

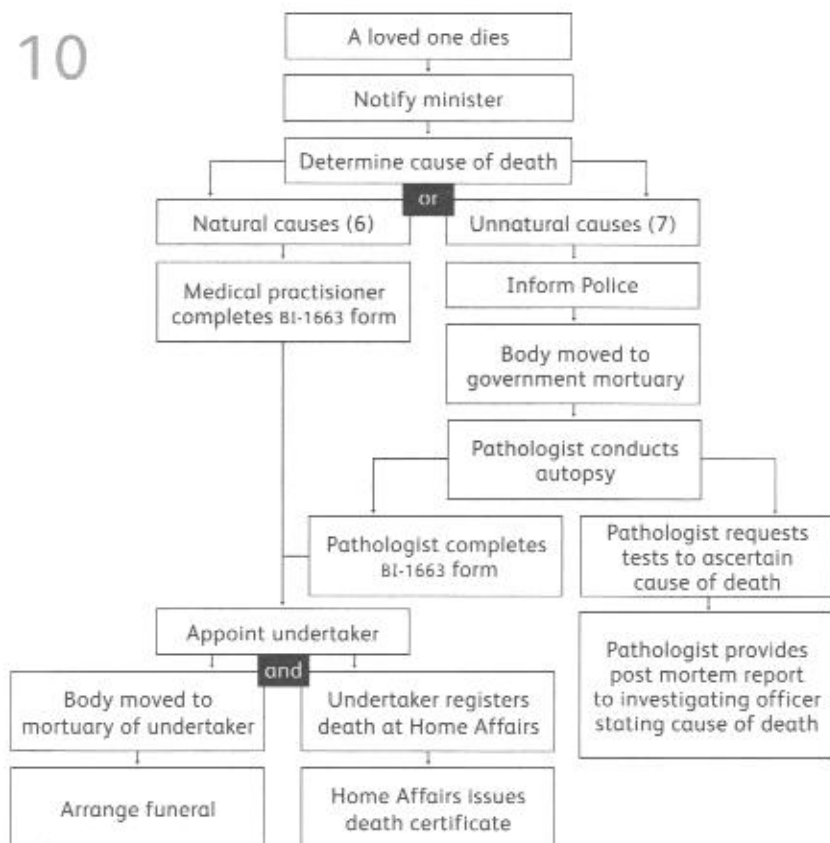
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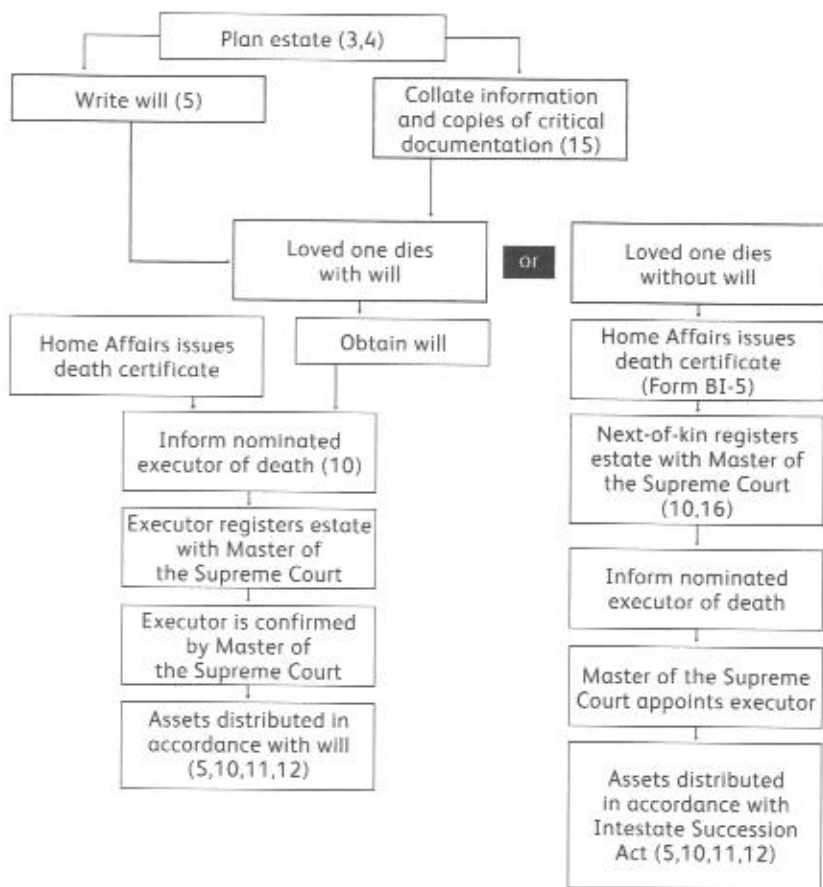
Overview of steps to obtain death certificate for natural or unnatural causes of death:

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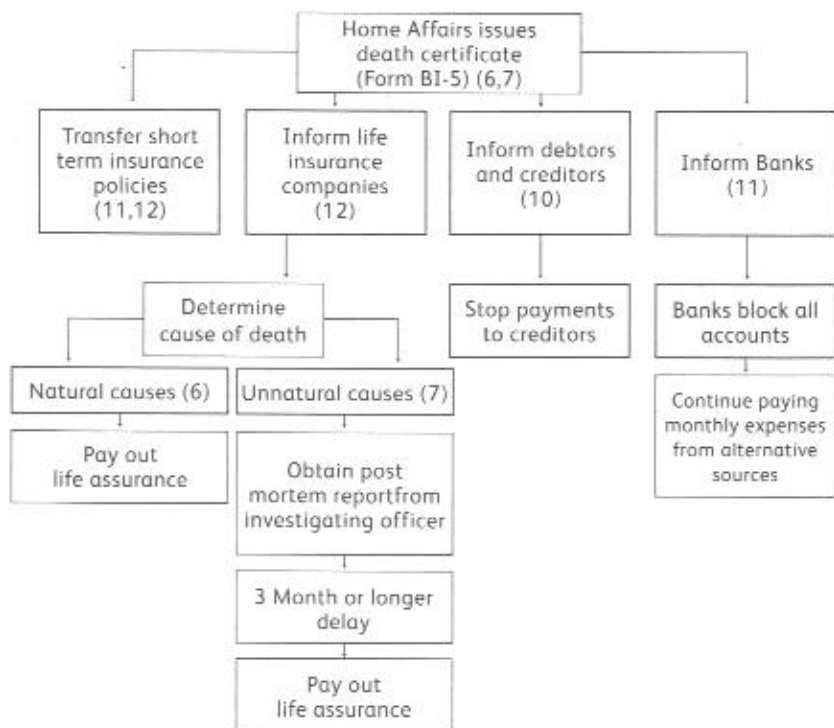
• Note: The numbers in brackets refer to the section(s) in the booklet that contains additional information on the subject.

Process to register an estate (with or without a will):



- Note: The numbers in brackets refer to the section(s) in the booklet that contains additional information on the subject.

Interaction with stakeholders:



• Note: The numbers in brackets refer to the section(s) in the booklet that contains additional information on the subject.

