

WILLS ACT

[Updated to 4 October 1996]

Act 7 of 1953 (GoN 451, G. 5018),
Act 48 of 1958 (GoN 1441, G. 6122, c.i.o 3 October 1958),
Act 80 of 1964 (GoN 914, G. 829, c.i.o 24 June 1964 unless otherwise indicated),
Act 41 of 1965 (GoN 526, G. 1084, c.i.o 4 December 1970 [Proc. R306, G. 2934]),
Act 43 of 1992 (GoN 1071, G. 13920, c.i.o 1 October 1992. [Proc. 113, G. 14312]),
Act 49 of 1996 (GoN 1601, G. 17477, c.i.o 4 October 1996).

[Commencement: 1 January 1954]

ACT

To consolidate and amend the law relating to the execution of wills.

(English text signed by the Governor-General.)
(Assented to 25th February, 1953.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows.

ARRANGEMENT OF SECTIONS

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 - 2A. Power of court to declare a will to be revoked
 - 2B. Effect of divorce or annulment of marriage on will
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1. Definitions

In this Act, unless the context otherwise indicates—

“**amendment**” means a deletion, addition, alteration or interlineation;
[“amendment” ins by s 2(a) of Act 43 of 1992.]

“**competent witness**” means a person of the age of 14 years or over who at the time he witnesses a will is not incompetent to give evidence in a court of law;

“**Court**” means a provincial or local division of the Supreme Court of South Africa or any judge thereof;
[“Court” am by s 1 of Act 49 of 1996.]

“**deletion**” means a deletion, cancellation or obliteration in whatever manner effected, excluding a deletion, cancellation or obliteration that contemplates the revocation of the entire will;
[“deletion” ins by s 2(b) of Act 43 of 1992.]

“**internal law**” means the law of a state or territory, excluding the rules of the international private law of that state or territory;
[“internal law” ins by s 2(c) of Act 43 of 1992.]

“**Master**” means a Master, Deputy Master or Assistant Master of the Supreme Court appointed under section 2 of the Administration of Estates Act, 1965 (Act 66 of 1965)

[“Master” subs by s 2(d) of Act 43 of 1992.]

“**sign**” includes the making of initials and, only in the case of a testator, the making of a mark, and “**signature**” has a corresponding meaning;

[“sign” subs by s 2(e) of Act 43 of 1992.]

“**will**” includes a codicil and any other testamentary writing.

2. Formalities required in the execution of a will

(1) Subject to the provisions of section three *bis*—

[Words preceding para (a) subs by s 1 of Act 41 of 1965, s 3(a) of Act 43 of 1992.]

(a) no will executed on or after the first day of January, 1954, shall be valid unless—

- (i) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and
- (ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and
- (ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and
- (iii) such witnesses attest and sign the will in the presence of the testator and of each other and, if the will is signed by such other person, in the presence also of such other person; and
- (iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person anywhere on the page; and

[S 2(1)(a)(iv) am by s 20(a) of Act 80 of 1964; subs by s 3(b) of Act 43 of 1992.]

- (v) if the will is signed by the testator by the making of a mark or by some other person in the presence and by the direction of the testator, a commissioner of oaths certifies that he has satisfied himself as to the identity of the testator and that the will so signed is the will of the testator, and each page of the will, excluding the page on which his certificate

appears, is also signed, anywhere on the page, by the commissioner of oaths who so certifies: Provided that—

(aa) the will is signed in the presence of the commissioner of oaths in terms of subparagraphs (i), (iii) and (iv) and the certificate concerned is made as soon as possible after the will has been so signed; and

(bb) if the testator dies after the will has been signed in terms of subparagraphs (i), (iii) and (iv) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate, and sign each page of the will, excluding the page on which his certificate appears;

[S 2(1)(a)(v) am by s 1 of Act 48 of 1958; subs by s 20(b) of Act 80 of 1964, s 3(c) of Act 43 of 1992.]

(b) no amendment made in a will executed on or after the said date and made after the execution thereof shall be valid unless—

(i) the amendment is identified by the signature of the testator or by the signature of some other person made in his presence and by his direction; and

(ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time; and

(iii) the amendment is further identified by the signatures of such witnesses made in the presence of the testator and of each other and, if the amendment has been identified by the signature of such other person, in the presence also of such other person; and

(iv) if the amendment is identified by the mark of the testator or the signature of some other person made in his presence and by his direction, a commissioner of oaths certifies on the will that he has satisfied himself as to the identity of the testator and that the amendment has been made by or at the request of the testator: Provided that—

(aa) the amendment is identified in the presence of the commissioner of oaths in terms of subparagraphs (i) and (iii) and the certificate concerned is made as soon as possible after the amendment has been so identified; and

(bb) if the testator dies after the amendment has been identified in terms of subparagraphs (i) and (iii) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate.

