

Wills lessen the trauma of death



A will is an important part of estate planning and can prevent additional heartache and trauma for your loved ones in the event of your death.

“If a person dies without a will in South Africa, the residue of the deceased’s estate (after payment of debts, costs and taxes) must be distributed to his/her heirs under the rules of intestate succession,” says Louis van Vuren, the CEO of the Fiduciary Institute of Southern Africa.

“In contrast, having a will in place means that the practical issues around the division of assets and the nomination of an executor can be dealt with,” he says.

The rules of intestate succession

In essence, the spouse of the deceased (including a life partner) and the children of the deceased will each inherit a so-called child’s portion, provided that such a child’s portion is more than R250 000.

The spouse must receive at least R250 000 or the child’s portion, whichever

is greater. To determine the size of the child’s portion, the spouse and all the children are counted as children and the residue of the estate is divided by that number. If the child’s portion of the residue is more than R250 000, that is what the spouse and each child will receive. If it is less, the spouse will receive R250 000 and the children will share what is left in equal shares.

“This division, though fair, can be quite impractical,” says Van Vuren. “For example, if the residue of the deceased estate consists of a house of R1m and cash and investments of R260 000, the estate is not that easily divisible. If the surviving spouse is not the natural parent of the children, the situation can be quite sticky.

“Furthermore, if there is no will, there is no nominated executor to wind up the estate. The Master of the High Court will then appoint an executor after consultation with interested parties. This can be a time-consuming process.”

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DIY wills

While it is easy to comply with the formal requirements of a will (go to www.justice.gov.za/master/wills.html to see these requirements), it is not as easy to draft a practically executable will, says Van Vuren.

The terminology used must be accurate and relevant legislation must be complied with – especially when it comes to ‘so-called’ re-constituted families.

You can get a free will from certain institutions under certain circumstances, says Van Vuren. “Sometimes, this is on condition that the institution is nominated as executor in the will and they will get their dues when the deceased estate is administered and they take an executor’s fee.”

A will should not be drafted until at least basic estate analysis or planning has been done, he says. “In fact, a will should be the end product of an estate planning process, so that it can cater for the full picture.”