

# YOUR GUIDE ON HOW TO WRITE A VALID WILL



AIDS Law Unit  
Legal Assistance Centre  
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This manual contains information on wills and inheritance.

It has been developed as a tool to educate the reader on the importance of writing a will as well as on the procedure to follow in writing a valid will.

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# **Introduction**

The importance of planning for your future by writing a will is to ensure that your assets are distributed in accordance with your wishes. The only way to avoid family disputes and property grabbing is to clearly state your wishes in your will.

## **What is a Will?**

A will is a written document, voluntarily made by a person (called the testator) in which that person says what should happen to their property, or who should look after their minor children, after the person's death.

## **Why should I have a will?**

- I can give my property to whoever I want.
- I can take care of my wife/ husband, or if I am not married, to my partner, and children after my death.
- I can appoint a guardian for my minor children, and see to it that they are financially looked after.

- I can state who should round up my affairs after my death. This person is called the executor.
- Normally an executor must furnish security before s/he can be appointed by the Master of the High Court as an executor. I can tell the Master to do away with this requirement in my will and this will make it easier for the executor to be appointed.



# Who are the people involved when I draft my will?

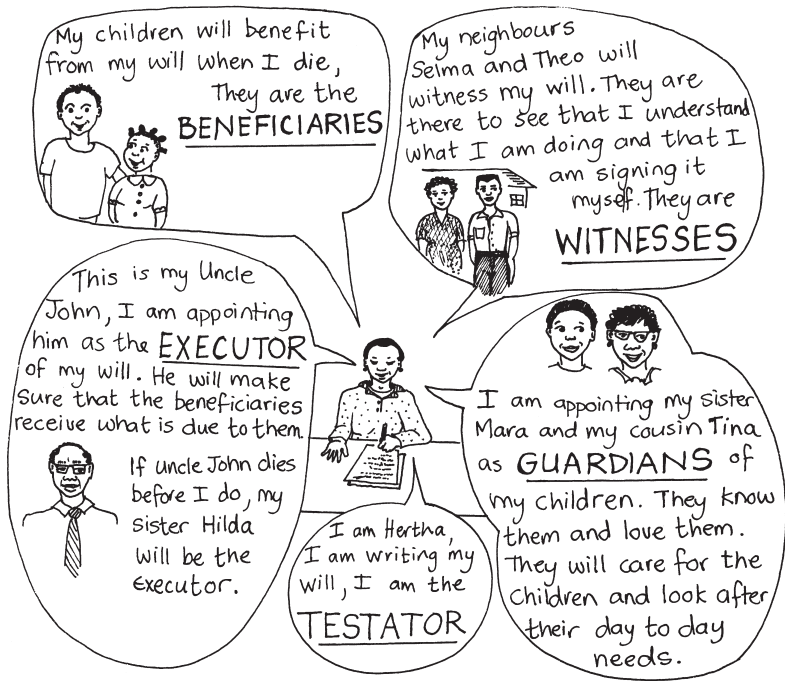
**Testator:** the person making the will

**Witnesses:** people who sign the will proving that the signature is that of the testator

**Beneficiaries:** people who will receive benefits under the will, also called heirs.

**Executor:** the person who has to execute the will of the deceased and see to it that the estate is wound up according to the wishes of the testator by paying all debts and distributing the funds left over to the beneficiaries.

**Guardians:** if you have minor children, this is the person that you nominate to take custody and care of your children.



## Who can make a will?

Any person who is 16 years or older may make a will, provided that person knows and understands that s/he is making a will.

## Who can receive benefits under the will?

Normally, any person can benefit under a will. However, make sure that the witnesses of the will are not beneficiaries under the will, or are not nominated as guardians or executor, as this will prohibit them from inheriting under the will or from being appointed as a guardian or executor.

If a person writes a will on behalf of the testator in which the writer is given something, the testator must make it very clear that it was his/her intention that the person who wrote the will, also became a beneficiary under the will. The testator can do this by confirming after the will is drawn up that it was his/her intention that the writer will also benefit under the will.

