

## A Handwritten Will at your peril!

The current pandemic is a stark reminder to us all to ensure that our affairs are in order, and notably our Last Will and Testament. We all either had a family member or know of someone who has either passed away or been hospitalised because of COVID-19 and its many variants. Apart from the enormous heartache that one endures in these cases, but the very idea that you cannot visit the hospitalised loved one is even more painful. For this reason alone we should make sure that our Fiduciary house is in order.

Often, we find that testators are awakened to their Fiduciary failures when they are hospitalised and panic sets in. The tendency is to do a quick handwritten Will and many of the legal formalities are either forgotten or simply ignored, due to prevailing circumstances.

Frequent tendencies include: -

- Doing a Handwritten Will, where a spouse, a child or their spouses write out the Will;
- A spouse, child or their spouse sign as a witness;
- No witnesses or only one witness signs the Will;
- No executor is appointed;
- The executor is not exempted from having to furnish security to the Master of the High Court;
- Substitution heirs are not included;
- Minors portion are not wrapped into a Trust, and end up having to be paid into the Guardians fund.

These are but a few of the more common failures that we see.

We also often scoff at the use of the legal jargon in a Will, but believe us, it has its place and ensures that there is clarity and no misinterpretation.

In summary .... Keep your fiduciary matters up to date and don't fall victim to a last minute effort of a hand written Will, it could cost your family financially and emotionally.

For ease we set out hereunder an extract of Section 4A of the Wills Act!

### **Competency of persons involved in execution of a Will**

Section 4A of the Wills Act 7 of 1953, states that

1. Any person who attests and signs a will as a witness, or who signs a will in the presence and by direction of the testator, or who writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person

at the time of the execution of the Will, shall be disqualified from receiving any benefit from that will.

2. Notwithstanding the provisions of subsection (1)
  - a. a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will;
  - b. a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession;
  - c. a person or his spouse who attested and signed a will as a witness shall not be thus disqualified from receiving a benefit from that will if the will concerned has been attested and signed by at least two other competent witnesses who will not receive any benefit from the Will concerned.
3. For the purposes of subsections (1), and (2)(a) and (c), the nomination in a will of a person as executor, trustee or guardian shall be regarded as a benefit to be received by such person from that will.