



WITH COMPLIMENTS

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YOUR WILL AND A PRACTICAL PLAN FOR YOUR LOVED ONES
Where there's a will, I want to be in it (Anon)
Whether you are young or old, healthy



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or ill, single or attached, you should have a Will. Without one, you die "intestate", which means you forfeit your right to decide who inherits what, who administers and distributes your estate, and who looks after your children and their money. You owe it to your loved ones to spare them the inevitable financial and personal risks.



So if you don't yet have a Will get one drawn up immediately.

Here's a practical guide to making sure that it will protect and provide for your loved ones properly.

Do it properly with a professional

Don't be tempted to use a template Will or to copy a friend's; there is just too much at stake here to take any chances. Apart from all the legal formalities involved, there are a multitude of practical considerations that all call for professional help.

Badly drawn Wills risk outright invalidity, reduced tax and estate planning efficiency, confusion, doubt and dispute - our law reports are replete with bitter and costly family feuds that would have been avoided with a properly drawn and executed Will.

Appoint the right executor/s

Your estate will be administered and distributed by an executor or executors. If you decide to nominate a non-professional such as your spouse, he/she will need professional assistance so consider appointing a specialist as joint executor. Choose someone you can trust to act with absolute integrity and professionalism – you will no longer be around to keep an eye on them!

A practical plan for your loved ones

Firstly, all your bank accounts and other assets will be frozen when the executors take control and deceased estates take a long time to wind up. So check that your dependents will have enough on hand to tide them over for at least several months' worth of living expenses. Take advice on how best to do this – common solutions include separate bank accounts and investments, life assurance policies that will pay out directly to dependents on your death, and family trusts.

Secondly, when you die your family will be in shock. Help them through the stress and anxiety of bereavement by keeping a file with everything listed below -

- Right in front put a list of the names and contact details of everyone you can think of who your family can and should turn to for support and advice – your lawyer, accountant, tax adviser, insurance broker, medical aid specialist, doctor, financial adviser, investment manager, bank contact, employers, employees, business partners and so on
- Next, a copy of your Will and contact details for your executor (who should keep the original Will in safe custody)
- If you have particular wishes in regard to funeral arrangements, cremation etc, leave a signed directive giving details (or referring to any instructions in your Will)
- Medical aid details and details of any funeral policy
- Copies of ID documents – for you, your spouse, your children, other dependents or heirs, guardians etc
- Important family documents like marriage certificates, ANCs, cohabitation agreements, divorce orders and so on
- A full list of your assets (give detailed descriptions of any important assets, and don't forget full details of any loans made to family members) and your liabilities
- Details of all bank and savings accounts, credit cards, investments, life

policies, pension funds, retirement annuities and the like

- Information on entities like companies and trusts in which you or your family have any interest or involvement
- A list of all monthly recurring liabilities, debit orders etc
- Important documents relating to your assets and liabilities – title deeds, vehicle registration papers, rental agreements, loan agreements, insurance policies, tax returns, tax records – really anything your family or executor may need to access quickly and easily
- Notes on the location of things like safes, spare key boxes, security documents, firearm cabinets etc, and of the keys or codes needed to access them (see under “Passwords” below for ideas on doing this securely)
- A note on how to access passwords, PIN numbers and access codes, which are a big issue in our electronic age but often overlooked. Don’t make that mistake - your loved ones will need access to your computers, your cell phone, your online accounts, your email, your online payment portal, your Social Media pages and so on. For some ideas on how to do this securely read “Making Life Easier for Your Heirs in a Digital World” on Siller & Cohen’s [website](#). If you use a password manager like LastPass www.lastpass.com look for functions like “Emergency Access” to share your passwords with your heirs, and “Secure Notes” to share information like PINs, safe and alarm codes, location of keys etc
- Anything and everything else your loved ones or advisers may need to know about – ask them if they can think of anything to add.

Where your file contains copies of documents rather than originals, say clearly where the originals are kept.

Put your file somewhere safe then tell everyone where to find it and how to access it (it’s no good telling them it’s in your safe if they don’t know where to find the safe key!).

Diarise regular reviews

All sorts of life events - marriage, divorce, deaths, births, adoptions, retirement, new family circumstances and the like – call for amendment of your Will. So diarise regular reviews and again take full professional advice on how to make any changes both validly and to best advantage.

TRUMPED! A HOME OWNER CAN BE EVICTED AS AN UNLAWFUL OCCUPIER

Did you know that even as the owner of a house, you could still be evicted from it as an “unlawful occupier”?

That could happen if, to take one example from a recent SCA (Supreme Court of Appeal) matter, you give someone else a right of habitation (“*habitatio*”). But why, you may ask, would you do that?



Useful tools for property owners

Our law provides you with a range of useful tools to make the most of your property, including several different types of occupational and usage rights. For instance you will come across terms like “usufruct”, “*usus*” or “*habitatio*”. The distinctions between them are fine and not important for now, but what is important is that you

don't use any of them without getting specific advice on which – if any of them – will suit your particular needs.

