



ESTATE PLANNING AND WILLS

Insurance | Financial Planning | Retirement | Investments | Wealth

The importance of having a will



A will may be described as: a written, unilateral, voluntary, deliberate, revocable expression in a legally prescribed way which effectively disposes of a competent testator's property on his death.

What does it mean to *die intestate*? The Intestate Succession Act applies.

Freedom of testation: the freedom of a person to dispose of his or her estate as he or she pleases.

Freedom of testation explained



The freedom of a person to make any provision he or she wants to make in a valid will, and the right to have his or her estate divided in whatever manner he or she wishes.

Limitations to freedom of testation:

- › Constitutional provisions: public policy
 - › Statutes: e.g. Maintenance of Surviving Spouses Act (amendments pending)
 - › The common law duty of support: maintenance of children
 - › Retirement benefits (separate discussion)
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Testamentary vehicles

- Legacies
- Residue
- Usufruct/s
- Trustees, guardians and executors (functions)

Advantages of a testamentary trust:

- › An instrument to set out one's aims and objectives
 - › Perpetual
 - › Interests of young children protected
 - › Protect the interests of the vulnerable or disadvantaged
 - › Provide for one's parents
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Formalities required for a valid will



When a testator signs or executes his or her will, it must be executed in accordance with certain rules set out in the Wills Act.

A will that is not executed in accordance with the formalities required by the Act is invalid.

Consequences of invalidity: the will is of no force or effect, unless a court condones it.

The “rescue provision” explained.

The dangers of the “off the shelf-will” or the online template.

Common errors that generally occur



- Nominating *laypeople* as executors and not stipulating the power of assumption in the will. (executor's fees discussed)
 - Leaving legacies without substitute beneficiaries.
 - Not revisiting a last will regularly or with the happening of a life event (birth, divorce, etcetera)
 - Not having sufficient liquidity in the estate.
 - The liquidity analysis is not comprehensive (executor's fees, transfer fees, funeral costs, estate duty etc.) or not done at all.
 - Liquidity is required for multiple reasons: for the estate, for the maintenance of spouses and children, etcetera)
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THE ASSETS IN AN ESTATE



In general

The three categories:

- ① The retirement fund benefits (section 37C the Pension Fund Act)
- ① Life policies (beneficiary nomination, contract law)
- ① Other assets such as residences, household content, unit trusts, shares, cash, etcetera (the will, law of succession)

The rules that are applicable is not similar are not similar.

SECTION 37 C



- ⊗ This section limits the freedom of testation.
 - ⊗ It applies to the distribution and payment of death benefits from retirement funds.
 - ⊗ The rationale behind the section.
 - ⊗ The scenario's:
 - ⊗ •Dependents only
 - ⊗ •Nominees only
 - ⊗ •Dependents and nominees
 - ⊗ •No dependents and no nominees
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THE PROCESS



1. Identify dependents:

- ⦿ A person in respect of whom the member is legally liable for maintenance.
- ⦿ A person who the member is not legally liable for maintenance if the person is in fact dependent.
- ⦿ A person whom the member would have become legally liable for maintenance had the member not died.

2. Nominees a per the nomination form

- ⦿ If there are dependents and nominees, the nominees do not automatically qualify
 - ⦿ A nomination form is not binding on the trustees

 - ⦿ There is a duty on trustees to do a reasonable investigation and effect an equitable distribution.
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EXAMPLE



Susan is 45 years old.

She is a widow.

She has a 12-year-old son, Tim.

She is concerned about his future and financial well-being.

She has a retirement benefit (Section 37C).



Steps to Calculate Estate Duty

Step 1: Calculate gross estate value

- ① Sum of all the deceased's assets - liabilities

Step 2: Calculate net estate value

- ① Gross estate value - deductions

Step 3: Calculate dutiable estate value

- ① Net estate value - (exclusions + rebate) - R3 500 000

Step 4: Apply rate of duty

- ① $20\% \times$ dutiable estate (or 25% , if the dutiable estate exceeds R30 000 000).
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Property and deemed property	
House	1 950 000
Car	300 000
Life Policy (no beneficiary)*	2 000 000 <i>(who can the beneficiary be?)</i>
Gross estate	4 250 000
LESS: Deductible expenses	
Funeral costs / administration	50 000
Executor's fees	171 062 (4,025%)

Example continued	
LESS: liabilities	
Bond (on home which is a primary residence)	250 000
Credit card	20 000
Net estate	3 758 938
Less Abatement	(3 500 000)
Dutiable estate	258 398
Estate duty @ 20%	51 788

Liquidity calculation	
Liquidity required	
Bond	250 000
Credit	20 000
Funeral/administration	50 000
Estate duty	51 788
Executors' fees	171 062
Total	542 850

What are challenges and options to consider?



- ✿ Would the life cover be sufficient for the minor child (consider his future expenses and educational needs of a minor)?
 - ✿ Consider additional funding from the retirement benefit (depending on the percentage allocated and the value of the retirement benefit). We do not know her circumstances.
 - ✿ Consider if the money should be left to him, in a testamentary trust and to what age (18, 21, 25?). Who will the trustee be?
 - ✿ Consider the implications of a beneficiary nomination to save some executor's fees. But balances the scales carefully.
 - ✿ Liquidity needs of the estate versus savings on executor's fees on the life policy.
 - ✿ Who will receive the benefit on his behalf (life cover)?
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thank you 