

Making a Will, A publication of the Legal Resources Foundation

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WILLS

What is a Will?

A will is a legal document which says who must get your property when you die.

Why Make a Will?

Every family has to face the problems that come when someone dies. It is difficult to lose any family member, but the most serious problems often occur when the person who dies is the one who owned the family house and other property.

Usually, this is the father and husband, but often it is the mother when she was a single parent. In Zimbabwe, some people have seen a chance to make themselves rich when one of their relatives dies. They may move in and claim their brother's or sister's house and other property and leave the widow and children with nothing.

Although this has always been against the law, many widows and children do not know their rights. Under the old customary law of inheritance, it was easy for a relative who was appointed an heir to take the deceased person's property and use it. We now have a new inheritance law. Under the new law, when a man dies without leaving a will, his wife will inherit the matrimonial home and the wife and children will inherit the rest of his property. The practice of grabbing property has always been illegal, but we hope that now it will not happen as often as it used to.

However, if a person wants to be certain that his family will not suffer after he dies, he will be wise to plan ahead and make a will.

Fears About Wills

Many people do not like to think about dying, and as a result do not plan for looking after their family after their death.

People also have fears about wills. They think that if they write a will they are likely to die immediately. Or they think that if they write a will the beneficiaries (people who the will says must inherit their property) will kill them in order to get the inheritance sooner. But many people do write wills and keep them for many years before they die. If you are afraid someone will kill you to get an inheritance, then there is no need for them to know that you have left something to them.

Some men do not want to leave the marital home to their wife, because they fear she might remarry and then her new husband would get the property instead of his own children. In this case, it is possible to leave the house for the wife to use, but not to own. The will can specify that she will have the use of the house only as long as she does not marry. She cannot sell the house.

If You Have No Will

If you do not leave a will, the law will determine how your property will be divided. Although there are different rules for people under civil and customary law, in both cases the property will be inherited by the spouse or spouses and the children, with the spouse getting the house. The parents, brothers and sisters of the deceased person may only get a share if there are no children.

Who Can Make a Will?

- Any person over sixteen can make a will.

- Both men and women, married or single, can make wills. Today many women also own property as well as men.
- A man who makes a will is called a **testator**. A woman who makes a will is called a **testatrix**.

Does Marriage Affect My Will?

Yes, if you made a will when you were single, the law will not recognise it after you marry. You will need to make another one. However, a man married under customary law does not need to make another will if he marries another wife.

What Kinds of Wills Are There?

- **Oral Wills**

This is a spoken will, not written down. A person can tell other people how the property can be shared after he or she dies.

This will is only valid if the property is worth less than \$ 10 000, which is very little – maybe two beasts.

This type of can also cause problems if the people who were present to hear the oral will do not agree about what was said or if they all die before the person who made the oral will.

- **Written Wills**

This type of will is written down and signed by the testator (the person making the will) and two witnesses.

It can cover all the property owned by the testator.

The testator can say exactly what property is to be given to each relative or any other person, but he can only include property, which belongs to him.

In order to be valid, certain things must be included.

Usually, there are not as many quarrels over written wills as over oral wills, because it is clear what the person wanted, and it cannot be disputed easily.

WRITING YOUR OWN WILL

Can I Write My Own Will?

Yes you can write your own will but you must make sure that your will is valid. This means that you must write it according to how the law says a will must be written.

You can use the sample will contained in this pamphlet as an example in preparing your own will. Remember to put in your own details and wishes in the proper places.

What Should a Will Contain?

- It should tell your relations what should be done with your property and possessions when you die.
- If there are certain articles you want to go to certain people, you must state each one separately.
- If you want to leave all your property to one person, or divide it between specific people, you must state this clearly.
- An executor should be named. The executor is a person who looks after the deceased person's property when he dies and makes sure it is given to the people named in the will.
- It should be dated and signed by the testator and two witnesses.

Can I Leave My Property and Possessions To Anyone?

You can leave your property and possessions to anyone you wish. You do not have to leave them to your relations only.

But remember – your spouse (that is your surviving husband or wife) and any children who are under the age of 18 years (that is minor children) can claim maintenance from your estate, even if you do not mention them in your will, or leave too little for their up-keep.

Who should be the Executor?

You can legally name anyone who is 18 years old or over to be the executor of your estate. It can be a relative or a friend. It is important that the executor should be someone who is able to understand what the court asks him to do. It should also be someone whom your family will be able to trust.

Often a person writing a will chooses the spouse or an adult son or daughter to be the executor. They are likely to be inheriting property from the will, but there is nothing to prevent a beneficiary from being the executor.

