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DIY WILL NEVER A GOOD IDEA

Will is 'one of most important documents you'll ever sign'

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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 estate's assets.

But beware.

Dying without a will results in delays. The Master of the High Court will have to appoint an executor on behalf of the deceased and this can delay the process while family members are consulted. Disagreements can result in a lengthy and costly court battle, says Louis van Vuren, CEO of the Fiduciary Institute of Southern Africa (Fisa).

Moreover, the rules of intestate succession are rigid. The estate has to be divided as prescribed even in cases where it may not be practical, he says.

"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 Lorimer Leach said during a 2012 Supreme Court of Appeals judgment.

Van Vuren says 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.

His application didn't succeed because the document wasn't signed or drafted by the deceased wife.

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> Supreme court Judge

Van Vuren says estate and will planning requires a working knowledge of 20 to 40 pieces of legislation, the common law rules of succession and the case law on wills.

Practicality and reasonableness are also important. For instance, bequeathing R1 million to your daughter on condition she does not marry a Jew would be invalid as it would discriminate on the basis of religion contrary to the constitution. It would also offend good morals in terms of common law principles, Van Vuren says.

For a will to be valid, the Wills Act requires that the testator needs to sign all pages and at the end of the document.

Two competent witnesses over 14 must also sign at the end. It is good practice, but not compulsory, that they also sign each page. The witnesses must sign the will in the presence of the testator and one another. The testator must also be in sound and sober senses.

Although South Africans have to be at least 16 years old to have a will, there is no upper age limit, Van Vuren says.

Importantly, any beneficiary, executor or trustee, or minor guardian should never draft the will or sign as a witness.

While the common law of succession allows you to disinherit your spouse completely, he or she could institute a claim against the estate in terms of the Maintenance of Surviving Spouses. This type of claim will have preference over bequests.