

# LEGACY: DEATH – THE INCONVENIENT TRUTH

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## **Life? Death? Who cares? Your loved ones do and you should too.**

Life is often unpredictable and the circumstances we find ourselves in today may not be the same tomorrow. Implementing an estate plan and in particular, drafting a will ensures that you decide who inherits, who carries on the estate business and who has access to your assets when you pass away. This takes away the added stress that your loved ones face in an already difficult and emotionally trying time.

As lawyers who deal with estate matters, we regularly hear comments such as: *"My assets will go to my spouse anyway"* or *"Why is there a need to make a will so complicated?"* or *"I do not wish to 'rule from the grave'."* However, just as often as we hear such comments, we also work with clients on estate matters involving disputes over who should be named as the administrator of their loved one's estate or over who should benefit under the estate. These include: *"Why does sibling X benefit when he/she was never a part of the family for over 20 years?"* or *"Sibling X should not be allowed to handle the deceased's estate because he/she is not trustworthy!"* This can often lead to disputes which could have been avoided with a will.

In the absence of a will, the law imposes certain rules of distribution. This means that a person has passed away intestate and will have no means to ensure that his/her wishes are carried out. In such circumstances, the law does not provide for a more nuanced approach to cater to each family's differing circumstances. For example, under the intestacy rules, 50 per cent of your assets will go to your spouse and the remaining 50 per cent will be split equally among your children. This will leave nothing for your surviving parents who may have been dependent on you for financial support. Alternatively, you may have concerns that one of

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your intended beneficiaries may be a spendthrift or there may be a particular family member who requires more careful consideration due to special needs. Worst still, imagine the possibility that some obscure and distant relative is able to gain access to your private assets or is tasked with the care of raising your orphaned children because your immediate family members have passed away before you. These persons will have little to no idea of what you want or your children's needs.

You are best positioned to know your own wishes and preferences. However, an estate planning professional, whether a trained estate planner or lawyer, may be better equipped to point out to you concerns that you may not have turned your mind to. In short, you don't know what you don't know. Consulting with an estate planning professional will allow you to take advantage of their expertise to tailor an approach that best caters to your needs and concerns.

If you haven't prepared a will yet, this may serve as a timely reminder for you to consider taking steps to draft your will. If you have already prepared a will, consider reviewing it to ensure that it still adequately addresses your wishes and concerns, if any. A well-crafted will minimises the risk of disputes arising and ensures that your estate will be distributed to your loved ones in accordance with your wishes and in a more meaningful manner.

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