



WOMEN'S LEGAL CENTRE

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# **YOUR GUIDE TO WILLS IN SOUTH AFRICA**

A PRACTICAL RESOURCE FROM THE WOMEN'S LEGAL CENTRE



# 1. WHAT IS A WILL, AND WHY IT'S IMPORTANT

A Will is a written legal document that expresses a person's (testator) wishes as to how their property (assets, money, house, etc.) should be distributed after their death and which person should manage their property until its final distribution.

It can also specify who should take care of your minor children.

## **A Will is important because it:**

- Ensures your wishes are followed
- Simplifies the estate process
- Avoids family disputes and prevents disagreements among your loved ones

## **What happens without a Will:**

- Your assets are distributed according to the laws of the Intestate Succession Act, which is a formular determined by the government
- The court will appoint an executor to manage the distribution of your assets
- The Master of the High Court will appoint an executor to manage the distribution of your assets
- Cause family disputes because there are no clear instructions on how your assets should be distributed
- There can be extra and unnecessary costs

A will gives you control and peace of mind, especially if you have children, dependents, or a complicated family situation.

When you die with a valid will, it's called testate succession, and your wishes guide what happens.

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# 2. TESTATE VS INTESTATE SUCCESSION

## **Testate**

What happens when you have a will:

- Your assets are distributed according to your wishes
- The process is faster and smoother for you family
- You choose your executor and beneficiaries

## **Intestate**

What happens if you don't have a will:

- Your estate is divided according to the law, not your wishes
- Appointing an executor may take longer
- Family disputes and delays may arise



### 3. WHY CHOOSE TESTATE SUCCESSION?

- Testate succession protects your legacy.
  - Having a valid will ensures your assets go to where YOU want them to.
  - Make your wishes clear and avoid legal complications.
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### 4. WHO CAN MAKE A WILL

In South Africa, you can make a will if you:

- Sound mind to make decisions, or giving someone, like a lawyer, instructions to draft your will.
  - Are 16 years or older.
  - You can also use an attorney to draft your will. Attorneys are experts in the law and ensure your will is valid and reflects your wishes.
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## 5. DIFFERENT TYPES OF WILLS

### Simple Will

A basic will for people with straightforward needs.

- Says who gets your money, property, and belongings.
- Can name a guardian for your children.
- Quick, affordable, and easy to make.
- Best if you have a small estate and clear wishes.

### Joint Will

One will, shared by two people - usually married or life partners.

- Both people agree on what should happen to their joint estates.
- Often says everything goes to the surviving partner first, then to other beneficiaries.

### Living Will

This type of will is not about money, property or possessions, this is about your medical care.

- Explains what treatment you want (or don't want) when the time comes where you can't speak for yourself.
- Helps your family and doctors know your wishes in medical emergencies.
- Does not decide who gets your property.
- Useful for avoiding confusion and stress for loved ones.

### Testamentary Will (with Trust)

A will that sets up a trust after you die.

- The trust holds and manages money or property for certain people (like your children).
- The trust can last until they reach a certain age or meet other conditions you choose.
- Helps protect and manage assets for people who can't handle them yet.
- Best for parents or anyone with vulnerable beneficiaries.



## 6. WHAT YOUR WILL CAN DO

### With a will, you can:

- Appoint an executor (as well as an alternative), someone you trust to manage your estate
- Name guardians for children under 18 years
- Decide who gets what, from money to property and specific items
- Include your government-subsidised home (\*RDP house\*) or other state-assisted property so it's clear who should inherit.
- Set up a trust for minors or dependents with special needs
- Make personal requests, such as funeral wishes or care for pets
- Plan for special circumstances, like blended families, second marriages, or dependents who need extra care
- Include your property, government-subsidised home (RDP house) or other state-assisted property, so it's clear who should inherit

### Important Notes on Property in Your Will

- You can only include your property in your will if you are the rightful owner and in possession of the Title Deed. If you are still paying off your home, it means you are not the owner and therefore no one can inherit the property.

