

YOUR ESTATE PLANNING GUIDE

By Nunez Attorneys Inc

Everything you need to know to protect your loved ones, plan your legacy, and take control of your future.



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You DO have an estate!

(even if you don't think so...)

Many individuals believe that “I don’t need a Will because I don’t have enough” or “I’m too young to worry about this now” or “I’ve placed all my assets in a trust, so I don’t have assets”. However, if you possess a bank account, a car, personal belongings, life insurance, receive a salary, or have children, you have an estate that requires a plan. **Simply being alive means, under our law, that you have an estate.** Life is unpredictable, and whether you are single, starting a family, running a business, or simply own a car and a bank account, having a Will ensures that your wishes are honored and your loved ones are safeguarded. Your Will enables you to:

- Choose who should inherit your assets (and who shouldn’t)
- Appoint a trusted executor, guardian, and trustee
- Plan for your children’s future and education
- Protect your partner, pets, and possessions
- Prevent unnecessary delays, disputes, and costs

Remember, if you don’t have a Will, the law decides for you. That may not reflect your true wishes. It’s also not just about what you own now but it’s about planning for the future.

Estate planning is not just about drafting a Will, it’s about **taking control of your future**. It’s the process of making thoughtful, legally binding decisions about who will care for your children, who will manage your finances, and how your assets (big or small) will be distributed when you’re gone.

This guide is designed to make the process easier by answering all your most important questions by grouping topics into clear, practical sections:

- **What a Will is and why it's essential**
- **Who should be your executor, guardian, and trustee**
- **How bequests, legacies and residue work**
- **Providing for loved ones, pets, and funeral wishes**
- **Why a testamentary trust can protect your children**
- **How your marital regime affects your estate**
- **Foreign assets, digital life, and complex situations**
- **How to plan for liabilities, tax, and maintenance**

WHY USE NUNEZ ATTORNEYS INC?

Because you won't regret it.

We don't say that with arrogance. We say it because we genuinely care about helping people and believe we do it well. Not because we know everything, but because we go as far as humanly possible to support our clients. One of the ways we do that is by educating you and that's why we've created this guide. **Everything we'd tell you in a consultation is right here at your fingertips.** At Nunez Attorneys Inc, we believe legal tools shouldn't only be accessible to those in crisis or those who've been wronged because every ordinary person needs a Will, and at some point, legal guidance too. It's an honour every time someone chooses us, whether for a Will, a property sale, or a new business venture. We want to be your go-to attorney for life's most important decisions.

I'm Elanie Nunez, the founder of Nunez Attorneys Inc., a boutique law firm in Pretoria. I'm an admitted attorney, conveyancer, and notary, with a background in property law, commercial work, and estate planning. After years in a large firm, I opened my own practice to give clients a personal, transparent, and relationship-driven legal experience.

Here's what we offer for drafting your Last Will & Testament:

- R1600 once-off fee per person; or
- R2000 discounted rate for both spouses (married) or prospective spouses (engaged); or
- FREE if we are formally appointed as your Executor

But here's the thing: we don't recommend choosing the "free" option.

There's a common tactic where professionals offer to draft your Will for free in exchange for being appointed as executor. But as you'll see in the FAQs, executors are entitled to charge a percentage of your estate and that cost adds up quickly. We'd rather charge you a little now than cost your loved ones a lot later. That said, we're honoured to act as executor if that's your wish and we'll deliver top-notch service. But in most cases, we recommend you appoint someone close to you (like a spouse or adult child) as executor and simply nominate us to act as agent when the time comes. That way, your loved ones stay in control, and we're there to guide them every step of the way. Because that's what we do. We stand by you when it matters most.

Warm Regards,

Elanie Nunez

Nunez Attorneys Inc

Attorney | Conveyancer | Notary

Wills 101

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FAQ'S:

01 What is a Will?

It is a legal document that sets out how your assets will be distributed after your death. It allows you to name heirs, guardians for your children, trustees for any testamentary trust, and an executor to carry out your wishes.

