your final to-do list

Think you can postpone drafting a will until it's a matter of life and death? Um, that would be too late. This guide will help you do it now.

FOR SOMEONE WHO IS AN ACE at organising five-course dinner parties and remembering to get the bulbs into the ground in mid-winter, relinquishing control seems unimaginable. But just as that antenuptial contract, unromantic though it seemed at first, gives your married life a solid grounding, a will also helps you retain control. After all, if you're passing on your grandmother's wedding ring, you want to avoid family squabbles, especially if you're not going to be around to referee. Here then, what you need to know in order to tackle one of life's more inevitable little tasks.

WRITTEN BY **NICOLA DAVIES-LAUBSCHER**
ILLUSTRATIONS BY **LAUREN FOWLER**

A will is a living document that should change as you move through life. Ultimately it is a final act of kindness to those left behind – be it your children or a beloved pet. Read on for the different scenarios and their consequences.

dying intestate

Let's be clear: you can die without creating a will. The question is, would you want to? If you do, the State will administer and distribute your assets on your behalf in accordance with the Intestate Succession Act 81 of 1987. And, as you know if you've ever argued a traffic fine, the State can take its time. Motivation enough to start drafting, but if not, consider this: if you have children under the age of 18, in most cases their inheritance will be placed in the Guardian's Fund that is administered by the Master of the High Court. This means that your assets will be converted into cash and the money will be locked into a State-controlled savings account until it is paid out when your children reach the age of majority. 'The Guardian's Fund is managed very conservatively and may result in a lower standard of living for your children: things like overseas holidays or private schools could be out of the question,' says Nicolene Schoeman of Schoeman Attorneys in Cape Town.

estate duty

Estate duty of 20 percent is payable on estates worth more than R3.5 million after all liabilities and allowable deductions have been settled. This can amount to a substantial chunk of your beneficiaries' inheritance. There are ways around it, which require what is for some a courageous step: letting go of your goods sooner rather than later. 'Currently, donations of up to R100 000 per year are exempt from tax and therefore many people donate spare cash to their children and grandchildren, enabling them to drop below the R3.5 million benchmark,' says MC Coetzer of Cape Town's Chris Fick & Associates. That's R100 000 per year, not per child. Any donation exceeding R100 000 per year is subject to a 20 percent donation tax. But say you don't want to do this. You can still save on overall administration costs by negotiating a reduced fee with your executor (who usually gets paid up to 3.5 percent of the value of the estate). If your executor is a family member, he or she may even waive the fee completely.

international assets

Any assets that you have in another country – a bank account, a house or that camper van you travelled through Europe in 10 summers ago – should be dealt with in a separate will as they might fall under that country's jurisdiction.

'There are potential taxation and succession dangers with regard to assets outside South Africa,' says John Maddocks, head of UK-based International Probate Services Group at Lester Aldridge LLP Solicitors. For example, French law considers children reserved heirs (*héritiers réservataires*), which means it is nearly impossible to disinherit them, which means that, regardless of the fact that Philippe and his father have not spoken in the 20 years since he dropped out of the Sorbonne, Philippe will be entitled to a portion of the chateau, irrespective of his father's wishes. 'Therefore it is vital that separate wills dovetail and do not revoke each other,' says Maddocks.

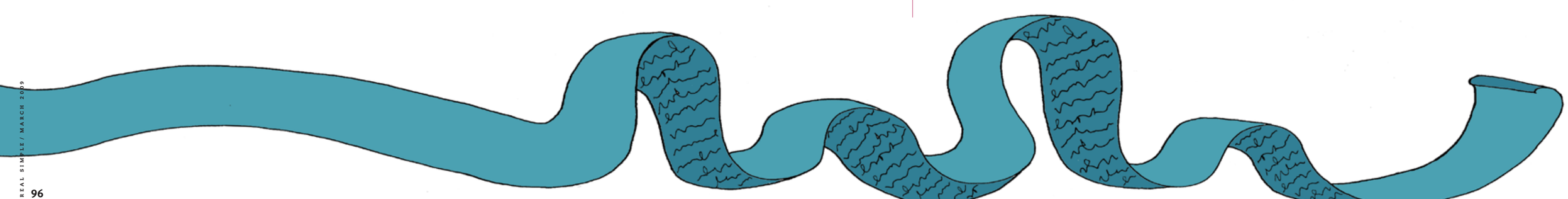
checklist

Keep this at hand, from the first time to the last time you write a will. (The first three points listed here are prerequisite for your will to be valid.)

