

Dying and the Law

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Introduction

Death is an inevitable fact that we will all face at some time in our lives, be it the death of a loved one or our own eventual passing. What is also inevitable is the grief that we will encounter during such a time. Everyone copes differently, but what is important is the need to protect loved ones from additional administrative and financial problems during such times. Everyone needs to think of how to prepare for such an eventuality and we need to do this when we are well and our minds are still clear. Preparation before death – estate planning – helps with making decisions about:

- what will happen to our money, belongings and the people we love after we die and
- Putting solutions in place so that people have instructions on what to do with our property, our savings and other financial matters such as pension and insurance.

In our law there are two ways of sorting out the property of a person who has died. One is when a person prepares a will before his/her death. This is called testate succession. The other is when a person dies without a will and we call this intestate succession.

Leaving a will is very important if you have property or children. But it is equally important that you take care when writing out your wishes. The law is very careful about wills. You have to put your wishes down in writing and you must use clear language so that any person reading the will can understand it. If certain legal requirements are not met, then the Master of the High Court could reject your will and use the law of intestate succession (explained later) to distribute your possessions. If you write your will properly

Terms you will read in this chapter:

Administration: organising and taking care of paper work and office tasks

Assets: property you own such as your house, your car, your furniture, your books and your money. Your assets can help to pay off any outstanding debts.

Best interests of the child: this means that if there is a conflict between the child's interest and the parents' rights then the child's interest comes first

Burial order: an order that is made once the death has been registered. This allows the person to be buried.

Custody: taking of care of a minor child. Making sure children are fed and clothed.

Customary succession: dying in terms of traditional African law

Death certificate: this is a government form issued by the Department of Home Affairs. A funeral director or undertaker can help you get one.

Death notice: a government form that needs to be filled in by someone who knows the personal details of the deceased and is able to identify the deceased.

Debt: money you owe to someone, referred to as liabilities when dealing with deceased estates

Estate: all the things and the money owned by the person who has died – sometimes referred to as a deceased estate

Executor: an executor is the person who makes sure your property is divided up according to your wishes as set out in the will. See executor's duties

Formalities: set rules that must be followed to make something legal

Freedom of testation: people have the freedom to decide what they want to do with their property after they die

Guardianship: the legal responsibility of a minor child

Heir: a person who inherits

High Court: the supreme guardian of all children

Inheritance: property, belongings or money left to someone by a deceased person

Intend: you mean to do something and you understand what you are doing

Intestate: dying without a will

Marital regime: the type of marriage contract that you have entered into with your spouse (see inset below)

Master of the High Court: the state official tasked with the responsibility of winding up deceased estates. There is a Master's Office in every province

Notary public: an attorney who has been trained to write legal documents and is able to sign and draw up people's contracts, affidavits and property agreements

Spouse: the person to whom the deceased was married. This will be the husband or wife, or partner in a same sex marriage

Testate: dying with a will

Trustee: a person appointed by the High Court to take care of a child's/person's estate

Winding up: closing down a person's estate, a person's property

there will be no arguments after your death and members of your family will not need to go to court to sort out any problems that can result from an unclear will.

Many people like to leave a will which states clearly what they would like to happen to their property. The law recognises that people have a right to give their property to anyone they choose. The law refers to this right as a person's 'freedom of testation.' These rights of 'testation' are not absolute, and there are certain legal provisions that need to be followed and will be applied. For example if a person is married at the time of his/her death, or if there are any children, the law will protect these close family members after a person has died. Although the law protects your immediate dependents, to a certain extent, you can ensure that they are taken care of if you leave them something in your will.

If you die without a will, the executor or the Master of the High Court will not be able to follow your wishes even if you spoke about what you wanted before your death. This means that if your wishes are not written down and certain set formalities are not followed, the law will step in and distribute your property in terms of the Intestate Succession Act.

In this next section we are going to discuss what the law says and what preparations should be in place when faced with death. We will also look at some problem situations and some new changes to the law, particularly the law dealing with customary rights.

Dying testate – with a will

Everyone should have a will so that their loved ones will not have to sort out legal or administrative problems at a time when they are grieving. A will is a document that formally sets out your wishes. In a will you can write:

- who you want to leave your property/money/belongings to
- the amount you wish to leave each person
- and also who will take care of the administration of your estate.

