

Please note : This is a simple will where a person leaves the whole of his estate to his children in equal shares. It caters for the situation where, as at the date of death , one or more of the beneficiaries are minors by creating a trust for that minor. If no trust is required, then the relevant paragraphs may be deleted.



LAST WILL AND TESTAMENT

of:

(INSERT NAME)
(IF FEMALE - INSERT Born INSERT NAME)

1. This is the Last Will and Testament of:

(INSERT NAME)

(IF FEMALE - INSERT Born INSERT NAME)

domiciled and resident in (INSERT CITY AND PROVINCE).

2. I hereby revoke, cancel and annul all previous Wills, Codicils and other testamentary writings or bequests heretofore made or executed by me.

3. In this Will, unless inconsistent with the context:

3.1 the masculine includes the feminine and vice versa;

3.2 the singular includes the plural and vice versa;

3.3 the term:

3.3.1 "my children" means collectively:

3.3.1.1 (INSERT NAME); and

3.3.1.2 (INSERT NAME); and

3.3.1.3 (INSERT NAME)

and "a child" shall have a corresponding meaning;

3.3.2 "my administrators" means the administrators appointed in clause 6 hereof and shall include a

sole administrator and subsequent administrators;

3.3.3 "my executors" means the executors appointed in clause 6 hereof and shall include a sole executor and subsequent executors;

3.3.4 "net income of a trust" means the net income thereof remaining after my administrators shall have paid and made provision for payment of all amounts required for the maintenance and upkeep of the assets of such trust and all costs, charges, expenses and taxes properly incurred or payable in connection therewith;

3.4 bequests to my administrators shall be to them trust only without beneficial interest, save and except such commission as from time to time shall be lawfully chargeable as remuneration for their services, to hold, invest, administer and distribute upon the several trusts with and subject to the powers and provisions hereinafter mentioned;

3.5 the maintenance of a person shall without derogating from the generality thereof, mean travel, medical treatment and advice, reasonable pleasures, the acquisition or provision of a residence, the payment of taxes and general welfare and benefits, higher education and setting him up in a business or profession or fitting him for a career;

3.6 an adopted child shall be regarded as the child of his adoptive parents.

4. I hereby give, devise and bequeath the whole of my estate of whatsoever nature and wheresoever situate, whether movable or immovable and whether in expectancy, contingency, reversion or remainder, to my children in equal shares.

5.

5.1 Should any of my children predecease me, ~~the~~ the inheritance due to such deceased child shall:

5.1.1 be divided equally amongst his descendants per stirpes; or

5.1.2 if the children of such deceased child shall predecease him, be awarded in equal shares to my remaining children.

5.2 Any inheritance accruing to any descendants of any deceased child who, as at the date of such accrual shall not yet have attained the age of (INSERT AGE), shall be paid and delivered to my administrators in trust who shall hold and administer such inheritance for and on behalf of such descendant subject to the provisions hereunder. I direct that there shall be a separate trust in respect of each descendant, subject to the following conditions:

5.2.1 my administrators shall be entitled to apply ~~so~~ much of the income and if the income is insufficient, so much of the capital of each trust as they in their discretion may deem fit, towards the maintenance of the beneficiary/ies of the trust concerned. Without affecting the generality of the foregoing, my administrators shall be entitled to make advances to such beneficiary from his trust for the purpose of enabling him to set up a home and/or in order to establish or acquire a business or pursue a profession or other calling and for the purpose of supplementing his income and/or for any other purpose as my administrators may in their sole and absolute discretion deem fit;

5.2.2 any income which is not paid by my administrators to the beneficiary of the trust concerned shall remain vested in such trust;

5.2.3 my administrators may in their discretion award the whole or any part of the capital of any trust to the beneficiary thereof in advance of the time it would otherwise have vested in him, if they are of the opinion that such award is warranted by circumstances.

5.3 My administrators shall have the right to postpone or defer the termination of any trust for a period not

exceeding five (5) years after the date on which such trust would, but for the provisions of this paragraph, terminate, if in their opinion it is in the interests of the beneficiary so to do.

- 5.4 My administrators may make payment of any income and/or capital accruing to a descendant or directly to any source or sources from which the descendant will have or may receive maintenance or other benefits, or to any other person or institution for the benefit or account of such descendant. My administrators shall not pay any monies due to any descendant into the Guardian Fund.
- 5.5 Neither my administrators nor any descendant shall be obliged to account to the Master of the Supreme Court or any other officer, official or person for any intromissions with any income accruing, paid or applied for the benefit or account of any such descendant, unless my administrators should otherwise decide or direct.

6.