Benjamin Franklin stated “In this world nothing can be said to be certain, except death and taxes.” Talking about death is awkward. The reality is that each one of us will have to face death some day. Few people savour the idea and the typical reaction is to ignore this certainty. Add to this reaction the fact that few of us know when death will come knocking, results in very few people’s affairs being in order at time of death.

Not having your affairs in order can lead to financial suffering for those left behind, arguments amongst loved ones about the distribution of assets, the unintended sale of assets (including potentially your house) to pay for estate duties as well as other liabilities.

Your loved ones, apart from having to deal with the ordeal of your death, will also have to arrange your funeral, would need to deal with the bank, Master of the High Court, assurance companies, potentially the Police, doctors, Department of Home Affairs, relatives, friends, business associates, other groups of people and organisations and ensure that your estate is dealt with in accordance with your wishes.

The purpose of this booklet is firstly to urge you to do the necessary planning in preparation for your death. Investing some time and effort now in doing your Estate Planning and writing your Will, will make a significant difference in the well being of those left behind. Some basic guidelines on Estate Planning and writing a Will are provided, but you should seek professional advice from your personal financial advisor, attorney, auditor, bank, trust company or other competent advisor on these specialized topics.

Secondly, the booklet explains the processes and interactions with a variety of stakeholders that will be required following

your death, or that of a loved one. Interaction will have to take place with the executor, Master of the High Court, bank, assurance companies, etc. We have made an attempt to explain the terminology associated with each, list the documentation required and provide an estimate of timelines associated with getting the process done. Throughout this discussion we point out the legislation that governs each process and the implications for those left behind.

Thirdly the booklet provides a checklist of documentation and information that should be available at death.

Very few of us deal with death on a daily basis. When we suddenly lose a loved one we are traumatized and confused on what we are supposed to do. It is our sincere wish that this booklet will, in some small way, provide guidance during these dark and difficult days.

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An estate is the total of what you own (assets) minus what you owe (liabilities). Proper estate planning covers the strategy for managing and growing the assets during your lifetime as well as the distribution of the assets after your death. A will is an important part of estate planning and care must be taken for the will to be practical and plausible.

Ideally, your estate should be such that those left behind will be in the same (or better) financial position as if you were still there. The bigger and more complex your estate, the more advanced your estate planning should be. Estate planning is a specialised subject that falls outside the ambit of this book. You are urged to discuss estate planning with your personal financial advisor, attorney, auditor, bank, trust company or other competent advisor. This section is limited to touching on good estate planning principles.

The assets of your estate would include fixed / immovable assets (your house, holiday flat, etc), movable assets (e.g. car, furniture, etc), incorporeal assets (e.g. unit trusts, shares, government bonds, etc) and deemed assets (proceeds from a life assurance policy). An important part of estate planning is to minimise the amount of estate duty and capital gains estate duty that will need to be paid.

Estate duty is payable on the value of your assets less your liabilities. The first R 3 500 000 of nett assets is exempted from tax, thereafter a flat rate of 20% is applicable. A nominated beneficiary of a life policy is not liable for any tax on the amounts received if the estate is not liable for tax. If the estate is liable for duty, then the beneficiary would be proportionally liable. Note that no transfer duties are payable on property that is inherited.

Expenses associated with the winding up of the estate are

deducted from the value of the estate before estate duty is calculated.

These expenses include:

1. Executor fees
2. Fees payable to the Master of the High Court
3. Funeral expenses, etc.

Capital gains tax (CGT) is tax payable on the increase in the value of certain assets. At death the value of the assets when you acquired them is compared to the value at the date that you died. The gains are taxable, with some exceptions, such as:

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1. The first R 120 000 of capital gain in the year of your death are exempted from CGT.
2. Any other CGT exemptions that you would have been able to claim under normal circumstances would also apply, for example the first R1 500 000 profit on your primary residence.
3. Long-term life assurance policies are exempted from CGT.

An important part of estate planning is to ensure that there is sufficient cash available (referred to as liquidity) at death to maintain your dependants and settle debts. Provision should be made for:

1. The living expense requirements of dependents during the period it takes to wind up the estate.
2. Settling mortgage loans.
3. Payment of CGT and estate duty.
4. Payment of fees due to the Master and the executor.

5. Administrative expenses payable to administer the estate, etc.

Should there be insufficient cash to pay for these expenses, it may result in the selling of some of the assets to pay for the expenses. A sale under such circumstances may not fetch the highest possible price - effectively reducing the inheritance of the beneficiaries.

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The most common method for providing sufficient liquidity is through a life policy.

4.1 Introduction

One of the most important aspects to consider when doing estate planning is the need for the establishment of a trust. A trust is a very flexible instrument that can be tailor made to suit the needs of the founder of the trust.

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Briefly defined a trust means the following:

A trust is an arrangement whereby property of one person is transferred to another person as trustee, to be administered for the benefit of the persons indicated in the trust instrument or for the achievement of the object stated in the trust instrument. A trust may be created through a will or by way of contract.

4.2 Basic elements of a valid Trust

A trust requires three basic elements for validity:

1. A trustee.

This is the person that will administer the trust. This person should have the ability to act with the high measure of care that is expected of someone who administers the property of another. The Master of the High Court requires one trustee to be an independent third party.

2. Trust assets.

Every trust should have trust assets.

3. Trust beneficiaries.

Every trust should have a trust beneficiary or trust beneficiaries. It is possible to set up a trust to benefit more than one successive generation. Trusts may also be created for a charitable purpose of a specific public benefit organisation.

4.3 Taxation of a Trust

Trust property of a correctly formulated trust will not form part of the estate of the founder of the trust, the trustee or trust beneficiaries. Thus these assets will not form part of the estate of natural persons for estate duty purposes and the potential capital growth on these trust assets will take place outside their estates.

Take note that there are presently a number of statutory anti-tax avoidance provisions that may hold severe financial implications for a trust if the trust is not correctly structured. As part of the clamp down on trusts as tax avoidance vehicles there have been significant changes in the legislation governing trusts.

In terms of South African tax law, trusts are considered tax payers. Two types of tax apply to trusts, namely income tax and capital gains tax (CGT). A trust pays income tax at a flat rate of 40 % (individuals pay according to income scales). A trust pays CGT at the rate of 20 % (individuals pay 10 %).

4.4 Benefits of a Trust

Although trusts may be used to achieve some tax saving, this should not be the only reason for the establishment of a trust. A trust may have many benefits for the estate planner, and these may have little or even nothing to do with tax. The degree to which these benefits will be achieved (and tax saved) is directly dependent on the correct structuring of the trust – something that must be done in conjunction with an expert.

The following benefits could be realised through a correctly structured trust:

1. Trust assets may not be subject to estate duty.
2. Trust assets may be protected in the case of the insolvency of the trustee or even a trust beneficiary.
3. A trust is not limited to the life of the founder and may benefit successive generations.

