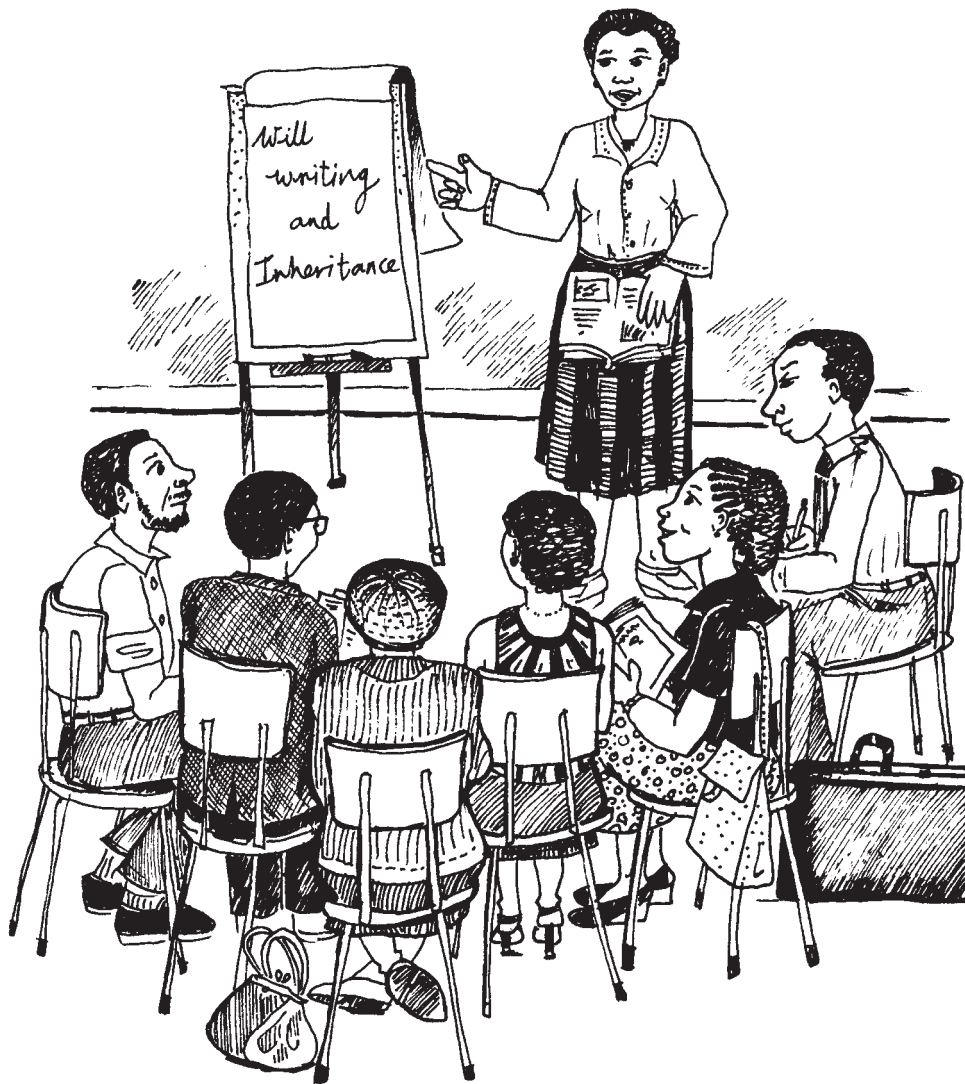


Training Manual for Trainers on Will Writing and Inheritance in Namibia



AIDS Law Unit
Legal Assistance Centre
2001

Acknowledgements

This manual contains information on wills and inheritance.