- 6.1 I hereby nominate, constitute and appoint:

6.1.1 (INSERT NAME);

and

6.1.2 (INSERT NAME)

and

6.1.3 (INSERT NAME)

jointly to be the executors of this my Last Will and Testament and administrators of my estate (in the event of clause 5 above being applicable), hereby giving and granting unto them all such powers as are allowed in law, the power of assumption and the powers specifically hereinafter set forth.

- 6.2 If any of the persons appointed to office or holding office as an executor or administrator fails to accept the said appointments, or either of them, relinquishes the same, be removed therefrom or die, then with effect from such failure, relinquishment, removal or death, the others of them may continue to act alone.
- 6.3 Without limiting the powers vested in my administrators by law, my administrators shall have the following powers:
- 6.3.1 to apply or invest money under the trusts hereof in the purchase of or at interest upon the security of such shares, stocks, funds, securities, land, buildings or other investments or property of whatsoever nature, wheresoever situate and whether involving liabilities or producing income or not, or upon such personal credit with or without security as my administrators shall in their absolute discretion think fit, to the extent that my administrators shall have the same powers in all respects as if they were absolute owners beneficially entitled;
- 6.3.2 to allow the investments at any time forming part of my estate to remain in the actual state of investment thereof for so long as my administrators may think fit, and at any time or times to sell, call in or convert into money the aforesaid investments, or any of them or any part thereof;
- 6.3.3 to change or vary any investments for the time being forming part of my estate for others hereby or by law authorised;
- 6.3.4 to apply any money for the time being forming part of my estate in improving or developing any land which, or the proceeds of sale of which, may for the time being be subject to the trusts hereof, or erecting, enlarging, improving or rebuilding any buildings upon such land;
- 6.3.5 to permit any beneficiary for the time being to reside in any dwelling house, occupy any land or have the custody and use of any articles which or the proceeds of sale of which may for the time being be subject to the trusts hereof, free of consideration or upon such conditions as to payment of rent, rates, taxes and other expenses and outgoings and as to insurance, repair and

decoration for such period and generally upon such terms as my administrators in their discretion shall think fit;

- 6.3.6 to sell, lease, let, mortgage, charge, licence and generally manage and deal with any land which or the proceeds of sale of which, may at any time form part of my estate as if my administrators were beneficial owners absolutely entitled;
- 6.3.7 to appropriate any investment or property from time to time forming part of my estate in its actual state of investment in or towards the satisfaction of the beneficial interest of any person in my estate upon making such valuations as my administrators may think fit and without the necessity of obtaining the consent of any person;
- 6.3.8 to pay to the parents of either parent or any guardian of any minor any sum of income intended to be applied for the maintenance or education or benefit of that minor, or any sums of capital intended to be applied for the advancement or benefit of that minor upon receiving from the said parents, parent or guardian an undertaking so as to apply the said sum of income or capital as aforesaid and so that the receipt of such parents, parent or guardian shall be a complete discharge to the administrators;
- 6.3.9 to borrow money on such terms and as to interest, repayment and otherwise as they may think fit, and whether upon the security of the whole or any part or parts of the assets of my estate or upon personal security only and to use such monies so borrowed in purchasing or subscribing for investments or property to be held as part of my estate;
- 6.3.10 to deal with any income applicable for the maintenance, education or support of any beneficiary under any of the provisions of this Will by paying or contributing towards the payment of the premiums or costs of any policy of insurance by the terms of which any sum or sums may in any contingency be payable to or applicable for the maintenance, education or benefit of such beneficiary;
- 6.3.11 to lend money to the beneficiary of any trust for such period subject to such terms and conditions and on such security or without security and at interest or free of interest as my administrators may in their discretion deem fit;
- 6.3.12 every discretion or power hereby conferred on my administrators shall be an absolute and uncontrolled discretion or power, and no administrator shall be held liable for the loss or damage accruing as a result of his concurring or refusing or failing to concur in any exercise of any such discretion or power.

7.

- 7.1 In the professed execution of the powers hereof, no executor or administrator being an individual shall be liable for any loss to my estate arising by reason of any improper investment made in good faith or for the negligence or fraud of any agent employed by him or by any other administrator although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by any administrator.
- 7.2 Any executor or administrator being an attorney, accountant or other person engaged in any profession or business shall be entitled to be paid all usual professional or proper charges for business transacted, time expended and acts done by him or any partner of his in connection with my estate and the trusts created in terms hereof, including acts which an executor or an administrator not being in any profession or business could have done personally.
- 7.3 Insofar as and to the extent that my executors or administrators may find it necessary to sell property in my estate they are authorised and empowered for the purposes of Section 47 of Act 66 of 1965 to effect all and any sales in a manner other than by public auction and without receiving directions from the Master of the Supreme Court in regard to notice of any such sale and the conditions upon which such sale may take place.
- 7.4 I exempt my executors and administrators, both such as shall hold office by original appointment or by

substitution, and both jointly and severally from the obligation of furnishing security for the due administration of my estate to the Master of the Supreme Court or to any authority, whether under the Trust Monies Protection Act or the Administration of Estates Act or otherwise.

