrates Office**, which has jurisdiction on the matter.
 - ▶ Note, the duplicate Account will **only be open for inspection** in the above mentioned **Magistrates Office** if the deceased was ordinarily resident at the date of his death in a district other than the **magisterial district of the specific Masters Office.**



Duties of an Executor(Cont.)



- ▶ Before distribution the Executor must obtain a release form from SARS. This **ensures that all relevant taxes are paid.**
- ▶ If the Account has **no objections and there are no reviews or appeals** of the Master's decision then the Executor can start **finalising the administration** (i.e. making payment to the heirs).
 - ▶ Please note, that cash amounts must be distributed **within 2 months** of the estate being distributable.
- ▶ Upon receiving their inheritance the **heirs will sign an acquittance** stating that they have **received their inheritance.**
- ▶ The **acquittances and the final bank statements are sent to the Master.**
 - ▶ The Mater will **inspect** these **documents** and once satisfied the Master will forward the Executor a **filling notice which stipulates the completion of the estate.** The Executor retains all records **pertaining to the estate for the prescribed period.**



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