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

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1. INTRODUCTION

Namibia ranks as one of the countries with the highest HIV infection rate in the world. As the number of HIV/AIDS related deaths increases, family disputes and property grabbing are also on the rise. This is mainly due to cultural and traditional practices that reinforce gender inequality and discrimination in Namibia. Women and children are often left destitute as extended families grab property for themselves to the exclusion of the widow and children. There is accordingly a need to train and prepare people living with HIV/AIDS on the importance of avoiding disputes related to inheritance, and on the importance of adequately providing for their children after death by writing a will. Many of the disputes surrounding property grabbing can simply be avoided if the deceased leaves a valid will, in which he or she directs how his or her estate should be administered, who the beneficiaries should be, and who should take responsibility for the care of children left behind.

The majority of people avoid dealing with death. There is a myth surrounding will writing. To most people will writing means inviting death and they will postpone writing their wills to avoid death. However, it is important, whether a person is HIV positive or not, to write a will. The will is the only valid document our law recognizes to guide the family and anyone else, on how a deceased's property will be distributed. Writing a will should thus be seen in the context of making life easier for those you leave behind. It is the only way to ensure that extended family members will not grab your property or throw your widow and children on the street in the event of your death. Writing a will assists those left behind to distribute your assets in accordance with your wishes.

This **manual** is designed for use in the training of health care workers, care givers, counsellors and community activists who are involved in the treatment and care of people living with HIV/AIDS on the importance of writing a will and on the procedure to follow in writing a valid will.

This **manual** should be used in conjunction with the pamphlet on wills and inheritance published by the AIDS Law Unit of the Legal Assistance Centre. This pamphlet contains information on will writing and inheritance that will serve as an important guide for parents living with HIV/AIDS to identify and nominate guardians for their minor children in the event of their dying.

The number of children orphaned by HIV/AIDS is escalating and parents have a duty to make provision, while they are still alive, for the well being of their children. Parents are most familiar with the strengths and weaknesses of their extended families. In the absence of a will in which parents identify and nominate guardians for their minor children, Social Workers and the Commissioner of Child Welfare will be forced to make a decision on what is in the best interest of the child in question should a dispute arise.

2. GUIDELINES FOR TRAINERS

Proposed workshop plan

SESSION	METHOD	TIME
1 Welcome and introduction	Select your own	10 min
2 Explain the outline of the workshop	Share workshop plan	10 min
3 Group introductions and expectations	Select your own	30 min
4 Ground rules	Select your own	10 min
5 Wills and inheritance	Input	1½ hour
TEA BREAK		15 min
6 Group work	Cards/Groups	1 hour
7 Reflection on the workshop	Input from groups	20 min
TOTAL HOURS		3 hours 15 min

Group introductions

The objectives at the start of the workshop should be:-

- * To put everyone, including the trainer, at ease;
- * To get to know each other; and
- * To start building a relationship of trust between the trainer and participants.

Introductions are not just for people to say their names. They help people to remember each other's names and to feel at ease in the group.

How you do introductions depend on how well the participants know each other and how long you have for the workshop. For example, if your workshop is only two hours, then you cannot spend too much time on introductions.

These are some examples of methods and techniques for introductions:-

- * The group sits in a large circle;
- * Each participants has a chance to say their full name; and
- * Participants can also give other details about themselves (e.g. what music they like, or their favourite hobby).

Expectations

- * Participants need to say what their own expectations are for the workshop; and
- * After the introductions you can request each participant to say what their expectations are.

Guidelines to expectations

- * Always write the expectations up on flipchart paper and keep them on the wall for everyone to refer to during the workshop;
- * Read out the aims of the workshop and check them with the expectations. You can also ask people to say their expectations first, and then put up and compare the aims you wrote on the flipchart paper before the workshop; and
- * When you evaluate the workshop at the end, you can read out the expectations and ask people if their expectations were met in the workshop. You can tick the expectations that were met and leave the others open for discussion with participants.

Ground rules

Everyone should agree on a set of basic rules for the group at the beginning of the workshop. These are called "ground rules".

Ground Rules help to:-

- * Explain how people would like to work together;
- * Create a safe space for people to work together; and
- * Sort out a conflict or problem among participants, or between the trainer and the participants.

