

## Your Will: Planning for the Inevitable

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# Your Will: Planning for the Inevitable

Do you know how your assets will be distributed when you die? The Fiduciary Institute of South Africa estimates that 76% of South Africans die without a will which means for most people their assets will be distributed according to the laws of intestate succession - unless they put a will in place.

While a will is a simple way to ensure that your assets are distributed according to your wishes, this does not necessarily apply to your retirement funds. In this case the trustee has to follow certain rules under the Pension Funds Act.

Here we provide you with information to help you make informed decisions around estate planning – and because we want you to live a long and healthy life we also provide some tips on how to prevent lifestyle diseases.

## What happens when you die before retirement?

What will happen to your retirement funds should you pass away?



The money is distributed to your dependants, with the trustees of the fund responsible to ensure that the death benefit is shared equitably amongst the dependants. The trustees (through the administrator, who is usually an insurance company) will do an investigation into the dependence of any surviving legal dependants – usually including a spouse, parents, children, etc. However, anyone who can prove that they were financially dependent on you, including children from other marriages or relationships, have a rightful claim on some of the proceeds.

Once the trustees have identified and contacted all of the dependants, they'll distribute the benefits according to the level of dependence. So, if a member of a pension fund was married and had one adult child who was employed, then the spouse would normally get the full benefit. However, if the child was still living at home, and therefore dependent on the deceased, a portion of the money could be paid to them. This does assume that there were no other dependants.

It is therefore important that you include all your legal dependants on your nomination form and keep it updated, as this will speed up the process and help the trustees to distribute the funds quickly.

## How do you prove financial dependence?

For both a spouse and minor children, financial dependency is assumed and no further proof is needed.

Financial dependence can also be proven by a divorce order or by supplying bank statements proving that the deceased paid for certain expenses.

Tuition fees, bond repayments and any other expenses that were paid by the deceased can be used to prove financial dependence. Tracking cash is often very difficult and should be avoided if at all possible. That's why it is very important that all of your dependants can prove their dependence in the event that you do pass away untimely.

Writing a will is one of those things most of us avoid. It's understandable, because by doing so we have to consider our death and leaving our loved ones. But it's those loved ones who need us to tackle that document now, before it's too late.

## Make sure your wishes come true

If you do not have a will at the time of your death, the state will impose a will on your estate through its intestate succession legislation. This means that those whom you would've wanted to benefit may not do so, or not in the way you would've chosen.

According to intestate succession legislation your assets will be distributed as follows:

Deceased is survived by	How estate is divided
Only the surviving spouse	Total estate goes to the spouse
Only descendants	Total estate is divided between descendants
Spouse and descendants	The spouse gets the greater of R125 000 or a child's share and the balance is divided equally between the descendants
Both parents	Your estate is divided equally between both parents
One parent, no descendants of deceased parent	Total estate goes to the parent
One parent and descendants of deceased parent	Total estate goes to the spouse
No spouse, No descendants, No parents, but descendants through mother & descendants through father	Estate divided into two parts: half to descendants through mother, half to descendants through father
No spouse, No descendants, No parents, No descendants through mother or father	Estate goes equally to Blood Relatives that are nearest in degree of relationship.

Even if the intestate succession is how you would wish your estate to be wound up, the absence of a will at the time of your death will result in delays, meaning your loved ones will be denied financial support until all the legalities concerning your estate are resolved.

## Tips and guidelines

**Plain and practical:** Write your will plainly, in the language you would speak at home, and keep your instructions as practical as possible. Remove or rewrite any Latin or legal phrases you don't understand. Ask an impartial third party to check your will to make sure that there are no ambiguities and their interpretation is the same as yours.

**Living document:** Remember that your will is a 'live' document: you should review it every three to five years (or sooner) as your personal (marriage, divorce, birth of a child) and financial circumstances change.

**Sufficient funds:** A life cover policy is a cost-effective way of ensuring that there are enough funds to settle your debts and taxes after your death, as well as giving your children financial security.

**Legal guardian:** Appoint a guardian to take care of your children. Draft a letter to convey your wishes regarding how you would like your children to be raised.

**Marriage and your will:** Your marital status (or common law partnership) affects your assets and therefore your will. The legal agreement at the time of your marriage (whether in or out of community, with or without accrual) must be taken into account in your will. This is where a legal adviser would be helpful.

**Trust funds:** A testamentary trust is an effective way of providing for the financial future and well-being of your minor children. The trust comes into existence only on your death. It should be drafted by an attorney specialising in this field.

**Safe and sound:** Place your updated will and any letters to family and friends in a folder and keep it in a secure place. Tell one or two trusted people where to find these documents when you die.

\* All information for this article supplied by [Liberty Life](#)