02 Why is having a Will important?

It ensures your wishes are respected, avoids family conflict, and speeds up the estate administration process.

03 What are the legal requirements for a valid Will in South Africa?

It must be in writing, signed by you and two competent witnesses. Although dating a Will is not a legal requirement, doing so will provide clarity as to which Will is the most recent and updated document to submit to the Master.

04 Who can be a witness to my Will?

Any person aged 14 years and older who is competent to give evidence in court. Anyone who stands to benefit under your will (whether as an heir or as nominated executor, guardian or trustee) is not allowed to sign as a witness, as doing so could invalidate their inheritance or nomination. The testator (person whose Will it is) and the witnesses must sign in the presence of each other.

05 Can I write my own Will?

Yes, as long as it complies with the Wills Act No. 7 of 1953. DIY Wills however often lead to disputes or delays due to vague wording or non-compliance with formalities (e.g. missing signatures or incorrect witnesses) and if not correctly done, it may be declared invalid or cause confusion.

06 Why should I use an attorney to draft my Will?

Having a legal professional draft your Will ensures it's valid, enforceable, and practical. A professional will also know which clauses to insert to ensure proper estate planning. For example, if you are married out of community of property with the acorual, since I am also a notary (attorney specialising in contracts including Wills), I will know to insert additional clauses that can address this aspect which your standard attorney will not necessarily know about.

07 Do I need to register my Will?

No. South African law does not require registration, but the original must be safely stored. If you lose the original the Master will not accept a copy, and your estate will be administered as if you died without a Will.

08 Where should I store my Will?

Preferably with your attorney, in a fireproof safe, or at a trusted institution. Always let someone know where the original is.

09 Can my Will be stored digitally or scanned?

No, only the original signed and witnessed paper copy of your Will is legally valid in South Africa. Scanned copies are not enforceable and electronic/digital Wills are not recognised.

10 Can I revoke (cancel) my Will?

Yes, anytime. You can revoke a Will by either drafting a new Will that expressly revokes all previous Wills, or by physically destroying the old Will (e.g. tearing or burning it).

11 Can I amend my Will?

Yes, anytime. You can either draft a codicil (a short, legally valid amendment to an existing Will) when you want to make minor changes (e.g., change executor or add a bequest) and not redo the entire the Will, or you can draft a whole new Will. It is recommended to rather sign a new Will including the new provisions because a codicil must also be signed and witnessed like a full Will, and it is better to have one full document serving as your Final Will instead of two separate documents (existing Will and new codicil).

12 When must I update my Will?

It's advisable to review your Will after major life events (marriage, divorce, children, inheritance, loss of loved one) or at least every 2 – 3 years, whichever occurs first.

13 What happens if I die without a Will?

The Intestate Succession Act No. 81 of 1987 applies and your estate will be divided among your relatives according to a fixed formula. This Act does not provide for any other important estate planning factors such as executors, guardians, or trustees. It can cause delays, confusion, and family disputes.

14 What if my Will is challenged?

A Will can be challenged if there are allegations of undue influence, fraud or lack of mental capacity, problems with formal validity (e.g., unsigned, incorrect witnesses), or if family members were excluded who believe they were unfairly treated. Using a professional attorney reduces this risk and strengthens the enforceability of your Will.

15 Can my Will be contested if I have mental illness or dementia?

It is possible. A Will can be challenged if there's proof you lacked capacity when signing it. To prevent this draft your Will while still mentally sound, consider getting a doctor's letter confirming your mental state at the time, and use a professional attorney to draft and witness it properly. If you are unable to sign there are additional requirements, and a commissioner of oaths may need to also sign the Will to be valid.

16 Can my Will be kept secret from my family?

Before your death? Yes. After your death? No. Once your executor lodges your Will with the Master of the High Court, it becomes a public document. However, during your lifetime, you're not obliged to share it.

