

Wills and Estate Planning

The importance of having a legally valid will:

Validity requirements in SA:

- The testator has to sign in full at the bottom of each page and at the end of the will.
- The will has to be dated and the place of signature noted.
- Witnesses must sign at the same time as the testator.
- The will has to be signed directly above the text at the end with no big spaces between the text and the signatures.
- The witnesses have to be over the age of 16 and mentally capable and must not be an heir or married to an heir in terms of the will.

Consequences if will is not valid:

- The previously signed will is now the valid will.
- If there is no valid previous will, your estate will be intestate, with unintended consequences for taxes, and also for who now inherit.
- The heirs may now not be the persons that you intended to inherit.
- If you intended to leave your estate to your spouse with no estate duty consequences and it is now split between your spouse and children, the inheritances to the children will be subject to taxes in your estate.

How much liquidity do I need in my estate for taxes and administration costs:

Estate duty (20% up to R30 million and 25% for values over R30 million).

Executor's fees (negotiate the fees: maximum legal tariff in SA is 3.5% plus VAT).

Income taxes, accounting fees, capital gains tax, Master's fees and valuation fees (for assets at date of death) have to be provided for.

How to ensure that my heirs have access to liquidity:

Nominated beneficiaries give access to liquidity as these pay outside the estate directly to them.

Bank accounts can be in the names of heirs or surviving spouse.

There can be a trust to provide for beneficiaries.

How to structure my affairs to limit costs and taxes:

Nominate beneficiaries on policies and on living annuities and pension funds,

Negotiate executor's fees.

Have family member as co-executor.

Make donations during lifetime.

Donations between spouses are tax free.

What if I have children living abroad?

Their non-residency tax status in SA must be put on record with SARS to receive unlimited inheritances externalized from SA - exchange control regulations in SA are applicable.

Trusts in SA and distributions are taxed in the jurisdictions where the children are tax resident; be aware that they may be taxed punitively and you may have to plan otherwise. Specialist expert advice is recommended.

Do I need a will for investments outside SA?

There are many possibilities, depending on which countries are involved. People are advised to consult an expert who is familiar with the rules in each country.