Suggestions for ground rules

- * Give everyone a chance to speak and participate;
- * Listen when others speak;
- * No smoking during sessions. Only outside during breaks;
- * Lateness and extended breaks are not allowed. The workshop will carry on without people if they are late. If a participant is always late, he or she can be asked to leave the workshop;
- * Participants who constantly disrupt the workshop in a negative way can be asked to leave the workshop;
- * Participants should not miss any session of the workshop;
- * Participants may not be called away to attend to other things (including answering cell phones), unless there are emergencies; and
- * The decision to ask a person to leave the workshop will be taken by the facilitator of the workshop and any two participants nominated by the rest of the group.

OTHER WORKSHOP METHODS

Brainstorming

Brainstorming is a quick way to get ideas or proposals from a big group.

Steps for brainstorming

- * Ask anyone in the group to come up with ideas or points on the topic;
- * Write these up on flipchart paper; and
- * After writing down all the ideas, open up the discussion for comments or questions about the ideas written on the flipchart paper.

Guidelines for brainstorming

The purpose of brainstorming is to generate as many ideas as possible.

To do this, it is helpful to:-

- * Encourage people to think creatively, e.g. welcome all suggestions even if they are impractical
- * Write down each suggestion, even if you think the group does not support it;
- * Discourage others from making comments or criticism on any suggestions, especially while someone is still trying to explain what they mean; and
- * Allow people to build on their ideas.

Inputs

An input is a talk by one or two people to the workshop group. It is the best way to present information to a group in a short time.

But to be effective in a workshop, an input should not go on for longer than 15 or 20 minutes. It is a good idea to split up an input between 2 people. People can quickly lose interest and stop concentrating if an input goes on too long.

Guidelines to input

These are some tips on how to give a good input:-

- * Keep an input short and to the point;
- * Be well prepared: know your topic and structure your input;
- * Use picture or posters as much as possible;
- * Look at people and try not to just read from your notes;
- * Do not stand in front of a flipchart that you want people to read;
- * Talk slowly, clearly and loudly for everyone to hear;
- * Make sure that everyone can see you;
- * While you are talking be aware of your body language, e.g. scratching.

- * Use plain language that everyone can understand;
- * Use practical examples and local experience to make points clearer;
- * Allow time for questions and group discussion;
- * Encourage other people to help answer questions;
- * Never be impatient or make people feel that their questions are stupid; and
- * If a question is not clear, ask people to repeat it.

PURPOSE OF THE SESSION

Method

- * To introduce participants to the concept of an ordinary will;
- * To show why it is important for people to draw up a will before they die;
- * To show what can go into an ordinary will; and
- * To show how to draft a valid will.
- * Time it will take: 1½ hour

Materials

- * Copies of the Ordinary Will Cards on pages 6 and 7 of this manual. Cut these out (one set per group);
- * Flipchart paper, prestik and kokis; and
- * Pamphlet on will writing and inheritance for each participant.

Procedure

Step 1

- * Give an introduction input on ordinary wills; and
- * Use the material contained on pages below to help you.

Step 2

- * Divide the group into small groups of 4;
- * Give each group a set of Will Cards, flipchart paper sheets and kokis;
- * Ask people to read through the case-studies on the cards, and to answer the questions or do the tasks on the cards; and
- * Refer participants to the pamphlet "Wills and Inheritance" for help with answers.

Note: Give groups 1 hour to do this activity.

Step 3

- * Go through each of the cards and get feedback from all groups.

WILL CARDS

Card 1

Mathew Shikongo dies without leaving a will. He leaves behind a wife, Josephine, and four children. One of his children, Tuli, was born before he and Josephine got married. In other words, Tuli is an illegitimate child. Mathew's mother is also still alive.

