OTTO KRAUSE INCORPORATED

LAST WILL AND TESTAMENT: CLIENT INFORMATION QUESTIONNAIRE

Information required for the drafting of your will, and for advice upon the winding up of your estate

Client name	
File / matter reference	
Attorney dealing	
Date completed and returned	

HOW TO COMPLETE THIS QUESTIONNAIRE

This questionnaire may be completed on your computer. Click into any shaded block and type your answer. The block will expand as you type. It is not necessary to print the document or to complete it by hand. When you have finished, save the document and e-mail it back to this office.

Where you are unsure of an answer, simply leave the block blank. Several of these questions concern matters upon which you may want our advice before deciding, and that is exactly as it should be. We shall go through the questionnaire once we receive it and contact you about anything outstanding.

You are welcome to contact our offices directly at any stage should you experience any difficulty with any of the questions.

It is not necessary to attach any supporting documentation at this stage. A list of the documents we shall eventually require appears at the end of this questionnaire.

Everything you disclose in this questionnaire is protected by legal professional privilege and will be treated in strict confidence.

BEFORE YOU BEGIN

Making a will is an act of consideration for the people you leave behind. It takes an afternoon, it costs very little, and it spares your family a great deal of difficulty at the worst possible time. Most of the estates which become contentious, expensive or slow are estates where there was no will, or where there was one which had not been looked at in fifteen years.

We appreciate that thinking about your own death is not a comfortable exercise, and that some of the questions in this form ask you to consider things you would rather not. Take them at your own pace. If a question troubles you, leave it and we shall talk it through with you rather than have you answer it in writing.

Two practical points before you start. First, a will speaks from the date of death, not from the date it is signed, so it must be reviewed whenever your circumstances change — a marriage, a divorce, a birth, a death, a new business, the sale of a property. Second, the formalities are strict and a will which does not comply with them is invalid, however clear your intentions were. Please do not sign the will we prepare until we have explained to you how it must be signed and witnessed.

WHAT HAPPENS IF YOU DO NOT MAKE A WILL

If you die without a valid will you die intestate, and the Intestate Succession Act decides who inherits. It does so by a fixed formula which takes no account of your wishes, your family arrangements or the promises you may have made.

In broad terms, if you leave a spouse and no descendants, the spouse inherits everything. If you leave descendants and no spouse, they inherit in equal shares. If you leave both, the spouse takes a child's share or a prescribed amount, whichever is the greater, and the descendants take the balance. If you leave neither, your parents, and failing them your siblings, inherit. The prescribed amount is fixed by the Minister from time to time and is presently [[prescribed amount]].

The consequences are often not what people expect. A minor child's inheritance is ordinarily paid into the Guardian's Fund administered by the Master and released only in limited circumstances, which is why a testamentary trust matters. The person you would have chosen to wind up your estate is not appointed, and the Master appoints somebody else. A partner to whom you are not married may or may not inherit depending on the nature of the relationship. A business may have to be sold when it could have been continued. And a family which was on good terms is required to agree upon things at a moment when agreement is hardest.

A will avoids all of this, and it costs a fraction of what its absence costs.

THE FORMALITIES: HOW A WILL MUST BE SIGNED

The Wills Act prescribes how a will must be executed, and the requirements are not negotiable. The will must be in writing. You must sign it at the end. You must do so in the presence of two or more competent witnesses who are present at the same time, and those witnesses must then sign in your presence and in the presence of one another. If the will consists of more than one page, you must sign every page, and the last page at the end.

A competent witness is a person of fourteen years or older who is competent to give evidence in a court. There is, however, a trap which catches families regularly: a person who signs your will as a witness, or who writes any part of it out, and the spouse of such a person, is disqualified from receiving any benefit under it. Never, therefore, ask a beneficiary or a beneficiary's spouse to witness your will. For the same reason we ordinarily arrange the witnesses at our offices.

Where you are unable to sign, the will may be signed by another person on your behalf, or by your mark, but in that event a commissioner of oaths must be present and must certify the will. If that applies to you, please tell us in advance so that the arrangements can be made.

A court has a discretion to accept a document which does not comply with these formalities, but obtaining such an order is an expensive application with an uncertain outcome. It is far better to sign correctly in the first place.