4. Continuity of a business may be obtained if the business is owned by a trust.
5. Capital gains tax may be saved by a trust benefiting successive generations.
6. The tax liability may be spread and the taxable income may be taxed in the hands of the founder, the trustee or the trust beneficiaries depending on what is most beneficial.
7. Trusts may be an effective mechanism whereby trust beneficiaries who are unable to manage their own affairs are administered.
8. A "special trust" may be created for a person with serious physical or mental disability where that disability incapacitates that person from sufficient income to maintain him/herself. This trust will qualify for special income tax treatment.
9. Trusts may be altered or amended to make provision for changing circumstances.
10. Trustees may be easily replaced to ensure continuity.
11. Transfer of immovable property from a trust may in limited circumstances be exempt from transfer duty.
12. By transferring assets to a trust from a deceased estate the beneficiary will still benefit, not as heir, but as trust beneficiary, without increasing the value of his/her estate which is subject to estate duty and capital gains tax.

4.5 Conclusion

A carefully structured trust may hold substantial benefits for the estate planner. The structuring of the trust however requires an understanding of the tax legislation of the country to achieve maximum results. Notwithstanding all the efforts of the legislator to curb the formulation of trusts, its popularity remains on the increase. New uses for trusts are constantly being invented and the application of the trust expands daily. It is therefore worth considering creating a trust when estate planning is done.

Although templates of trusts are readily available it is advisable to consult with an expert in the field before any trust is created.

5.1 Most Important Legislation

The following acts form the core of the acts pertaining to Wills and Estates:

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1. Estate Duty Act, 1955 (Act 45 of 1955)
2. Intestate Succession Act (Act 81 of 1987)
3. Wills Act (Act 57 of 1953)
4. Administration of Estates Act (Act 66 of 1965)
together with all their amendments.

5.2 Living Will

A Living Will, sometimes also referred to as "Will to Live" reflects the wishes of the author with regard to medical decisions in the event that the author is incapacitated or unable to act on his / her own behalf. An example would be a statement by the author that if the injuries sustained in a vehicle accident or other incident are such that he / she is declared brain dead with no hope of recovery, and that he / she could only be kept alive artificially by life support machines, then the author requests the life support to be switched off.

It is important to note that in South Africa a Living Will is not a legally enforceable document, but only a statement of a wish. In the above example, if the wife of the author decides not to switch off the life support machines then the Living Will can not force anybody to comply with the wish of the author.

However, many people write Living Wills to ease the burden of the decision to switch life support off under certain circumstances and to lessen the feeling of guilt that could be associated with having to make such a decision.

5.3 Terminology relevant to a Last Will and Testament

A **Codicil** is an annexure to an existing will, which is made to supplement or to amend an existing will.

A **Competent Witness** is any person of 14 years and over and who at the time he or she witnesses a will is not incompetent to give evidence in a court of law.

Dying Intestate means dying without a valid will.

An **Executor** is a person (legal person, such as a bank or natural person) who has been nominated by the maker of a will to administer his / her estate.

A **Legatee** is a person / institution to whom you have bequeathed specific assets, such as your custom build hunting rifle left to your hunting partner.

A **Testator** is the person making the Will (male).

A **Testatrix** is the person making the Will (female).

A **Will** is a legal document expressing the desires of the author with regard to the distribution of property and assets after the author's death.

5.4 Safekeeping and Confidentiality of a Will

A will needs to be stored in a safe place, but the location must be known and accessible to next-of-kin in event of your death. Care must be taken that only the latest version of the will (with all codicils) is stored at that location. Typical storage locations include safe custody services of a bank (available at a nominal fee), a safe at home (ensure that next-of-kin know where the safe key is kept or have access to the safe combination) or a safety deposit box at a bank. In the case of a safety deposit box, ensure that next-of-kin know about the safety deposit box and arrange for them to get access to the safety deposit box in the event of your death. One way of doing this is to open the safety deposit box in two names – yours and that of your spouse / next-of-

kin. This way they will be able to get access without having to obtain a court order.

For most people a will is a very personal document and may contain sensitive information regarding the last wishes of the deceased. There is no "reading of the will", where all the heirs sit in a room and the last wishes of the deceased is read out - as popularized by Hollywood. Remember that after your death your Last Will and Testament becomes a public document that can be read by the anyone at the Master of the High Court.

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5.5 Requirements for a valid Will

The following requirements are stipulated in the Wills Act as prerequisites for a valid will:

1. Any will created since 1 January 1954 must be in writing. "Writing" can mean typed on a typewriter, written by hand or printed from a computer.
2. If the will consists of more than one page, each page other than the last page must be signed by the testator/testatrix anywhere on the page. The last page must be signed by the testator/testatrix at the end – directly after the last sentence.
3. The signature of the testator/testatrix must be made in the presence of two or more competent witnesses present at the same time.
4. The same competent witnesses must attest and sign the will in the presence of the testator/testatrix and of each other.
5. The will must be made by a person of 16 years and over and he/she must be mentally capable of appreciating the consequence of his/her action.

5.6 Effect of Divorce on a Will

The Wills Act states that if a person dies within three months after a divorce the will shall be implemented as if the divorced spouse died before him / her. This implies that:

1. Unless you specifically state that, in case of a divorce within three months prior to your death your divorced spouse is still entitled to inherit, your divorced spouse will not be entitled to any inheritance. In this instance, if the divorced spouse was the only beneficiary, you would effectively have died intestate and your estate will be dealt with accordingly, but with the divorced spouse being excluded from the inheritance.
2. This provision is to allow a divorced person a period of three months to amend his/her will, after the trauma of a divorce. Should you however fail to amend your will within three months after your divorce, this rule will fall away and your divorced spouse will benefit as indicated in the will.

Should there be a divorce settlement provision for alimony for your child, that child would still have a claim against your estate.

5.7 Dying Intestate

If you die intestate your estate will be dealt with according to the Intestate Succession Act, no. 81 of 1987.

Effectively what intestate succession strives to do is to divide your estate in equal portions to your closest surviving relatives.

According to the Estate Duty Act, 1955 (Act 45 of 1955) the definition of a "spouse" has been extended to the following:

"in relation to any deceased person, includes a person who at the time of death of such deceased person was the partner of such person—

1. in a marriage or customary union recognised in terms of the laws of the Republic;
2. in union recognised as a marriage in accordance with the tenets of any religion; or
3. in a same-sex or heterosexual union which the

Commissioner is satisfied is intended to be permanent. Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union without community of property.”

