

Estate Planning

Anything that you own at the time of death becomes the property of your Estate. It is vital that a properly drawn up Will specifies clearly what your intentions are regarding the heirs of your Estate.

What is a will?

It is a declaration of a person's wishes regarding the disposal of his property after his/her death.

What is an heir?

It is the person legally succeeding to the property of the deceased. It is important to note that the heir only receives the inheritance when the debt owed by your estate has been settled as well as costs involved with the finalisation of an estate.

Dying without a will

Lengthy delays will occur if you die intestate – this means that you die without a valid Will. If you die without a Will, your estate will be administered in terms of the procedures set out in the Intestate Succession Act. This Act determines who will be the heirs of your estate. It may also take longer for the estate to be finalised.

This would mean that even though your intention may have been for some people to benefit from your estate (or your share in the joint estate), the law will determine what happens to the remaining assets.

Unnecessary hardships may arise as it can take many months to finalize such an Estate. If your spouse survives you, or if you have dependents when you die, they could be without sufficient income during this time.

If you die intestate, the Master of the Supreme Court would settle your Estate according to the laws in force at the time of your death. This would often mean that your estate would be divided equally amongst your relatives and family, which may not have been your intention. Assets, such as the family home, may have to be sold in order to comply with the law.

Surviving family members would also have to attend to the many formalities and legalities required by the Master of the Supreme Court's office.

- A person who witnesses a Will cannot benefit from it.
- Couples married in community of property, each has an undivided half share in the assets of the joint estate. Accordingly, when either of them passes away, the entire joint estate is wound up, including the survivor's half share. Once the estate has been finalized, the surviving spouse is given back his or her half share of the joint estate while the deceased spouse's half share is awarded to his or her heirs.
- Ensure that beneficiary clauses in any life assurance policies in no way conflicts with the provisions of your Will.

PREPARATION OF YOUR ESTATE

The main objective of a Will is to ensure that the settlement of your estate goes as smoothly as possible. It is important to note the technical requirements to comply with in order for a Will to be legally valid in South Africa. You should, therefore, request an expert to advise and assist you in drawing up a Will. The following should be taken into account to make this possible.

- Revise your Will regularly to be certain that it continues to fulfill your wishes and that it provides for any changes in your circumstances.
- Make certain that your Executor and your next-of-kin know where the Will is kept and that you have certified copies thereof which you can consider keeping with trusted people. The most sensible arrangement would be to leave it in the safe-keeping of the executor. A close trusted relative should also know where you keep some important documents, including your identity document, marriage certificate, insurance policies, etc. which will be needed to finalize your estate.
- Draw up an inventory of your estate, showing all your assets and liabilities. State where you have placed the relevant documents, such as bank account books, title deeds, life policies, birth and marriage certificates and any other personal documents.
- Make provision for immediate cash for your surviving spouse or dependents - this is especially important where it concerns marriages in community of property. If you do not, they may have to constantly apply to the executor for funds for ongoing living expenses.
- Estate duty must be considered. The experts advise that estate duties are likely to increase in the future, resulting in the State taking a larger portion of your estate.

What is an "Executor"?

The Executor is the person named in the Will as having to finalise your estate under the supervision of the Master of the High Court.

Because of the complexities of the law, it is important that your Executor has sufficient knowledge. This will result in a speedy settlement of your estate according to your wishes and will be to the advantage of your heirs.

You might consider appointing your family lawyer, bank manager or financial consultant as your Executor. They may also help you draw up your Will. There may be no charges for drawing up the Will but your Executor will be entitled to a fee that is payable when your estate is finalized. The fees are set down in a tariff.

People often appoint a family member or a friend as Executor. They do this because such people know them and their family well and it may help in dealing with any personal issues that might arise during the settlement. Should you wish to have a friend or family member involved, you might consider appointing them as Co-Executor.

It is a good idea to discuss the appointment of any Executor or Co-Executor with the person concerned before naming them in your Will. In this way you can be sure that they are willing to undertake what can sometimes be a difficult task.

Update your Will regularly and keep all vital information handy for the disposal of an estate.