People need a will that has been properly executed. This means that it **must** be in writing and follow the formalities that have been set out in the Wills Act. Wills can give people some peace of mind knowing that their wishes will be followed after they have died. Making a will is an important legal act and that is why certain formalities need to be followed. A will can be relatively easy to make and you **DO NOT** need to go to an attorney or a bank to make your will.

A will must be drawn up before you die. You need to be mentally capable of understanding what you are doing at the time you draw up your will. This means that you are clear headed and can remember what you own and to whom you want to leave your belongings. Everyone over the age of 16 years can prepare a will, as long as they know and understand what they are doing. You also need to make sure that you sign your will **in front of** two witnesses who are over the age of 14 years and who can sign the will as well (see formalities on page 111).

Making a proper will needs careful planning and writing. It does not have to be typed. In a will you can leave anyone your property/belongings. Firstly you need to make sure that the property is yours to give away. You also need to think about any debts you may have. If you have not paid off your debts, the money you owe will be taken out of the estate first and then the remaining amount – if any – will be paid to your heirs.

When preparing a will, matters that need consideration are:

- whether you are married, and if so:
- your marital regime: are you married in community of property; are you married in terms of an anti-nuptial contract or do you have a customary law marriage? (see inset below – what do we mean by marital regime?)
- whether you have children
- who you would trust to take care of the administration of your estate after your death. This person will make sure your property is divided according to your wishes after your death and is called an executor or administrator. Their duties will be discussed a bit later on in this section.

Exercise on trust

Home-based palliative care services support patients and their families in preparing for death. This support is most effective when the patient and family have developed a relationship of trust with their carers as illustrated in the following real life stories:

Story 1

'Hey this one is a big problem you will find that the parents when they passed away they don't even tell the family where the children are supposed to go. They die like that and the children are left in the house like that. And sometimes you find that, most like, the uncles they come to fight for the property. They want to take away the property. Others they want to chase the children away, you find those children living in the street.'

Story 2

'Just from a family point of view they are sitting with a dilemma where the mother is terminally ill and preparing the children will normally happen after the death of the mother. So before the mother dies we test the process to find out what it would be like, because it's very painful on that day. We try to prepare the child in the context of the mother not being around anymore, like we may send the child to the father beforehand, so that the child can gradually get used to the father and the father's home.'

Wills may be very simple or may be very detailed. The detail depends largely on the number of assets that you have. If you have a number of assets and are worried about tax implications (or you plan to set up a trust to take care of your children) then you should seek the assistance of an expert, usually an attorney. If you need help when drawing up your will, there are several places where you could find expert advice. Some experts may charge a fee to draw up your will, some will not. If it's a simple will, an attorney should not charge you much. Banks, legal aid clinics and building societies are also able to help you draw up your will. A bank will want to act as the executor for your estate if you ask them to help draw up your will for you. This is standard practice. They will also keep a copy of the will for safe keeping and you should keep the duplicate copy. After your death, the bank will then become the executor of the estate (discussed later) and will approach the Master's

Office. The bank can charge the estate for this function. Be careful of people who offer to help write up your will for free and then suggest you leave them something in your will. Remember that if your will is simple you can draw it up yourself or ask one of your children or friends to help you. You are not obliged to leave them something in your will just because they helped you to draw it up.

You may change your own will at any time before you die. The proper way of doing this will be to state, in a later will, that all previous wills are cancelled or revoked. A testator (the person whose will it is) can destroy his/her will or change it any time before his/her death. The person changing, destroying or making a new will must want to make the change and not be persuaded or forced to do so. He/she should also be mentally alert at the time the changes are being made.

What do we mean by marital regime?

In South African civil law there are three matrimonial property systems/regimes. They are:

- Marriage in community of property, where both parties share a joint estate. This is the system that automatically applies if you do not draw up an ante-nuptial contract.
- Marriage out of community of property, where both parties have separate estates. You have to draw up an ante-nuptial contract before the marriage.
- Marriage out of community of property with accrual. You have to draw up an ante-nuptial contract before the marriage. The difference is that both parties have separate estates but to stop any unfairness they share in the accrual at the end of the marriage. Accrual is the accumulated profits they may make during their marriage.

