



#QuickFacts

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“Succession” is dependent upon survivorship

The Simultaneous death conundrum!

A professionally drafted Will ensures the continuity of your legacy and that you pass on your wealth to the the heirs of your choice, given your right to “freedom of testation”. That said -“succession is dependent upon survivorship”, and although it is quite normal for a testator to draft their Will on the premise that they will outlive their heirs, this could be spell disaster. With life being unpredictable, accidental death is something we should be aware of when drafting a Will. The consequences of accidental becomes even more complicated when one or more of your chosen heirs are victims with you as this could scupper your succession plans.

Most professional Estate Planners will ensure that (1) any inheritance is based on the condition that the heir outlives the testator and (2) that in the case of the heir not surviving the testator that an alternative heir is nominated.

However, it is imperative to also deal with the possibility of simultaneous death, because, unlike Roman Law, Roman - Dutch Law, English Law and the laws of most Continental countries, South African law has no presumptions as to survivorship, based on age, where several persons sadly meet their death in the same catastrophe, such as a shipwreck, an aeroplane disaster or motor vehicle accident. In the absence of clear indications that one of the *commorientes* (two or more persons dying at the same time, usually in the same event), has survived the others, the court will be inclined to assume that all died simultaneously.

We know that it is extremely difficult to cater for every possibility or to predict life expectancy. BEXs will always cater for this eventuality by utilising the 10 day survival clause.

Main source: -The Law of succession in South Africa - Corbett, Hofmeyr, Khan