[S 2(1)(b) am by s 3(d) of Act 43 of 1992; s 2(1)(b)(iv) am by s 1 of Act 48 of 1958; subs by s 3(e) of Act 43 of 1992.]

- (2) Any amendment made in a will executed after the said date shall for the purposes of subsection (1) be presumed, unless the contrary is proved, to have been made after the will was executed.

[S 2(2) subs by s 3(f) of Act 43 of 1992.]

- (3) If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1).

[S 2(3) ins by s 3(g) of Act 43 of 1992.]

- (4) The certificate of a commissioner of oaths referred to in subsection (1)(a)(v) or (b)(iv) may be in the form set out in Schedule 1 or 2, as the case may be.

[S 2(4) ins by s 3(g) of Act 43 of 1992.]

2A. Power of court to declare a will to be revoked

If a court is satisfied that a testator has—

- (a) made a written indication on his will or before his death caused such indication to be made;
- (b) performed any other act with regard to his will or before his death caused such act to be performed which is apparent from the face of the will; or
- (c) drafted another document or before his death caused such document to be drafted,

by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked.

[S 2A ins by s 4 of Act 43 of 1992.]

2B. Effect of divorce or annulment of marriage on will

If any person dies within three months after his marriage was dissolved by a divorce or annulment by a competent court and that person executed a will before the date of such dissolution, that will shall be implemented in the same manner as it would have been implemented if his previous spouse had died before the date of the dissolution concerned, unless it appears from the will that the testator intended to benefit his previous spouse notwithstanding the dissolution of his marriage.

[S 2B ins by s 4 of Act 43 of 1992.]

2C. Surviving spouse and descendants of certain persons entitled to benefits in terms of will

- (1) If a descendant of a testator excluding a minor or a mentally ill descendant, who, together with the surviving spouse of the testator, is entitled to a benefit in terms of a will renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse.
- (2) If a descendant of the testator, whether as a member of a class or otherwise, would have been entitled to a benefit in terms of the provisions of a will if he had been alive at the time of death of the testator, or had not been disqualified from inheriting, or had not after the testator's death renounced his right to receive such a benefit, the descendants of that descendant shall, subject to the provisions of subsection (1), *per stirpes* be entitled to the benefit, unless the context of the will otherwise indicates.

[S 2C ins by s 4 of Act 43 of 1992.]

2D. Interpretation of wills

- (1) In the interpretation of a will unless the context otherwise indicates—
 - (a) an adopted child shall be regarded as being born from his adoptive parent or parents and, in determining his relationship to the testator or another person for the purposes of a will, as the child of his adoptive parent or parents and not as the child of his natural parent or parents or any previous adoptive parent or parents, except in the case of a natural parent who is also the adoptive parent of the child concerned or who was married to the adoptive parent of the child concerned at the time of the adoption;
 - (b) the fact that any person was born out of wedlock shall be ignored in determining his relationship to the testator or another person for the purposes of a will;
 - (c) any benefit allocated to the children of a person, or to the members of a class of persons, mentioned in the will shall vest in the children of that person or those members of the class of persons who are alive at the time of the devolution of the benefit, or who have already been conceived at that time and who are later born alive.
- (2) In the application of this section 'will' means any writing by a person whereby he disposes of his property or any part thereof after his death.

[S 2D ins by s 4 of Act 43 of 1992.]

3. ...

[S 3 rep by s 5 of Act 43 of 1992.]

3bis. Validity of certain wills executed in accordance with the law of certain other states

- (1) A will, whether executed before or after the commencement of this section shall—
 - (a) not be invalid merely by reason of the form thereof, if such form complies with the internal law of the state or territory—
 - (i) in which the will was executed;
 - (ii) in which the testator was, at the time of the execution of the will or at the time of his death, domiciled or habitually resident; or
 - (iii) of which the testator was, at the time of the execution of the will or at the time of his death, a citizen;
 - (b) so far as immovable property is disposed of therein, not be invalid merely by reason of the form thereof, if such form complies with the internal law of the state or territory in which that property is situate;
 - (c) so far as therein a power conferred by any instrument is exercised or a duty imposed by any instrument is performed, not be invalid merely by reason of the form thereof, if such form complies with the internal law of the state or territory in which such instrument was executed;
 - (d) so far as it revokes a will or a portion of a will which by virtue of the provisions of paragraph (a), (b) or (c) is not invalid, not be invalid merely by reason of the form thereof, if such form complies with the internal law referred to in the paragraph in terms of which the revoked will or portion is not invalid;
 - (e) not be invalid merely by reason of the form thereof, if it was executed on board a vessel or aircraft and such form complies with the internal law of the state or territory in which such vessel or aircraft was registered at the time of such execution, or with which it was otherwise most closely connected at that time.
- (2) Any requirement of the internal law of any other state or territory in terms of which a testator of a particular age or nationality or having any other personal qualification is to observe special formalities in the execution of a will, or a witness to a will is to possess certain qualifications, shall be construed as a requirement relating to form only.
- (3) If there are in force in any state or territory two or more systems of internal law relating to the form of wills, the internal law to be applied for the purposes of this section shall be the internal law determined in accordance with any relevant rule in force in the state or territory in question or, if there is no such rule in force therein, the internal law with which the testator was most closely connected at the time of his death, if the matter is to be determined by reference to the circumstances prevailing at his death, or at the time of the execution of the will in any other case.

