

# What happens to your home when you pass away?

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If you own a home of your own, have you thought about what will happen to it one day when you pass away? With as many as 70% of South Africans not having a valid will, this is a key question for thousands of homeowners in our country.



Homeownership can be a great way of securing your financial future and leaving a valuable asset for your loved ones. However, not including your property in your will, or not doing so with thought and care, could leave your heirs out of pocket and even forfeiting the place, in some circumstances.

"A bit of careful estate planning will enable you to avoid these pitfalls and ensure smooth transfer of the property to the intended new owner, making sure your wishes are carried out," says Carl Coetzee, joint MD of Capital Legacy.

There are five important questions to answer as you think about what happens with your home if you pass away:

## Do you have a will?

If you are a homeowner, but you do not have a will, this should be your first step. "Having a basic will drafted is quicker, easier and simpler than you might think, and it safeguards you against dying without one," says Coetzee. This matters because if you pass away without a will, your estate will be divided according to a formula set by law (a.k.a. "intestate succession") and you will have no say in it.

## How are you married?

If you are married, your marital regime could impact your rights in terms of deciding what to do with your property. Most commonly, there are two marriage regimes to consider in this context:

If you are **married in community of property**, your spouse would own half of the property even if you leave it to a third party like a child.

If you are **married out of community of property with accrual**, bear in mind that your spouse could have a claim against your estate for their share of the accrual. "If this is a substantial claim, it might necessitate the sale of the property. This could make matters more complicated to wrap up, and could lead to unintended outcomes," Coetzee cautions.

### **How old are your children?**

In terms of South African law, children under the age of 18 (minors) cannot inherit directly without the assistance of their legal guardian. Having a valid will that includes provision for a testamentary trust, if your children are still minors, means the trustees would then be responsible for the property. This is widely considered a more desirable method of leaving property to children.

If there is no testamentary trust, your minor's legal guardian would be responsible for the property. If, for example, your ex is the guardian and you two were involved in an acrimonious divorce, this could easily lead to your wishes not being carried out, or your child's best interests not topping the list of considerations. Another reason for ensuring that your will makes provision for a testamentary trust.

### **Is the property bonded?**

Ideally, you want your property to be transferred to a new owner as an "unencumbered asset", which means no monies are owed on it. "If there is a home loan over your property, make sure you have sufficient cover to provide for your outstanding bond repayments, should you pass away. The executor of your estate will then use this cover to settle your total outstanding home loan amount before the property is transferred to your intended heir," explains Coetzee.

If there is a home loan over the property and no cover in place, your heir could decide to take over the loan instead of letting the executor sell the property. However, this may take a bit of time as they would need to meet the bank's qualifying criteria for a home loan.

### **Can your estate cover the costs?**

SARS does not require the payment of transfer duty when a property passes to a new owner by way of inheritance. "However, that does not mean that there are no other costs involved," Coetzee cautions.

Your estate will still be liable for conveyancing costs, deeds office fees and municipal rates clearance certificates. If the property is part of a sectional title scheme, you will also need a levy clearance certificate, usually provided by the managing agents. An electrical certificate and an entomologist's certificate (dealing with wood borer and termites) do not form part of a deceased estate property transfer.

"Without these required documents, the transfer will not be completed, so make sure there are sufficient funds available in your estate, so that the necessary certificates can be obtained and delays avoided," advises Coetzee.

### **What not to do**

Two top tips when leaving a home to your loved ones:

- Do not describe the address of the property in your will. You could, for example, simply refer to your 'residential property' when your will is drafted. Then it would not matter whether you might have moved house and forgotten to update your will to reflect the new address. Nor would it cause the bequest of the property to lapse if the place is sold and your will not updated accordingly.
- Do not neglect to discuss your plans and wishes with your loved ones. These conversations may be difficult, but they are important, so do not put them off indefinitely. Sharing your wishes with those involved while you are still alive, could ease their burden at a time of grief and loss.

"Deciding what to do with your home matters on a number of levels: financial, logistical and emotional. That's why you should think carefully about what you'd like to do with it, and make sure you update your will regularly to reflect your latest circumstances," Coetzee concludes.

For professional advice on estate planning and to draft your will, securing your legacy and your family's financial future, contact [Capital Legacy](#) today or speak to your financial advisor.

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