



Justice, Honour and Integrity

NATIONAL LEGAL AID CLINIC FOR WOMEN



TESTATE SUCCESSION



With Support from the Swedish International
Development Cooperation Agency

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FOREWORD

The National Legal Aid Clinic for Women (NLACW) was established in 1990 as a project under the Women's Rights Committee (WRC) of the Law Association of Zambia (LAZ). LAZ is a body corporate with perpetual succession and full legal status created under Act No. 47 of the Laws of Zambia. NLACW was established to provide affordable legal aid to women and children from marginalized social sectors whose means are inadequate to hire private lawyers to represent them in their pursuit of justice. Apart from legal representation, NLACW undertakes awareness raising activities on women and children's rights in order to address negative social norms and harmful traditional and cultural practices which discriminate against women; and to empower communities with knowledge and information on women and children's rights. This is done through community and school workshops, radio and television programmes and publications (posters, brochures, newsletters and posters) on various topics.

This Booklet on Testate Succession has been produced with support from the Swedish International Development Cooperation Agency.

Mandy Manda

Executive Director

WHAT IS A WILL?

A Will states what will happen to your assets after death. Assets include property, personal things, money and children. If you do not leave a Will, the Government will divide your property, in a way you may not have wished.

WHY SHOULD I HAVE A WILL?

People spend a lot of money to acquire their assets or property. It is therefore, important that they also decide how their property will be divided after their death. Writing a Will is the only way of making sure that your property is handled according to your wishes, after death.

WHAT IMPORTANT THINGS SHOULD I KNOW WHEN WRITING MY WILL?

1. Age

You must be at least 18 years or above to write a Will. A person who is below 18 years is regarded as a child and cannot therefore, write a Will.

2. Your state of Mind

You should not be suffering from any disease of the mind or disease which affects your mind. If at the time of writing your Will your mind is not alright, your Will can be put aside by the Court and when this happens, it will be as though you did not write a Will. The law will then decide how your property will be divided.

3. You do not need to be educated or be able to read and write

If you are a person who is blind or for some reason, you cannot read or write, you too can write a Will. You can ask someone you trust to write the Will for you. The person who writes the Will for you should then be able to read it back to you in the presence of two witnesses who can confirm what the person has written. Instead of putting your signature on the Will, you can put your thumb print. The person who has written your Will on your behalf should also be able to sign together with the two witnesses.

4. Beneficiaries

These are the people you want to leave your property with. You can choose whoever you want to leave your property with. When deciding who you want to take over your property after your death, it is important to list the names of all your children and spouse because if you do not provide for them, the Court can make changes to your Will to provide for them.

If you have young children, you can also mention the name of the person you want to look after your children. This person is called a Guardian. A Guardian should be someone you know and trust can look after your children.

5. Executor

You should choose the person who is going to divide your property after death. This person will be responsible not only for putting all your assets together but will also be responsible for paying any bills or taxes which will be required after your death. This person is called an

Executor. The Executor will also be responsible for taking any court cases to Court on your behalf.

It is also important to appoint another person in case the person you appointed as Executor refuses or is not willing to do the work.

The person you appoint as Executor must be at least 21 years old or older.

The person you appoint as Executor should not be suffering from a disease of the mind. This is important because the person will be expected to make decisions and must know what they are doing, which is not the case with a person who has a disease of the mind.

The person must not be penniless or broke. If you appoint a person who is broke, chances are that the person will misuse or waste the property.

Duties of the Executor

- To pay funeral expenses of the Testator;
 - To prepare a list of the property and also maintain records of the estate;
 - To apply to the High Court for authority to distribute the estate;
 - To distribute or divide the estate according to the Will;
 - To pay the Testator's debts at the time of his/her death;
 - To take legal action or to represent the estate in Court if required.
- To account if so required as to how the estate has been distributed.

6. Witnesses

When signing the Will, there must be two eyewitnesses. The witnesses are supposed to be both present when you are signing the Will. The Law further requires that the Witnesses must:

- Not be suffering from a disease of the mind
- They must both be above the age of 18 years; The age is important because should a dispute arise, the witness would need to testify as to the validity of the Will in Court. The general rule is that evidence given by a minor (person below the age of 18 years) will need to be supported by other evidence (corroborated). Therefore, even though a person is below that age can be a witness, problems may arise where their testimony in Court is not supported by other evidence.
- They should be people who are not entitled to benefit under the Will. This is to prevent them from intentionally causing your death so that they benefit from the Will.
- Not be blind.

