

Where There Is a Will, There Is a Way: Why Estate Planning Matters

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It is said that death and taxes are the only certainties in life. Yet despite the inevitability of mortality, most people take few steps to put their affairs in order.

We plan for retirement, purchase property, establish businesses and put money aside for a rainy day, yet the question of what happens to our affairs when we depart this life is often postponed. Unlike most forms of planning, estate planning also known as succession planning, does not come with the luxury of knowing exactly when our death will occur.

That uncertainty is precisely why estate planning is important. It allows an individual to make decisions about their affairs while they are still able to do so, rather than leaving family members and loved ones uncertain as to what the deceased intended after death. For some, this may mean a carefully prepared Will. For others, particularly those with significant assets, children, businesses or blended families, it may require a more comprehensive plan.

The law provides the framework for what happens after death. Estate planning gives a person the opportunity to put structure in place, make their wishes known and to speak beyond the grave.

Testate or Intestate: Why the Distinction Matters

The starting point in any discussion on the distribution of a deceased's estate is whether that person died testate or intestate.

A person who dies having made a valid Will dies *testate* and their estate is administered according to the wishes expressed in that Will. One who dies without a valid Will dies *intestate*. In those circumstances, the distribution of the estate is determined according to the rules of how an estate devolves on intestacy rather than by the deceased's testamentary wishes as stated in a Will.

In Trinidad and Tobago, the **Wills and Probate Act, Chap. 9:03** governs the formalities for making a valid Will and the process by which it is admitted to probate. Intestate succession is governed by the **Administration of Estates Act, Chap. 9:01**, which sets out the order of entitlement and how an intestate estate is distributed, including the rights of a surviving spouse, children, qualifying cohabitants, parents and other relatives.

A valid Will gives a person the opportunity to decide how their estate should devolve and how assets, real and personal, are devised and bequeathed to persons known as beneficiaries.

Without a valid Will, the manner in which the Estate is administered is based entirely on what the law prescribes in the legislative scheme established by Parliament. That statutory scheme is predetermined and cannot take account of personal preferences, promises or intentions that were never put into legally effective form.

What Happens If You Die Without a Will?

Dying intestate does not mean an estate is left without a legal framework, or that the deceased's property automatically passes to the State. The Administration of Estates Act establishes who is entitled to inherit and how the estate is distributed after debts and expenses are paid. The outcome depends on the deceased's family circumstances and may provide for a surviving spouse, children, qualifying cohabitants, parents and other relatives in the order set out by the legislation. Where there is no one entitled, the estate may pass to the State.

The difficulty with intestacy is that the law must apply general rules to individual families. It cannot take into account, for example, an understanding among family members or the deceased that a particular house would go to one child, that a dependent would be supported or that one beneficiary had already received substantial financial assistance during the deceased's lifetime.

Similar issues can arise in blended families, second marriages and common law or cohabitational relationships, particularly where promises concerning property or financial support were made but never formally documented. The law can determine who is entitled to an estate but it cannot give legal effect to an intention that was never properly expressed.

What Happens to the Estate After Death?

Publishing a Will, although a very solemn and serious matter, does not, by itself, bring the administration of an estate to an end. There are legal and administrative steps to complete before an estate can be distributed.

Where a person dies leaving a valid Will with a named executor who is able and competent to act, that executor, or executors, if there are more than one, may apply to the Probate Registry of the Supreme Court for a Grant of Probate. The Grant formally recognises the executor's authority to administer the estate.

Where a person dies intestate, there is no executor. An appropriate person may instead apply for a Grant of Letters of Administration. Where a Will exists but no executor is able or willing to prove it, a Grant of Letters of Administration with the Will annexed may be required.

The personal representative, whether an executor or administrator, must identify, preserve and collect the deceased's assets, deal with debts and liabilities and distribute the estate to those entitled under the Will or the rules of intestacy. These office holders carry legal responsibilities to the estate, and its beneficiaries and should take the role seriously and expeditiously discharge their obligations.

A Will Is Important but It Is Not the Whole Estate Plan

A Will is central to most estate plans, but it may be only the first step of a process that is suitable for you. There is no one size that fits all. Effective planning requires consideration of a person's circumstances, assets and the legal mechanisms through which those assets will ultimately pass.

The ownership of property is one example. The consequences of death may differ depending on whether property is held solely or jointly. Certain benefits, investments and insurance proceeds may likewise be dealt with differently depending on the arrangements governing them.

Business interests require particular attention. A business owner may need to consider what happens to shares, whether a shareholders' agreement restricts their transfer and how the business is expected to operate after their death. Parents and others responsible for dependents must also consider how those dependents will be provided for, in what manner and for how long.

A Final Thought

A well-considered estate plan is invaluable: it can spare a family and loved ones some of the uncertainty, disagreement, litigation and administrative burden that often follow death.

Making a Will, which can be revisited and changed over time, can ease the practical burdens that follow and spare those left behind from having to rationalise your estate at what may be a difficult time.