

■ MONEY

## Why a selfie-video or voice recording can't be a valid will

You can make a will on your digital device but it must be 'hard-signed' according to the Wills Act

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A digital or electronic will is hard to authenticate. Picture: 123RF/ARINDAM GHOSH

Questions such as why wills in SA still have to be hard-copy documents and why can't I simply take a selfie-video set out who inherits my assets after my death are becoming more common.

Electronic devices, such as desktop computers, laptops, tablets, smartphones and smartwatches have changed the way we store information. Hard-copy documents are rapidly going out of fashion and the Covid-19 lockdown has accelerated this trend.

However, the Wills Act in SA requires that a will be signed by the testator (the person whose will it is) and this signature must be made in the presence of two witnesses or acknowledged to the witnesses, who must also sign in the presence of the testator and each other.

A will can be drafted electronically – on a computer, smartphone or any other electronic device – but the draft must be converted to writing in some other way in a medium (traditionally paper) that can be signed by the testator or another person in their presence.

The Electronic Communications and Transactions Act of 2002 (ECTA) excludes wills from the provision that if a message, any requirement that the document be in writing is fulfilled. As a result, a will that is drafted, signed and stored electronically does not comply with the requirements of the Wills Act.

The rationale behind the requirements of the Wills Act is to prevent fraud. If the will document complies, on the face of it, with the formalities, it is accepted as authentic and anyone who alleges otherwise must prove that it is not a valid will.

A digital or electronic document – a “data message” as it is called in the ECTA – is harder to authenticate. The ease with which a digital document can be altered, as the recent memes about Donald Trump prove,

No electronic wills yet

It is, therefore, not that easy to switch to electronic wills simply because the technology exists to create such of the world would have moved to electronic wills.

However, most countries still insist on hard-copy wills despite the availability of digital technology and notwithstanding that the use of video wills started more than 30 years ago. Some countries do provide in their legislation that the recordings not complying with the requirements to be accepted as valid wills.

In SA, section 2(3) of the Wills Act empowers the court to order the Master of the High Court to accept a document drafted or signed by a person before their death and was intended by that person to be their will, despite the document not complying with the formal requirements for a valid will.

Although the high court has granted most applications regarding electronic documents so far, it did so with regard to hard-copy documents and not the electronic versions. However, an application to the high court is time-consuming and unopposed, can cost anywhere between R15,000 and R50,000. If opposed, the costs increase exponentially.

Emergency legislation in several countries allows for the signing of a hard-copy will by the testator and witnesses.

In SA, the Disaster Management Act, under which the current lockdown regulations were issued, does not make an exception to the requirements of the Wills Act. Any change will have to come by way of an amendment of the Wills Act by parliament.

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