The following table outlines the distribution of your estate in accordance with the Intestate Succession Act:

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Surviving Relative/s	Distribution of Estate
A spouse or spouses but no descendant/s.	The spouse or spouses are the sole intestate heirs. If there are more than one spouse they will inherit in equal portions.
A descendant/s, but no spouse.	The descendant or descendants will inherit the intestate estate. If there are more than one descendant they will inherit in equal portions.
A spouse or spouses as well as a descendant or descendants.	<p>The spouse or spouses inherit the greater of R125 000.00 per spouse or a child's share, and the children the balance of the estate.</p> <p>A child share is determined by dividing the value of the intestate estate through the number of:</p> <ol style="list-style-type: none"> 1. surviving children of the deceased, plus 2. if a child of the deceased have died before the deceased, the surviving children of the deceased child, plus

	<p>3. the surviving spouse/s.</p> <p>Example 1: The deceased is survived by a spouse and three children. The value of the estate is R600 000. The child share = R150 000 (R600 000 / (1 spouse + 3 children)) Because this exceeds R125 000, the spouse is entitled to R 150 000, sharing equally with the children.</p> <p>Example 2: The deceased is survived by a spouse and three children. The value of the estate is R240 000. The child share = R60 000 (R240 000 / (1 spouse + 3 children)) Because this does not exceed R125 000, the spouse is entitled to R125 000 and the children will share equally in what is left – R38 333 (R115 000 / 3 children).</p>
<p>No spouse or descendants, but both parents are alive.</p>	<p>His/her parents will inherit the intestate estate in equal portions.</p>
<p>No spouse and no descendants but leaves one parent, while the predeceased parent left descendants (brothers/sisters of the deceased).</p>	<p>The surviving parent will inherit one half of the intestate estate and the descendants of the predeceased parent the other half in equal shares.</p>

No spouse or descendants but leaves one surviving parent, while the predeceased parent did not leave any other descendants.	The surviving parent will inherit the whole estate.
No spouse or descendants or parents, but both his/her parents left descendants. (brothers/sisters of the deceased).	The intestate estate will be split into equal parts. One half of the estate is then divided among the descendants related to the deceased through the predeceased mother and the other half among the descendants related to the deceased through the predeceased father.
No spouse, descendant or parents, but only one of the predeceased parents left descendants.	The descendants of the predeceased parent who left descendants, will inherit the entire intestate estate.
No spouse or descendants or parents or descendants of his/her parents.	The nearest blood relation inherits the entire intestate estate.
Not survived by any relative.	The estate will become the property of the state.

Related to intestate estates note that the monetary value used in the calculation of the child share can be changed by the Minister of Justice through a notice in the Government Gazette.

We urge you to draw up a will to reflect your wishes rather than die intestate. It is highly unlikely that the mechanistic distribution of assets according to the Intestate Act would be in accordance with your wishes. It could have a significant

negative effect on your heirs as a result of the forced selling of assets and paying unnecessary estate duty.

5.8 Other important considerations

Bear in mind the following when creating or amending a will, or signing as a witness:

1. A beneficiary to a will should not sign as a witness, because he/she will then be disqualified from receiving any benefit from that will. There are some exceptions to this rule, but the safest is not to sign as a witness if you are a beneficiary.
2. In addition to a beneficiary, the following people should not sign as witnesses:
 - a. The spouse of a beneficiary (or their legal representative – "assignee").
 - b. The executor, a guardian, trustee, their spouses or assignees.
3. To be valid a codicil must comply with the same requirements applicable for a will to be valid, but does not have to be signed by the same witnesses that signed the original will.
4. Ensure that the will is correctly dated.
5. For the purposes of a will:
 - a. an adopted child is considered a child of the adoptive parents and not of his / her natural parents (also applicable to intestate estates).
 - b. a child born out of wedlock will have the same standing as a child born in wedlock (also applicable to intestate estates)
 - c. a bequest can be made to a child that has been conceived but not yet born.
6. When bequeathing specific assets to specific people (legatees) make sure that this is described in an unmistakable manner. For example a statement such as "I leave my car to my son" will be problematic if

you have more than one car and /or more than one son. Stating that you leave your Audi to your oldest son can cause a problem if you traded the Audi for a BMW a week before your death.

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7. The Legatee will receive exactly what has been left for them, without any estate duty being deducted. Heirs or beneficiaries will receive what is left after the legatees have received their due. The estate duty payable on the assets given to legatees will be recovered from the residue of your estate, effectively burdening the heirs with the estate duty payable.
8. You can leave categories of assets, such as clothing, books, etc. to beneficiaries. Should you leave your "household furniture and effects" to someone, this will include your car. Be sure that this is in accordance with your wishes.
9. Include a "Residue Clause" in your will. The residue clause describes what must be done with any part of your estate that has not specifically been dealt with in your will. This clause will take care of bequests to beneficiaries that predecease you, assets you have forgotten to include as well as items you have acquired since writing the will. If you do not include this clause you risk partially dying intestate. The assets not covered by the will, will then be divided according to the Intestate Succession Act.
10. Several organisations such as banks and insurance companies offer a service whereby they will prepare a will for you. This will cost between R300 and R400, if you appoint them as executors of the estate. Due to the effect a will can have on your estate it is highly recommended that you involve an expert in this field. It will be money well spent.

11. Make provision for the possibility that you may die in the same incident as your spouse.
 - a. It is prudent to identify alternative beneficiaries should this happen.
 - b. If you have minor children ensure that they have a guardian that will take care of them.
 - c. Make provision for the care of your pets.
12. Your circumstances, beneficiaries and assets change over time. So does the legislation that governs wills and estates. Make it a habit to review your will once a year and whenever there is a significant change in your circumstances (buying or selling a major asset, or a significant change in the relationship with any of the beneficiaries). Obtain input from a competent advisor on any legislative changes that may impact on your will and / or estate planning.
13. Make provision for succession planning. At death business partnerships are dissolved and family businesses can be left without a business leader.
14. Ensure that the actions taken for estate planning purposes are accurately reflected in your will.

Should you die of natural causes the attending medical practitioner will complete the BI – 1663 form and indicate that the cause of death was “natural”. In this instance the reason for your death will be filled in on the form (e.g. heart attack, cancer, etc.).

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Your family will be notified and they will select an undertaker which will fetch the body and assist with the funeral arrangements.

The spouse, next-of-kin or in many instances the undertaker appointed by your family, need to take the original to the Department of Home Affairs to apply for a death certificate (BI-5 form). This is usually issued within 1 to 2 working days. The death certificate would simply reflect the cause of death as “Natural”.

The ID of the deceased, the BI-1663 and the BI-5 forms will be required by most organisations that will now get involved (executor, bank, insurance companies, undertaker, etc.). Ensure that you make sufficient copies of the originals and it is recommended to have them certified as true copies.

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When deciding whether you have died of natural or unnatural causes, the root cause of your death will dictate. For instance, if you were severely injured in a vehicle accident three months ago, and as a result of the injuries a contracted infection kills you, your death will still be considered an unnatural death.

When you die an unnatural death (or appeared to have died an unnatural death), the death must be reported to the South African Police. Your body will be moved to the nearest Government Mortuary. In more rural areas there may not be a Government Mortuary close by. In this instance, there would be an agreement with a local funeral service provider to accept your body.

The case would be assigned to an investigating officer. The investigating officer will track down your family and inform them where your body has been taken. It is very important to get the name, rank and contact details of the investigating officer.

To identify the body the person doing the identification must bring personal proof of identification and must know the full names and ID number of the deceased. If possible, the person doing the identification should bring some form of identification of the deceased as well. This person will be required to complete a number of forms, one of them being an affidavit stating the identity of the deceased and their relationship to the deceased.

A post mortem will then be conducted by a forensic pathologist of the District Surgeon. He will complete the BI-1663 form (Notification / Register of Death / Still Birth Registration Form) indicating that the cause of death is "Unnatural". The form does not divulge the reason for

the death. The pathologist will conduct whatever tests deemed necessary before signing the BI-1663 as this will also release the body for burial / cremation. Getting the autopsy done can take a few days and this must be taken into consideration when planning the funeral / cremation. Your family must appoint an undertaker to assist with the burial / cremation.