Note:

- 1) **Customary law marriages** marriages are recognised in our law. The Recognition of Customary Marriages Act of 1998 gives full legal recognition to customary marriages as long as they are registered at a Magistrates Court. (A customary law marriage is not 'the same' as civil law marriages – best not confuse people if you say they are)
- 2) **Same-Sex Unions** are now also recognised in our law. The Civil Unions Act No. 17 of 2006 states that a civil union is, 'the voluntary union of two persons who are both 18 years of age or older, which is solemnised and registered by way of either a marriage or a civil partnership, in accordance with the procedures prescribed in this Act, to the exclusion, while it lasts, of all others.'

STORY

Mrs Laher, a car guard, tried for many years to secure maintenance from her husband for herself and her three children. Eventually the court ordered that his furniture be attached and the rental income from one of his properties be paid to Mrs Laher to recoup the maintenance monies he owed. Before this order could be enforced, Mrs Laher's husband died. After his death his family came and took all the furniture out of the house and took over the property so that Mrs. Laher cannot access it.

Solve the problem:

Read the story above and break into groups of three to five. In your groups discuss:

- a) Whether Mrs Laher has any legal rights, and;
- b) What steps can Mrs Laher follow in order to solve her problem.

Formalities of a valid will as set out in the Wills Act

A will needs the following requirements/formalities:

- it must be in writing
- it must be signed by two witnesses who are of sound mind and over the age of 14 years, who are also not due to inherit anything from the will
- it must be signed by the person who made the will in front of the two witnesses

Drawing up a will

- Give your full name with your identity number and your address.
- Say what your marital status is, and if married, state your marital regime. Give the name and identity number of your spouse.

Are you single, married, divorced or widowed?
- Write down that this is your last will and testament and that you revoke all other wills that you have made before.
- Name someone you trust to take care of administration of your wishes – an executor. You should check with the person first before naming them as your executor in the will. If you do not select someone, or if the Master thinks that they will not be able to do the administration properly, then the Master may select someone for you.
- Make it clear how you want your property to be dealt with. Write down who will inherit each of your possessions. Give details such as their full names, addresses and whether they are male or female, married or unmarried.
- Think of your children. If you have minor children you need to think of someone you trust who can act as their guardian. This person must be able and willing to be their guardian. If it is possible, an expert such as a bank manager, an accountant or a lawyer should be consulted if you have minor children.
- When you are finished, write the date and sign the will, **in full**, in front of the two witnesses – you must sign the will as closely as possible to the last line of writing in the will. This is to stop anyone from adding anything onto your will.
- Both witnesses must sign, **in full**, after your signature on the last page. If you have more than one page then you, as the person writing the will, must sign all the pages of your will.

WARNING

A person cannot inherit if s/he signs as a witness. This is to stop people from committing fraud or the court thinking that they may have committed fraud.

Example of a simple will:

LAST WILL AND TESTAMENT OF Kase Mdu (ID number) of 25 Malibongwe Drive, Randburg, Johannesburg

1. I hereby cancel all wills made by me before this time,
2. I appoint as executor of my estate my sister, Suni Sunn, of 10 Moss Street, Burgersfort,
3. I leave R5 000.00 to my friend, Sbu Khosa, of 9 First Avenue, Malvern, Johannesburg.
4. I leave my car to my daughter, Akhona Mnisi, of 201 Green Street, Acornhoek, Limpopo Province.
5. I leave the rest of my property to my wife, Agnes Mdu, with whom I have a customary law marriage which marriage is registered in terms of section 4(1) of Act 120 of 1998, and if she does not survive me, I leave the rest of my estate to my brother, Gideon Mdu,
6. Should my wife die before me, I would like to appoint my brother, Gideon Mdu, as the guardian of my minor son, Mpho Mdu.
7. I direct that my Executor shall have the power to appoint a professional to assist her and shall be exempt from having to furnish security to the Master of the High Court.

Signed by Kase Mdu on this day of 29th October 2006 as the testator of this will in the presence of two witnesses.

Testator. _____

Witness 1. _____

Witness 2. _____

Note: *as long as the heirs are clearly identified, a will remains valid. Even if the date, identity numbers or addresses are left out the will remains valid. The problem is that the Master of the High Court will then have to ask for the addresses of the heirs and if the date is missing it may be difficult to find out when the will was written.*

Dying without a will: Intestate succession

When a person dies without a will, the law of intestate succession sets out the steps that must be followed by the Master when distributing their property and possessions.

