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ESTATE PLANNING

No will? What happens to your estate when you die

DYING without a valid will can leave families facing intestate succession, delays and administrative complications. Here is what South Africans should know before National Wills Week. | SUPPLIED

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IF YOU do not have a will or it's outdated, read this

While 98% of people say they want to leave a legacy, having a will is essential to make it happen. Statistics reveal that 66 to 70% of South Africans do not have a will, encompassing around 8.7 million homeowners, 5 million single mothers, 5.4 million car owners, and 1.4 million pet owners. Among parents, only about one-third have wills, which leaves their children unprotected. Of those who do have wills, 67% have not reviewed or updated them in the past year, and 23% last made updates over five years ago.

Dying without a will is unacceptable. Studies show that the main risks of dying without a will include family disagreements (60%), extended estate settlement (56%), and complicated legal procedures (42%).

Is this your view?

"I don't own enough"

This is the most common reason people give for not having a will. Many believe that owning few possessions makes a will unnecessary, often overlooking everyday assets such as bank accounts, cars, pension funds, personal belongings, and life insurance. They may also not realise a will covers more than asset distribution. It can specify wishes such as whether to be cremated or buried, who will care for your minor children if you are no longer able, steps to prevent inheritance from being paid into the state's Guardian's Fund, who should close your social media accounts, whether you are an organ donor, whether you want a "living will", and other important preferences.

"I have not got around to doing that"

This is the most common obstacle. Many people intend to draft a will but keep postponing it because there is no urgent deadline or triggering event. Consequently, they often wait until it's too late. Unfortunately, an idea you have in your head will mean nothing after you pass away.

"My family will sort it out"

People assume that relatives will happily inherit everything on the basis of fairness, overlooking South Africa's strict law of intestate succession discussed below, which determines who gets what. This may not align with your wishes. Additionally, any inheritance your minor children receive will automatically be held by the government's Guardian's Fund, which can be difficult to access until they turn eighteen.

Expecting your family to handle your estate during a traumatic time is irresponsible. Money can cause family members to alter their behaviour, often resulting in serious family conflicts.

"It is too expensive"

Many believe that drafting a will is expensive, with high lawyer or fiduciary fees. However, they forget that dying can be costly, and without proper planning, unexpected expenses and consequences can arise, often exceeding the cost of preparing and executing a will. The saying "penny wise and pound foolish" rings true here.

"It will call death"

Planning for your death makes many people deeply uncomfortable. Some cultures or individuals are fearful and superstitious, believing that actively discussing or planning for death invites bad luck or "tempts fate".

"Our family cannot talk about that"

Relatives sometimes steer clear of the topic because they fear that talking about a will might appear greedy or make family members feel like someone is anxiously anticipating their passing.

"I have done a will a long time ago, so should be fine"

A will is a dynamic document that should be updated whenever family circumstances change or you change your mind. For instance, if your ex-spouse is still named as a beneficiary, they will inherit. South African law gives you three months to amend your will, during which it is assumed your ex-spouse predeceased you. After this period, they will inherit, which might not be what you want.

You can decide who inherits what; use the right

South Africans have freedom of testation, a legal principle that permits individuals to determine the distribution of their assets and estate after death via a valid will. Essentially, you can specify who receives what, excluding others.

However, this freedom is not unlimited. Courts will modify or invalidate will instructions if they breach the law or constitutional principles—such as unfair racial discrimination—are unclear, impossible to implement, or attempt to circumvent mandatory family support obligations.

These obligations include child support and statutory marriage claims under the Maintenance of Surviving Spouses Act, which ensures a surviving spouse can seek financial support from the deceased's estate to avoid destitution.

Make use of Free Wills Week

Even after COVID-19 (when many people experienced the consequences of someone dying without a valid, up-to-date will), the Master reported in 2022 that fewer than 15% of South Africans have a valid will at the time of their death, when estates are being wound up.

To address this issue and facilitate estate administration, the Department of Justice and Constitutional Development (DOJ&CD) promotes National Free Wills Week to raise public awareness of estate planning and to motivate all South Africans to create a legally valid will—arguably the most crucial document in one's life.

With Free Wills Week set for September 14 to 18, individuals are encouraged to evaluate their personal circumstances and prioritise their estate planning. Many free will services will be offered, but beware of hidden conditions, such as selling insurance. Always stay cautious and fully informed before agreeing to anything.

Avoid having a (free) will drafted by product providers without considering your assets, liabilities, and personal circumstances. Remember, a will is the final document in your estate plan, and no universal will suits everyone, contrary to what some product providers offer. Empower yourself and leave a legacy of love.

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