- * Describe how Mathew's possessions, including his money savings, would be divided up.
- * What would happen if he had no children?
- * What would happen if there was no wife?
- * What would happen if there were no children and no wife, but his mother is still alive?
- * What would happen if there were no children, no wife and no parents?
- * What would happen if Mathew had left a will which said three-quarters of his money savings should go to the Save the Rhino Project?

Card 2

Gerson includes a clause in his will which says his son will inherit N\$20 000 if he kills his brother.

- * Is this clause legal and will the court **enforce** it? Why

Card 3

Rosa has a mental disability. She owns a very large estate. When she dies, her daughter produces a will that is signed by Rosa. The will says that all her money must go to her daughter.

- * Is the will valid? Why?

Card 4

Tangeni told his son before he died that he wanted to change his old will. He told him that he wanted his son to inherit his whole **estate**. After his death, Tangeni's son tells everyone this. But the written will says the estate must be divided up equally amongst Tangeni's wife and children.

- * What will happen to his **estate**? Why?

Card 5

Moses, Tangeni's uncle, signed Tangeni's will as a witness. Under the will, he will inherit N\$50 000 from Tangeni's estate.

- * *Can Moses inherit this **estate**? Why?*

Card 6

Emelia is a very rich doctor. Festus, her husband, gets drunk and wild with anger one night and murders her. In Emelia's will, Festus is the only person who will inherit her estate.

- * *Can Festus inherit this estate? Why?*

Card 7

Petrus' will is not signed.

- * *Is his will valid? If not, who will inherit his estate?*

Card 8

Kaarina cannot write. Her daughter has drawn up her will. Kaarina wants to sign the will.

- * *What must she do to make sure the will is valid when she dies?*

Card 9

- * *Who must sign a will and how must a will be signed?*

Card 10

- * *How do you wind up (close) an estate after death?*

REFLECTION ON THE WORKSHOP

Purpose of the session

- * To give participants a chance to reflect on the workshop - in other words, to look back at how the workshop helped them.
- * Time it will take: 10 minutes

Step 1

- * Give a brief summary of what the group has covered in the session.

Step 2

- * If this is the end of the workshop, do a go-round and ask people whether their expectations were met.
- * Compare these to the expectations that were expressed at the beginning of the workshop.
- * You can ask the following questions as part of the process of reflection:
 - * *What will you remember most from the workshop?*
 - * *What can you do to change things in the community around you?*
 - * *In what ways has the workshop helped you to change your ideas?*

3. MATERIAL FOR USE BY TRAINER IN INPUT

What is a will

A will is a legal written document, voluntarily made by you (you are called the **testator**) in which you say what should happen to your property, or who should look after your minor children, after your death.

Why should I have a will

- * I can give my property to whomever I want;
- * I can take care of my husband or wife, or if I am not married, my partner as well as my 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**;
- * The person named as the **executor** in the will must furnish security before he or she can be appointed by the Master of the High Court as an **executor**. I can tell the Master in my will to do away with this requirement and this will make it easier for the **executor** to be appointed.



