

I am married in community of property. Can I sign a separate will?

There are no prescriptions in the Wills Act on which persons must sign a joint will. You could therefore execute a will together with your neighbour, your friend or your domestic worker.

On the other hand, you do not have to sign a joint will with your spouse, irrespective of whether you are married in or out of community of property. You could do your own will separate from your spouse.

However, you can only deal with your assets in your will. Where you are married in community of property, you can, for example, not take your spouse's 50% interest in the joint estate away from him or her in your will. Your spouse will always be entitled to his or her 50% after you have passed away in terms of the marriage in community of property, irrespective of what your will stipulates.

This principle applies to each asset in the joint estate. You can, therefore, for example, not bequeath your farm to your son on your own where you are married in community of property. This is because 50% of that farm belongs to your spouse. Your spouse will have to cooperate to get the farm to your son after you have passed away. The will has to cater for massing, and the surviving spouse will have to adiate (accept) the will and the massing after your death.

My advice to married persons is to do a joint will whether they are married in or out of community of property. This makes it easier for everyone if there is one document catering to three scenarios, namely

1. one scenario is where the husband passes away first,
2. one is where the wife passes away first, and
3. the third one is where they pass away together or within 30 days from each other.

I would say that about 95% of the people that I talk to accept my suggestion that they sign a joint will with their spouses. About 5% of them, however, prefer to do

a single will in which they separately deal with their estate planning and finances without their spouses, for example, in the case of a second marriage.

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Do you have a will? Or is your will outdated and needs to be revised? Click on [this link](#) and fill in the form to enable us to draw up a will for you. It won't take you longer than 5 minutes. This service is provided to you free of charge.