JOINT AND MUTUAL WILLS FOR MARRIED COUPLES

If you are married, you and your spouse may each make your own separate will, or you may make one document containing both of your wills. A single document of that kind is called a joint will. Where the two of you also leave your property to one another, or dispose of it reciprocally, it is usually described as a mutual will.

A joint will has obvious attractions. There is one document rather than two, the arrangements of the two of you are plainly consistent with one another, and each of you can see exactly what the other has provided. Many couples prefer it for that reason, and it is perfectly valid.

There is, however, a feature of joint wills which you should understand before choosing one, and it is called massing. Where the spouses consolidate their estates into a single mass and dispose of that mass as a whole — typically by giving the survivor the use of everything for life and providing that the whole then passes to the children — the survivor is put to an election on the first death. If the survivor accepts the benefit conferred by the will, the survivor is bound by the disposition and can no longer freely deal with his or her own share of the massed property by a new will. If the survivor declines the benefit, he or she keeps his or her own estate but takes nothing under the will of the first-dying.

That can be exactly what a couple wants, because it protects children of a first marriage and prevents the survivor from being persuaded to change the plan. It can equally be a serious inconvenience, because circumstances change and the survivor may live for another thirty years. Massing also has consequences for estate duty which need to be considered.

Until the first death, either spouse remains free to revoke his or her half of a joint will, and a joint will must also be produced to the Master on each of the two deaths, which means the original must be safely kept for what may be a very long time. For these reasons many practitioners prefer two separate wills in mirror terms, which achieve the same practical result while leaving the survivor free. We shall discuss the choice with you. Please indicate in Part B which you have in mind, and if you are unsure, say so.

WHAT DOES NOT PASS UNDER YOUR WILL

A number of assets fall outside your will altogether, and it is important that you know which, because clients frequently believe they have dealt with something in their will when they have not.

The proceeds of a life policy with a nominated beneficiary are paid directly to that beneficiary and do not form part of your estate. If your will says one thing and the beneficiary nomination says another, the nomination prevails. Retirement fund death benefits are not governed by your will at all: the trustees of the fund must distribute them among your dependants and nominees in accordance with the Pension Funds Act, and they are obliged to consider actual dependency rather than simply to follow your nomination form. If you are married in community of property, only your half of the joint estate is yours to bequeath, since the other half already belongs to your spouse. Assets held in a trust are owned by the trust and not by you. Property held jointly with another person may pass by the terms of the agreement between you.

This is one of the most useful things a will consultation achieves, because it is where the plan and the paperwork are brought into line with one another. Please complete Part K carefully.

THE PRINCIPAL STEPS

Consultation and instructions. We discuss your family, your assets and what you wish to achieve, and we advise you on the structure best suited to it.

Taking stock of the estate. We work through your assets and liabilities, identify what falls outside the will, and consider whether the estate will have enough cash to meet its obligations.

Deciding who benefits. Specific bequests, the residue, substitution and what happens if a beneficiary dies before you are settled.

Executor, guardians and trustees. You nominate the person who will wind up your estate, the guardian of any minor children, and the trustees of any testamentary trust.

Drafting the will. We prepare the will and send it to you in draft so that you can read it at leisure and raise anything which does not reflect what you intended.

Signature. The will is signed in the presence of two competent witnesses who are not beneficiaries and who sign in your presence and in the presence of one another.

Safekeeping. The original is placed in safe custody and you are given a copy. The Master requires the original on death; a copy will not do without an application to court.

Review. The will is revisited whenever your circumstances change. We recommend a review at least every three to five years.

Reporting the estate. On death the estate is reported to the Master, ordinarily within fourteen days, and the executor is appointed by letters of executorship.

Winding up. The executor takes control of the assets, advertises for creditors, pays the debts, prepares the liquidation and distribution account, lies it open for inspection and distributes what remains.

PART A: YOUR PARTICULARS

Full names and surname (as per identity document)	
Identity number	
Date of birth	
Residential address	
Cellphone number	
E-mail address	
Occupation	
Income tax reference number	
Are you a South African citizen? If not, state your nationality and residence status	
Preferred language (English / Afrikaans / other)	
Have you made a will before? Where is it kept, and who drew it?	
Is there any reason to think that your capacity to make a will might be questioned — illness, medication or a diagnosis affecting memory or judgement? (Please tell us; it is something we can address in the way the will is executed)	

PART B: YOUR MARITAL STATUS AND MATRIMONIAL PROPERTY REGIME

This Part determines what is yours to bequeath, and it must be answered accurately.