The Intestate Succession Act of 1987:

- (1) *If after the commencement of this Act a person (hereinafter referred to as the 'deceased') dies intestate, either wholly or in part, and –*
- (a) *is survived by a spouse but not by a descendant such spouse shall inherit the intestate estate;*
 - (b) *is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;*
 - (c) *is survived by a spouse as well as a descendant –*
 - (i) *such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed ... by the Minister of Justice... whichever is the greater; and*
 - (ii) *such descendant shall inherit the residue (if any) of the intestate estate;*
 - (d) *is not survived by a spouse or descendant, but is survived –*
 - (i) *by both parents, his parents shall inherit the intestate estate in equal shares; or*
 - (ii) *by one of his parents, his surviving parent shall inherit one half of the intestate estate and the descendants of the deceased parent the other half, and if there are no such descendants... the surviving parent shall inherit the intestate estate; or*
 - (e) *is not survived by a spouse or descendant or parent, but is survived –*
 - (i) *by –*
 - (aa) *descendants of his deceased mother who are related to the deceased through her only, ...by descendants of his deceased father who are related to the deceased by him only; or*
 - (bb) *descendants of his deceased parents who are related ... through both such parents; or*
 - (cc) *any of the descendants mentioned in... (aa) as well as ... (bb), the intestate estate shall be divided into two equal shares...*

And so on.

A simple explanation of the law is set out below:

- If you are married but you have no children then your surviving spouse will inherit everything.
- If you have children but no spouse then your children will inherit equally.
- If you have a spouse and children then the children and your spouse will inherit equally depending on how much money you have left after following a formula set down in law: Remember that children means all children including illegitimate children – children born outside a legal marriage.

Formula: *the surviving spouse will receive the same share of the property as the children or R125 000, whichever is the most, and the children will share the rest.*

Note: *This means that your wife will get all the money if you have the amount of R125 000 or less.*

- If you have no spouse or children the estate will be equally divided between your parents.
- If you have no spouse, no children and no parents your estate will be equally divided between your brothers and sisters.
- If you have no spouse, no children and no brothers and sisters then your estate will be equally divided between the blood relatives who are closest to you.
- If you have no spouse, no children, no brothers, no sisters and no relatives your estate will go to the state.

Exercise

In the following scenarios participants should:

- a) Draw a diagram showing the lines of inheritance.
- b) Give reasons for their answers below.

Story 1

Mr Sibanda dies without drawing up a will. He left a wife, Mary and three children, Nkhosi, who is five years old, Bernard, who is ten years old and Thandi, who is 19 years old. After all his debts have been paid off his estate adds up to R260 000. How much will Mary, Nkhosi, Bernard and Thandi inherit?

Note: *In this example the marital regime has already been sorted out, the exercise is only looking at the intestate estate.*

Story 2

Kevin forgets to make a will and after his death the Master has to devolve his deceased estate. Kevin never married and he had no children. He did have a brother and a sister, Connie and Brandon, and a half brother Martin, who was his mother's son from a previous marriage. Although his father has passed away, his mother is still alive. Kevin leaves an estate of R700 000. Who will inherit?

Answers:

- 1) Follow the procedure step by step:
 - i) Mr Sibanda has left a wife and three children. In terms of the law the surviving spouse, Mary, will either get an equal share of the property, as a descendant, or R125 000, whichever is the greatest amount.
 - ii) If you divide 260 000 by four (wife plus three children) = 65 000. This is an amount that is less than R125 000. Check the law. The wife must get the greater amount.
 - iii) The wife Mary will therefore get R125 000. The three children will share the remaining amount in equal shares.
 - iv) $260\ 000 - 125\ 000 = 135\ 000$ is the remaining amount. This amount must now be divided by three, which equals 45 000.
 - v) Each child will receive R45 000.
- 2) As above, follow a step by step procedure:
 - i) Kevin has no spouse and no children but has one surviving parent and descendants of a predeceased parent.
 - ii) The surviving parent inherits half of the estate. The estate is divided in half: $700\ 000$ divided by two = 350 000. Kevin's mother inherits R350 000.
 - iii) The remaining R 350 000 will be divided amongst the descendants of the predeceased parent. This means that Connie and Brandon will share R350 000 equally and receive R175 000 each.
 - iv) Martin is related to Kevin through his mother Mary and will inherit nothing.