17 Do I still need a Will if I don't have much?

Yes. Even if you have only a small bank account, furniture, or a life policy. A Will ensures it goes to the right people, and it helps your loved ones avoid unnecessary delays or costs. It's also a way to appoint a guardian for your children and clarify your funeral wishes.

18 Can I use my Will to plan for my digital assets (social media, emails, etc.)?

Yes, you can and should. You can include instructions about who should have access to your email, social media, cloud accounts, whether you want accounts closed, memorialised, or transferred, and password storage (ideally via a secure password manager). Consider keeping login details in a secure place (not in the Will) and referencing it.

Executors, Guardians & Trustees

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FAQ'S:

01 Who is an Executor and what do they do?

An Executor is the person you appoint to administer your deceased estate, and this includes reporting the estate to the Master of the High Court, gathering and valuing your assets, settling your debts and taxes, distributing the balance to your heirs, and finalising your estate according to your Will. You can nominate a trusted individual (e.g., a spouse, child, friend) or a professional (e.g., attorney).

02 What is the Executor's Fee?

The maximum fee is prescribed by law at 3.5% (plus VAT) on the gross value of the estate and 6% (plus VAT) on income earned after death. You can negotiate or limit this in your Will.

03 Who is an Executor's Agent and what do they do?

If the value of your estate exceeds R250 000.00, the Master will require a professional person to administer your estate. If a family member is nominated as your executor, they will have to approach a professional (such as an attorney) to assist them as an agent. The agent will usually charge the fee that the Executor would have been entitled to, but your Executor can negotiate this. You don't have to appoint the agent in the Will. Your Executor can decide who to approach when the time comes.

04 Who should I appoint as Executor?

Someone responsible, preferably close to you, e.g. your spouse or adult child. They can appoint us as their agent.

05 Why do you recommend appointing someone close to me?

They remain in control of your estate and its finances (e.g. when they approach an agent to assist them, they can negotiate the fee so that the agent's fee is less than 3.5% because as nominated executor they can make this decision) and can act immediately. We assist with administration if needed.

06 What does it mean to appoint Nunez Attorneys as agent for the Executor?

We provide legal and administrative support while your appointed Executor remains in charge.

07 Can I appoint co-executors?

Yes, you can appoint a family member and an attorney, two professionals, or a spouse and a child. Be sure they can work together. If not, appoint a primary and an alternative.

08 Can my spouse be Executor?

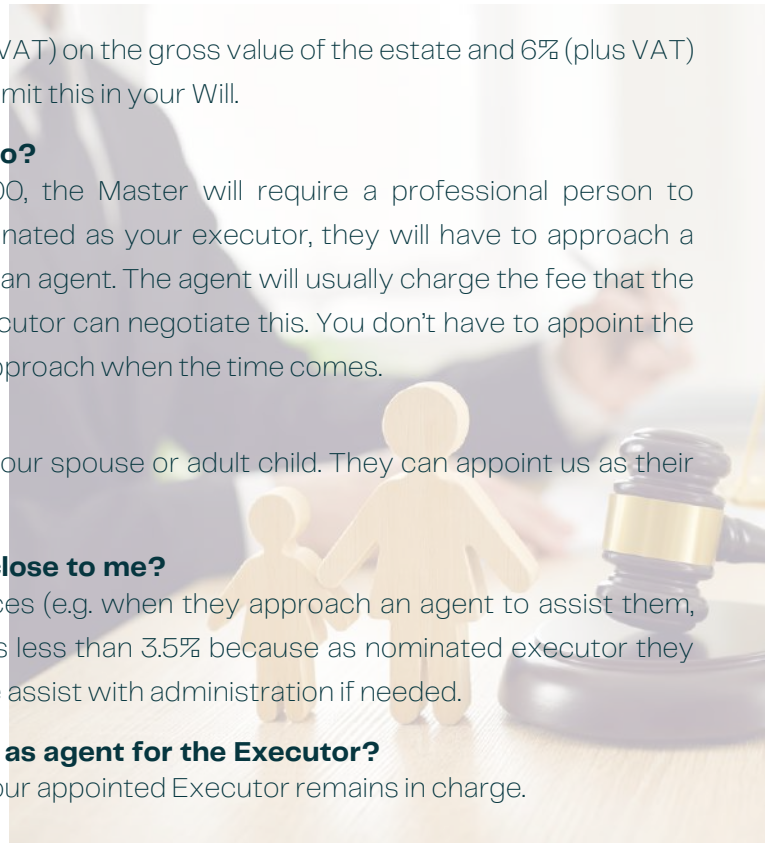
Yes, and it is often a good idea. They usually understand your wishes and have immediate access to key info. They can also decide who the Agent must be when the time comes.