People who pay lawyers to draft a will for them often make the legal firm the executor.

What Language Must I Use When I Write My Will?

- You can write your will in any language that you wish.
- You do not need to use legal language to write your will.
- You should try to make your will as simple as possible and not use fancy language which you do not understand.

What Makes a Will Valid?

In order to be valid (recognised by court) your will must:

- Have the date on which it was signed.
- Have your signature at the end of each and every page.
- Have the signature of two witnesses at the end of each and every page. These signatures should be under your signature as the person who has made the will.

SAMPLE WILL

Remember

1. The witnesses must sign the will in the presence of the person making the will (testator) and in the presence of each other.
2. The witnesses must actually see the person who made the will **sign** the will.
3. The witnesses must **not** be people who will benefit in any way from the will.
4. The witnesses do not have to read the will. **They do not need to know what is contained in the will.** They must simply witness that that person making the will signed that will in their presence.

A useful rule to adopt is that anyone whose name is mentioned in the will should not sign as witness.

Sample

This is a sample of a will for a married person who wishes to leave his/her estate to their spouse

Words in **bold type** are explained later

Last Will and Testament

This is the last Will and Testament of me, *(put your own name and place of residence here)*.

1. I hereby cancel any previous Will made by me.
2. I want *(put the name of the person you want as executor and his place of residence)*, to be the **Executor** of this Will, granting him all such powers as are required and allowed by law, especially that of **assumption**, and exempting him from the need to provide **security** for the due performance of his duties as such Executor.
3. I leave the whole of my estate, of whatsoever kind and where so ever situated, to my wife/husband *(put her/his full names here and remember to leave out either "wife" or "husband", whichever the case may be)* if she /he *(put only she or he, whichever the case may be)* lives longer than me for a period of thirty days.

If my wife/husband *(put only wife or husband whichever the case may be)* dies before me or fails to survive me for a period in excess of thirty days then I leave the remainder of my estate to my children in equal shares. If any of my children **predeceases** me leaving children of their own, the descendents of each of them shall succeed to their parent's share **per stirpes**.

I reserve to myself the right to make alterations to this my will by **codicil**.

Signed at *(place where you have made the will)* on the *(day)* day of *(month)* *(year)*.

(Sign your name here)

Witness 1: Signature -----

Address -----

Occupation -----

Witness 2: Signature -----

Address -----

Occupation -----

Explanation of Terms

Estate = All the property left by a deceased person including land, buildings, bank accounts, etc.

Executor = The person who 'executes' the will – who puts into effect the intentions of the person who made the will. The executor can get assistance from the Master's Office of the High Court.

Assumption = Taking up office or taking over the debts or obligations of another person.

Security = A guarantee in the form of money which the executor must usually provide before he can execute the will. This money or 'security' is paid to the Master of the High Court.

Predeceases me = Dies before me.

Per stirpes = Distribution 'per stirpes' means that each 'stem' of the family takes the same share.

For example: Jonas and Gladys had three children – Anna, Benjamin and Chipso. Anna has no children. Benjamin has one child, Daniel; and Chipso has two children, Ebrahim and Farai.

Jonas and Gladys both die in a bus accident at the same time. Chipso died before her parents, leaving her two children (Ebrahim and Farai).

In terms of the example overleaf: the estate will be divided into three equal portions – one each for Anna, one for Benjamin and one for Chipso (her family).

Since Chipso has already died, but her children and Anna and Benjamin are alive, this means that:

Anna will get one-third of the estate

Benjamin will get one-third of the estate

Ebrahim and Farai will share Chipso's one third equally:

Ebrahim will get one-sixth

Farai will get one-sixth

This adds up to one whole – that is the whole of the estate.

Codicil = This is an amendment to a will – either an addition or a supplement to a will previously made – for the purpose of adding to or changing what was in the original will.

Who can be a Witness?

Any mentally normal person over the age of 18 years who is able to sign his/her name and who can physically see the testator signing the will.

A person who is going to receive something (inherit) from the Will should not sign as a witness nor should any of their close relatives.

Why must all Wills be signed by Witnesses?

- Whenever an important document is signed, witnesses must also sign.
- The witness must watch you sign and then sign themselves.
- The witnesses' signature shows that the signature is in fact the signature of the testator, not a forger.
- If there is a dispute later the witnesses can be called to give evidence that they saw the person sign the will.

REMEMBER ... A VALID WILL

- **MUST** tell your family or relations what should be done with your property and possessions when you die.
- **MUST** show the date on which you wrote it.