Customary law and gender issues

Intestate succession in terms of African Customary Law is based on the principle of primogeniture. Primogeniture means that only a male who is related to the deceased through the male line is entitled to inherit. For example the eldest son of the senior wife or his descendant, if he is dead, usually takes over as the head of the house when the head of the house dies. The formal customary law of succession discriminates against women and children by excluding them from their rightful inheritance. In these cases the right to inherit is an important issue. Often what happens is, that after the death of the adult male, the widow and the children can be thrown out of the family home. That is why it is always advisable for African men to draw up a will to protect their wives and children. Because of the new Constitution and the right to equality, certain changes have started to take place that affect customary law.

Quite frequently we are dealing with single moms who are dying and who are concerned about the future care of their children. Men are less frequently the single parent but have similar concerns for their children's future. The reality of the HIV epidemic in South Africa has resulted in women being abandoned because they have HIV or are very sick with AIDS and this contributes to the breakdown of the family structure.

The Constitutional Court decision of *Bhe and Others vs Magistrate Khayelitsha and Others 2005 (1) SA 580* ruled that certain laws dealing with the administration of black estates are unconstitutional because they discriminate against women. This decision has had a far reaching impact on the future administration of black estates, and new laws related to these changes are being developed and debated.

CASE STUDY

The Bhe case concerned two young girls, aged nine and two. The customary rule of primogeniture that prevents them from inheriting their father's property because of their female gender, was challenged on their behalf.

The girls had been living in Khayelitsha with their parents until their father's death. Even though their parents had been together for twelve years, they were not legally married. After their father had died, the family continued to live on the property until their grandfather told them to leave.

He claimed that under African customary law, the house should now be the property of the eldest male relative of the father's children. This meant that, in terms of the rule of primogeniture, the family house would become his property and he then planned to sell it.

The court decided in favour of the girls and against the grandfather since this was a clear case of African females being discriminated against. The two girls were declared to be the sole heirs of their father's estate and were given the right to inherit equally.

EXAMPLES OF PROBLEMS – CAREGIVERS' STORIES

'Because people do not like to talk about death, especially their own death, their silence causes lots of problems. And there's one big problem... we find that the parents, when they passed away, they don't even tell the family where the children are supposed to go.'

'The stigma of having HIV affects the way people talk to their families and this means that they don't make any plans for when they are not around. The sick person says to us as their caregivers, 'Don't tell them (the family) that I am HIV until I die, even if they ask you every day don't tell them anything.'

'How the family are towards the sick person depends on the family and the situation in the house and sometimes there is no one who will help other than the caregiver. The people who stay there may be going to work, others are there but they are scared... we need to educate them. Sometimes the sick people may be left in the shack outside, even if they own the house and that person must stay there until she dies. There's some family they don't have love for these people.'

'People want to grab children when there's a funeral – because there's money attached to a child – and there's no-one to monitor whether the children go to school or not because the social workers does not go out there. NGOs do their best to monitor, but really they cannot help much. It's very complicated that's when you need the legal process to keep an eye on things and make sure the children are being taken care of.'

'The old man never had an ID so when he was killed the mortuary treated his body with no respect and they refused to keep his body at the mortuary. We had to run around and find the chief in his area who would allow the old man to be buried quickly because the mortuary wanted to throw him out. Luckily we found his birth certificate.'

These are all stories from caregivers and the problems they have encountered or have had to sort out.

Taking care of the children

If you decide to draw up a will you need to provide for a legal guardian or even a trustee for minor children. Do not nominate these people without consulting with your family and the people you want to nominate. Explain what you want to do and think about what would be best for the children. Keep your children's birth certificates, medical records, school reports with your will or with all your other documents such as identity documents (IDs), work information and insurance information.

Do not leave your money or property directly to minor children unless you have no-one who can help the children or who you can trust. If you leave these things directly to your minor children, then the state will administer their property through the Guardian's Fund. Each time the children need money a guardian of the children will have to write a letter to the fund motivating why they need the money. This guardian will also have to show proof of the expenses. It can be a very time consuming process.

If you do have some money and you would like to leave it to your minor children, then plan what you would like to do in advance. Go to a lawyer, a bank or a building society and ask them about creating a trust for your minor children.

A trust can provide the following for your children (if there is enough money):

- day to day care of the children
- education needs

The legal process after someone dies

Winding up the estate:

The administration of an estate is a step by step process that needs to be followed. If each step is followed, the estate can be wound up fairly quickly. The estate must be wound up (closed down) by the Master's Office of the High Court in the province where the deceased lived. The steps that need to be taken after a person has died are as follows:

- Report the death to the Master's Office. This needs to be done within 14 days after the person has died. You need to send a death notice to the Master's office. A family member or friend can do this. If the death did not take place at home, then the official from the building where the death occurred can do this.
- A death certificate needs to be issued if the person who signs the death notice was not present at the death or did not identify the body after the death.
- The Master's Office will give the family forms to fill in, to

help wind up the estate of the deceased.

