

What Is a Valid Will — And Why You Really Need One

By Charmaine Lötter, Senior Legal Advisor, Whitfield Fintax

Very few conversations get put off as consistently as the one about a will. It's understandable — nobody enjoys thinking about their own mortality, and drafting a will can feel like an admin task for "someday." But a will is one of the most important documents you will ever sign. It determines who cares for your children, who receives your assets, and how smoothly — or painfully — your family's affairs are settled after you're gone. If it isn't valid, none of that is guaranteed.

What Is a Will?

A will (or "last will and testament") is a legal document in which you set out how your estate — your property, investments, business interests and personal belongings — should be distributed after your death. It also allows you to nominate an executor to administer your estate, and to appoint a guardian for any minor children. In South Africa, wills are governed by the Wills Act 7 of 1953, and the rules for what makes a will legally valid are strict and formal. Get one of them wrong, and the Master of the High Court can refuse to accept the will, effectively treating you as if you died without one at all.

The Requirements for a Valid Will in South Africa

For a will to be legally valid and enforceable, it generally must meet the following requirements:

- **Age and capacity:** The testator (the person making the will) must be at least 16 years old and mentally capable of understanding the implications of the document at the time of signing.
- **In writing:** The will must be in writing — typed or handwritten. South Africa does not recognise verbal wills.
- **Signed by the testator:** The testator must sign the will personally. Every page should be signed, and on the final page the signature must appear at the very end of the document, after the last word of text.
- **Two competent witnesses:** The will must be signed in the presence of two witnesses, both at least 14 years old and legally competent to give evidence in court. The witnesses must sign in the presence of the testator and of each other, at the same time.
- **Witnesses cannot benefit:** Anyone who witnesses the will — or their spouse — cannot also be named as a beneficiary. Doing so doesn't invalidate the will, but it does disqualify that witness from inheriting.
- **Signing by another person:** If the testator cannot sign (due to illiteracy, disability or injury), someone else may sign on their behalf, in their presence and under their direction, but this must be certified by a Commissioner of Oaths.
- **Dated:** While not always a strict requirement for validity, dating a will is essential for establishing which version is the most recent if more than one will exists.

Any amendment to a will — even a single word — must be signed by the testator and both witnesses next to the change, and in some cases certified by a Commissioner of Oaths. This is why hand-written corrections on an existing will are risky and often unenforceable; a formal codicil or a new will is the safer route.

Why Having a Valid Will Matters

A properly drafted, valid will is not just a formality — it's what stands between your wishes being carried out and the law making those decisions for you. Here's why it matters so much.

1. You choose who inherits — not the law

If you die without a valid will, your estate is distributed according to the Intestate Succession Act 81 of 1987, not according to your wishes. Under intestate succession, a surviving spouse and children inherit according to a fixed formula — broadly, the spouse receives the greater of a set statutory amount (currently R250 000) or a child's share, with the balance divided among the

children. Unmarried life partners, close friends, favourite charities, or specific family members you may have wanted to provide for receive nothing at all, no matter how close the relationship was.

2. You appoint your own executor

A will lets you nominate the executor of your choice — someone you trust to administer your estate efficiently and in line with your wishes. Without a will, the Master of the High Court appoints an executor, who may be unfamiliar with your family circumstances, and this can add delay, cost and friction to an already difficult time.

3. You protect your minor children

A will allows you to nominate a legal guardian for minor children, giving the family certainty instead of leaving guardianship to be contested or determined by the courts. It can also direct that a child's inheritance be held in a testamentary trust until they reach a suitable age, rather than being paid into the state-administered Guardian's Fund, which can be slow and cumbersome to access.

4. You reduce delays, costs and disputes

Estates without a valid will typically take longer to wind up, cost more in administration, and are far more prone to family disputes — precisely at a time when your loved ones are grieving and least equipped to deal with conflict. A clear, valid will removes ambiguity and significantly reduces the scope for disagreement.

5. You can plan for tax and estate duty efficiency

A will is also a planning tool. Structured correctly — alongside instruments such as trusts, bequests to a surviving spouse, or use of the Section 4(q) estate duty deduction — a will can help reduce the estate duty and executor's fees payable on your death, leaving more for your beneficiaries. This is where the guidance of a tax and estate planning advisor makes a real difference, ensuring your will works together with your broader financial and tax plan rather than against it.

A Will Is Only as Good as Its Validity

It's worth stressing: having "a" will is not the same as having a valid one. Wills drafted on outdated templates, signed without the correct witnesses, or never updated after a divorce, remarriage or the birth of a child can be challenged, misinterpreted or set aside entirely — leaving your family to navigate intestate succession anyway, despite your intentions. A will should also be reviewed periodically, particularly after major life events such as marriage, divorce, the birth of children, immigration, or significant changes in your asset base.

Get Your Will in Order

Drafting or reviewing your will is one of the most valuable pieces of financial housekeeping you can do — for yourself and for the people who depend on you. A valid, tax-efficient will that is properly integrated with your broader estate and financial planning means that, when the time comes, your wishes are followed with the least possible cost, delay and uncertainty for your loved ones.

If you don't yet have a will, or haven't reviewed yours in some time, it's worth using the expertise of a fiduciary practitioner who is a member of FISA (Fiduciary Institute of South Africa) to make sure your affairs — and your family's future — are properly protected.

Charmaine Lötter
charmaine@wftax.co.za
Senior Legal Advisor
WHITFIELD FINTAX

This article is for general informational purposes only and does not constitute legal or financial advice. Please consult with a fiduciary practitioner regarding your specific circumstances.