Who is the people involved when I draft my will

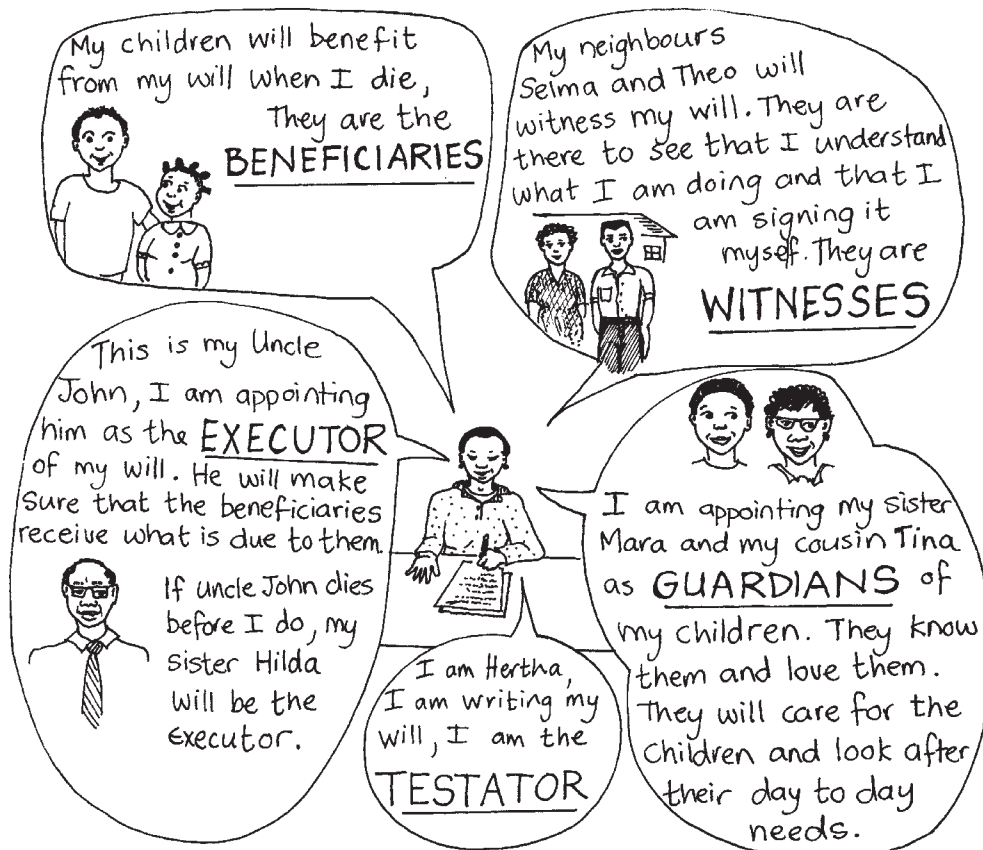
Testator: the person making the will

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**.

Guardian: 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

If you are 16 years or older you can make a will, as long as you know and understand what you are doing. You are not allowed to make a will if at the time of making the will, you are mentally incapable of making decisions.

Can I leave my estate to anyone I want to?



Yes you can, but you should provide for your minor children in your 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 as the **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 or 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 or 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 or 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, for example, to some disability.

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

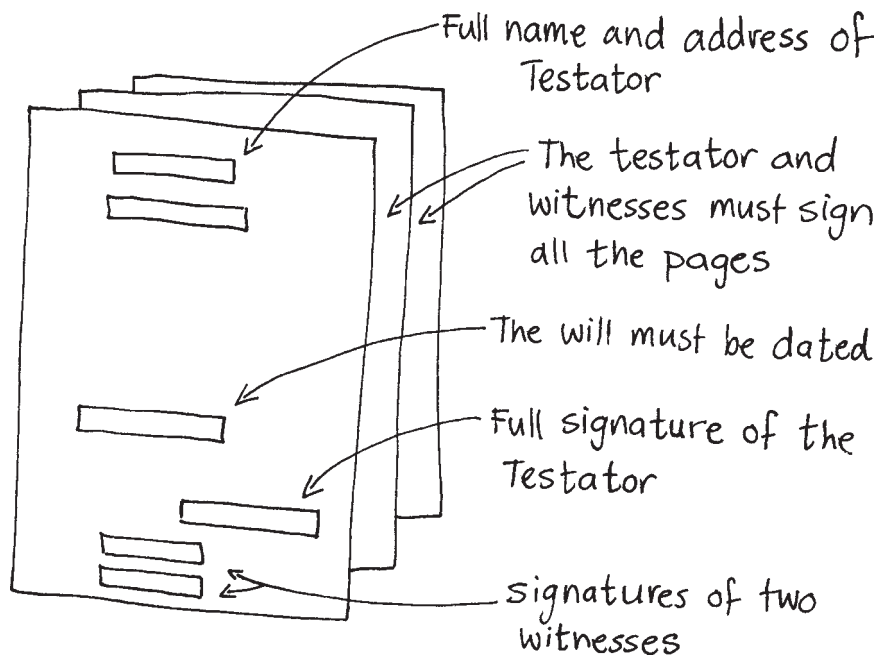
Who can be a witness to a will

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

What are the 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 just his or her initials;
- * Somebody may sign the will on behalf of the **testator**;
- * A **testator** 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 he or she 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. The **witnesses** must sign in full. They should not use initials or a mark; and
- * 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.