09 Can I nominate someone outside South Africa as executor?

No. Your Executor must be someone physically located in South Africa. The Master will not appoint someone as Executor if they are not located here.

10 Who can be a Guardian for my children?

Any competent adult. Choose someone you trust to care for your child if both parents pass away.



Executors, Guardians & Trustees *cont.*

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11 **Do Guardians manage the money?**

No, unless they are also appointed as Trustees. It is wise to separate guardianship and financial management.

12 **Can I have alternative guardians?**

Yes you can and it is recommended. You can have a single (one person) or joint (two persons) guardian or alternative guardians (if your first nominee is perhaps unable or unwilling to accept the nomination).

13 **What is a Trustee and how is one appointed?**

A trustee is the person (or people) you appoint to manage the inheritance left to your children or other vulnerable beneficiaries through a testamentary trust in your Will. You also appoint them in your Will.

14 **Who must be a Trustee?**

You should appoint someone who is responsible and financially savvy, trustworthy and impartial, willing to act in the best interests of your beneficiaries, and ideally available long-term especially if your children are still young.

15 **How many Trustees should I appoint?**

You are legally required to appoint at least one trustee in your Will to manage a testamentary trust, but in practice it is strongly recommended to appoint two or more. Most clients choose a spouse or close family member (e.g., adult child or sibling) together with a professional (such as their attorney) as co-trustees, as this combination balances personal insight with legal and financial expertise to ensure the trust is managed correctly and in line with your wishes.

16 **What do trustees do?**

Trustees manage the assets placed in the trust on behalf of the beneficiaries. This includes safeguarding funds, investing wisely, keeping financial records, and making distributions in line with the terms of your Will.

17 **What powers will my trustees have?**

Your Will should spell out the trustees' powers clearly. Typically, these include the ability to open bank accounts, invest funds, pay school fees or medical expenses, and distribute income or capital as needed. You can give broad powers or set specific limits depending on your wishes.

18 **Are trustees paid?**

Yes, trustees are entitled to reasonable compensation for their time and responsibilities, unless your Will states otherwise. A professional trustee (like an attorney) will usually charge an annual fee or hourly rate, while a family member may waive their fee or agree on a nominal amount.

19 **What if a trustee mismanages the trust?**

If a trustee fails to act in the best interests of the beneficiaries or mismanages the trust's funds, they can be held personally liable for any losses. Beneficiaries (or co-trustees) can apply to the Master of the High Court to have the trustee removed and may pursue legal action to recover damages if needed. This is why it's so important to appoint trustworthy individuals and, where possible, include a professional as co-trustee to ensure accountability.

Beneficiaries, Bequests & Inheritance

09

FAQ'S:

01 Who is a beneficiary?

It is someone who stands to inherit something from you. It can be an heir (inherits from you) or a legatee (someone who receives a legacy).

02 What is a bequest?

A bequest is a specific item or sum of money you leave to someone in your Will.

03 What is a legacy?

A legacy is a general gift of money from your estate, often not linked to a specific asset.

04 What is the residue of the estate?

The residue is what's left of your estate after debts, taxes, and specific bequests are paid. The residue forms the bulk of your estate, and you must nominate one or more residual beneficiaries if you don't have a sole heir.

