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South Africa

Estate Planning

This collection of documents and processes protects your assets upon your death. Having a will is important, especially if you have dependants.

Capital gains tax and death taxes must be taken into account in your estate plan. Trusts may be used to manage and distribute your assets independently, and reduce taxes. Estate duty is levied on the value of your estate.

There are two types of lasting powers of attorney: financial (which dictates who will handle your financial affairs when you become incapacitated) and health care (which makes decisions about your medical treatment if you are incapacitated, and allows you to appoint a healthcare proxy).

Advance Care Planning
Advance Care Planning (ACP) is the process of preparing for your future health and personal care. It includes discussing your individual beliefs and goals for care with your loved ones and healthcare providers.

A living will/advance directive is a guide for your loved ones and doctors indicating your desired treatment – what can and cannot be used – should you become incapacitated. Living wills typically cover issues such as artificial life support, resuscitation, organ donation, and tube feeding. A living will should be signed in the presence of two witnesses, and a copy provided for the doctor or hospital.

Living wills are not yet recognised in statute law, despite a draft bill being drawn up to change this. However, the law recognises a patient's right to accept or decline treatment, and most professionals comply with a living will where the patient is in a permanent vegetative state. You cannot request euthanasia. A living will can be ignored by the family and doctors if there is the remotest chance of recovery.

Passive euthanasia
The law accepts the practice of passive euthanasia which includes the withdrawal or withholding of life-sustaining medications where the patient has a living will or the physician feels that the treatment if continued would be futile. 'Palliative sedation' through increasing doses of pain-killing drugs that may hasten death is also allowed.

Voluntary active euthanasia and physician-assisted suicide are both illegal in South Africa.

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Less than 15% of South Africans have a will when they pass away.

Source PPS

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Useful websites

Aligned offers support to people with serious illness and impresses the importance of ACP.

The Association of Palliative Care Centres sets out why ACP matters.

The Cancer Association of South Africa offers an Advance Health Care Directive template.

CDH Incorporated lists what to include in a death file.

The Conversation unpicks the ethical issues around the right to die.

The Department of International Relations and Cooperation explains what to do if a South African dies abroad.

Dignity SA campaigns for dignified assisted deaths.

An Estate planning guide, Discovery, Mazaars and Meerkat all examine estate planning.

Expatica supports expats to organize their legal affairs in South Africa.

Funeral Guide explains what to do when a loved one dies in South Africa and offers a living will template.

The Medical Protection Society looks at assessing capacity and legal aspects of living wills.

Moneyweb lists 10 things to know about death planning.

PainSA looks at ACP and palliative care.

Sanlam reality explains the administrative tasks that need to be carried out after a death.

The South African Medical Association provides a living will template.

Standard Bank provides advice on wills, tax and trusts.

This 2023 study examines barriers to ACP.

This 2021 study explores the debate around physician-assisted suicide.

ThisUK government site has advice on what to do when a UK national dies in South Africa.

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