



LEGAL ASSISTANCE CENTRE
Fighting for human rights in Namibia since 1988



Pro **Bono**

INFORMATION ABOUT NAMIBIA'S LAW ON ...

WILL-WRITING

ProBono is a monthly column by the Legal Assistance Centre designed to inform the public about Namibian law on various topics. You can request information on a specific legal topic by sending an SMS to 081-600-0098. Note that we will not be able to give advice on specific cases in this column, only general legal information.

Having a will is arguably one of the most important things you can do for yourself and your family. A will gives you the comfort of knowing that the rewards of your life's work will be distributed and managed according to your wishes. It can also protect the interests of your spouse and children, and it is an important tool for making sure that your minor children will be taken care of properly.

A will is a written legal document in which you say what should happen to your property and who should look after your minor children, and who should be the executor to distribute your property after your death.

In some cultures property grabbing can be a big problem, particularly when a man dies, leaving a widow and children. Sometimes other family members think that a woman should not have ownership of land or property and take these things for themselves. This can make it very difficult for the woman to survive by herself. If you make a will then you are telling your family members what you want to do with your property.

In the case of cohabitating partners who are not formally married, when one partner dies, the other partner has no legal claim to any of the property of the deceased in the absence of a will.

In Namibia anyone who is at least 16 years can write a will. You are not allowed to make a will if you are mentally incapable of making decisions at the time of making the will. There are a number of rules about written wills. These rules are designed to prevent fraud

Your will must be made voluntarily by you, without coercion from anyone. A will can be either handwritten or typed, and it can be in any language.

You must sign the will in the presence of two witnesses who are at least 14 years of age and are not mentally incapacitated. The witnesses must not be otherwise involved with the will in any other way.

The witnesses to your will cannot inherit in terms of the will, and they cannot be named as the executor of your will or the guardians of your children.

You must sign each page of your will with your full signature, not just your initials. You must also sign in full at the end. The two witnesses must both sign each page of the will with their full signatures, and sign at the end, after seeing you sign in each place. Both witnesses must sign in the presence of each other.

The signatures at the end of the will must be right below the last line, without a big empty space. This helps to prevent someone from adding something that you do not know about.

If you are unable to sign the will for some reason, you can get assistance from a Commissioner of Oaths, who can certify your mark or thumbprint. The witnesses must be people who are able to sign the will personally.

In your will, you can name anyone you wish (other than the two witnesses) to inherit specific items or to inherit a share in your property. The executor of the will is allowed to be an heir. Most people leave their property to family members or loved ones, but you are free to leave your property to any other person or even to an organisation or a charity.

Your will can also include instructions on issues such as burial or cremation. Recording your wishes on such matters can help prevent family disputes.

Your will is not valid if you drafted it under duress, or at a time when you were mentally incapable of making decisions.

The executor of the will manages the estate and makes sure that the estate is distributed properly according to the will. The executor named in the will must get authority called “letters of executorship” from the Master of the High Court. Anyone who thinks that an executor is not handling the estate correctly can make a complaint to the Master’s Office.

It is a good idea to update your will from time to time to provide for changes, such as a marriage or the birth of additional children. When making a new will, you must include a statement in it that this new will cancels your previous will.

You should give your will to a trusted person, for example a lawyer, friend, pastor or bank manager, or else store it in a safe place. Make sure that your family members or other people who will inherit know where your will is kept. They will need the original signed copy when you die to take to the Master of the High Court.