### RDP Property:

- If you want to include an RDP property in your will, you must be the rightful owner. Local government housing agencies only issues Title Deeds after some time, and allocation of a property does not automatically mean you have the Title Deed. It can take years for the local government housing agencies to provide Title Deeds. Without a Title Deed, you cannot legally include the property in your will.
- Many clients have been allocated RDP properties and lived in them for years without receiving Title Deeds. If the owner dies without a Title Deed, the property cannot be transferred to the heirs until the Title Deed is issued. The executor and beneficiaries will have to wait for the Title Deed before the will can be honoured.

### Usufruct Rights:

- You may include a usufruct clause in your will, granting a person (often the surviving spouse in a joint will) the right to use and enjoy the property during their lifetime. The person inheriting the property cannot evict the usufruct holder, as their rights are protected under the will. The terms can be customised, but typically last for the lifetime of the usufruct holder.

### Exclusion from Marital Property:

- You can direct that any property inherited under your will shall be excluded from the marital estate. This means the property is free from interference, control, and marital power, and remains the sole and absolute property of the inheriting beneficiary. If the beneficiary of the property is married in community of property (ICOP), the inherited property will not form part of the joint estate and cannot be divided in a divorce. This ensures that spouses cannot claim 50% of the inheritance property in divorce proceedings.

## 7. LEGAL BASICS FOR A VALID WILL

### Your will must:

- Be in writing (typed or handwritten)
  - Be stored somewhere safe and accessible, and your executor must know where
  - Be signed by you in front of two competent witnesses and have those witnesses also sign in your presence. Your witnesses cannot be beneficiaries in your will. Neither can their spouses or partners.
  - If you make changes later, use a codicil (an official amendment) or write a new will. If you choose to make a new will, you must still follow the legal requirement of having two witnesses present to watch you sign and then sign the document themselves.
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## 8. COMMON MISTAKES TO AVOID

- Not updating your will after big life events (marriage, divorce, birth, death)
  - Not appointing an alternate executor or guardian
  - Using vague wording that can cause disputes
  - Forgetting to include important assets
  - Not including housing or property properly; particularly places obtained through subsidies or shared ownership. Women risk losing access to these assets if they are not clearly accounted for in the will.
  - Failing to store your will safely or telling your executor where it is
  - Assuming a handwritten will is automatically valid - it must still include witness signatures and an executor.
  - Openly discussing how you'd like your assets to be distributed before death, to ensure that children and other beneficiaries understand your wishes. This will avoid confusion, prevent disputes, and keeping families united.
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## 9. STEP-BY-STEP: MAKING YOUR WILL

- List your assets and debts - include property, bank accounts, investments, vehicles, valuable items, and any subsidised/government housing
  - Choose your beneficiaries
  - Appoint an executor (and a backup)
  - Appoint guardians for your minor children
  - Consider trusts for minors or dependents
  - Write your will clearly and simply
  - Sign it in front of two competent witnesses
  - Store it safely and tell your executor where it is
  - Review it regularly
  - Get help if you're unsure - you can contact us for free advice.
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## 10. SPECIAL CONSIDERATIONS FOR WOMEN

- Protecting dependents: Ensure their needs will be met
  - Special needs dependents: Use a trust to protect their care and benefits
  - Blended families: Be clear about stepchildren and shared property
  - Domestic violence or safety concerns: If you are experiencing or have experienced domestic violence, it is crucial to seek confidential legal advice before finalising your will. This includes being cautious when naming guardians or disclosing personal information that could put you or your dependents at risk. A lawyer can help you structure your will in a way that protects your privacy, ensures your wishes are honoured, and minimises the possibility of an abusive partner or unsafe family member gaining control over your estate or children's care.
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## 11. THE GUARDIAN'S FUND

If you pass away and leave behind minor children, and there is no will making provision for the children's financial needs, assets will be paid and the funds transferred into the Guardian's fund for management by the government on behalf of your minor child.

### What is the Guardian's Fund for?

- The government managing the money left for minor children
- Ensures the funds are used for the child's education, maintenance, and wellbeing
- Provides financial security for the children's future.

