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# The importance of having a will

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The Law Society of South Africa's (LSSA) National Wills Week will take place from September 11–15 when the importance of having a will is highlighted.

It is also an opportunity for law firms to perform social outreach activities, something which is encouraged in the industry.

During this week, law firms that have signed up will be assisting members of the public free of charge to draw up a basic will, a move that will go a long way to helping families at a time when they are grieving the loss of a loved one.

**The LSSA says it is important to have an attorney draft your will because they:**

- Are qualified in the law
- Can advise on any problems with your wishes
- Will ensure it is valid and legal.

Matthew Ainsworth from Jooste Peters Incorporated says, "Having a will in place is so important for when you die. It is a legally binding set of instructions for what must be done with your 'estate' – your assets, properties, and other possessions you have collected during your life."

Without one, discussions about who will inherit what or how your estate will be divided up may not be what you would have wanted.

A common example of this could be your surviving husband or wife that you wanted to inherit your estate might not be looked after because of children or others claiming their share.

So too are difficulties found when young children have their portion of any inheritance held back until they are 18 with their new guardian needing to claim maintenance from the inheritance. "This route is much more difficult than claiming from a trust that is set up after the death had there been a will."

Ideally, families have had open and honest discussions among each other that there is an understanding of the deceased's general wishes, but this is not a common occurrence.

Wills are not only for people who have a lot of money, or who own several properties, but are something every adult should have to ensure their estate is wound up neatly and with as little guesswork as to wishes as possible. This also goes a long way to ensuring family feuds do not occur with relatives fighting over possessions or money.

**Important to remember:**

- A will is an original paper document that is signed by you
- Two competent witnesses will also sign it
- A digital will is not a legally recognised document
- The High Court would need to be approached to have it accepted
- This is not guaranteed
- It is an expensive exercise
- If you are a beneficiary of the will, you may not:
  - Write or draft the will
  - Be a witness signatory on the will
- Request anything illegal or immoral be done with your estate.

- potentially destroying the family unit
- There can be extra financial costs to wrap up your estate, and,
- It can take a long time for an executor to be appointed.

**What to do with your will when it is finalised and signed?**

- Provide copies to trusted friends or family
- Let your executor have a copy or tell them where it is
- Most attorneys will keep the original copy safe for you

**As with a will, other wishes or important information should be shared:**

- Do you have a funeral or insurance policy?
- Do you want to be buried or cremated, and where?
- Where are your important passwords and household documents kept?
- Do you have a living will or advance directive for your wishes regarding medical care at the end of your life?

**If no will is in place:**

- A spouse will get an equal share with your children regardless of whether they are from the same marriage or not, or R250 000 – whichever is the greater
- It is more difficult for new guardians of young children to get maintenance money from your estate
- Family may feud and fight over money, houses or possessions,

"Crucially too is identifying someone who will be your executor, the person who will manage the process of wrapping up your life for you after you have passed on," says Ainsworth.

Your will can also stipulate wishes, such as who you wish your pet to live with after your passing, or who gets your precious stamp collection. Ownership of your digital life – photographs stored online, crypto wallet and other items – can also be outlined.



Matthew Ainsworth from Jooste Peters Incorporated hopes Wills Week will prompt people to get a will drafted to alleviate problems families face when loved ones pass without one.

Keshnie Mathi lives in Greymont and advocates for people to have these difficult discussions before they become ill with a life-limiting disease like cancer or before they reach old age. This is to ensure their wishes are respected if they are ever in a position when they are unable to speak for themselves. "If you are on a ventilator or heart machine, for example, and you are possibly nearing the end of life and a decision needs to be made about your treatment, do your loved ones know your desires? Do you want them to fight until no stone has been left unturned for treatment, or would you prefer to be allowed to pass? These are difficult and hard discussions but are so important as you will have taken the difficult decision-making away from children or spouses and spoken for yourself while you still could."



Keshnie Mathi is an end-of-life doula and wellness specialist.

A list of Gauteng-based law firms participating in Wills Week can be found at [www.lssa.org.za](http://www.lssa.org.za)

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