



**J Leslie Smith & Company Inc.**

**ATTORNEYS, CONVEYANCERS AND NOTARIES PUBLIC**

# Wills

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# Empowering you

- Aim is **not** for you to draw Wills
- Aim is to provide you with
  - the knowledge
  - the understanding of why it is important to have a will
- September – National Wills Week:  
Law Society initiative

# What is a will?

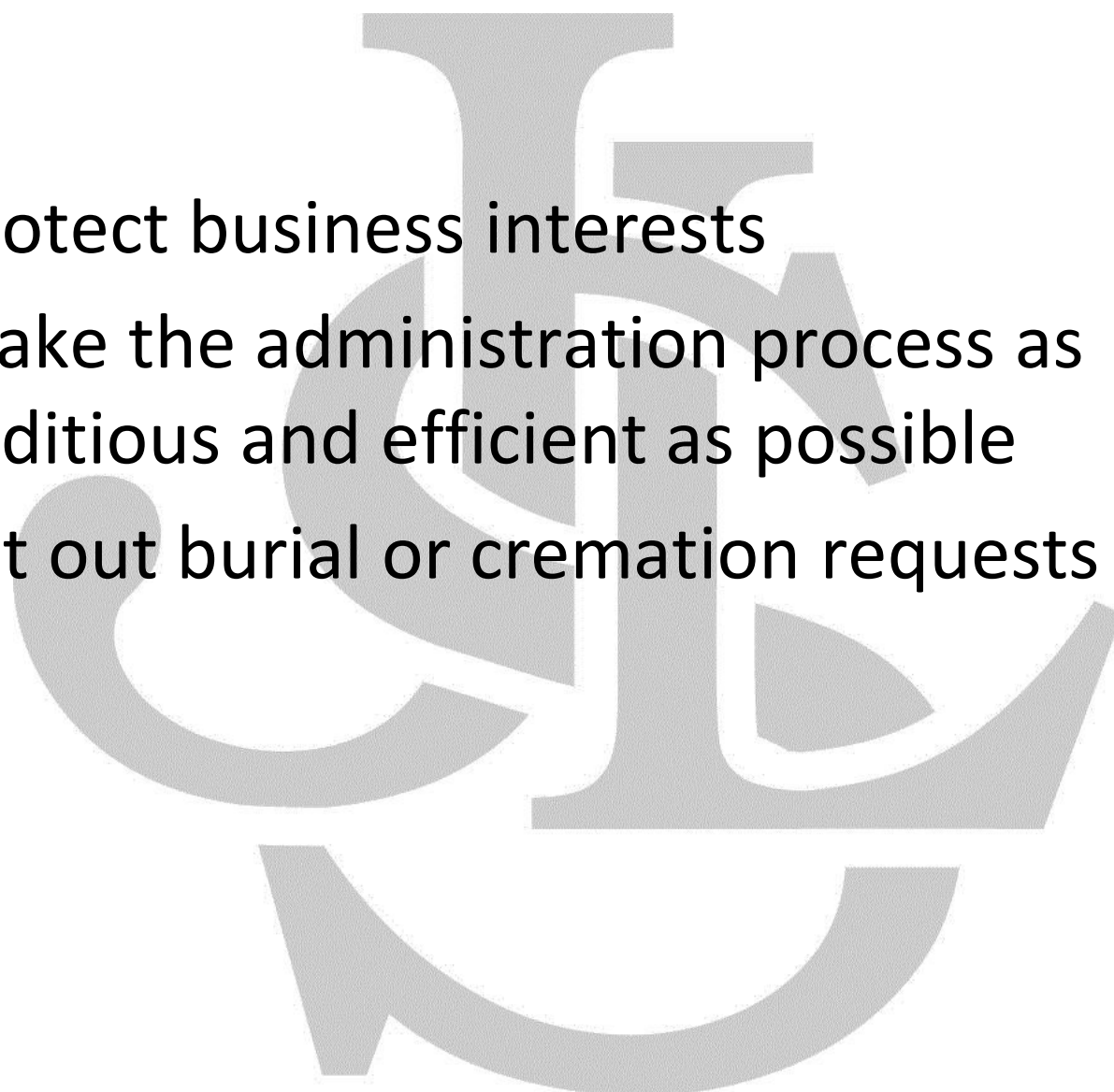
A Will is an expression of your intention regarding the distribution of your estate upon your death

# Who Can Make A Will

- over the age of 16 years
- Mentally capable

# The Importance of Executing a Will

- to appoint an executor of choice
- to appoint trustees, beneficiaries, guardians
- to direct the devolution of assets according to one's wishes
- to look after dependents – creation of trusts
- to make donations
- to disinherit blood relatives and/or spouses

- 
- to protect business interests
  - to make the administration process as expeditious and efficient as possible
  - to set out burial or cremation requests

# Drafting, Grammar and Language

- Keep sentences short, keep paragraphs short and use headings
- Be precise and clear
- Allow for change of circumstances
- Provide for alternatives
- Ruling from the grave



# Important Parties in a Will

- Executor
- Trustee
- Legatees
- Residual heirs
- (NB be aware of order of distribution)
- Guardian/Custodian



# Marital status and how it effects your estate

- Marriage in Community of Property
- Marriage out of Community of Property
- Customary Unions – Registered / Not Registered

# Minors, The Guardian's Fund and Forming Testamentary Trusts

- Bequests to Minors – Cash
- Bequests to Minors – Property
- Can be a useful estate planning tool –  
eg child with drug/alcohol abuse  
problems; special needs children;  
spouses with dementia

# Divorce

- 3 month window period
- If you die within 3 months of dissolution of your marriage without amending your Will, effect will be given to your Will as if your ex-spouse had predeceased you

## **unless**

- a contrary intention appears from your Will

# What happens if you die without a Will

- The Intestate Succession Act
- Effect :-
  - Surviving Spouse R250 000,00 or a child's share, whichever is the greater
  - Customary Unions
  - Islamic Marriages
  - Common Law Unions
  - Hindu Marriages
  - Same Sex Unions

Child's share paid into Guardian's Fund if it is cash

# Estates

- Less than R250 000,00
  - No requirement to advertise for debtors and creditors (Section 29) of the Administration of Estates Act,
  - advise third parties liquidation and distribution account available for inspection (Section 35 of the Act)

More than R250 000,00

- All formalities apply

# Maintenance of Surviving Spouses Act

- Important to make provision for your spouse
- Claims against your estate

# Importance of reporting estates to The Master of the High Court

- When there are properties or land involved
- Properties or land inherited from generation to generation but never transferred



# Cremation or burial ?

## Funeral arrangements

- Cultural requirements;
- Costs of burial sites;
- Make provision for funeral arrangements and funeral costs;
- Families have different views – prevents discord.

# Cases

- Hassam v Jacobs NO and Others (5704/2004) [2008] ZAWCHC 37; [2008] 4 All SA 350 (C) (18 July 2008)
- Bhe and others v The Magistrate, Khayelitsha and others Case CCT 49/03

# What to take with when you going to make your will

- Identity Document
- Marriage certificate, ANC



The End



19/05/2016

