

## **WHY IT IS IMPORTANT TO ENSURE YOU HAVE A WILL IN PLACE**

### ***Introduction***

The trauma of losing a loved one can be challenging to work through. However, leaving behind family and loved ones without ensuring the deceased have a valid will often induce stress and heightens family members' emotions. When a deceased person passes away without a valid will, the law provides that their estate will be governed in terms of the Intestate Succession Act No 81 of 1987 ("the Intestate Succession Act"). However, the Wills Act No 7 of 1953 ("the Wills Act") also makes provision for persons to determine how their estate should devolve upon their death by concluding a will.

### ***Winding up the estate in terms of the Intestate Succession Act 81 of 1987***

When dealing with Intestate Succession, the Act prescribes exactly what gets distributed to who, as well as the share thereof that will go to the surviving family members. Once an individual has passed away, and their estate has been reported, the estate will be dealt with in terms of the Intestate Succession Act. The disadvantage here is that control over the distribution is lost. The deceased essentially has no control over the inheritance as the estate will be divided amongst the surviving family members in order of preference, namely:

- If the deceased is survived by only a spouse, then the spouse will inherit the entire estate;
- If the deceased is widowed or unmarried and survived by their children, then the children will inherit the entire estate in equal shares;
- If the deceased is survived by both a spouse and children, then the surviving spouse will receive either a child's share or R250 000 (the current amount determined in the Government Gazette), whichever is the greater amount, and the children will each receive an equal share of the remainder of the estate;
- If the deceased had no spouse or children, then the deceased's parents, siblings and or aunts or uncles will inherit from the estate;
- Should the deceased not be survived by any of the above-mentioned relatives, then the relatives most closely related to the deceased will inherit in equal shares.

But what happens if you pass away, leaving no surviving relatives? The Act made provisions for the instances where there is no surviving family that qualifies to inherit from the Estate. Should this be the case, the estate is forfeited to the State who will place any monies flowing from the Estate into a fund referred to as "the Guardian Fund". The money is held in the Fund for a period of 30 years, to allow for any heirs to come forward and lay a claim against the Estate. Should the thirty-year period expire, the money is forfeited to the State in its entirety.

### ***The importance of having a Will***

It is vital that you have a will in place to ensure that your wishes are accounted for when the assets in your estate are being disposed of. The wishes of the deceased person is thus preserved and the deceased can ensure their loved ones are taken care of even after their death. This is especially important when you wish to nominate a beneficiary that would otherwise not have inherited from your estate, and who would be left with no legal entitlement in terms of intestate succession. You are therefore in control of your estate in after your death. Additional benefits of having a will in place are:

- it allows you to appoint a guardian for your minor children;

- You are able to set out any special requests such as funeral arrangements, cremation, organ donation, and where to spread / keep your ashes; and
- It ensures that there is minimal conflict over the division of your assets and a smoother administration exercise in the winding up of your estate.

With concluding a will comes the added responsibility of ensuring that the will is kept updated as the estates changes and or expands, as well as for instances where there is a change in relationship with any of the beneficiaries.

### **Conclusion**

Although we have only touched on a few of the benefits of having a valid will in place, it is evident that the benefits thereof far outweigh having your estate wound up in accordance with intestate succession. Without having a valid will in place, the deceased is unable to control from beyond the grave and the estate may be distributed to persons that the deceased would have not wanted to inherit. Ensuring a Will is in place and prepared by a qualified legal representative will ensure that the deceased party's family will have the least amount of trouble handling and administrating the Will.

Contact an Attorney at SchoemanLaw Inc for all your Wills, Estate-planning and Administration needs today.