- (4) The provisions of this section shall not apply in respect of—
- (a) a will made by a South African citizen otherwise than in writing; and
 - (b) a will made by a person who died before the commencement of this section.
- (5) The provisions of this section shall not affect the validity of a will which but for such provisions would be valid.

[S 3bis ins by s 2 of Act 41 of 1965; am by s 6 of Act 43 of 1992.]

4. Competency to make a will

Every person of the age of 16 years or more may make a will unless at the time of making the will he is mentally incapable of appreciating the nature and effect of his act, and the burden of proof that he was mentally incapable at that time shall rest on the person alleging the same.

4A. Competency of persons involved in execution of will

- (1) Any person who attests and signs a will as a witness or who signs a will in the presence and by direction of the testator, or who writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person at the time of the execution of the will, shall be disqualified from receiving any benefit from that will.
- (2) Notwithstanding the provisions of subsection (1)—
- (a) a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will;
 - (b) a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession;
 - (c) a person or his spouse who attested and signed a will as a witness shall not be thus disqualified from receiving a benefit from that will if the will concerned has been attested and signed by at least two other competent witnesses who will not receive any benefit from the will concerned.
- (3) For the purposes of subsections (1), and (2)(a) and (c), the nomination in a will of a person as executor, trustee or guardian shall be regarded as a benefit to be received by such person from that will.

[S 4A ins by s 7 of Act 43 of 1992.]

5. ...

[S 5 rep by s 8 of Act 43 of 1992.]

6. ...

[S 6 rep by s 8 of Act 43 of 1992.]

7. Repeal of laws

The laws specified in Schedule 3 are hereby repealed to the extent set forth in the fourth column of the Schedule: Provided that the laws so repealed shall continue to apply in respect of any will executed before the first day of January, 1954.

[S 7 subs by s 9 of Act 43 of 1992.]

8. ...

[S 8 subs by s 21 of Act 80 of 1964 wef 1 January 1954; rep by s 10 of Act 43 of 1992.]

9. Short title

This Act shall be called the Wills Act, 1953.

Schedule 1

Certificate in terms of section 2(1)(a)(v)

I, (full name)

of (full address)

.....

in my capacity as commissioner of oaths certify that I have satisfied myself as to the identity of the testator (full name)

.....

and that the accompanying will is the will of the testator.

.....

Signature
Commissioner of Oaths

.....

Capacity

.....

Place

Date

[Sch 1 ins by s 11 of Act 43 of 1992.]

Schedule 2

Certificate in terms of section 2(1)(b)(iv)

I, (full names),
of (full address)

.....,
in my capacity as commissioner of oaths certify that I have satisfied myself as to the identity of the testator
(full name)

.....
and that the alteration(s) to this will was/were made by/at the request of the testator.

.....
Signature
Commissioner of Oaths

.....
Capacity

.....
Place

.....
Date

[Sch 2 ins by s 11 of Act 43 of 1992.]

Schedule 3
LAWS REPEALED

Province or Union.	No. and Year of Law.	Title or Subject of Law.	Extent of Repeal.
Cape of Good Hope.	Ordinance 15 of 1845.	Execution of Wills	So much as is unrepealed.
Do.	Act 22 of 1876	Attesting Witnesses Act, 1876.	The whole, excepting section two insofar as it applies to powers of attorney.

Do	Act 3 of 1878	Wills Attestation Amendment Act, 1878.	The whole.
Natal	Ordinance 1 of 1856.	Testamentary dispositions of Natal-born subjects of Great Britain and Ireland.	The whole.
Do.	Law 2 of 1868	Execution of Wills and Codicils.	The whole.
Orange Free State.	Ordinance 11 of 1904.	Execution of Wills and other Testamentary Instruments Ordinance, 1904.	Sections one to five inclusive and sections seven and ten insofar as the two last mentioned sections apply to wills.
South-West Africa.	Proclamation 23 of 1920.	Wills Proclamation, 1920	The whole.
Transvaal	Ordinance 14 of 1903.	Wills Ordinance, 1903	The whole.
Union	Act 14 of 1920	Wills Ordinance, 1903 (Transvaal) Amendment Act, 1920.	The whole.

[Sch renamed as Sch 3 by s 11 of Act 43 of 1992.]