

The importance of a will (and why you need one)

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It's one of the basic, key instruments of a comprehensive financial plan and yet so many people die without one. Moremadi Mabule, head of Wills Operations at Sanlam Trust, examines the critical importance of a will in estate planning and what to consider in drawing one up.

Being heard, even after you've passed on

Financial planning should be approached holistically, and your will forms a critical part of estate planning. It enables you to secure a legacy and literally prescribes how your wishes regarding your assets will be carried out after your death. Moremadi points out that estate planning cannot be discussed without referring to a will. The consequences of dying without one (intestate) can be dire, possibly resulting in financial and legal challenges and disputes. Without a will, the State will step in to administer your estate and you literally would have no say over how your assets will be distributed to your loved ones or the fees that could be payable.

Know how you are married

Understanding your marital regime (the laws that govern your particular union) is an essential part of drawing up a will. Moremadi points out that the marital laws in South Africa are not static and since the year 2000 have undergone profound changes. The right to marry and to have your marriage recognised by the State whether you marry in community of property; by antenuptial contract; by antenuptial contract with accrual; by Muslim rites; in a customary or polygamous arrangement; or as a same-sex couple, have been dealt with under a range of Acts over the years. Knowing your marital regime and how it relates to estate planning goes a long way in mitigating any risks or challenges after you pass away – and especially if you have minor children to provide for.

10 tips to think about in drawing up your will

Moremadi has reduced her wealth of knowledge on this topic to 10 useful tips for you to follow when drawing up your will.

1. Keep it simple. Be specific and practical, but don't specify every single one of your assets as this may lead to your executor having to value every item. This takes time and may be costly. Use words like 'furniture' or 'personal items' unless you have specific movables (e.g. valuable jewellery) that are intended for a specific person.
2. Ensure that you have enough liquidity in your estate. There may be executor fees, master's fees, estate duty or capital gains tax payable and these will need to be covered. Establish who is liable for what at the outset.
3. Avoid ruling from the grave or illegal clauses. Your wishes will be carried out as you stipulate them in your will but only if they are actionable within the law.
4. Don't be vague. Using terms like 'cash' or 'investments' is not helpful. Stipulate what cash (in a specific bank account, for example) or if possible, refer to the investment by its name (such as 500 MTN shares).
5. Be clear about what's in and what's out. Do not specify assets that do not form part of the estate, for example, a property owned by a company or trust.
6. Understand the terms 'child', 'spouse' and 'marriage'. There is no such thing as a common law spouse. In terms of the Pension Funds Act, your long-term life partner could be considered as a spouse but in a will, it is best to specify who you are referring to as your life partner, especially in the absence of a marriage contract. And make sure you provide for them as you would for a person that you are legally married to.
7. Make provision for preferred claims. This is especially important in the case of child maintenance and accrual claims. In the former instance, if you are responsible for the maintenance of a child, the court maintenance order or your divorce agreement should be included in your planning.
8. Make provision for a testamentary trust. This applies to, for example, minor children for whom you are responsible until they are legally adults.
9. Nominate a guardian for minor children. In the age of COVID-19, where children are losing both their parents simultaneously, this unfortunate provision in your will has become of critical importance.
10. Get help. Appoint an appropriately authorised financial adviser if you don't already have one. They have the tools and know-how to help you with all aspects of financial planning, of which wills and estate planning is an important part.

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