

## YOUR MONEY SORTED



# WHAT YOU NEED TO KNOW IF A WILL CAN'T BE SIGNED

A testament can still be legally binding, even if the person isn't able to put their signature to it

GO TO  
[you.co.za](http://you.co.za)  
FOR MORE  
FINANCIAL  
ADVICE

By LETITIA WATSON

Send suggestions for topics and requests for info to [yourmoney@you.co.za](mailto:yourmoney@you.co.za). We may answer your questions in this column but won't reply personally.

**W**HAT happens when someone wants to draw up a will or make amendments to an existing will, but isn't physically able to undersign it? It could happen if someone's

been paralysed or incapacitated due to accident or illness.

Your Money spoke to Louis van Vuren, CEO of the Fiduciary Institute of Southern Africa (Fisa), about what's to be done in such a case and what the legal requirements are.

### A DOCTOR'S ROLE

A person wishing to draw up a will or amend an existing one may not have any mental impairments. It basically means the person must be aware of what's happening around them and understand what the will says.

To prove this it's best if a medical doctor is present, Van Vuren says. A doctor can perform tests to confirm the person is still *compos mentis* (of sound mind).

The Wills Act places the burden of proof on the person who alleges the deceased wasn't mentally sound when drawing up the will.

But if there should be doubt later – for example, if other heirs were to contest the will in court – the doctor would be able to provide proof.

Though it's not a legal requirement a doctor be present, it could prevent possible problems later.

### WHO CAN DRAW UP A WILL?

You don't have to be a lawyer to draw up a will but it's important the responsible party has the knowledge to do it correctly so it fulfils all legal requirements.

For example, it should be signed in the correct spots on the docu-

ment and the wording should accurately reflect the testator's wishes.

Be wary of people who completed basic courses or info sessions on wills and estates and now claim to be experts. They might use unclear or ambiguous language so that your estate isn't distributed as you'd intended.

### AMENDMENTS

Whenever a will is amended – in the form of corrections, additions or deletions – the testator or authorised signatory, as well as two competent witnesses, must sign next to each amendment in the others' presence.

The original witnesses don't have to sign the already undersigned will again; it can be two new witnesses. If these amendments are made at a later stage, the commissioner of oaths must be present again to attach the same certificate as with the previous undersigning.

When you make any amendments to your will, it's important to stipulate that all previous wills and codicils (instructions added to a will after the main part has been written) are rendered null and void.

It's only necessary to undersign one original document, but it's best to undersign two identical originals for separate safekeeping.

### THESE FOUR PEOPLE MUST BE PRESENT AT THE SIGNING OF THE WILL:

1

#### THE BEQUEATHER

Also called the testator, this is the person who's will it is. The bequeather must be mentally sound.

Their memory doesn't have to be perfect but they have to know what assets they want to bequeath and to whom, and they need to understand they're in the process of drawing up their will.

2

#### THE AUTHORISED OR DESIGNATED SIGNATORY

If the testator is unable to sign, someone can do it on their behalf.

But the bequeather must be able to indicate that they choose this person and that they're instructing the person to sign on their behalf.

The person also needs to be clearly indicated in the will as the authorised signatory.

If the will is more than one page, each page must be signed.

3

#### TWO WITNESSES

Two witnesses must sign the will in the presence of each other, the authorised signatory and the testator. The witnesses must sign after the authorised signatory.

Competent witnesses are defined as people older than 14 who are capable of testifying in court. A witness may not be a beneficiary in the will.

The person isn't a witness to what the will says, so they don't have to read the will – they're simply witnessing that the will belongs

to the bequeather, Van Vuren says.

4

#### A COMMISSIONER OF OATHS

The law stipulates a commissioner of oaths be present in the event of someone signing a will on a bequeather's behalf. The commissioner must also sign each page, as well as any amendments, and the commissioner may not be a witness.

The commissioner must then attach a certificate to the will stating that the bequeather wasn't mentally impaired in any way, is who they say they are, and that the signed document is their last will and testament. The Wills Act contains a template of the certificate.

### THIS IS IMPORTANT

The last page must have the signatures of the testator (or designated signatory) and witnesses directly under the last paragraph, says Louis van Vuren, CEO of the Fiduciary Institute of SA. The text might end in the middle of the page and if the signatures are at the bottom of that page, that leaves an open space where a fraudster might later add more copy.

### GET HELP HERE

- ▶ Law Society of South Africa: [lssa.org.za](http://lssa.org.za)
- ▶ The Fiduciary Institute of Southern Africa (Fisa): [fisa.net.za](http://fisa.net.za)
- ▶ Find a lawyer: [lawyer.co.za](http://lawyer.co.za)