05 Do I need to list all my assets in the Will?

No, your Will doesn't have to list every asset, but it should clearly state who inherits the residue of your estate and you may list specific assets (like property, shares, cars) as bequests. (Tip: Keep a separate asset list and update it regularly to help your executor.)

06 What happens if a beneficiary dies before me?

If you do not provide for this, the benefit will fall into the residue of your estate or pass intestate. To prevent this name an alternative (substitute) beneficiary or update your Will as soon as possible.

07 What is substitution?

Substitution allows you to name an alternative beneficiary if your first choice dies before you. Without it, the benefit may fall into the residue or be inherited intestate. It ensures your wishes are followed, and inheritance goes to someone of your choosing, not by default.

08 What is collation and how does it work?

Collation is the process where lifetime gifts to children are considered when dividing an estate. If you want to include or exclude collation, you must say so in your Will.

09 Can I exclude someone from inheriting (disinherit them)?

Yes South African law generally allows freedom of testation but note that certain dependents (e.g. spouse or minor children) may still claim maintenance from the estate if they were financially dependent on you. If you wish to do this, a clear motivation or explanation in your Will (or a separate letter) can help reduce conflict.

10 Can I provide for my pets?

Yes. You can request a person or organisation to care for your pets and include care instructions in your Will.

11 Can I leave money to a charity?

Yes, you can leave cash or property to any registered non-profit or religious organisation. Be sure to name the charity correctly (including its registration number), specify any conditions clearly and be specific about the purpose (e.g. R50,000 to the SPCA for animal welfare in Pretoria).

12 Can I create conditions in my Will?

Yes, as long as they are not illegal, unreasonable, impossible, or against public policy. For example, inheritance at a certain age is valid. For complex wishes, a testamentary trust is best.

Marriage, Property & Financial Planning

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FAQ'S:

01 How does my marriage affect my Will?

Your marital regime (in or out of community of property, with or without accrual) affects what you can legally leave in your Will.

02 Does my marital regime affect my estate?

Yes. In community of property means you only control 50% of the joint estate as half of the joint estate belongs to your spouse. Out of community of property with accrual makes your estate subject to the accrual regime as the accrual must first be calculated and settled before distributing the estate. Out of community without accrual gives you full control of your estate as each spouse owns their assets separately. It's important to consider your marital regime when drafting your Will.

03 Will my spouse automatically inherit everything?

Not necessarily. You must expressly nominate your spouse. If you die without a Will, your spouse may only receive a portion.

04 Can I use my Will to disinherit an ex-spouse?

Yes, and you should. Even if you are divorced, your ex may still benefit if you haven't updated your Will, or the Will still names them as a beneficiary. The Wills Act provides for a 3-month grace period after divorce. If you die within 3 months without updating your Will, your ex may not inherit but if you die after 3 months after your divorce and you didn't update your Will they may still inherit.

05 Will my debts die with me?

No, debts do not disappear when you die. Your estate must settle all your debts, taxes, and funeral costs before any inheritance is paid out. If your estate is insolvent, heirs may receive nothing. Your Will won't override creditors' rights.

06 Is my spouse liable for my debts after my death?

If you were married in community of property, then yes they will because it is a joint estate. If you were married out of community of property then no. If you were married out of community of property but you were co-owners of any asset they may be liable for the debt in respect of that specific asset.

07 How can I provide for estate expenses?

You can nominate policies to cover executor fees, taxes, and debts. Alternatively, a cash legacy may be set aside for these costs. You may also indicate which asset(s) may be sold or used to settle liabilities. This should be clearly worded.

08 Can I provide maintenance to my spouse/children while the estate is being administered?

Yes. You can include instructions for settling debts or funding from specific sources such as policies or sale of assets.

09 What happens to my life insurance or retirement funds when I die?

These do not automatically form part of your estate, unless no beneficiary was nominated, or the beneficiary has passed away. Life insurance and retirement annuities are usually paid directly to the nominated beneficiary. It may still form part of your estate for estate duty purposes. You may still mention major policies in your Will for context and backup planning.

