

Requirements for a valid will

It is very important to follow these instructions carefully, otherwise your will will be invalid:

- The will must be dated.
- The will must be in writing and signed at the end by you. This must be your full signature and not just initials.
- Somebody may sign the will on your behalf.
- You may sign with a mark such as a thumbprint, but then a commissioner of oaths, like a police officer or bank manager, must certify that s/he is certain of your identity, and that the document is your will.
- Your signature or mark must be made in the presence of two witnesses.
- The witnesses must sign the will after you have signed, and in your and the presence 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.



Need more information or assistance?

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AIDS Law Unit

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Wills and Inheritance

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, of 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 until they can look after themselves.
- I can state who should round up my affairs after my death. This person is called the **executor**.

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**. 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.

When will your will be invalid?

- If you 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 you and the witnesses did not sign at the end of each page in the presence of each other.
- If you did not want to make a will, for example where you sign something thinking it is some other document.
- When you are forced or tricked into making a will.
- Unless the original will is available, a copy of the will will be invalid.

How to change your 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 you and the witnesses.



How to cancel your will

- You may cancel your will at any time before death.
- You can do this by making a new will, stating that you cancel (or revoke) the previous will.

- If you failed to cancel or revoke the previous will, the will with the most recent date will be accepted as your last will.

What can be written in your will

You can:

- Distribute all or some of your property
- Nominate the people you intend 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, if for some reason, he/she is unable to perform his duties as an **executor**.

What to do after your 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.