HEUER ATTORNEYS
LEGAL INSIGHT - BUSINESS INSTINCT

Kudu Park, The Wilds Estate

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Wills and Testaments Information Required

1. **Full Names and Identity Numbers of Parties:**

   _____

   _____

   _____

   _____

2. **Residential Address:**

   _____

   _____

3. **Do you require a single or a joint will? :**

   _____

4. **Are you married in community of property, or by way of an antenuptial contract, widowed/widower/divorced? If you are single, kindly indicate same:**

   _____

5. **Do you confirm that you are aware that you will revoke all your previous wills and testaments, should you provide our offices with such instruction?**

_____

6. **Nomination of Executor:**
   Will the Executor be appointed with the powers of assumption and exempted from having to find security for the fulfillment of his duties?

_____

_____

_____

_____

7. **Do you confirm Power of Assumption:**
   (Should a person be nominated as executor and such person wishes to relinquish such offices, such person will be entitled to resign and his/her absolute discretion, appoint someone to substitute him as Executor)

_____

_____

8. **How do you wish to bequeath your estate?**

   Kindly list all heirs' full names and identity numbers

_____

_____

_____

_____

9. **Should you wish to bequeath any specific assets, kindly list same with a full description.**

_____

_____

_____

_____

10. **Do you have any policies not directly named to a specific person?**

    _____

    _____

    _____

11. **Should you wish to have any further requests to be included in your will, kindly describe same below.**

    _____

    _____

    _____

    _____

WILLS AND TESTAMENTS INFORMATION

A will, also known as a testament, is a document in which a person sets out what must happen to their estate when they die. A person can also nominate the person or persons, known as executors, who should administer their estate on their death. A will is a specialized document, which should preferably be drawn up by an expert like an attorney, trust company etc. The information is merely to inform the user of this site about some basic aspects of wills.

A person's estate consists of all their assets (belongings, property) and liabilities (debts) which they had as at date of death.

To administer an estate means to collect or take control of all the assets of the deceased, to pay the debts which the deceased left at date of death, and then to pay the balance left for distribution to the rightful heirs of the deceased as determined in the will, or if you do not have a will, to the heirs as determined in terms of the rules of intestate succession.

Why should you have a will?

It allows you to decide who should be the beneficiaries of your estate once you die. in your will, you can also appoint the person who will administer your estate.

Who is competent to make a will?

The person who draws up a will is known as the testator (male) or testatrix (female). .

All persons 16 years and older are competent to make a will in order to determine how their estate should devolve upon their death, unless they were mentally incapable of appreciating the consequence of their actions at the time of making the will.

Will can assist you in drafting a will?

You can get assistance from attorneys, banks, chartered accountants, boards of executors, insurance companies, trust companies and various individuals who have the necessary qualifications.

You can, however, draft your own will as well, but you need to make sure that it complies with all the relevant formalities to be accepted as a valid will.

Who is competent to act as a witness to a will?

All persons of 14 years and over are competent to act as a witness to a will, provided that at the time they witnessed the will they were not incompetent to give evidence in a court of law.

A beneficiary to a will should not sign as a witness, because he/she will then be disqualified from receiving any benefit from that will. There are some exceptions to this rule. Consult your legal representative for more information in this regard.

What you need to know when drafting a will:

All persons (16 years and older) are competent to make a will

A will must be in writing. It can be written by hand, typed or printed. (note that a person who wrote the will in his/her own handwriting (and his/her spouse) may not be one of your heirs or the executor in the will)

The signature of the testator/testatrix must appear on every page of the will as well as at the end of the will (This signature must be made in the presence of two or more competent witnesses)

Any person of 14 years and above is competent to act as a witness (note that a witness and his/her spouse) may not be one of your heirs or the executor in the will)

A witnesses must attest the last page of the will in the presence of the testator/testatrix and of each other

You must include all details of the assets you want to bequeath as well as the names and details of your heirs

Decide who should be your executor, and indicate this in your will (note that your nominated executor (and his/her spouse) may not be one of the witnesses to the will)

Decide and indicate what should happen to the inheritance of a minor beneficiary (e.g. Must it be paid into a trust, the Guardian's Fund etc.?)

If you are the sole guardian of your minor child, indicate who should be appointed as the guardian of your child after your death.

