



EAP Educates: Making a Will

What is a will?

A will is a legal document that stipulates who gets your monies, belongings and properties when you die.

Why do I need a will?

- If you die without a will you die “intestate” which means that your belongings, monies and properties (assets) are divided amongst your family according to the law and not according to your wishes.
- When you die intestate, it takes longer for your assets to be distributed to your family members.
- When you die intestate, family members end up fighting over your assets because they believe the law is unfair and because they believe they deserve certain things.
- With a will you appoint the Executor (person to carry out the will after your death), dying intestate the state appoints the executor (usually the surviving spouse).

Making a will

- It is recommended that you seek expert advice to ensure that your will is valid after your death. This can be done either through a lawyer or a bank.
- If you work with your bank, check to see what their charges are. If they don't charge, they usually take 3.5% of the total value of your assets as an executor's fee after your death (banks normally appoint themselves as executors to carry out your wishes)
- Anyone over 16 can make a will.
- Two (2) witnesses who are over the age of 16 years must sign the will and they must be both present to sign the will, every page on the will must be signed.
- Any additions to the will must be made correctly or they will be invalid. Consult your lawyer or the bank regarding this.

Cancelling a will

You can cancel the will you have made at any time. The usual way is to state in the new will that you “revoke all previous wills” or tear up all the copies.

Free Wills Week 2013

This year, the week of 7 – 11 October 2013 has been designated wills week. During this week, participating attorneys will draft new basic wills free of charge. This initiative **DOES NOT** extend to amendments to existing wills.

CONTACT THE EAP FOR FURTHER INFORMATION AND CONTACT DETAILS OF PARTICIPATING ATTORNEYS



Example of a Last Will and Testament

<p>Explanation</p>	<p>This is the last will of BOB HARRY SMITH of 123 4th Street, Greyton, Western Cape</p>
<p>The clause ensures that no reference need be made to any earlier wills</p>	<p>I hereby revoke all previous wills or testamentary writing made by me.</p>
<p>Identify the executor full and accurately – choose a responsible, trustworthy person, who is “money wise” and likely to be alive at the time of the testator’s death. Security will be required unless exempted by the will or unless the executor is a spouse or child of the deceased. It is a good idea to nominate an alternative executor in the event of the “first choice” predeceasing the testator.</p>	<p>I appoint as executor of my estate my brother GEORGE SMITH of No 1 2nd Road, Caledon, and in the event of his being unwilling or unable to act, I appoint JOE ELS of No 5 6th Street, Caledon, and direct that he shall not be required by the Master of the Supreme Court or other competent authority to give security for the performance of his duties.</p>
<p>List specific legacies. Our example gives two.</p>	<p>I leave my Toyota motor car, PQ112233 and R5000, to JOE SOAP of plot 456 Greyton, if he is still in my employ at the time of my death. (If car is sold before death, a CODICIL will have to be inserted to bring the position up to date.)</p>
<p>This appoints the testator’s spouse or alternatively his son, as heir to the estate.</p>	<p>I leave the residue of my estate to my wife, HELEN SMITH (nee BLOGS), to whom I am married out of community of property. Should my said wife, HELEN SMITH not survive me, I leave the entire residue of my estate to our son, JOE BLOG SMITH.</p>
<p>Ensure guardianship of any children.</p>	<p>Should my wife and I die before my son reaches 21 years of age, I appoint my brother, GEORGE SMITH as his guardian.</p>
<p>This is the so-called attestation clause. It is not strictly necessary for there to be one, but it is valuable when it contains the date of execution (that ought otherwise to appear elsewhere in the will), because the date may be significant in determining the capacity of the testator or a witness, the formal validity of the will, and whether it was in fact the last will. Furthermore, the clause may help in making the testator and witnesses comply with the formality of the Wills Act.</p>	<p>In witness hereof I have hereunto set my hand at Caledon on this the twentieth day of June 1991 in the presence of the undersigned witnesses who in my presence and in the presence of each other have signed this will as witnesses.</p> <p>BOB HARRY SMITH</p> <p>AS WITNESSES</p> <p>.....</p> <p>.....</p>