Are you single, married, divorced, widowed or in a permanent life partnership?	
If married, give your spouse's full names and identity number	
Date and place of the marriage	
Are you married in community of property, or out of community of property?	
If out of community of property, does the accrual system apply?	

Was the marriage concluded by civil, customary or religious rites, or as a civil union?	
Is this a second or subsequent marriage? Are there children of an earlier relationship?	
If divorced, does the divorce order impose any obligation which affects your estate — maintenance, a policy to be maintained, or property to be transferred?	
Do you and your spouse wish to make separate wills, or one joint will? (If you are unsure, leave this blank and we shall advise you)	
If a joint will, do you intend that your estates be massed, so that the survivor is bound by the disposition?	
If you are in a life partnership but not married, how long have you lived together, and do you support one another?	

PART C: YOUR FAMILY AND DEPENDANTS

Full names	Identity number or date of birth	Relationship to you	Is this person financially dependent on you?

Are all of your children born of the same relationship? If not, give particulars	
Is any child adopted, or a stepchild?	
Is any child a minor?	
Does any child or dependant have a disability, a chronic illness or a special need which will require provision after your death?	
Is there anybody else who depends on you financially — a parent, a sibling, a former spouse or a domestic employee?	
Is there anybody you wish deliberately to exclude from your will? (You are	

entitled to do so, but please tell us, so that the will can be drawn to withstand a challenge)	

PART D: YOUR ASSETS

Asset	Approximate value (R)	Held in whose name
Immovable property — primary residence		
Immovable property — other (holiday home, farm, rental, vacant land)		
Motor vehicles, caravans, trailers and boats		
Household contents and furniture		
Jewellery, artwork, firearms and collections		
Bank and savings accounts		
Investments, unit trusts and shares		
Retirement annuities, pension and provident funds		
Life insurance policies		
Business interests, shares in companies and members' interests		
Loan accounts owing to you		
Cryptocurrency and digital assets		
Assets held offshore		
Interests in a trust		
Other (specify)		

PART E: YOUR LIABILITIES AND THE LIQUIDITY OF YOUR ESTATE

What debts will your estate have to meet (bonds, vehicle finance, credit cards, personal loans, tax)?	
Have you signed surety for any person or entity?	
Will there be enough cash in the estate to pay the debts, the executor's fees, the Master's fee and any estate duty, without an asset having to be sold?	
Do you have a policy intended to provide that cash?	
Do you wish us to consider whether your estate will attract estate duty, and how it might be reduced? (The abatement presently allowed is [[current	

abatement]], and a portion unused on a first death may be carried over to a spouse)	

PART F: YOUR EXECUTOR

The executor is the person who winds up your estate. It is a demanding administrative task, and the appointment should not be made simply out of courtesy to a family member.

Whom do you nominate as executor? Give the full names, identity number, address and contact details	
Whom do you nominate as alternate executor, should the first be unable or unwilling to act?	
Do you wish to nominate this firm, or an executor recommended by us, to act or to assist your nominee?	
Is the executor to be exempted from furnishing security to the Master? (This is usual, and saves the estate the cost of a bond)	
Is the executor to have the power to assume a co-executor?	
What remuneration is the executor to receive? (In the absence of agreement the prescribed tariff applies, presently [[executor tariff]] of the gross value of the assets, plus a percentage of income collected)	
Are there any specific instructions you wish to give the executor?	

PART G: GUARDIANSHIP OF MINOR CHILDREN

Whom do you nominate as guardian of your minor children?	
Whom do you nominate as alternate guardian?	
Have you discussed this with the person concerned, and is he or she willing?	
If the other parent survives you, is that parent to have sole guardianship, or is there a reason why not?	
Are there any wishes you would like recorded concerning the upbringing, schooling or religion of the children?	

PART H: A TRUST FOR MINORS OR VULNERABLE BENEFICIARIES

Where a minor inherits and no trust is created, the inheritance is ordinarily paid into the Guardian's Fund administered by the Master. A testamentary trust avoids this and allows the money to be managed for the child.