Ensure that your original signed will is kept safe by a trustworthy person or institution, as a copy of a will is not deemed a valid will.

Where to keep a will?

Ensure that your original signed will is kept safe by a trustworthy person or institution, as a copy of a will is not deemed a valid will. You can also have more than one signed copy of the original will and request different trustworthy persons too. Each keep a copy, in order to ensure that there will be an originally signed copy available after your death. Inform your family and heirs where/who is keeping a copy (or copies) of your will, so that they do not struggle to obtain it after your death.

Why and how to appoint an Executor of your estate?

By nominating your own executor, you ensure that someone you trust will take care of your estate and your heirs' interests after death. The administration process of a deceased estate is a complex process with many legal requirements, you ensure that you nominate someone who will be able to do what is required.

IMPORTANT TO PLEASE NOTE:

You do not have to appoint an institution/person drafting your will, as your executor.

You can appoint more than one person to simultaneously act as executors.

Nominate more than one person, in case your nominated executor is not able or willing to take up the appointment.

Indicate whether you would need your executor to provide security to the Master for the performing of his/her duties.

(if not exempted, the Master will request that security is provided to the full value of the estate – this is not something that a lay person will normally/ easily be able to provide).

Normal prescribed executor's fee is 3,5% of the value of the assets, you are however, entitled to indicate a different fee in your will, but ensure that your nominated executor is in agreement with this, if the fee is lower than the prescribed fee.

What are the requirements for a valid will?

Since 1 January 1954 all wills must be in writing. They can be written by hand, typed or printed. The signature of the testator/testatrix must appear at the end of the will. This signature must be made in the presence of two or more competent witnesses.

The witnesses must attest and sign the will in the presence of the testator/testatrix and of each other. If the will consists of more than one page, each page other than the page on which it ends must be signed anywhere on the page by the testator/testatrix. Although the testator/testatrix must sign all the pages of the will, only the last page of the will needs to be signed by the witnesses.

What are the requirements for a valid will, if I cannot sign his/her name?

If the testator/testatrix cannot sign his/her name, he/she may ask someone to sign the will on his/her behalf or he/she can sign the will by making a mark (a thumbprint or a cross). When the will is signed by someone on behalf of the testator/testatrix or by making a mark, a Commissioner of

Oaths must certify that he/she has satisfied him/herself as to the identity of the testator/testatrix and that the will so signed is the will of the testator/testatrix.

The Commissioner of Oaths must sign his/her certificate and he/she must also sign every other page of the will, anywhere on the page. The Commissioner of Oaths must also be present when the will is signed and must append his/her certificate as soon as possible after the will is signed even if the testator/testatrix dies soon after signing the will.

What is a codicil?

A codicil is a schedule or annexure to an existing will, which is made to supplement or amend an existing will. A codicil must comply with the same requirements for a valid will. A codicil need not be signed by the same witnesses who signed the original will.

What if I want to amend my will?

Amendments to a will can only be made while executing a will or after the date of execution of the will. Amendments to a will must comply with the same requirements for a valid will and, if a testator/testatrix cannot sign it, with the same requirements that apply for persons who cannot sign a will. When amending a will, the same witnesses who signed the original will need not sign it again.

Must I amend my will after divorce?

A bequest to your divorced spouse in your will, which was made prior to your divorce, will not necessary fall away after divorce. The Wills Act stipulates that, except where you expressly provide otherwise, a bequest to your divorced spouse will be deemed revoked if you die within three months of the divorce.

This provisions to allow a divorced person a period of three months to amend his/her will, after the trauma of a divorce. Should you, however, fail to amend your will within three months after your divorce, the deemed revocation rule will fall away, and your divorced spouse will benefit as indicated in the will.

Who is disqualified from inheriting under a will?

The following people are disqualified from inheriting under a will: a person or his/her spouse who writes a will or any part thereof on behalf of the testator; and a person or his/her spouse who signs the will on instruction of the testator or as a witness. Consult your legal representative for more information in this regard.

What will happen if I do not leave a will?

If you die without leaving a will or a valid will, your estate will devolve according to the Intestate Succession Act, 1987 (Act 81 of 1987).

Should you have any enquiries, please do not hesitate to contact us.

Regards,

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Director

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