

The rights of your child when it comes to their inheritance

One of the most important jobs we have as parents is making sure our children are well cared for and protected. But how do we ensure this continues long after we are gone? As South Africa marks Human Rights Day on 21 March, we reflect on the rights of children; not just their rights to the basics of nutrition, shelter and healthcare, but also their right to inherit.

“It starts with ensuring you have a valid will in place,” says Moremadi Mabule, Head of Wills at Sanlam. If a parent dies without a will, it can create numerous challenges. For example, the child’s inheritance will be paid into the State Guardian Fund, which can mean a lengthy process before funds can be accessed. “When you have minor children, it is also vital that you nominate a guardian. Should you pass away without doing this, it triggers a debate around who will look after your children and this is not a decision you want to leave to someone else.”

Here's what you need to know when choosing a guardian for your child:

1. A natural guardian is a biological parent – whether married or not, both parents have parental rights and responsibilities.
2. A parent who is the sole surviving guardian may appoint a fit and proper person as a guardian, should they pass away.
3. An appointment of a guardian in a will does not remove the surviving parent as a guardian.
4. Co-guardianship is possible but must be practical, for example the individuals should live close to each other.
5. The decision should always be in the child's best interest. If the surviving parent is not a suitable guardian then, as the upper guardian of all minors, the court may give the guardianship to any other person who applies.

Parents can also consider drawing up a testamentary trust as part of an instruction in their will to preserve wealth, protect the child’s inheritance and eliminate the possibility of this inheritance being placed in the State Guardians Fund. The trust is created when you pass away and will remain in place until the child reaches a certain age. “Certain formalities must be met to ensure the trust can be created on your passing, so I strongly suggest working with an estate planning expert to help you draft your will,” cautions Mabule.

The rights of adoptive children

“Whether adopted or a biological child, all children are treated the same in terms of the right to inherit,” explains Mabule. “An adopted child can inherit from his/ her adoptive parents and their parents’ blood relatives. The child would also be able to inherit from their step-parent, should the step-parent formally adopt the child. Similarly, the adoptive parent can inherit from that adoptive child.”

The Children’s Act is currently under review and amendments seek to further address the promotion and protection of a child’s rights to physical and psychological integrity. It also aims to regulate the position of unmarried fathers and provide clarity concerning guardianship and parental responsibilities. “The Children’s Amendment Bill will be a significant change towards protecting the rights of our children,” concludes Mabule.

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