Publication: Moneywebs Personal Finance
Date: 01 Apr 2016
Page: 3

How (not) to draft a will

The pitfalls of a DIY approach

By: INGÉ LAMPRECHT

IT MIGHT be easy to argue that a will is an unnecessary document, especially if it won't make any difference to the distribution of the assets in the estate—but beware.

The argument is flawed for two reasons. Dying without a will invariably causes significant delays in the administration of the estate. The Master of the High Court will have to appoint an executor on behalf of the deceased, and this can delay the process considerably.

The Master also has to consult family members before an appointment is made. If they are not satisfied with the appointment, it could result in a lengthy and costly court battle, according to Louis van Vuren, chief executive officer of the Fiduciary Institute of Southern Africa (FISA), who adds that since the rules of intestate succession are rigid, the estate has to be divided as prescribed—even in cases where it may not be practical.

Situations might also arise where someone was convinced that the estate would be divided in a particular way, while it might practically not be the case. In the South African environment, there might be more than one surviving spouse, for example.

However, the mere existence of a will does not necessarily solve the problem. "It is a never-ending source of amazement that so many people rely on untrained advisors when preparing their wills, one of the most important documents they are ever likely to sign," Judge Leach said during a 2012 Supreme Court of Appeals judgement.

Van Vuren says that estate and will planning requires a working knowledge of anywhere between 20 and 40 pieces of legislation, the common law rules of succession, and the case law on wills. "You walk unwittingly into a minefield if you think you can do it yourself."

There are often instances where these 'DIY wills' don't comply with the formalities of signing a will. Van Vuren says that in a case that escalated to the High Court, a husband bought the necessary forms at CNA and drafted a 'will' on behalf of his terminally ill wife. While there is a process in the Wills Act whereby a court can declare a document that was not properly witnessed to be the will of the deceased, his application didn't succeed because the particular document wasn't signed or drafted by the deceased wife.