1. PUT IT IN WRITING A will must be in writing, either handwritten or typed.
2. APPOINT YOUR WITNESSES You need two witnesses who have to be over the age of 14 and competent to give evidence in court. A witness may not be the executor of the estate, a trustee or a beneficiary of the will. (If a witness is also named as a beneficiary, the will is valid but the person will automatically be disinherited.)
3. SIGN THE DOCUMENTS The testator (you) and the two witnesses must each sign in full just below the text on each page. This must be done in one another's presence.
4. INCLUDE A REVOCATION Include phrases such as 'I hereby revoke all previous wills…' otherwise all existing wills will be read together, which may lead not only to confusion but also contradictions.
5. STATE YOUR INTENTION Your intention must be clear and the executor must be in no doubt as to who inherits what. If you're unsure, ask someone to read it through for clarity.
6. INDICATE THE DATE AND DOMICILIUM If more than one will exists, the date of signage will indicate which is the most recent, and therefore the applicable, document. The domicilium is a reference to the place where the document is signed.
7. NAME AN EXECUTOR The executor is the person whom you appoint in your will to ensure that your wishes are carried out. Typically, this is a capable person who is close to you. In appointing an executor there are numerous factors to consider and certain financial ramifications. For the finer points and some useful advice see the sidebar.
8. CONSIDER YOUR OFFERS A financial institution like a bank could offer to draw up your will free of charge on condition that it is appointed as executor. The cost of this (3.5 percent of your estate) might be a large amount, and an executor close to you might waive this fee (that's more in the pot for your dependants).
9. MAKE A WISH LIST You can attach a document to your will stipulating your wishes around resuscitation if you are in a coma and any deathbed wishes (for example, if you want to be cremated or buried). Remember that this should be expressed as a wish, not a direction, and that it is not always legally enforceable.
10. TELL SOMEONE ABOUT YOUR WILL Make sure that at least your attorney or executor knows where you keep your will and that your friends and family are aware of any final wishes. You may be long buried when they finally discover your last wish was to have your ashes scattered in Hermanus to the tune of *Dancing Queen*.

appointing an executor

When you name an executor, include an alternative: your first choice might turn down the task or, worst case, may also have died. (Choose wisely. Winding up an estate is a legal, often long-winded, process that requires special know-how. Consider whether your husband or sister can cope with their loss as well as the admin.) It remains at the discretion of the Master of the High Court to appoint your nominated executor. If the Master thinks that the estate is too complex or the executor needs help in administrating it, the Master can appoint an agent to help the executor. If this happens, the executor has to find a suitable agent with the knowledge and experience that the executor lacks. The executor and the agent have to come to an arrangement regarding the distribution of the 3.5 percent executor's fee, and the agent could take the full fee. Even so, the executor should manage the agent.



single without a partner

'An insurance policy will protect the person who signed any type of surety for you (typically a parent in the case of a student loan) and also cover any outstanding debt if you have acquired assets such as a car or property,' says Bronwen Norman of John Riley Attorneys in Cape Town. If you have ageing parents who rely on you for financial assistance it is a good idea to take out a life-insurance policy that has them as the beneficiaries. 'Alternatively you might consider opening a savings or investment account into which you make monthly payments,' says Norman. 'You can then bequeath the balance of the account to your parents.'

Your will should specify if you'd like any personal effects (your Pink Floyd box set or your great-aunt's dining-room suite) to go to a specific person. If you are going to bequeath an asset that might change over time, such as your house, your intention must be clear from the wording in your will. For example, you may want your sister to inherit your house and refer to the house as 'my house in Greenside' in your will. But then you sell the house in Greenside and buy one in Rosebank. The asset mentioned in the will therefore no longer exists and the bequest will fail.

single with a partner

The Intestate Succession Act only deals with married couples, not life partners. It is therefore very important that you have a will that protects your partner. (Sure you may have felt like killing him on a few occasions but you don't really want him to be left with nothing.)

'Having a will becomes critical if you are not married but share a property that is only registered in one person's name, especially where both incomes are needed to pay the bond or where one person pays all the household expenses,' says Schoeman. Without it, besides the emotional trauma of losing a partner, your partner may end up without a place to stay, not to mention losing his belongings: 'By law the surviving partner is not entitled to take anything out of the house, except that which he can prove belongs to him by means of a receipt or warranty document,' says Schoeman. (And be honest, will you be able to lay your hands on your cellphone and clothing receipts, especially in a time of crisis?)

