# Checklist for your will

It is often surprising for us as attorneys to see how many people, whose other affairs apparently seem to be properly organised, have a will that is 20 or 30 years old – or who do not even have one at all.  Nobody obviously likes to think about dying.  Consequently people do not like to talk about their will.  It is, however, something that you owe your loved ones.  It does not cost a lot in terms of time and money to do some estate planning and to have a proper will drafted. And it can prevent a lot of headaches. Test your will (hopefully you do have one) with this list.  Does your will provide for the following?

## Guardians and a trust for minor children

Your will should always cater for a trust for your minor children or other minor beneficiaries such as grandchildren.

The trustees of a trust are in control of all cash and other trust assets, which they must use for the maintenance of the children. The trustees must pay the funds to the children as stipulated in the trust deed. Normally this would be linked to the age of the children, for example 25 years.

Guardians, on the other hand, are the persons with whom the children will stay and who will take important decisions, for example which school the children will attend.

## Substitution and accrual

Does your will provide for the possibility that an heir might pass away at the same time as you or shortly after you, for example in a motor vehicle accident?

## Capital Gains Tax

When someone passes away, similar consequences in terms of Capital Gains Tax will result from the death as when everything, the deceased owned, is sold. You need to plan for this. Fortunately all assets, inherited by the surviving spouse, are exempt from Capital Gains Tax.

## Insolvency of heirs

If your will does not state otherwise, inheritances and bequests will fall into the insolvent estate of an heir and will be distributed among his creditors.

## Estate Duty

The primary rebate is currently R3.5m. The amount is increased to R7m if the surviving spouse inherited everything from the first-dying spouse.  Estate Duty is payable at 20% on the ‘dutiable value’ of the deceased estate exceeding the primary rebate. If the ‘dutiable value’ of the estate exceeds R30m, a rate of 25% is applicable.

Whatever the surviving spouse, however, inherits is exempted from Estate Duty.

## Accrual system

The accrual claim, where applicable, will first be paid out as a claim against the estate before what is left, will be inherited in terms of the will. This needs to be considered when drafting a will.

## Donations

If the will does not stipulate otherwise, donations to heirs will in certain cases be deducted from inheritances, for example where children inherit in equal shares.

## Maintenance

Has provision been made for the maintenance of your spouse, especially if he/she does not inherit everything?

## Liquidity

Will there be sufficient cash funds in the estate to enable the executor to pay your debts, the costs related to the winding-up of your estate and taxes, including Capital Gains Tax and Estate Duty? The review of your life cover is therefore an important part of estate planning.

## Living will

Do you have a living will? This is an instruction to your doctor and family to switch off the machines in the event of you having been declared brain-dead. In other words, it is a case where there is no hope whatsoever that you will recover, but your heart and lungs are still functioning as a result of the modern medical technology.  The living will makes the decision for your family and doctor easier to switch off the machines and can prevent a lot of trauma and medical costs.

## Overseas assets

Several considerations make it more practical if you have a will or wills for each of the countries where assets are being held. The executor appointed for each will should preferably reside in the country concerned. Should you therefore be fortunate enough to have assets abroad, we advise you to consider amending your current will or having an additional one drafted in which an executor from the country, where the assets are situated, is appointed.