- 7.5 Should there be any difference of opinion between my executors and/or administrators, such difference shall be decided by unanimous decision, provided that if there should not be unanimity on any issue, the matter in dispute shall be referred to a referee agreed to by the parties to the dispute and failing agreement, to a referee nominated by the President for the time being of the Law Society of the Transvaal.

The proceedings before the referee shall be informal and there shall be no pleadings or other formal legal process. None of the parties to the dispute will be entitled to legal representation and the decision of the referee shall be final.

8. Whenever my executors or administrators shall have a duty to make any payment or distribution to a beneficiary in terms of this Will, such payment or distribution shall be made by them to the beneficiary free from the marital control of any husband, from any community of property, from any community of profit and loss and from any community of accruals.
9. When distributing or delivering the subject matter of my estate or of any inheritance in terms hereof, my executors or administrators shall not be obliged, unless they will otherwise decide, to convert into cash any assets or investments constituting the same or forming part thereof, but may should they so decide, effect such delivery by:
- 9.1 paying out in cash any amounts of money forming part thereof, including any credits in banking or savings accounts; and
- 9.2 ceding, transferring or otherwise delivering in kind any other assets.

Although it is my wish and desire that my heirs should share in the appropriate proportions any assets devolving upon them and delivered to them in kind, I direct that my executors and administrators may nevertheless, should they so think fit, award different assets and investments to my different heirs, provided always that each of my heirs shall receive the fair value of his or her inheritance in relation to those of any other heirs and provided further that the decision of my executors and administrators as to the fair value of any asset or investment distributed by them shall be final and binding upon all my heirs.

10.

- 10.1 No rights or hopes of any beneficiary under this my Will and no part thereof shall be attachable by any creditor of any heir or beneficiary, or vest in his trustee in insolvency, and if, prior to any payment being made to any heir or other beneficiary, he shall have committed or suffered any act, default or process of law whereby such rights or hopes, or part thereof, would, but for any provisions of this my Will, become vested in or payable to any other party or parties, or if any beneficiary shall be declared insolvent or assign his estate in favour of his creditors, or if an attachment is made or an execution levied of or against the rights or hopes, or any part thereof, of any beneficiary, then and in any or all of such cases the rights and hopes of the beneficiary concerned under this my Will shall immediately and entirely thenceforth cease and determine and those rights and hopes shall thereupon and subject to the provisions hereunder, devolve on and vest in such other parties as it would be entitled thereto, if the beneficiary concerned had died at the time of such cessation and determination, provided that:
- 10.1.1 no such beneficiary shall be obliged to repay to my estate any amounts previously paid or advanced to him from my estate;
- 10.1.2 my administrators shall be entitled, in their absolute discretion, to continue to hold in trust for the lifetime of the beneficiary clause have been or become entitled in terms of this my Will, and pay or, without detracting from the other powers conferred
- 10.1.3 if my administrators continue to hold the said share of my estate as aforesaid, then notwithstanding that the rights and hopes of the beneficiary concerned shall have ceased and determined and notwithstanding anything to the contrary herein contained, such rights and hopes shall, on the death of the beneficiary devolve upon the parties entitled thereto by substitution, determined as at the date of the actual death of the beneficiary.

- 10.2 My executors and administrators shall be entitled to refuse to recognise and to treat as null and void any cession, assignment or pledge of the rights and hopes of any beneficiary hereunder.
11. I direct that my estate will be liable for, and shall pay, all estate duty and other fees which may be payable in connection with or relating to any inheritance or bequest accruing to any person whomsoever in terms of this my Will.
12. An administrator shall be responsible only for such money as he shall actually have received, and shall be answerable only for such loss as may happen or be caused in execution of or in relation to the obligations of trust, by or through his willful neglect or default.

IN WITNESS WHEREOF, I have hereunto set my hand at (INSERT PLACE) on his the (INSERT DATE) day of (INSERT MONTH AND YEAR), in the presence of the undersigned Witnesses, who in my presence and in the presence of each other, have hereunto subscribed their names as Witnesses.

(INSERT NAME OF TESTATOR)

AS WITNESSES :

1. _____

2. _____