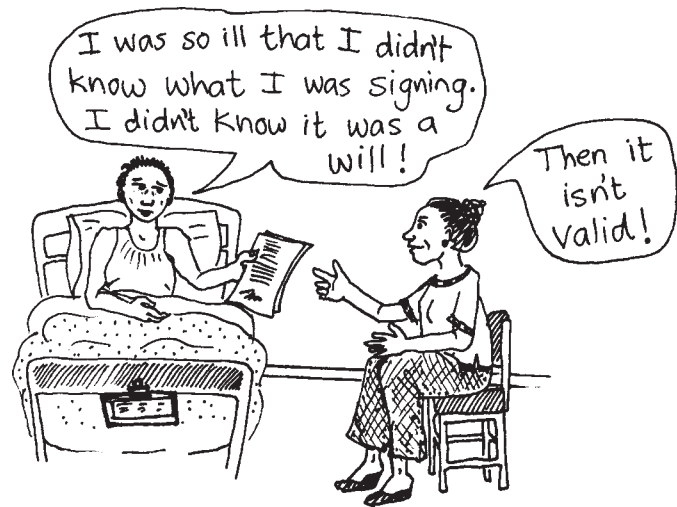


When will a will be invalid

A will will be invalid (not recognised by the law):

- * 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 he or she signs something thinking it is some other document;
- * When the **testator** is forced or tricked into making a will; and
- * If the original will is unavailable, a copy of the will will be invalid.



What can be included in a will



Any wishes can be included in a will as long as they are not:

- * Illegal - something that is against the law;
- * Against public morals - something that offends public morals; and
- * So vague that it cannot be carried out - it is not clear who is to inherit the property.

Basic details to include in a will

Personal and family details

1. Your full names, age, identity number and permanent address.
2. Your marital status and whether you are married in or out of **community of property** (sharing of property in marriage).
3. If married, your spouses name and identity number.
4. The names, sex, and age of your children and whether they are single or married.
5. Details of your relatives and other persons who will inherit.
6. The name and details of the **executor** - the person who manages the will and who is responsible for winding up the estate and making sure that the estate is distributed properly.

What is not allowed in a will...

Maria will only inherit my house if she poisons Gert, her husband!



Rudolf will be my heir if he becomes a drug dealer!



Business and financial details

1. Your personal financial position - for example, what you own, what money you owe, any policies you have (e.g., life insurance).
2. You and your spouse's income tax numbers.
3. Your employment details, provident or pension fund beneficiaries and employer's address.
4. Your business details and duties - for example, the names and addresses of business partners, and instructions on whether a business you own should be sold or carried on.

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 or her will at any time before death. The **testator** does this by making a new will, stating that he or she 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 a will

The **testator** can:

- * Distribute all or some of his or her property;
- * Nominate the people he or she intends to benefit under the will;
- * Appoint a **guardian** to look after the minor children; and
- * 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 state that the **executor** may be assisted by someone else if necessary. It is advisable to nominate a second **executor** in case the first appointed **executor** dies first or for some reason, is unable to perform his or her duties as an **executor**.

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 where it is kept; 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; and
- * Regularly update the will to provide for a change in circumstances, such as marriage, the birth of children or acquiring other property.



