

SIGNING A WILL DURING LOCK DOWN

The coronavirus crisis means many people are considering updating their Will or drawing one up for the first time, and so fiduciary practitioners are seeing a surge in demand for Wills. Whilst this is a sensible step to take, strict lockdown measures in South Africa mean that drawing up a valid Will is not as straight forward as simply drafting the document. A Will requires two witnesses to sign it in order to validate it.

This is creating practical - but not insurmountable – challenges according to Elmien Pols of Private Client Trust, the fiduciary pillar of Private Client Holdings.

“A Will must be signed by the person making it and two independent witnesses over the age of 14 who are not beneficiaries or the spouses of beneficiaries, and all three must be physically present in the same place when this happens,” says Pols. “Given that most of us are restricted to contact with those in our household only, this creates some difficulty, assuming the people in your household are the intended beneficiaries.”

So how do you ensure your Will is valid in the face of this challenge? Pols offers the following suggestions which reiterate the Fiduciary Institutes guidelines (see: <https://www.fisa.net.za/>)

“If you have a good relationship with your neighbours and would be comfortable to enlist their help, you can place your Will through or over the fence and they can then sign as witnesses while you observe, and vice versa, complying with the requirement that the witnesses and testator must be in the presence of each other when signing. It is important to be mindful of distancing and the required sanitation before and after contact with neighbours or other witnesses.”

“If the person drawing up the Will is in hospital then using nursing staff members as witnesses would be a good option,” advises Pols, who continues that another good solution would be to take your Will to your local police station, however, it is not clear whether the local police station would be willing to allow members of the SAPS to sign as witnesses to a Will under the current circumstances, so this may not be an option.

“If none of the above is an option and there is no other way to validly sign the Will, the best approach would be for the testator to date and sign their Will and then write and sign a letter

explaining why the Will was not signed by witnesses and stating that the Will is intended to be the testator's last Will and testament. If possible, the Will should also be scanned after signature and emailed to your fiduciary practitioner. This course of action will make an application under sec 2(3) of the Act to have the court order the Master to accept the Will as valid, much more likely to succeed," says Pols.

Pols goes on to advise that unfortunately digital signatures are not recognised on last Wills and testaments. "Whilst eSignatures are recognised by the Electronic Communications and Transactions Act (ECTA) as verification of a range of legal documents, such as employment contracts, short-term real estate documents, personal and commercial agreements, Wills are excluded and may not be verified using an eSignature under this law. Wills must contain wet signatures."

"These are highly unusual circumstances so we are advising our clients that any Wills written during this time should be revisited in the future when normality resumes."

For more advice on Wills contact Private Client Trust on 021 671 1220 or email at trusts@privateclient.co.za to read more about the PCT Fiduciary offering see www.privateclienttrust.co.za .

Ends

Private Client Trust is the fiduciary pillar of Private Client Holdings

Private Client Holdings was founded as a corporate tax consultancy in Cape Town, South Africa in 1990. Since then the company has developed into a full spectrum Asset and Wealth Management Company and multi-Family Office with six specialist divisions; Wealth Management, Portfolio Management, Financial Services, Fiduciary Services, Cash Management and Risk Management.

Private Client Holdings (PCH) are taking the lead in Southern Africa when it comes to providing high net worth families with an all-inclusive wealth management solution and recently secured 2nd position overall in the TOP WEALTH MANAGER: BOUTIQUES in the INTELLIDEX TOP PRIVATE BANKS & WEALTH MANAGERS AWARDS 2019. They also placed 3rd in the Passive Lump-sum Investor award and 2nd in the Successful Entrepreneur award. The award they are most proud of is placing 2nd in the People's Choice Award - an award based purely on feedback from a confidential client survey.

Private Client Portfolios, the Portfolio Management arm of Private Client Holdings has been awarded the title of "Best Investment Advisory Team – South Africa 2019" in the Capital Finance International Award – this London based CFI.co awards programme identifies individuals and organisations worldwide that truly add value through best practice within their industry.



Disclaimer

PRIVATE CLIENT HOLDINGS IS AN AUTHORISED FINANCIAL SERVICES PROVIDER (LICENSE #613)

Private Client Holdings has taken care to ensure that all the information provided herein is true and accurate. Private Client Holdings will therefore not be held responsible for any inaccuracies in the information herein. The above press release does not constitute advice and the reader should contact the author for any related concerns. Private Client Holdings shall not be responsible and disclaims all loss, liability or expense of any nature whatsoever which may be attributable (directly, indirectly or consequentially) to the use of the information provided.