Do you wish a testamentary trust to be created in your will?	
For whose benefit is it to be created?	
Whom do you nominate as trustees?	
At what age should the capital be paid over to the beneficiary?	
May the trustees use capital before that age for education, medical expenses or maintenance?	
Are the trustees to be exempted from furnishing security?	
Do you already have an inter vivos trust into which the inheritance should rather be paid? Give its name and registration number	

PART I: SPECIFIC BEQUESTS

List any particular asset or amount you wish to leave to a particular person. Everything not specifically bequeathed falls into the residue, which is dealt with in Part J.

What is bequeathed	To whom (full names)	If that person dies before you, then to whom?

Do you wish to leave anything to a charity, church or public benefit organisation? Give the full name and registration number	
Is any bequest to be subject to a condition?	
Is any beneficiary to receive the use of an asset for life, with the asset then	

passing to somebody else (a usufruct or a right of habitation)?	

PART J: THE RESIDUE OF YOUR ESTATE

Who is to inherit the residue of your estate, and in what shares?	
If a beneficiary dies before you, should that share pass to that person's descendants, or be divided among the surviving beneficiaries?	
If you and your spouse were to die together or within a short time of one another, who should inherit?	
If none of your beneficiaries survive you, who should inherit?	
Should a beneficiary's inheritance be excluded from that beneficiary's community of property or accrual, so that it does not fall into a marriage?	
Should any beneficiary's inheritance be protected from that beneficiary's creditors?	

PART K: ASSETS WHICH FALL OUTSIDE YOUR WILL

Type (policy / retirement fund / joint account)	Institution	Policy or member number	Beneficiary presently nominated

Do the beneficiary nominations on your policies and funds reflect what you want, and do they agree with this will?	
Do you hold any asset jointly with another person, and is there an agreement about what happens on death?	
Are you a shareholder or member of a business with a buy-and-sell agreement	

or a shareholders agreement dealing with death?	
Are you a beneficiary of any trust?	

PART L: FUNERAL, ORGAN DONATION AND PERSONAL WISHES

Do you wish to be buried or cremated, and is there a place you would prefer?	
Have you made funeral arrangements or taken out a funeral policy? With whom?	
Do you wish to donate your organs or your body for medical purposes?	
Do you have a living will or advance directive concerning medical treatment? Do you require one?	
Is there anything you wish to say to your family which should accompany the will, in a letter rather than in the will itself?	
Do you have pets which will need to be provided for?	

PART M: DIGITAL ASSETS AND RECORDS

Do you hold cryptocurrency or other digital assets? Where are they held, and how would they be accessed? (Do not record passwords or seed phrases in this document)	
Are there online accounts, businesses or intellectual property which would need to be dealt with?	
Where do you keep your important documents, and who knows where they are?	
Do you use a password manager, and has anybody been given emergency access to it?	

PART N: FOREIGN ASSETS

Do you own any asset outside South Africa? Give particulars and the country in which it is situated	
Have you made a will in that country?	

Do you hold citizenship, residence or domicile in any other country?	
Do you have any offshore trust or investment structure?	

PART O: ANY OTHER INFORMATION

Please set out anything else you consider relevant, including any concern you have about how your will may be received, or any dispute you anticipate within the family.

PART P: DECLARATION BY THE CLIENT

I, the undersigned, confirm that the information furnished in this questionnaire is true and correct to the best of my knowledge and belief, and I instruct Otto Krause Incorporated to prepare my will in accordance with it. I confirm that I give these instructions freely and without any undue influence having been exercised upon me. I undertake to inform my attorneys forthwith should any of the information change, and I accept that my will should be reviewed whenever my circumstances alter.

Full names	
Signature (you may type your name here and sign the printed copy at our offices, or attach a scanned signature)	
Place	
Date	

ANNEXURE: DOCUMENTS TO BE FORWARDED IN DUE COURSE

Document	Available? (Yes / No / Will obtain)
Your identity document	
Marriage certificate	
Antenuptial contract, if married out of community of property	
Divorce order and settlement agreement, if divorced	
Birth certificates or identity documents of your children	
Any existing will, and any codicil	
Title deeds of immovable property	

Document	Available? (Yes / No / Will obtain)
Policy schedules and beneficiary nomination forms	
Retirement fund statements and nomination forms	
Share certificates and any shareholders or buy-and-sell agreement	
Trust deed and letters of authority of any trust in which you have an interest	
Details of any foreign asset and any foreign will	
Statements of significant assets and liabilities	