It is also important to look at the general liquidity of your estate and consider the immediate cash implications your death could have on your partner. 'Taking out life cover or buying shares and naming your partner as beneficiary means that he or she will receive cash from the estate fairly quickly to cover essentials such as bond payments, rates and taxes and everyday living expenses,' says Schoeman.

married without children

IN COMMUNITY OF PROPERTY 'Though each party's will only deals with his or her share, upon the death of one, the entire estate is effectively frozen until the administration of the deceased's estate is finalised,' says Schoeman. 'This can lead to cash-flow problems in the months following your death.' And keep in mind that while your husband will share in the profits of the fledgling business after your death, all related debts will pass on to him too. Makes you think twice about that dodgy-sounding deal your old classmate wanted to involve you in at your 20-year high-school reunion.

OUT OF COMMUNITY OF PROPERTY In terms of this arrangement, a couple maintains two separate estates. If you are married under the accrual system (check your antenuptial contract) the size of each of the estates at the beginning of the marriage must be reconciled with their sizes at the end, be it through divorce or death. Common ground must be found between the two in order to divide them evenly. 'This means that either of the spouses may have an accrual claim against the other, which could effectively override your wishes as stated in your will,' says Norman. You were surprised to find out that you automatically get your husband's surname if you don't ask to keep your maiden name? The same will happen if you do not have an antenuptial contract: your marriage will default to the status of one in community of property.

married with underage children

Think worst-case scenario: both of you die in a car accident. That's why your will must set out a detailed plan for your children's maintenance and education. This is usually done by means of a trust.

There are two types of trusts: *inter vivos* ('between living people') trusts that are created while the parties are alive and testamentary trusts that are created by means of a will.

'Typically, an *inter vivos* trust will be appropriate if you have substantial assets as it enables your assets to grow in value outside the scope of your estate, thereby reducing the estate duty payable upon your death,' says Ulrich Hoffmann of Sentinel International Trust. Keep in mind that the income retained in the *inter vivos* trust generally falls into a high tax bracket.

A testamentary trust will nominate a trustee to manage the assets and property to the benefit of your children. The trust will pay out when they reach an age specified by the trust, but not before they turn 21.

'It is advisable to nominate at least three trustees, one of whom should be an independent person outside the family, such as an attorney, an accountant or a trust company,' says Hoffmann. You also need to appoint a guardian to physically look after the children. Failure to do so could cause unnecessary strife in the family if more than one person sees looking after them as solely his or her responsibility.

divorced

'A provision in the Wills Act 7 of 1953 states that if one party dies within three months of the divorce, the ex is automatically disinherited unless the will provides otherwise,' says Norman. But if no adjustment is made during the three months, the will is reinstated and your ex becomes entitled to inherit according to the provisions of the will. 'If you foresee an acrimonious divorce, it is advisable to make the necessary adjustments the moment you realise that reconciliation is out of the question, especially since divorce proceedings can take years to finalise,' says Norman.

On the other hand, if there is no animosity and you do not wish your ex to be disinherited, it is important that you make the necessary provision in your will to override this three-month revocation.

'Regardless of any personal differences between you and your ex, it is important that you work together to consider your children,' says Norman. 'Following a divorce where underage children are involved, you need to make the necessary adjustments to your will by appointing a custodian parent and providing for their financial needs by means of a trust.' If you have debt – quite common if you had to strike out on your own again – it is advisable that you take out additional insurance to cover it – unless you want your parents to jump to your rescue long after they should be doing so.

married and retired

As you grow older, the simplest way to dispose of your assets is to leave everything to your spouse with the condition that everything goes to your children on his death. Wills often make provision for usufruct, which means you leave something, usually property, to someone to enjoy until his death, after which it passes to someone else. 'One must be very careful of instituting usufruct as it places a restriction on someone,' advises Norman. 'For example, leaving the large family home to your husband can become a liability when he is physically or financially unable to maintain it and cannot sell it either (as he doesn't own it) to move to a smaller place.'

Any bequest to your surviving spouse is exempt from estate duty. 'Keep in mind that your spouse's entire estate may then be worth more than R3.5 million and that estate duty will eventually be due on this greater amount,' says Coetzer.

As you get older you should review your will at least once a year or with each major family event such as the birth of a grandchild. 'To prevent you from inadvertently disinheriting someone if you don't, your will should refer to your grandchildren as a group, not individually,' says Norman.

'The purpose of your will changes as you get older,' says Schoeman. 'You will now make donations out of love, rather than merely for the beneficiaries' physical maintenance, since most will now be independent.'