If a person signs the will on behalf of the testator, neither that person nor his/her spouse can benefit under the will. This will happen when the testator cannot write or where he is unable to make use of his hands to sign the will due, to for example some disability.

In short, it is best to get people in to witness or write the will who will not receive anything under the will.



## Who can be a witness to a will?

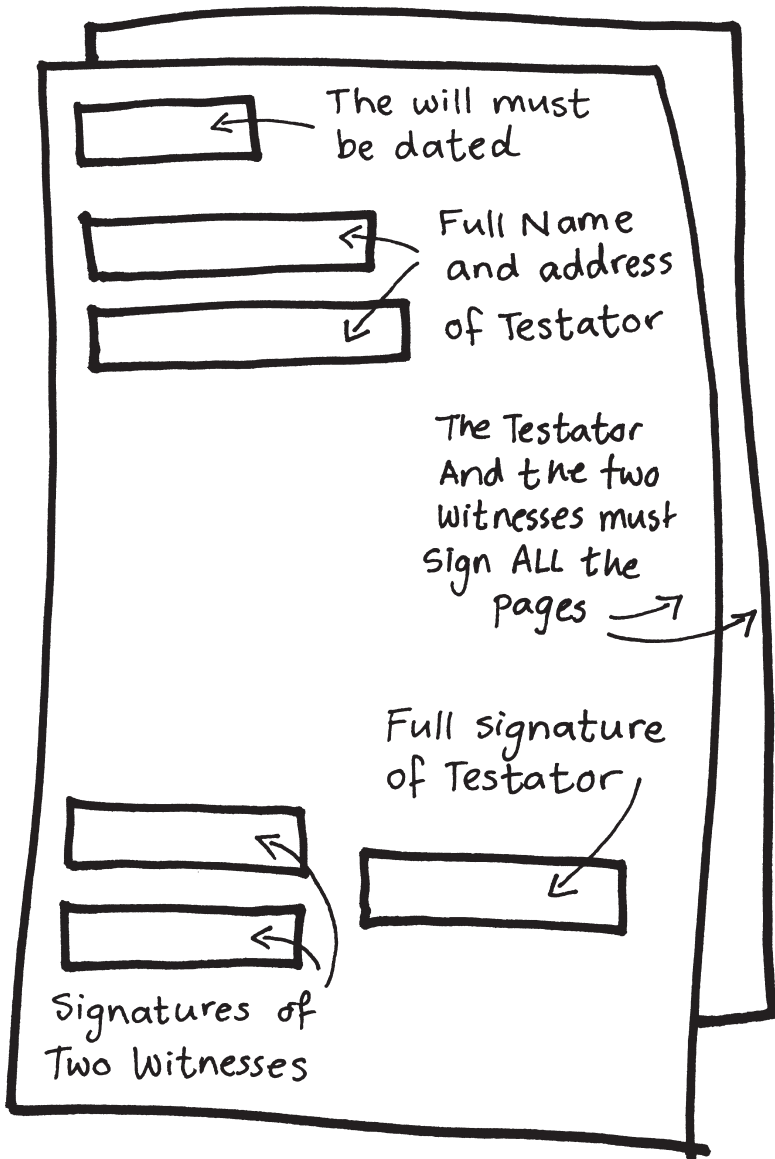
Any person who is 14 years and older can witness a will, provided that the person is of sound mind.



# Requirements for a valid will

It is very important to follow these instructions carefully, otherwise the will will be invalid.

- The will must be dated.
- The will must be in writing and signed at the end by the testator. This must be the testator's full signature and not initials.
- Somebody may sign the will on behalf of the testator.
- A testator may sign with a mark, but then a commissioner of oaths, like a police officer or bank manager, must certify that s/he is certain of the identity of the testator, and that the document is the will of the testator.
- The signature or the mark of the testator must be made in the presence of two witnesses.
- The witnesses must sign the will after the testator has signed in the presence of the testator and of each other.
- If the will consists of more than one page, the same people must sign all the pages. If the commissioner of oaths has certified the will, the same commissioner must also sign the other pages.