### How to access the Guardian's Fund

- The child's guardian will need to claim on their behalf and when the child turns 18 years they can claim the full amount.
- Ensure the funds are used for the child's education, maintenance and wellbeing.
- Provide documentation like the death certificate and the will (if available).

### Why is the Guardian's Fund Important?

- To protect the financial interest of children who's parents dies without leaving a valid will, because the government will then manage the financial interest on the child's behalf.

## 12. WHAT HAPPENS AFTER YOU DIE

- Your spouse/children/life partner must report your death to the Master of the High Court.
- Your executor applies for letters of executorship from the Master of the High Court
- They collect assets, pay debts, and distribute according to your will
- Taxes or transfer duties may apply
- If no valid will exists, the Intestate Succession Act decides
- If someone disputes the will, the court decides; a clear, valid will reduce this risk

## 13. WHERE TO GET HELP

**Women's Legal Centre -**  
Legal Advice Unit

2nd Floor, 5 St Georges  
St Georges Mall  
Cape Town

**Tel:** 021 424 5660

**WhatsApp:** 079 421 8197

**Email:** [info@wlce.co.za](mailto:info@wlce.co.za)

## 14. QUICK WILL TEMPLATE

I, \_\_\_\_\_, ID \_\_\_\_\_, of \_\_\_\_\_  
 [Full Name] [Number] [Address]  
 \_\_\_\_\_ declare this to be my last will and testament.

I appoint \_\_\_\_\_ as executor, with \_\_\_\_\_  
 [Executor's Full Name] [Alternate Executor]  
 as backup.

I leave \_\_\_\_\_ to \_\_\_\_\_.  
 [Special gift] [Beneficiary]  
 The residue of my estate shall go to \_\_\_\_\_.  
 [Beneficiary/ Beneficiaries]

I appoint \_\_\_\_\_ as guardian for my minor children \_\_\_\_\_  
 \_\_\_\_\_  
 [name children with ID numbers]  
 \_\_\_\_\_,  
 with \_\_\_\_\_ as backup.  
 [Alternate Guardian]

Signed at \_\_\_\_\_ on \_\_\_\_\_ in the presence of  
 [Place] [Date]  
 the undersigned witnesses.

[Your Signature] \_\_\_\_\_  
 [Witness 1 Signature & Details] \_\_\_\_\_  
 [Witness 2 Signature & Details] \_\_\_\_\_

# GLOSSARY

## **Intestate Succession**

When a person dies without leaving a valid will. Their estate is distributed according to the rules set out in the Intestate Succession Act, which may not reflect the person's personal wishes.

## **Intestate Succession Act**

The South African law that determines how a deceased person's estate is divided when they die without a valid will. It sets out a specific order of inheritance for surviving spouses, children, and other relatives.

## **Testate Succession**

When a person dies leaving a valid will. The estate is distributed according to the instructions in that will, as long as they comply with the law.

## **Witnesses**

People who are present when you sign your will and who also sign it to confirm that they saw you sign it. South African law requires two competent witnesses for a will to be valid, and they cannot be beneficiaries in the will.

## **Executor**

The person you appoint in your will to manage and finalise your estate after your death. The executor is responsible for paying debts, managing assets, and ensuring your wishes in the will are carried out.

## **Estate**

Everything you own at the time of your death, including property, money, possessions, and any debts you owe.

## **Trust**

A legal arrangement where assets are managed by a trustee for the benefit of specific people or purposes. Trusts can be used in wills to protect assets for minors or vulnerable beneficiaries.

## **Codicil**

A legal document that makes specific changes or additions to an existing will without replacing the whole will. It must be signed and witnessed in the same way as a will.

## **Dependents**

People who rely on you for financial support, such as children, a spouse, or other family members. Dependents' rights must be considered when drafting your will to ensure they are adequately provided for.

## **Beneficiaries**

The designated person/people who will inherit assets like money, property, or other possessions from the person who made out the will.

## **Guardian**

A person appointed by a parent in their will to take responsibility for their minor children, or special needs children/family and welfare if the parents pass away.