



OLDMUTUAL

# GUIDELINES WHEN DRAFTING A WILL



**WEALTH**  
FIDUCIARY SERVICES

Your will is one of the most important documents you will ever sign during your lifetime and it is essential to ensure that your instructions are clear and concise. Below are a few guidelines and key considerations that will assist you in drafting your will.



### 1. APPOINT AN EXECUTOR TO ADMINISTER YOUR ESTATE

An executor is the person who will be responsible for ensuring that your instructions, as set out in your last will and testament, are carried out. Administering an estate is a legal process that involves several pieces of legislation and it is therefore advisable to consider appointing a professional executor or nominating a reputable firm or trust company as opposed to appointing a family member.



### 2. UNDERSTAND THE IMPLICATIONS OF YOUR MARITAL REGIME IN COMMUNITY OF PROPERTY

If you are married in community of property you only own 50% of the joint estate and therefore you can only bequeath 50% in terms of your last will and testament. The remaining 50% of the joint estate automatically devolves upon the surviving spouse.

#### OUT OF COMMUNITY OF PROPERTY, WITH ACCRUAL

In simple terms, the accrual system ensures that both spouses will, at the dissolution of the marriage (death or divorce), share in the growth of their respective estates during the existence of the marriage. The value of both estates will be added up and divided by two; the spouse with the smaller accrual will have a claim against the spouse with the bigger accrual. You will have to take the accrual claim (either a claim or a payment) into account before any bequests to beneficiaries/heirs.

#### OUT OF COMMUNITY OF PROPERTY

Your estate will remain completely separate from your spouse as if you are unmarried. You have freedom of testation BUT if you disinherit your spouse, note that the provisions of the Maintenance of Surviving Spouses Act will apply, which may provide the surviving spouse with a claim for maintenance against the deceased estate.

#### CUSTOMARY MARRIAGES

The customary law in terms of which you are married will determine whether your marriage is in community of property, out of community of property or governed by some other proprietary system.



### 3. WHAT HAPPENS AFTER A DIVORCE

If you get divorced, it is important to note that you only have a three-month grace period to change your will. Should you die after three months of getting divorced and your ex-spouse is still named as an heir in your will, he/she will inherit.



### 4. ALL ABOUT HEIRS

It is important that all your heirs are correctly identified, as described in their identity documents. When naming them, use their full names and ID numbers.

- **Minor heirs**

A bequest to a minor (younger than 18 years) will be paid into the Guardian's Fund, which is administered by the Master of the High Court. The assets earn very little interest and the funds will be paid out when the minor turns 18. By creating a testamentary trust in your last will and testament you can avoid the bequest being paid into the Guardian's Fund. A testamentary trust is only created by the Executor AFTER your death.

- **Incapacitated heirs**

If you have an heir with a disability it is important to make sure that the inheritance is structured to his/her benefit. One way of achieving this is by creating a Special Trust in your last will and testament.

- **Appoint a guardian for when there is no natural guardian/surviving parent**

Make sure to appoint a guardian to look after your minor children as if you do not, the court will appoint a guardian on your behalf. This might be someone you would not have approved of. It can also lead to conflict between family members who may have different opinions on who should be appointed as guardian.



## 5. MAKE PROVISION FOR DEPENDENTS

Make sure to provide for dependents in your will (i.e. spouse, minor children, etc.).



## 6. MAKE SURE YOUR WILL IS VALID & UPDATED

Make sure that all formalities in the execution of wills are complied with; if not, the will would be regarded as invalid and the estate will be distributed according to the rules of intestate succession.

In order for a will to be valid, it must meet a number of criteria. A will needs to be in writing (typed or handwritten) and must be signed by the testator/testatrix. It must be signed on every page, including the last page, and it must be clearly dated and witnessed by two competent witnesses. Importantly, witnesses may not inherit and all competent persons aged 14 years and older may act as a witness.

Importantly, review your will annually or after any significant life changes (i.e. marriage, divorce, birth of a child, death of an heir, etc.). An outdated will can quite easily create a situation with detrimental effects for the family and loved ones who should benefit from the estate.




## 7. LET YOUR LOVED ONES KNOW WHERE YOUR WILL IS

Ensure that your will is kept safe and that your family knows where to find it. If the will cannot be found, the estate will devolve according to the rules of intestate succession.



## UNDERSTANDING COMMONLY USED TERMS

<b>TESTATOR/ TESTATRIX</b>	A male person who drafts a will is known as a testator, while a female person drafting a will is known as a testatrix.
<b>INTESTATE</b>	If you die without a will, it is referred to as dying intestate. This means that your assets will be distributed among your heirs in accordance with the rules of intestate succession.
<b>LEGACY</b>	A legacy is an individual item (i.e. Rolex watch, cash, property, etc) bestowed to a specific heir. A legacy is paid out first, before the residue is distributed.
<b>RESIDUE</b>	This is the remainder of your estate after all legacies and liabilities are paid. If you do not stipulate in your will who should inherit the residue, it will be distributed according to the rules of intestate succession.
<b>LIQUIDITY</b>	Liquidity refers to the cash that is available in a deceased estate or to the assets that can easily be turned into cash (i.e. liquidated). There must be sufficient cash in the estate to cover all debts, bequests, any maintenance obligations and estate administration expenses. If there is not enough liquidity in an estate, the executor is entitled to sell assets in the estate if the heirs are unwilling/unable to fund the shortfall.



At Old Mutual Wealth Fiduciary, our premium services are designed for clients with estate values of above R10 million. However, we believe that every client should have a valid will. We have therefore partnered with Lighthouse Trust & Corporate to offer an online wills capability that allows you to draft basic, yet robust wills for estates valued below R10 million.

For more information: visit [www.oldmutual.co.za/wealth/solutions/fiduciary-services-wills](http://www.oldmutual.co.za/wealth/solutions/fiduciary-services-wills)

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