10 What happens if I own property jointly with someone else?

It depends on how the property is registered. Joint ownership can be because of your marital regime (e.g. married in community of property) or because you are co-owner with someone else as recorded on the title deed. The specific circumstances may affect the manner in which you can bequeath the property.

Trusts, Guardian's Fund & Protecting Minors

11

FAQ'S:

01 **What if my child is under 18?**

You must appoint a guardian in your Will. Inheritances for minors are usually paid into the Guardian's Fund unless a testamentary trust is created in your Will.

02 **What is a testamentary trust?**

A trust created in your Will to manage assets for a beneficiary. It only comes into effect upon your death. It allows you to protect assets for minor or vulnerable beneficiaries, appoint trustees to manage funds until a certain age, and avoid money being paid into the Guardian's Fund.

03 **Why is a testamentary trust important?**

It allows you to control how and when a minor receives their inheritance. It avoids funds going to the Guardian's Fund which is very important.

04 **Do I need to register a testamentary trust?**

No, not while you are still alive. A testamentary trust is created through your Will and comes into existence only after your death. It is then registered with the Master of the High Court as part of the estate administration process.

05 **What is the Guardian's Fund?**

It's a state-run fund that holds money on behalf of minors until they reach majority. It can be difficult to access.

06 **How do I avoid money going to the Guardian's Fund?**

By creating a testamentary trust in your Will and appointing a trustee to manage the inheritance.

07 **What is a usufruct?**

A right to use and enjoy property (e.g. a house) for life or a specified time, without owning it.

08 **Is a usufruct still relevant?**

Yes, particularly for protecting a surviving spouse or partner's right to remain in the home while keeping the asset for children.

09 **What is a fideicommissum?**

A fideicommissum is an old Roman-Dutch legal concept where an asset (usually property) is left to one person (the fiduciary) with the obligation to pass it on to a second person (the fideicommissary heir) at a later stage, usually after the fiduciary's death.

10 **Is a fideicommissum still relevant today?**

While still recognised in law, fideicommissa are rarely used today because they are inflexible, can cause administrative complexity, and may restrict the freedom of heirs. In most cases, a testamentary trust or usufruct achieves similar goals in a more modern, practical way. If you inherited or plan to leave property subject to a fideicommissum, it's wise to consult your attorney as it can impact estate planning and property transfers.

Foreign Assets & Business Interests



FAQ'S:

- 01 What if I own foreign property or investments?**
Different countries have different succession laws. A South African Will may not apply abroad.
- 02 Does a Will cover overseas assets?**
Your South African Will can mention foreign assets, but it's often best to have a separate Will in each country where you hold assets to avoid delays and compliance issues.
- 03 Do I need a separate Will in each country?**
Usually, yes. You can have separate Wills for different jurisdictions, but they must be carefully worded not to revoke one another.
- 04 Can I include foreign heirs?**
Yes, you can leave assets to people abroad, though local laws and tax may apply.
- 05 What if I own a business?**
You can leave shares or interests to someone specific, appoint someone to run or wind up the business, or create a buy-sell agreement (especially if there are partners). It is also important to consider for example the content of any Shareholders Agreement or the Memorandum of Incorporation of a company as this may impact or limit your ability to bequeath your shares or interests.

Personal Wishes & Final Arrangements

- 01 Can I include my funeral wishes in my Will?**
Yes, though they are not legally binding. It's helpful guidance to your loved ones.
- 02 Can I provide login details in my Will?**
No. Rather store them securely elsewhere and reference their location in your Will.
- 03 What is a Living Will?**
It's a document where you express medical treatment preferences if you become terminally ill and cannot speak for yourself. It is not about inheritance.
- 04 Is a Living Will legally binding in South Africa?**
It's not legally enforceable, but it is usually respected by doctors and family. It helps guide medical decisions and reduces the emotional burden on loved ones during end-of-life care.

