

BEWARE THE PITFALLS OF BEQUEATHING PROPERTY

When leaving property to beneficiaries in your will, make sure you have done your estate planning, writes **Maya Fisher-French**

For most middle-class families, the primary residence is the most valuable asset in their estate, as retirement funds fall outside of one's estate. It is not uncommon for parents to leave the family home to their children. Yet, without a properly constructed estate plan and will, this legacy could create a financial nightmare for their loved ones.

IS THE PROPERTY YOURS TO BEQUEATH TO YOUR CHILDREN?

1 Louis van Vuren, CEO at the Fiduciary Institute of Southern Africa says that, when it comes to bequeathing a property, the first determining factor will be the matrimonial property regime. There are many cases where spouses may be estranged but not divorced. The matrimonial property regime would still apply.

For example, if the deceased was married in community of property, the surviving spouse effectively owns half the property and only the half that belongs to the deceased can be bequeathed to the children.

If married out of community with the accrual, the accrual claim must first be settled and, depending on the circumstances, the house may have to be used to settle the claim.

IT MUST BE TRANSFERRED INTO YOUR CHILDREN'S NAMES

2 It is important to note that, if the property is not sold, it must be transferred into the heir's name. It cannot remain in the name of the deceased. As a parent, you need to decide whether you leave the property to one child or if it will be shared equally among all children.

This is an important conversation to have with your children. What if one child wants to live in the house and another child wants to sell it? Are all the children able to pay for the running costs, or will it fall to only one child to pick up the bills?

Van Vuren says it is possible to register a residential property in the names of more than one person: "Shared ownership can work, depending on what is done with the house. If it is rented out, all costs [such as maintenance and rates] can be deducted and the net income shared between the co-owners. Or the house can be sold and the proceeds shared between the heirs."

WHAT COSTS WILL YOUR CHILDREN OR ESTATE NEED TO PAY?

As the property must be transferred, this is done by a conveyancing attorney and there will be costs involved. Can your children afford to pay for these expenses, or have you left enough liquidity/life cover to provide for the costs?

There is also capital gains tax to consider when leaving assets to your children. Although a primary residence is exempt from capital gains tax up to the first R2 million of capital gains, any second property or investment property would attract capital gains tax and possibly estate duty if the estate is worth more than R3.5 million.

It is worth having these conversations as a family, whether you are a parent or an adult child. The last thing you want is a legacy to create financial complications for those you love.