What to do once the testator has died

- * After death, a relative, friend or partner must get a death certificate from the doctor who looked after the person when they were dying. This certificate confirms that:-
 - the person has died;
 - the date of death; and
 - the cause of death.
- * When the **testator** dies, the death certificate and the will must be filed at the office of the Master of the High Court.
- * The Master will appoint the **executor** identified in the will, and direct him or her what to do.
- * In short, the Master will want a preliminary inventory of the assets of the **testator**. This is a list of all the property of the **testator**.
- * The **testator's** bank accounts must be frozen.
- * The **executor** must advertise the estate and ask people to lodge their claims against the estate, if the **testator**, while alive, had owed them money. If the **testator** had owed people or businesses money this will be paid out from the estate of the **testator**, and only then will the **heirs** receive their benefits in terms of the will.
- * Thereafter the **executor** will draw up liquidation and distribution account in which it is indicated how much property is in the estate and how much is owed by debtors and how much is owed to creditors.
- * The **executor** must collect all the money owing to the deceased.
- * This account must be advertised and is open for inspection.
- * People may object to the account while it is open for inspection.
- * If the account is in order, the **executor** has to pay all the creditors in terms of the account.
- * Thereafter, also in accordance with the account, the **beneficiaries** are paid and the estate finalized.

What options do parents have in providing for their children in terms of a will

Establishing a trust

What is a trust?

A **trust** comes into existence, when the creator of the **trust** hands over the control of the assets and property to be administered by another person (the **trustee**) for the benefit of a third party. The objectives of the **trust** must be clearly defined by the creator of the **trust**.

What is a trustee?

A **trustee** is the person who is entrusted by the creator of the **trust** to administer the **trust** on behalf of the creator. A **trustee** must keep his or her personal property separate from the property of the **trust**. A **trustee** is not allowed to transfer **trust** property either to himself or herself or to any person except those persons that have been nominated by the creator of the **trust** to benefit under it.

Why is it important to have a trust?

When parents have minor children, it is important that they make the necessary financial arrangements to ensure that their minor children are looked after financially after the death of the parents.

A **trust** fund can be established to take care of the financial and educational needs of the minor children, after the death of the parents.



What steps can parents take to set up a trust?

Parents can state in their will that a **trust** be set up for the benefit of the minor children.

Parents can nominate more than one **trustee** to administer the trust on behalf of the children until they are 18 years old or independent, whichever occurs first.

Parents can set clear objectives on how they wish the **trust** to be administered.



I am so grateful that my parents set up a trust fund for my education!

4. CONCLUSION

The aim of this manual is to equip as many people as possible to minimise the impact of injustices currently experienced by widows and children who are left destitute due to disputes and property grabbing after the **deceased** has died without leaving a valid will. Given that HIV/AIDS is the major cause of death in Namibia, we hope that people working and living with HIV/AIDS will benefit from this manual. However, the use of this manual is not limited to people living with HIV/AIDS. We hope that all Namibians will benefit from and make use of this manual.

5. EXAMPLE OF A WILL

This is the last will of.....(name)

Identity number.....

of:.....(address)

1. I revoke any previous wills made by me.
2. I nominate,
to be the Executor of my Estate (give the full name and address of the
person appointed as Executor).
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:
(full names and addresses).....

.....

5. I appoint(full name)

Identity number.....

.....(address)

to be the guardian of my children.

Signed at(place) on this(date)

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.

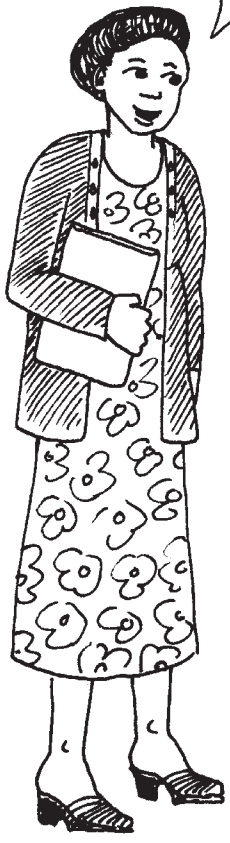
.....
(Testator)

AS WITNESSES:

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 unexpectadly