# Basic details to include in a will

## Personal and family details

- Your full names, age, identity number and permanent address.
- Your marital status and whether you are married in or out of community of property (sharing of property in a marriage.)
- If married, your spouse's name and ID number.
- The names, sex and ages of your children, and whether they are single or married.
- Details of your relatives and other persons or groups who will inherit.
- The name and details of the executor- the person who manages the will and who is responsible for winding up (closing) the estate and making sure that the estate is distributed properly.

## Business and financial details

- Your personal financial position for example: What you own, what money you owe, any policies you have, eg life assurance.
- Your employment details - provident or pension fund beneficiaries and employer's address.

# When will a will be invalid?

If the will does not comply with the following requirements in terms of the Act:

- If the testator did not sign at the end of each page of the will in the presence of two witnesses, who also sign at the end of each page.
- If the testator and the witnesses did not sign at the end of each page in the presence of each other.
- If the testator did not want to make a will, for example where s/he signs something thinking it is some other document.
- When the testator is forced or tricked into making a will.

Unless the original will is available, a copy of the will will be invalid.



## How to change a will

A will can be changed, but then the same procedures must be followed as when a will is made. Remember, every time you make a correction in a will, the correction must be signed by the testator and the witnesses.



## How to cancel a will?

The testator may cancel his / her will at any time before death.

The testator does this by making a new will, stating that s/he cancels (or revokes) the previous will.

If the testator failed to cancel or revoke the previous will, the will with the most recent date will be accepted as the testator's last will.

# What can be written in the will?

The testator can

- distribute all or some of his/her property.
- nominate the people s/he intends to benefit under the will.
- appoint a guardian for the minor children.
- appoint an executor, and instruct the Master not to require security for the handling of the will. The executor can be a trusted friend. You can also state that the executor may be assisted by someone else if necessary. It is advisable to nominate a second executor in the event of the first appointed executor dying or for some reason, he/s is unable to perform his duties as an executor.

The contents of the will may however not be

- illegal
- against public morals
- so vague that it cannot be carried out



## What to do after a will is made?

- Keep the will in a safe place, and tell the people who will benefit under the will; or
- Give it to a trusted friend who will produce it after your death; or
- Give it to your local priest or church elder to keep in a safe place; or
- Give it to a lawyer or bank manager to keep safely.
- Regularly update the will to provide for a change in circumstances, such as marriage, the birth of children or getting other property.

# What to do once the testator has died?

When the testator dies, a death notice and the will must be filed at the office of the Master of the High Court.

The Master will appoint the executor as identified in the will, and direct her/him what to do.

The testator's bank accounts must be frozen.

The executor must collect all the money owing to the deceased.





# EXAMPLE OF A WILL

This is the last will of ..... (full name)  
with identity number.....  
of .....(address)

1. I revoke any previous wills made by me.
2. I nominate .....(full name)  
of ..... (address) to be the Executor  
of my Estate.
3. I direct that my Executor does not have to give security  
to the Master of the High Court for the proper  
administration of my Estate.
4. I bequeath my Estate to the person(s) and to the extent  
set out below:.....  
.....
5. I appoint .....(full name)  
Identity number.....  
of .....(address)  
to be the guardian of my children.

Signed at ..... on this ..... day of .....year.....

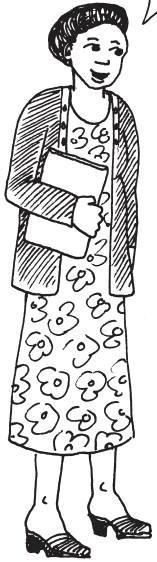
In the presence of the undersigned witnesses, who signed in  
my presence and in the presence of each other, all being  
present at the same time.

AS WITNESSES: .....  
(Testator)

1.....

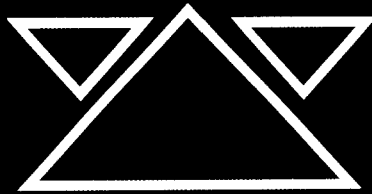
2.....

I am HIV positive  
So I am busy writing  
my will as a matter  
of urgency.



I am not HIV positive  
but I am also making  
my will, because we  
are all at risk of  
dying unexpectedly





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