

FREQUENTLY ASKED QUESTIONS REGARDING WILLS, DECEASED ESTATES AND TRUSTS

By **Debi Jacobs**, Senior Estate Administrator - Independent Executor & Trust.

Q What happens if I die without having made a Will?

Your estate will be distributed in terms of the Law of Intestate Succession, and you may end up benefiting beneficiaries whom you may not have wished to benefit, and may exclude persons whom you would have preferred to benefit. If there are minors involved, their inheritance will be paid to the Master of the High Court Guardian's Fund. Complex problems would also arise which could be avoided if your Will was in place.

Q Can I draw up my own Will without seeking professional advice?

The law does not prevent you from drawing up your own Will, but there are many legal formalities which must be complied with for the Will to be valid. If the Master renders the Will invalid, only a costly High Court application can be sought to rectify this error.

Q Can the proceeds of insurance policies be bequeathed in terms of my Will?

The proceeds of an investment can only be bequeathed in terms of your Will if such proceeds are payable to your estate on your death. If you have nominated a beneficiary to receive the proceeds then the company who issued the policy will pay the proceeds to the beneficiary nominated. Remember, if a policy pays directly to a beneficiary and bypasses the estate, it is still considered a deemed asset for Estate Duty purposes.

Q What happens if I forget to change my Will after divorce?

According to the Wills Act, if you die within 3 months of the divorce, a bequest to your divorced spouse will be deemed revoked. This allows a divorced person a period of three months to amend their Will after the trauma of divorce. If one fails to amend ones Will within three months after divorce, your divorced spouse will benefit as

indicated in the Will.

Q What is a Codicil?

This is an addition made to supplement or amend an existing Will. A codicil must comply with the same requirements as a Will in order to be valid. A codicil need not be signed by the same witnesses who signed the original Will.

Q What is the difference between an heir and a legatee?

A legacy is a specified amount of money or property that is left to someone in a Will, and this person is called a legatee. The residue of the estate, the portion left after debts and legacies have been paid out is inherited by heirs, also known as beneficiaries.

Q How old do I have to be to have a Will?

Any person 16 years and older can have a Will drawn up provided that person is mentally equipped to understand the impact of their actions. A witness to a Will must be at least 14 years old.

Q Do I need to pay tax on money I inherited?

An inheritance acquired by an heir is what is described as a 'capital receipt' and is therefore not included in the heirs' gross income. In South Africa, there is therefore no tax payable by the heirs who inherit.

Q Can I make valid a Will if I cannot sign?

Yes, you can sign by means of a mark, e.g. a thumbprint or making of a cross, or someone may sign on your behalf, but this must be done in the presence of two competent witnesses and a commissioner of oaths, all of which need to be present at the same time, and the Commissioner must add his Certificate to the Will. ⊕



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49 Beach Road, Nahoon, East London, 5241 | PO Box 8081, Nahoon, 5210
Telephone: (043) 735 4633 Fax: 086 693 3356 / (043) 735 3942 | e-mail: info@iet.co.za

Port Elizabeth clients can call 041-582 3990 and you will be re-directed accordingly