The spouse, next-of-kin or in many instances the undertaker appointed by your family, needs to take the original BI-1663 to the Department of Home Affairs to apply for a death certificate (BI-5 form). This is usually issued within 1 to 2 working days. The death certificate would reflect the cause of death as "Unnatural". The ID of the deceased, the BI-1663 and the BI-5 forms will be required by most organisations that will now get involved (executor, bank, insurance companies, undertaker, etc.). Ensure that you make a sufficient number of certified copies of the originals.

Because it is an unnatural death most insurance policies will not pay out until the reason for the death is made known. This will depend on the results of the tests requested by the pathologist. Based on the test results the pathologist will complete a post mortem report. This is sent to the Police station investigating the death – for attention of the investigating officer. Expect this process to take at least 3 months. The family may request a copy of the post mortem report from the investigating officer. To proceed with the insurance payout the insurance company would request the same report and verify that the cause of death is not in conflict with any of the clauses in the policy (e.g. suicide within 2 years of taking out the policy).

The purpose of the inquiry is to determine the circumstances leading to the death and whether any person should be held responsible for the death.

There is a basic principle in law that you can not "inherit with blood on your hands". If any of your beneficiaries

were instrumental in your death they would automatically be disqualified from inheriting.

In the case of an unnatural death the only interaction that the family of the deceased will have with the government mortuary will be when they identify the body. The interaction thereafter would be via the investigating officer. That is why it is critical to get the name, rank and contact details of the investigating officer.

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A person who has suffered injuries to the extent that there is no hope of recovery and is only kept alive with the assistance of a heart lung machine or artificial respiration would be a prime candidate for organ and tissue donations. For example a person suffered massive damage to the brain stem and is kept alive artificially. In this instance the direct family of the injured person will be approached to obtain permission for organ and tissue donation.

This permission is requested from the family, even if there is evidence that the person wished to be an organ donor (e.g. Medic Alert bracelet indicating that the person is an organ donor, organ donor forms have been completed). It is a requirement in South African law that the next-of-kin must agree to the donation.

Permission can be granted telephonically, but the preference is to get it in writing. To assist with the transplant a short interview with the family may be requested to gain insight into the medical history of the deceased.

A search for a match between the donor and waiting list of potential recipients is then done. A transplant team is brought together to harvest the organs from where they will be transported to the different sentra where the recipients await them.

In the case of an unnatural death the normal procedure would be for an autopsy to be performed before the body can be released. Due to the time constraints associated with organ transplants this would not be possible. Once the patient has been declared brain dead, the hospital would contact the Government Pathologist and describe the nature of the injuries to him. This must be confirmed by 2 doctors who are present, one of which must be the

neurosurgeon that declared the patient brain dead. The pathologist will then give permission to remove tissue and organs that will not affect the outcome of the autopsy that must be held afterwards.

From hereon forward the body would follow exactly the same procedure as if organ donation did not take place.

Should you consider organ donation please contact:

Christiaan Barnard Memorial Hospital

The Annexe - Suite 501

162 Longmarket Street, Cape Town 8001

PO Box 2349, Cape Town 8000

Tel: 021 426 0198 / 0800 22 66 11

Fax: 021 426 0197

website: <http://www.odf.org.za>.

e-mail: info@organdonor.org.za

9.1 Burial or Cremation

Your choice of burial or cremation is usually described in your will. In many instances this includes a wish to be buried in a specific place. The problem is that your spouse or next-of-kin could take a few days to get hold of your will. By this time you may have been buried or cremated in a manner not according to your wishes. It would be better to ensure that your next-of-kin are aware of your wishes. You can document these wishes in a note that would be immediately accessible when you die. For example place this note in an envelope and ask your brother to keep it in his safe. If you have a funeral policy or belong to a funeral society note the details thereof on this document.

9.2 Funeral Arrangements

When you die the undertaker of choice should be informed as soon as possible so that your body can be moved from the place you died to their mortuary. (See prerequisites as discussed under the sections "Death due to Unnatural Causes" and "Death due to Natural causes".) If you had a funeral policy with a specific undertaker they would be the logical choice. All the bigger funeral service providers provide a 24 hour service and their numbers can be found in the local white and yellow page telephone directories.

The undertaker will do the registration of your death, will walk the family through the funeral decisions to be made, plan the funeral and make many of the funeral arrangements on their behalf (e.g. placing notices in the press if required, coordinate with the minister, printing of handouts, etc.). A key decision is the date for which the funeral is scheduled. Remember that if you died of unnatural causes your body would not be released for burial / cremation until the autopsy has been completed. Consideration should be given to family and friends that may be overseas or not

immediately contactable.

The undertaker would require the following documentation to assist your family:

1. Your ID document (or a certified copy). If the deceased is not a South African citizen, then the passport must be presented. A copy of the ID of one of the next-of-kin is also required for the undertaker to register your death at the Department of Home Affairs.
2. The Notification of Death (BI – 1663) form. (See the sections “Death due to Unnatural Causes” and “Death due to Natural causes”.)
3. The name and number of your pension fund (if applicable).
4. Any funeral policies or proof of membership of funeral societies

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In most instances the undertaker would be willing to come to your house to discuss all the funeral arrangements. However the family would still have to go to the funeral parlour to select a casket or urn. Therefore it may just be easier to have the meeting at the funeral parlour and get all the arrangements done.

9.3 Family or Joint Graves

If you are going to be buried in a joint or family grave where another person has already been buried (e.g. your spouse died before you) then the family would need to sign an authorization form mandating the municipality to open the grave. These forms are not available from the undertaker. They can be obtained from and be signed at the cemetery where the grave is.

9.4 Paying for the Funeral

Funeral service providers will insist on payment in full before the funeral service takes place. The average funeral costs between R10 000 and R15 000. The law permits the dependents to approach your bank for payment for the funeral services (if there are funds available in your

account), even though the accounts will still be blocked at this stage.

The bank is allowed to do this on invoice from the funeral service provider, but must pay the money directly to the funeral service provider.

You can take out a special policy that pays out within a day or two after your death to cover these expenses (available from assurance companies, banks and funeral service providers). Alternatively your spouse will have to come up with the money from other sources.

As in any industry you do get unscrupulous operators. The complication is that your distraught family is an easy target for abuse. They should take the same care as they would with any other business transaction of the same value.

9.5 Dying outside the borders of South Africa

Should you die outside the borders of South Africa and wish for your body to be transported back, this will have to be done in a lead lined coffin to comply with international health regulations. The cost of an appropriate coffin plus airfare and all the arrangements associated with such an endeavour would cost in the region of R50 000 to R60 000. As airlines charge per weight, the weight of your body, the weight of the coffin, together with the destination from which your body is transported will determine the cost.

A less complicated and more affordable approach would be to cremate the body in the foreign country and bring back the ashes, if allowed by the religion of the deceased.