How might you use these tools? Consider these two examples -

1. You could – perhaps as an estate planning exercise - bequeath your house to one of your heirs, subject to a lifelong usufruct in favour of your spouse so that although he/she won't actually own the house after your death, he/she can still live in it for life
2. Or you could sell your house to someone else but retain for yourself the right to remain in residence for life.

From bitter family feud to eviction application

The facts in the SCA case were these -

- A mother sold her house to her son, subject to a lifelong right to live in it via a right of habitation. This was registered against the title deeds – an essential step in making a servitude like this valid and enforceable against all-comers
- The son subsequently married in community of property, so thereafter the house belonged jointly to him and his new wife
- The mother, son and daughter-in-law lived together in the house for many years
- The son eventually moved out after divorcing, and relations in the house deteriorated to the extent that the mother temporarily fled the house and obtained a family violence interdict against the (now ex) daughter-in-law
- The ex-daughter-in-law denied everything and said the mother was welcome to return at any time to live with her in the house. Naturally enough the mother declined this offer, and applied instead for an eviction order.

Who's in charge?

Now our law requires that to evict an occupant you must comply with PIE (the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act). PIE requires that you prove either that you are the owner of the property or that you are the “person in charge” of it.

In this case of course the owner was the ex-daughter-in-law. But, held the Court, “where someone other than the registered owner is the ‘person in charge’ (i.e. the person with the right to determine who stays on the property), it is the consent of such person rather than the registered owner which is . . . relevant”.

Finding on the facts that the ‘person in charge’ was the mother, that she alone could give permission to live in the house and that she hadn't given her ex-daughter-in-law any such permission (any previous implied consent having been withdrawn), the Court held that the ex-daughter-in-law is indeed an “unlawful occupier” and therefore subject to an eviction hearing.

In other words, a registered right of habitation trumps the owner's rights of occupation to the extent that the owner can be evicted from his/her own home.

IN AMBUSH

Since the “new” 2008 Companies Act came into effect in 2011, directors and other company officers have had to shoulder a raft of additional responsibilities and risks, amongst them a significantly increased risk of personal liability.



Consider for example the little-known section 218(2) which waits in ambush for the unwary in the “Miscellaneous Matters” section at the tail-end of the Act, and which reads: “Any person who contravenes any provision of this Act is liable to any other person for any loss or damage suffered by that person as a result of that contravention”.

That’s wide wording –

- Anyone who has a duty to comply with the Act – not just directors - is in the firing line
- They can be sued for any loss caused by any contravention
- They risk personal liability to anyone who has suffered a loss – the company itself, shareholders, employees, creditors, suppliers, customers, etc. and the section has indeed been used several times to successfully attack directors.

Two directors go down R1.5m

A good example is a recent High Court case involving a liquidated company which failed to pay R1.5m in levies and provident fund contributions/salary deductions to a Bargaining Council. The two directors were ordered to pay the claims personally having, held the Court, acted in a grossly negligent manner, recklessly and with an intention to defraud not only the Council but also employees.

That of course was a serious contravention of the Act but the wording of the section suggests that even minor or technical contraventions will lead to liability - be warned accordingly!

TAX – HERE’S WHAT TO DO IF A “SARS” DEBT COLLECTOR COMES KNOCKING ON YOUR DOOR

SARS has appointed 3 debt collection agencies (currently named as CSS Credit Solutions, NDS Credit Management and Lekgotla Trifecta Capital Consortium) to chase up outstanding taxes. But with reports of scamsters contacting taxpayers, pretending to be SARS officials or official debt collectors, and demanding immediate payment, SARS advises that -



- Direct queries to the SARS Contact Centre at 0800 00 7277 (0800 00 SARS)
- Any suspicious activity should be reported to the SARS Anti-Corruption and

Fraud Hotline at 0800 00 2870

- Outstanding tax, VAT or duties must only be deposited directly into SARS bank accounts
- **No money should be paid over to debt collectors or self-proclaimed SARS officials.** In fact, collectors who want money to be handed over to them must be immediately reported.

YOUR SEPTEMBER WEBSITE: WHO'S WHO IN THE PANAMA PAPERS?

Find out who's behind almost 320,000 offshore companies and trusts named in the Panama Papers leaks. **Bear in mind that just because a person or entity is named in the database in no way suggests that they are guilty of anything – in fact it is believed that many (perhaps most) of the investments involved are entirely legitimate.**



To access the ICIJ (the International Consortium of Investigative Journalists)'s searchable database of the leaks –

1. Firstly go to [“Three tips for searching the Offshore Leaks database”](#)
2. Then go to [“Offshore Leaks Database”](#) and start searching (if the site won't open in Chrome, try it in another browser like Firefox or Microsoft Edge).

Dipping into the dictionary

“Paraffle”, n. – “An ostentatious display”

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