

PERSONS WHO ARE DISQUALIFIED FROM INHERITING UNDER A WILL

1. The person of his/her spouse who writes a will or any part thereof on behalf of the Testator.
2. A person of his/her spouse who signs the will on instruction of the testator or as a witness.
3. Consult your legal representative for more information in this regard.

CONTACT DETAILS

Master of the Free State High Court, Bloemfontein

Tel: 051 - 411 5500
Fax: 051 - 448 6182 /
051 - 447 6575

Master of the Northern Cape High Court, Kimberley

Tel: 053 - 831 1942
Fax: 053 - 833 1586

Master of the North West High Court, Mafikeng

Tel: 018 381 8585 / 4122 /
0005
Fax: 018 - 381 3617

Master of the North Gauteng High Court, Pretoria

Tel: 012 - 339 7700 / 7808 /
7999
Fax: 012 - 326 1977

Master of the South Gauteng High Court, Johannesburg

Tel: 011 - 429 8000/8004
Fax: 086 679 6362

Master of the Limpopo High Court, Thohoyando

Tel: 015 - 962 1032
Fax: 015 - 962 1033

Master of the North Gauteng High Court, Polokwane

Tel: 015 - 291 4300
Fax: 015 - 291 4320

Master of the Eastern Cape High Court, Bhisno

Tel: 040 - 639 2087/2079
Fax: 040 - 639 2100

Master of the Western Cape High Court, Cape Town

Tel: 021 - 410 8300
Fax: 021 - 465 2574

Master of the Eastern Cape High Court, Grahamstown

Tel: 046 - 603 4000
Fax: 046 - 622 9990

Master of the KwaZulu-Natal High Court, Pietermaritzburg

Tel: 033 - 264 7000/7006
Fax: 033 - 345 5252 (GF)

Master of the Eastern Cape High Court, Mthatha

Tel: 047 - 531 2361
047 - 532 3201
047 - 531 2120
Fax: 047 - 531 0980 or
047-532 2040

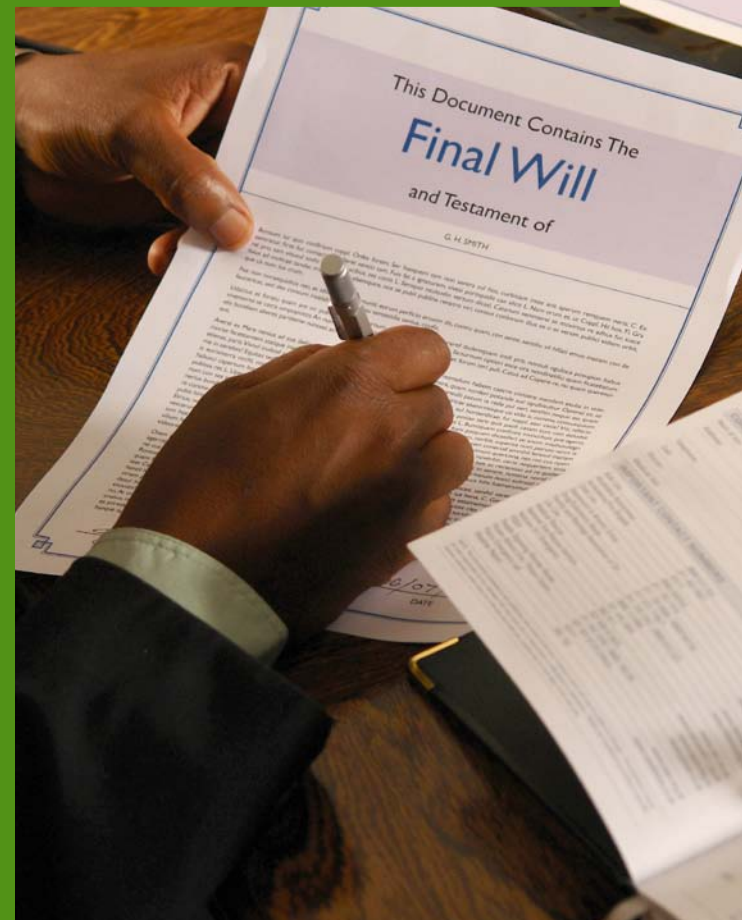
Master of the KwaZulu-Natal High Court, Durban

Tel: 031 - 306 0123
Fax: 031 - 306 0126

Master of the Eastern Cape High Court, Port Elizabeth

Tel: 041 - 403 5100
Fax: 041 - 403 5117

The Master of the High Court



MASTER OF THE HIGH COURT HELP LINE

Tel: 012 315 1207
chiefmaster@justice.gov.za
www.justice.gov.za

WILLS

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What is said hereunder is not meant to be a comprehensive guide on wills.

A will is a specialised document, which should preferably be drawn up by an expert like an attorney, trust company etc. The information is merely to inform the reader about some basic aspects of wills.

WHO IS COMPETENT TO MAKE A WILL?

All persons of 16 years and over, unless at the time of making the will he/she is mentally incapable of appreciating the consequence of his/her actions.

The person who draws up a will is called the testator/testatrix.

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

All persons of 14 years and over and who at the time he/she witnesses a will, are not incompetent to give evidence in a court of law.

WHAT ARE THE REQUIREMENTS FOR A VALID WILL?

1. Since 1 January 1954 all wills must be in writing. It can be written by hand, typed or printed.
2. The testator/testatrix must sign the will at the end thereof.
3. The signature of the testator/testatrix must be made in the presence of two or more competent witnesses.
4. The witnesses must attest and sign the will in the presence of the testator/testatrix and of each other.

5. If the will consists of more than one page, each page other than the page on which it ends must be signed by the testator/testatrix anywhere on the page.

(Although the testator/testatrix must sign all the pages of the will, it is only the page on which the will ends, that needs to be signed by them at the end of the will).

WHAT ARE THE REQUIREMENTS FOR A VALID WILL IF I CANNOT SIGN MY NAME?

You may then ask someone to sign the will on your behalf or you can sign the will by the making of a mark (a thumbprint or the making of a cross).

When the will is signed by someone on your behalf or by the making of a mark, the additional requirements for a valid will are as follows:

1. A commissioner of oaths must certify that he/she has satisfied himself/herself as to the identity of the testator and that the will so signed is the will of the testator.
2. The commissioner of oaths must sign his/her certificate and he/she must also sign every other page of the will, anywhere on the page.
3. The commissioner of oaths must be present when the will is signed and must append his/her certificate as soon as possible after the will is signed even if the testator/testatrix dies soon after signing the will.

WHAT IS A CODICIL?

A codicil is a schedule or annexure to an existing will, which is made to supplement or to amend an existing will.

A codicil must comply with the same **requirements for a valid will**. A codicil need not be signed by the same witnesses who signed the original will.

WHAT IF I WANT TO AMEND MY WILL?

Amendments to a will can only be made while executing a will or after the date of execution of the will.

Amendments to a will must comply with the same **requirements for a valid will** and if you cannot sign, with the same requirements listed under that heading. When amending a will, the same witnesses who signed the original will need not sign it.

MUST I AMEND MY WILL AFTER DIVORCE?

A bequest to your divorced spouse in your 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 is to allow a divorced person a period of three months to amend his/her will, after the trauma of a divorce.

Should you however fail to amend your will within three months after your divorce, the deemed revocation rule will fall away, and your divorced spouse will benefit as indicated in the will.