10.1 Purpose of the Master

The Master of the High Court (the Master) forms part of the Department of Justice and Constitutional Development. The purpose of the Master is to protect the financial interests of persons whose assets or interests are, for various reasons, being managed by others. Thus one of the divisions of the Master is to manage the administration of Deceased Estates.

10.2 Appointment of an Executor

An Executor is a person (legal person, such as a bank or natural person) who has been nominated by the maker of a will to administer his / her estate under the watchful eye of the Master of the High Court. The executor's duties include the disbursement of property to the beneficiaries as designated in the will, obtaining information about any other potential heirs, collecting and arranging for payment of debts of the estate and approving or disapproving creditors' claims. An executor also makes sure estate taxes are calculated, necessary forms are filed and tax payments made. In most circumstances the executor is the representative of the estate for all purposes, holds legal title to the estate property and has the ability to sue or be sued on behalf of the estate.

It is customary to nominate the executor in your will. At the moment of death all your assets vests immediately in the hands of the Master of the High Court.

Because the executor, once appointed by the Master, will have power to dispose of assets of the estate, the Master can require the executor to provide security to the Master for the proper performance of his duties. If the executor nominated is the parent, spouse or child of the deceased (or a person co-opted by the parent, spouse or child of the

deceased), then the Master would not require such security. As testator / testatrix you can instruct the Master not to require security from the executor. This is a standard clause in many wills, especially where the executor appointed is a large, reputable company (such as one of the four big banks) or where there is negligible risk associated with the executor.

The executor is, after appointment, the point of contact for any queries by the spouse, heirs, debtors and creditors on issues related to the estate.

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10.3 Documentation required by the Executor

The following documentation will be essential in assisting the executor in winding up the Estate:

1. Identity Documents of the deceased
2. Death certificate
3. Will
4. All Bank accounts and Bank details
5. Deeds of transfers and related documents
6. Policies (Life, short term and funeral)
7. Deposit certificates
8. Share certificates
9. All documents relating to assets or investments
10. Motor vehicle registration certificate(s)
11. Any outstanding accounts
12. Any Hire-purchase agreements
13. Any other documents relating to loans, liabilities or debts
14. Income tax details
15. Pension fund details from employer or own pension fund

10.4 Reporting of the Deceased Estate to the Master

The mandate of the Master is described in the Administration of Estates Act, Act 66 of 1965. The same act places certain obligations on the surviving spouse or nearest living relative of the deceased.

The surviving spouse or nearest living relative must:

1. inform the Master of your death within 14 days of it occurring, or ensure that the Master is informed.
2. compile a list of all the assets that belonged to you within 14 days of your death. In practice the to-be-appointed executor would usually do this or assist your spouse or relative to do it.

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The moment you die your will must be delivered to the Master. It is the responsibility of the person who is in possession of your will to do this. However, the executor would be keen to do the delivery of the will as he needs to prove to the Master that he has been nominated when applying for the appointment as executor of your estate.

The estate must be reported to the Master in whose area of jurisdiction you were resident at the time of your death. A list of the Master's offices and contact details is attached as Appendix A. From the 5th of December 2002 all Magistrate offices are designated service points for the Master and estates can be reported there. However, these Magistrate offices have limited jurisdiction. The following estates will be transferred from the Magistrate's office to the Master's Office:

1. Estates with wills.
2. Estates with a value of more than R50 000,00.
3. Insolvent estates.
4. Estates where one or more of the beneficiaries are minors, is not assisted by a legal guardian and the cash assets in the estate is worth more than R20 000,00.

Therefore it is advisable to report these estates directly to the Master's office to save time, as the estate file will simply be referred from the local service point to the Master and this may be very time consuming.

10.5 Documentation involved in reporting the Estate
The following documentation needs to be completed / provided when reporting the estate to the Master (Note: the forms are usually provided to your next-of-kin by the executor or can be obtained from the Internet at: <http://www.doj.gov.za/master/forms.html>):

1. Original or certified copy of the Death Certificate (BI 5 that was issued by Department of Home Affairs)
2. Original or certified copy of Marriage Certificate (if applicable)
3. All original wills and codicils
4. Nominations by the heirs for the appointment of an executor in the case of an intestate estate or where no executor has been nominated in the will, or the nominated executor declines the appointment.
5. Completed Death Notice (form J294)
6. Next-of-Kin Affidavit - J192 (if the deceased did not leave a valid will)
7. Completed Inventory form - J243
8. Completed Acceptance of Trust as Executor (form - J190) in duplicate by the person(s) nominated as executor(s)
9. Undertaking and acceptance of Master's directions (J155)
10. Notice to Creditors in Deceased Estates (J 193)
11. Liquidation and distribution accounts in deceased estates lying for inspection (J 187)
12. Undertaking and bond of security (Form J262) (unless the nominated executor has been exempted from furnishing security in the will, or is the parent, spouse or child of the deceased – see section "Appointment of an Executor" above)

10.6 Notice periods and timelines

Once the executor has been appointed he has to advertise the estate in the Gazette and local newspapers to invite creditors to lodge a claim against the estate. Creditors have a period of 30 days to lodge such a claim. After this period of 30 days a liquidation and distribution account is

drawn up. The executor has six months after the letters of executorship have been granted to him to draw up the liquidation and distribution account. This account portrays how the assets will be divided between the heirs and creditors. This account is advertised to lie open for inspection for 21 days at the Master. If no one contests the liquidation and distribution account within the 21 days, then the Master will instruct the executor to proceed with distributing the assets and paying the creditors.

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It is important for the spouse to know where the previous year's tax forms and supporting documentations are kept as an audit may be done by SARS. Tax is payable up to the date of your death. SARS will make an assessment of the tax due. The executor will need to lodge the required documentation with SARS as any claim by SARS against the estate needs to be included in the liquidation and distribution account. Without the consent of SARS that your tax affairs are in order the Master can not instruct the executor to distribute the assets.

Looking at the timelines involved it is clear that in a best case scenario, the distribution of assets will only start to take place 3 months after your death. The winding up of a simple estate takes on average 6 to 12 months, the typical estate up to 18 months and more complex estates up to several years.

10.7 Payment for Executor services

The executor is entitled to a percentage of the value of the estate as payment for his services in winding up the estate. The maximum fee is prescribed in the Act and limited to 3,5% of the gross value of the estate. A lower percentage can be negotiated with the executor.

If there is insufficient cash in the estate to pay the executor's fees, the executor could sell some of the assets to recover his fee. There are policies available in the market that will pay the executor's fees.

11.1 Claims against the Estate and Cash Requirements

Your spouse needs to inform the bank/s where you have accounts at your death. The bank/s will immediately place a hold on all your accounts. This means that your spouse will not have access to any of these funds. If you were married in community of property this will apply to the accounts of your spouse as well – putting those left behind in dire straits. If you were married in community of property, your spouse should immediately request the bank to open an account in her own name. (Note: If you were the only signatory on a business account, that account will be blocked as well.)

At death, your creditors and debtors become creditors and debtors of the estate. Your spouse will not be responsible for paying the monthly installment on the house, car or repaying your Edgars account. These payments will be put on hold and the creditors will have a claim against the estate. They are allowed to charge interest for the period that they do not receive payment. Creditors and administration expenses need to be paid in full before any assets will be distributed to heirs.