- **MUST have your signature or mark on each and every page.**
- **MUST have the signature of two witnesses at the end of each and every page under the place where you have put your signature or mark.**

GETTING A LAWYER TO WRITE YOUR WILL

Is it better to get a Lawyer to Make a Will for Me?

Yes, if you can afford it or if the will is likely to have complex provisions. Often people are not sure whether they have said the right thing or written a document in the right manner.

In such a situation, it is best to get advice from a lawyer, especially when there is a lot of property to be given to many different people.

How Much will it Cost for a Lawyer to Make a Will?

A simple will costs less than a complicated will. A will which has a number of heirs or requests will cost much more. But remember, that a properly written will can save your family a lot of time, money and problems later.

If I cannot Read or Write can I still Make a Will?

If you or your relations can afford to do so, you should go to a lawyer and tell the lawyer what is wanted in the will. The lawyer will then write this down and read it to you. When you are happy that the lawyer has written down what you want, you must sign or put your mark on each and every page and two witnesses must also sign each and every page. The lawyer will probably ask two people in his office to be witnesses.

If I Can't Sign My Name can I Still Make a Will?

Yes, you can ask someone else to write out the will for you. It is best to ask a lawyer to do this. You would then sign the will with your mark.

But if you do this a special official must sign an acknowledgement that the mark upon the will is yours. You need to go to a Legal Advice Centre to arrange this if you did not go to a lawyer first.

What Should I do if I Cannot Afford a Lawyer?

If you cannot afford a lawyer you can write your own will, as long as you make sure that it is valid (see over leaf, above). If you are not sure that you are doing it correctly, visit a Legal Advice Centre, where a paralegal will assist you.

AFTER THE WILL IS WRITTEN

Where Should I Keep My Will?

- You should keep your will with all other important papers so that after you die your family can take it to the Master's Office of the High Court in Bulawayo or Harare.
- If a lawyer has made your will a copy will be kept in the lawyer's office.
- Also, if a lawyer has made your will, you should tell your family the lawyer's name so that your family can contact him or her if your own copy of the will cannot be found after you die.
- If you live in Bulawayo or Harare, that is, where there is a High Court, it is a good idea to lodge (place) a copy of your will at the Master's Office of the High Court for safekeeping. It will cost you some money to do this and the Master's Office will give you a receipt.

- You can lodge a copy of your will at the Master's Office of the High Court if it was done for you by a lawyer or if you wrote it yourself.
- Always make sure that someone in your family who is responsible knows where your will is.

If I Make a Will Can I Change it Later?

Yes, you can change your will as you may have got more property or possessions that you want to add to your will or you might wish to make changes to your last will.

- Whatever changes and additions you make must be clearly written down; you must sign each and every change and two witnesses must sign wherever you have signed.
- Witnesses who sign alterations or additions on your will need not be the same ones who signed the first will.

It may be better to make a new will if there are a lot of changes.

Can I Make a Completely New Will?

- Yes, you can make a completely new will and the new will cancels the old one.
- If there are two wills, the Master of the High Court will look at the date on the wills. The will with the latest or most recent date is the one that is usually taken to be the valid one. If another will is found, it should be taken to the High Court.

Can a Will be Changed After a Person Dies?

Sometimes a will can be declared invalid, but it is not possible to change the will itself. The will states what the deceased person wanted, and we cannot change his mind for him after he has gone.

If it is not clear from the way the will is written what the testator meant, the court will have to make a ruling.

What if the Will Leaves out Dependants?

Sometimes a person will write a will and leave his property to a relative, or even a friend, and not leave anything to his wife and children.

If this happens the wife or husband can go to the Master's Office at the High Court and apply for maintenance from the estate for herself or himself and the children. He or she must do this as soon as it is known that there is nothing for them in the will.

What can I do if there is a problem?

- If you can afford to, go to a lawyer for advice.
- If not, go to the Master's Office of the High Court in Bulawayo or Harare – whichever is nearest to you.
- You can also seek guidance from a paralegal worker at a Legal Advice Centre.

REMEMBER

- **A written will is a very important legal document. You must keep it in a safe place.**
- **It is the duty of the Master of the High Court to make sure that the will is followed properly.**
- **Anyone who tries to take property which the will does not leave to them is committing a criminal offence and should reported to the police.**

Legal Advice Centres

Mashonaland: Bindura, Guruve, Marondera, Mt. Darwin, Murehwa and Mutoko.

Matabeleland: Hwange, Lupane, Nkayi, Plumtree, Gwanda and Beitbridge.

Masvingo: Gutu, Chiredzi and Zaka.

Midlands: Kwekwe, Gokwe and Zvishavane.

Manicaland: Chipinge, Murambinda and Nyanga.