

Lost Will Emergency Checklist

What to do, step by step, when a loved one's original will cannot be found

Prepared by Roy Bregman, admitted attorney with over 51 years' experience in wills and deceased estates

Why this checklist matters

If an original will cannot be found after death, the law may presume the deceased destroyed it to cancel it. That presumption can be overcome, but only with evidence. Every search you record, letter you keep and affidavit you obtain now can decide whether the court accepts the copy later. Work through this checklist in order and keep everything in one file.

Step 1: Search and record everything

- ☐ Search the deceased's home thoroughly: safes, desks, filing cabinets, cupboards, password books and document folders.
In the 2026 Van Deventer case the copy of the will was found in a book of passwords and documents.
- ☐ Check vehicles, storage units, holiday homes and the workplace, including office drawers and lockers.
- ☐ Keep a written search log: who searched, where, on what date, and what was found.
Courts give real weight to "diligent but unsuccessful" searches. Your log is the proof.
- ☐ Do not throw anything away. Keep every document that mentions a will, an attorney, a bank or an insurer.

Step 2: Contact every likely custodian in writing

- ☐ Write to the deceased's bank and ask whether a will is held in safe custody, and request written confirmation either way.
- ☐ Write to any attorney the deceased ever used, including firms that handled property transfers or divorces.
- ☐ Ask insurers, brokers, financial advisers and employers whether they hold a will or know who drafted one.
- ☐ Keep every reply, especially confirmations that an original was drafted, received or lost.
In Van Deventer, the bank's written admission that the signed original was never received for safe custody was crucial.

Step 3: Preserve the electronic trail

- ☐ Secure lawful access to the deceased's email accounts before they are closed or deleted.
- ☐ Search emails for terms like "will", "testament", "executor" and the names of banks and attorneys.
- ☐ Save drafts, instructions and any message attaching or referring to a signed will, with full dates and addresses visible.
- ☐ Back up scanned copies of the will exactly as found. Do not edit, rename or re-scan the file.

Step 4: Gather the people evidence

- ☐ Identify the two witnesses who signed the will and obtain sworn affidavits confirming what they saw.
- ☐ Ask family and friends to record, in writing, anything the deceased said about their will and their wishes.
- ☐ Note the deceased's life circumstances: relationships, dependants and major assets acquired after any older will.
Courts ask whether the deceased had any reason to cancel the will. Life circumstances answer that question.

Step 5: Deal with the Master and the court

- ☐ Report the estate to the Master of the High Court within 14 days of death, and disclose honestly that only a copy exists.
- ☐ Attach the copy of the will and a full explanation of the searches made.
- ☐ Do not sign letters or documents you do not fully understand, especially while grieving.
In Van Deventer, a family member later tried to withdraw a letter she said she signed under pressure. It damaged her case.
- ☐ If the Master will not accept the copy, get legal advice on a High Court application without delay.
- ☐ Guard urgent assets in the meantime: insured property, vehicles under finance and accounts at risk.
Keep proof of any estate expenses you personally pay. They can usually be claimed back from the estate.

Need help right now?

A lost-will application succeeds or fails on preparation. Bregman Moodley Attorneys has been handling wills and deceased estates since 1974, and we can assess your evidence, deal with the Master and bring the High Court application if one is needed.

Call Roy Bregman on +27 (0)11 646 0335, email roy@bmalaw.co.za or visit bregmans.co.za.

This checklist is general information, not legal advice. Every estate is different, and you should obtain advice on your specific circumstances.