However, this does not take care of expenses such as the monthly rates and taxes (water and lights), telephone, insurance, house rental, food, clothing, school expenses, fuel, medical expenses, etc. In addition, all expenses related to your funeral will probably be incurred before the executor has even been appointed. Without the letter of appointment no funds from your accounts may be released, even if your bank is the executor.

To address this need you could put in place one or more strategies such as having an account in the name of a trust, cc or company with sufficient funds (or a sufficient

overdraft limit) which your spouse could access. As the trust, cc or company is a separate legal entity, the account will not be blocked. Alternatively, there are a number of insurance products that pay out within 24 to 48 hours of death.

If your spouse is really facing a cash flow crisis she can:

1. approach the bank for an overdraft on her own account or a personal loan,
2. approach family and friends for funds.

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The basic guideline here is not to have all the cash or cash resources in the name of one person.

11.2 Use of Vehicles while winding up the Estate

If you inherit a vehicle which is still under hire purchase / lease agreement you may be allowed to use the vehicle during the time it takes to wind up the estate, provided that the vehicle is fully insured. The same applies to a vehicle that has been paid off already.

12.1 Effect of ceding a life policy

When you cede a life policy it means that you nominate the beneficiary of the policy in the policy. You can also nominate the beneficiaries of a policy in your will. Ceding a policy, rather than nominating the beneficiaries in your will, have different legal implications because ceding a policy has a "higher standing". The effect of this will be that:

1. If you cede the policy to your spouse, but nominate your brother in your will as the beneficiary of the same policy (irrespective of which one was done first), then your spouse will be entitled to the payout of the policy.
2. If you want to change the beneficiary to which a policy is ceded, it needs to be changed on the policy.

Even if you cede a policy it will still be considered part of the estate for estate duty purposes, but the executor will not be entitled to any fees on the payout of the policy. A second benefit of ceding a policy is that it can be paid out significantly faster. Once the insurance company is satisfied that the requirements for payout has been met, the payment takes place directly to the beneficiary. If the policy is not ceded, the payout will form part of the assets of the estate and will be paid out as part of the normal process of winding up the estate. A third and related benefit is that if you die with significant claims from creditors against your estate and the unceded policy pays out into the estate, the creditors will have a claim against that payout. Ceding the policy keeps it out of the estate and the creditors will have no claim against it.

This does not imply that all policies should be ceded. If there are insufficient cash funds in the estate to pay the costs associated with winding up the estate and all legal claims, a beneficiary inheriting a fixed asset such as

property, may be forced to sell the property. A policy can be used to supply the necessary cash. You must take this into account when doing your estate planning.

If you cede a policy to the bank to cover debt and the value of the policy exceeds the amount of debt, the surplus belongs to the estate and should be dealt with in your will.

12.2 Nominating a minor as the beneficiary of a policy

If a minor is the beneficiary of a policy, irrespective of whether the policy was ceded to him, or whether he would be entitled to the money via the normal winding up of the estate, then the money would be paid to the guardian of the minor. This money can be spent at the guardian's discretion. An alternative solution would be to create a trust into which the funds would be paid until coming of age, or such age as prescribed in the will (See section on Trusts). A minor is considered anybody under the age of 18.

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With the death of a loved one there are a significant number of people who needs to be communicated to. Family, friends, business associates and colleagues all phone to convey their condolences and they need to be provided with information about items such as funeral arrangements. It is emotionally tiring for the grieving spouse and family to repeat the same story multiple times and to phone numerous people to keep them abreast of developments.

We would recommend that a list of people that needs to be communicated to is drawn up and that this is provided to a close friend of the family. With most of the modern cell phones a sms can be sent to multiple recipients (the same can be done with 3 G cards in laptops or PC's). The necessary information can then be sent via a group sms.

The reason for asking a friend to do this is that many people will sms back. He or she can do the first order filtering and forward selected sms's to the family.

More extensive information, such as maps to the church, can be sent by e-mail or fax. Again, consider asking a friend to assist with this. To some extent, the undertakers will assist with the dissemination of this information.

The following items should be borne in mind with the death of a loved one:

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- Do not forget to take care of the pets of the deceased. Some pets grieve as much as humans and it is easy to forget to feed them and give them water when you yourself are grieving.
- Ensure that you keep the original of all documents where possible. If another party is entitled to the original make sure that you keep copies. Ideally, these should be certified copies, although this is not always a requirement.
- Notify the pension fund of the employer of the deceased. If their administration is efficient they should start paying the pension from the following month.
- Ask the bank for three months copies of bank statements of the deceased to see what payments were made on a regular basis. You may have to continue with these payments to ensure that the services do not cease to be provided, e.g. rates and taxes, armed response, DSTV, etc. Remember that you do not have to continue paying a creditor such as vehicle finance, mortgage on the house, clothing account at Edgars, etc. as these entities will now have a claim against the estate.
- Ensure that you immediately transfer all insurances into your name. This includes short term insurance, vehicle insurance, insurance on your house, etc.

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15.1 Documentation to be kept with your will

For some of the documents it is recommended that the copies should be certified copies. In practice it is just much simpler to get all the documents together, make sufficient copies of the documents and get them certified in one exercise than to do it in drips and drabs. For the documents kept with your will, note on the copy where the original is kept so that it can be retrieved when required.

You should keep copies of the following documents with your will.

	Description:	Copies:	Comments:
1.	Identity Document of the will maker	10 - 15	Certified copies
2.	Passport of the will maker	2	Certified copies
3.	Deeds of transfer and related documents	1	Certified copy
4.	Timeshare ownership	1	
5.	Life assurance policies Short term policies Funeral policies	1	Do not need to copy the entire policy, but should copy the pages with the policy number and details on

6.	Share certificates	1	Share trading is now done electronically and physical certificates are not always issued.
7.	Deposit certificates	1	
8.	Documents related to other assets / investments, e.g. overseas investments or unit trusts	1	
9.	Vehicle registration certificates	1	
10.	Trade credit accounts, e.g. Edgars, Woolworths, Clicks, Joshua Doore, etc.	1	It does not have to be the latest statement, but must contain sufficient information to enable the executor to contact the creditor
11.	Hire purchase agreements	1	It does not have to be the entire agreement, but must contain sufficient information to enable the executor to contact the creditor.
12.	Income tax documentation in anticipation of a potential audit	1	It will not be practical to copy all tax related documentation and

			keep it with the will. Ensure that your spouse knows where these documents are kept.
13.	Marriage certificate	5	Certified copies
14.	Ante nuptial contract	1	
15.	Divorce order and divorce agreement	1	
16.	Important contracts e.g. partnerships	1	
17.	Inter vivos trust deeds and the Master of the High Court's appointment of trustees	1	Only applicable if a trust was created
18.	Firearm licenses	1	
19.	Receipts for items in safe storage	1	Certified copy
20.	Inventory of assets and liabilities	1	

15.2 Information required at Death

The following information will be required after the death of a loved one:

Description:	Comments:
1. Bank account details: <ul style="list-style-type: none">• Current account• Savings account• Credit card/s	Could have accounts at more than one bank
2. Bank loans in the name of the deceased	
3. Income tax details <ul style="list-style-type: none">• Income tax number• Office tax returns submitted to	
4. Pension fund details of pension fund	Could be an employer pension fund or personal pension fund

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15.3 Documentation generated after Death

The following documentation will be supplied to you, or you will be requested to complete the documentation after the death of a loved one. The most critical documents are the BI-1663 form (Notification / Register of Death / Still Birth Registration Form) and the BI-5 (Death Certificate). Do not part with the original Death Certificate. Rather provide certified copies to parties that require the Death Certificate.

