

BUSTING THE MYTHS ABOUT YOUR DEATH

THE REALITY OF DEATH IS OFTEN FAR MORE COMPLEX AND SERIOUS THAN MOST PEOPLE THINK.

This is because many people are living in a dangerous set of circumstances should their loved ones pass away. According to the 2017 statistics from the Master of the High Court, more than 70% of people pass away without a **Will / valid Will!**

Everyone should have a Will to dictate how their assets should be distributed upon their death. Many people choose to ignore the necessity for drawing up a Will as it is unpleasant to think about your own death or that of a loved one.

In the absence of a Will, legislation chooses the heirs and there's nothing that can be done to stop people from benefitting from the estate without a valid Will. Worst case scenario is that your ex, from whom you have been divorced for 12 years, lands up with all your assets because you never updated your Will!

MYTH 1: WE HAVE A COMMON LAW MARRIAGE (LIFE TOGETHER OR HAVE PAID LOBOLA) SO I'LL INHERIT FROM MY SPOUSE

- Living together, even for an extended period, is not considered being married in the eyes of the law.
- There is no such thing as a COMMON LAW SPOUSE in SA. Should one partner pass away without a Will, the other partner will not be recognised as a spouse for purposes of intestate succession.

MYTH 2: I AM HEALTHY AND HAVE DECADES LEFT TO LIVE, SO I DON'T NEED TO WORRY ABOUT A WILL

- You can pass away at any time and at any age.
- It is simply irresponsible not to have a valid Will.
- You should seriously consider guardianship for your minor child(ren) should both parents pass away.
- A guardian nomination in terms of a Will is a legal appointment, therefore it is important to discuss guardianship beforehand with the nominees.

MYTH 3: THE MONEY THAT MY CHILDREN NEED WILL GO TO THEM

- In terms of the Intestate Succession Act the greater portion of R250 000-00 or a child's portion will go to the surviving spouse.
- If your Estate is less than R250 000-00, and you have children from a previous marriage, nothing will go to the children, and everything will be paid to the spouse.
- Likewise, foster children do not qualify as heirs in the intestate Estate of the foster parents.
- Any benefit that accrues to a minor child will be liquidated and held by the Guardian's Fund until that child has attained the age of majority, which is currently 18 years – **THIS IS SOMETHING THAT YOU DO NOT WANT!!!**

MYTH 4: MY PARENTS WILL BE TAKEN CARE OF

- As in the case of children, the law prioritises your legal spouse first and foremost.
- Only biological, or legally adoptive parents and not foster parents, are recognised by the law.

MYTH 5: THE MONEY WILL ULTIMATELY GO TO WHO I WANT IT TO GO TO

- The distribution of an Estate without a Will follows the rules strictly according to the Intestate Succession Act.
- The actual result of this is that people can inherit from you that you have never met or don't even like.

The above myths are not comprehensive but are merely used as a reminder as to why it is critically important for you to ensure that you have a properly drafted valid Will.

You can contact us should you require assistance in drafting a proper Will.