HOW SHOULD I WRITE A WILL?

- a) A Will must be written in a pen or any other permanent form of writing such as typing it. This means that a Will should not be written in pencil because something written with a pencil can easily be changed by simply rubbing.
- b) You must sign the Will in the presence of two witnesses. The Law of Zambia requires that the witnesses must both be present at the same time when the Will is being signed. It is also

important to sign on each page of the Will with all the witnesses. This stops the Will from being changed by anyone.

- c) The Will should be written in simple language so that it is easy to read and understood by everyone.

WHO CAN BE APPOINTED AS A GUARDIAN?

- A person who is not suffering from a disease of the mind
- The person must be above 18 years
- The person must not have been declared by the Court to be penniless or broke

WHAT ARE THE RESPONSIBILITIES OF A GUARDIAN?

A person who is appointed to be guardian of minor children has the following responsibilities:

- To be responsible for the day to day needs of a child;
- Hold property on behalf of the child
- Buy or sale property on behalf of a child; and
- Represent the child in court.

OFFENCES BY GUARDIANS

If a Guardian sells property or misuses property in which a minor is interested, he or she commits an offence and can imprisoned.

CAN A WILL BE CHANGED?

You can change a Will or any part of it. To do so, you have to prepare a document called a Codicil or simply write another Will. To do so, you

can do any of the following:

- Declaring in writing that the Will has been revoked;
- Writing another Will stating among other things that the earlier Will has been revoked; or
- The Testator burning, tearing or destroying the Will.

CAN THE CONTENTS OF A WILL BE CHANGED AFTER THE DEATH OF A TESTATOR?

As a general rule, the Will cannot be changed after the death of the Testator.

WHERE SHOULD A WILL BE KEPT?

- A Will should be kept in a safe place;
- It can be kept in the Testator's personal file at work;
- It can be deposited at the bank where a Testator is a customer;
- At Church;
- Entrusted to the custody of a lawyer; or
- Filed at the High Court Probate Registry.

It is worth noting that Wills are better kept in a place the Testator frequently visits so that it is known when the Testator dies.

WHICH COURTS HAVE POWERS TO HEAR MATTERS CONCERNING WILLS?

Only the High Court has the power to deal with matters relating to Wills.

OFFENCES RELATING TO WILLS

- It is an offence to deprive a person of their share or entitlement under a Will.
- Stealing a Will.
- Hiding a Will with intent to deprive beneficiaries.
- Forging a Will.
- Wrongfully depriving a minor of property to which the minor is entitled.
- Changing the contents in a will.

REMEDIES

The offences can be reported to the police so that the offenders are prosecuted. Apart from being sent to Prison, the Court can also order the person to return the property belonging to beneficiaries or may be ordered to pay the beneficiaries money in exchange of the property.



EXAMPLE OF A SIMPLE WILL

THIS IS THE LAST WILL AND TESTAMENT OF me of Lusaka in the Republic of Zambia.

I REVOKE all former WILLS, CODICILS and other TESTAMENTARY dispositions formerly made by me and DECLARE this to be my LAST WILL and TESTAMENT.

I appoint..... to be the Executrix of this my WILL.

I appoint as Guardian of my children

I BEQUEATH house number to my child

All household goods should be used by my children until they become independent.

All other chattels, real or otherwise that shall comprise my estate at the time of my death shall be given to my children and

All my personal effects should be given to my daughter to distribute as she deems fit.

I further DIRECT THAT the moneys from my Savings Account, and benefits are to be shared as follows.....

I HAVE written all this WILL of my own volition without coercion, undue influence, pressure or trickery having been applied by any person or factor upon me AND expressly desire that my estate be so disposed of.

THUS DONE AND EXECUTED at Lusaka]
on the day of June in the year of]
our Lord Two Thousand and Nine as for]
My LAST WILL and TESTAMENT in the]
presence of two Subscribing Witnesses]
who in my presence and in the presence]
of each other, all present at the time]
have hereunto subscribed their names]

WITNESSES:

Name:..... SIGNATURE:.....

OCCUPATION:..... DATE:.....

Name: SIGNATURE:.....

OCCUPATION:..... DATE:.....

WHERE TO GET HELP

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