Attempt to make copies of all forms completed for the Master and other parties (even if not certified) so that you have proof in case the documents get lost.

	Description:	Copies:	Comments:
1.	Registration of Death (BI – 1663)	10 - 15	Certified copies
2.	Death Certificate	10 - 15	Certified copies
3.	Completed Death Notice (form J294)	1	Completed for Master
4.	Next-of-Kin Affidavit J192 (if the deceased did not leave a valid will)	1	Completed for Master
5.	Completed Inventory form J243	1	Completed for Master
6.	Acceptance of Trust as Executor (form - J190)	1	Completed for Master
7.	Undertaking and bond of security (Form J262) – If applicable	1	Completed for Master
8.	Post mortem report (in the case of an unnatural death)	1	Completed for Master

15.4 Contact details

Make a list of the contact details (telephone, cell, fax and e-mail) of the following parties to assist with communication and coordination at death:

1. Minister
2. Immediate family
3. Next-of-kin
4. Friends
5. Employer
6. Attorney
7. Auditor
8. Key business associates
9. Executor nominated in the will

For the latest version of this list refer to
<http://www.doj.gov.za/master/contact.htm>

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National Office:

Chief Master:	Ms K Mbeki
Tel:	012 - 315 1699
Fax:	012 - 315 1603
Postal Address:	Private Bag X81, Pretoria , 0001
Physical Address:	3rd Floor, South Tower, Momentum Centre, 329 Pretorius Street, (Cnr of Pretorius and Prinsloo Streets), Pretoria

National Office:

Chief Director:	Mr L Basson
Tel:	012 - 315 1824
Fax:	012 - 315 1886
Postal Address:	Private Bag X81, Pretoria , 0001
Physical Address:	3rd Floor, South Tower, Momentum Centre, 329 Pretorius Street, (Cnr of Pretorius and Prinsloo Streets), Pretoria

Bloemfontein:

Master:	Mr J du Plessis
Tel:	051 - 411 5500
Fax:	051 - 448 6182 / 051 - 447 6575

For the latest version of this list refer to
<http://www.doj.gov.za/master/contact.htm>

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Physical Address:	3rd Floor, South Tower, Momentum Centre, 329 Pretorius Street, (Cnr of Pretorius and Prinsloo Streets), Pretoria

Bloemfontein:

Master:	Mr J du Plessis
Tel:	051 - 411 5500
Fax:	051 - 448 6182 / 051 - 447 6575

Postal Address:	Private Bag X20584, Bloemfontein, 9300
Physical Address:	Southern Life Building, C/o Aliwal & Maitland Streets, Bloemfontein, 9301

Kimberley:

Master:	Mr C Davids
Tel:	053 - 831 1942
Fax:	053 - 833 1586 (General) 053 - 832 9559 (Guardian's Fund)
Postal Address:	Private Bag X5015, Kimberley, 6300
Physical Address:	Civic Centre, Jan Smuts Boulevard, Kimberley, 6300

Mmabatho:

Master:	Mr P Modibela
Tel:	018 - 381 0003
Fax:	018 - 381 3617
Postal Address:	Private Bag X42, Mmabatho, 2735
Physical Address:	Justice Chambers, 44 Shippard Street, Mafikeng, 2745

Pretoria:

Master (Acting):	Mrs N Sigcau
Tel:	012 - 339 7700
Fax:	012 - 326 1977

Postal Address:	Private Bag X60, Pretoria, 0001
Physical Address:	Sanlam Forum Building, C/o Church and Queen Streets, Pretoria, 0002

Johannesburg:

Deputy Master (Acting):	Ms L Basson
Tel:	011 - 429 8000
Fax:	011 - 833 1362
Postal Address:	Private Bag X 5, Johannesburg, 2000
Physical Address:	No 66 Marshall Street, Hollard Building, JHB

Thohoyandou:

Master:	Mr TC Rambauli
Tel:	015 - 962 1032
Fax:	015 - 962 1033
Postal Address:	Private Bag X5015, Thohoyandou, Venda, 0950
Physical Address:	Venda Government Building Complex, Thohoyandou, Venda, 0950

Polokwane:

Master:	Ms FP Mugivhi
Tel:	015 - 291 4300
Fax:	015 - 291 4320

Postal Address:	Private Bag X9670, Polokwane, 0700
Physical Address:	Cnr Grobler and Hans van Rensburg, Office 105, Library Garden, 1st floor, Polokwane

Bisho:

Master:	Ms Z Nhlapo (Matikinca)
Tel:	040 - 608 6601
Fax:	040 - 639 2100
Postal Address:	Private Bag X5015, Kimberley, 6300
Physical Address:	No 1 Prince Alfred Square, Old Embassy Building, King Williams Town

Cape Town:

Master:	Ms I Dick
Tel:	021 - 410 8300 / 02
Fax:	021 - 465 2574
Postal Address:	Private Bag X9018, Cape Town, 8000
Physical Address:	High Court, Parade Street, Cape Town, 8001

Grahamstown:

Master:	Mr SS Moodley
Tel:	046 - 603 4000
Fax:	046 - 622 9990

Postal Address:	Private Bag X1010, Grahamstown, 6140
Physical Address:	5 Bathurst Street, Grahamstown, 6139

Pietermaritzburg:

Master:	Mr MF Vahed
Tel:	033 - 342 0591 (General) 033 - 342 0672 (Guardian's Fund)
Fax:	033 - 342 3129
Postal Address:	Private Bag X9010, Pietermaritzburg, 3200
Physical Address:	Court Gardens, C/o Commercial Road & Church Streets, Pietermaritzburg

Umtata:

Master:	Mr SC Jozana
Tel:	047 - 532 3716
Fax:	047 - 532 2040
Postal Address:	Private Bag X5023, Umtata, 5100
Physical Address:	Metropolitan Place, C/o Leeds and Craister Streets, Umtata, 5100

Durban:

Master:	Ms A Tsolekile
Tel:	031 - 306 0123

Fax:	031 - 306 0126
Postal Address:	Private Bag x 54325, Durban, 4000
Physical Address:	2nd Floor, Devonshire Place, cor Field and Smith Streets, Durban, 4001

Port Elizabeth:

Master:	Ms EA Daniels
Tel:	041 - 403 5100
Fax:	041 - 403 5117
Postal Address:	Private Bag X 2, Centrahill, Port Elizabeth, 6006
Physical Address:	523 Govan Mbeki Avenue (Cnr Crawford & Govan Mbeki Avenue), North End, Port Elizabeth