- If the estate is worth less than R50 000, a family member or some other representative can wind up the estate on their own.
- If the estate is worth more than R50 000, the Master's Office usually says that an executor must wind up the estate.
- If an executor has not been appointed, the Master will appoint one.

Executor's Duties – if the estate is not complicated or under R50 000, the appointment of an executor is not necessary. An administrator can be appointed by the Master. When a person dies, the property of the deceased person does not go immediately to the heirs. It must first go to the executor or administrator who will then pay off the debts and then divide the rest of the inheritance between the heirs.

Administrator's duties:

For estates that are small and below R50 000 the Master does not appoint an executor. An administrator is appointed instead. The Master will issue 'letters of authority' which will give this person the authority to administer the estate – meaning that s/he can collect together all the money owed to the estate and deal with the banking. The procedure is very simple, but the Master will require proof of all assets and debts and how the estate was sorted out. The administrator will have to give the Master proof in the form of receipts, invoices and statements. Once the administrator has supplied the Master with the necessary proof, and the Master is satisfied with the administration, the account will be closed.

The executor's duties are as follows:

- The executor needs to meet with the family to collect relevant documents such as the deceased's identity documents, banking details and any policies that the deceased may have had.
- The executor then reports the estate to the Master with the relevant documents such as the death notice, death certificate (if needed) and the original will, if there is one.
- The Master will then appoint the executor by sending him/her 'letters of Executorship'.
- The executor must then arrange for a valuation of the estate.
- The executor puts a notice in the paper and asks all the creditors to come forward. The creditors have 30 days to come forward.
- The executor must open a bank account for the deceased estate and deposit all the money from the estate into this account.

- After that all the deceased person's assets and his/her debts need to be added up.
- The executor contacts the beneficiaries and explains the procedure to them and asks for their opinion on certain matters about the estate.
- The debts are then subtracted from the total amount of the assets. All of the debts are then paid.
- There are also death duties on estates – the executor must pay taxes. If the estate is small there are no costs they are minimal.
- The executor sends the final account to the Master of the High Court. The account lies at the Master's Office to allow people to inspect it
- If there are no objections to the account and the Master is satisfied, the executor can then pay the heirs their inheritance.
- The executor must then send the Master copies of receipts from the heirs showing that they have received their inheritance.
- The executor is then released from his/her duties by the Master.

If an executor needs help, he can ask for assistance from someone who knows. This could be a lawyer, an accountant or the manager of a banking institution. He can even hire a lawyer to assist with the above duties and responsibilities. This person will usually charge a fee or a percentage of the value of the estate.

When someone dies at home

When someone dies at home, the caregiver or family members need to be careful about taking care of themselves at this time – both emotionally and physically. When someone dies, and there is no doctor or nurse there to help, certain things need to be done or someone trustworthy asked to assist.

- Close the person's eyes and contact someone who can help you – it will be better if that person is your home-based carer, a nurse or a doctor.
- If there is going to be a delay until the doctor or funeral director can get to you, then the body may need cleaning.
- Cover any wounds or sores, taking care to cover your hands with gloves or plastic bags.
- Put a cloth between the legs and up under the buttocks.
- Put clean clothes on the deceased person, if you are able.
- Remove all pillows.
- Straighten the body and limbs (arms and legs).

When the medical practitioner arrives s/he needs to give you the medical certificate of death. This will explain the cause of death. This is not the death certificate. The medical

practitioner will hand the documents to next-of-kin or to the funeral undertaker. You need to think about contacting a funeral company at this stage. You will need someone to help you remove the body and prepare it for burial.

The funeral director may need the following documents from you:

- the deceased's ID document or
- an official document that will show the deceased's date and place of birth and place of death
- details of any hazardous work that the deceased was employed to do – if relevant
- details of any funeral policies, burial societies or pre-paid plans
- the medical certificate issued by the medical practitioner.

Funerals and planning

The death must be reported to the Registrar of Births and Deaths (Home Affairs) as soon as possible. If the death takes place in the city, the notice of death must be handed to the registrar within 24 hours. If it takes place in the rural areas, it should be handed in within 14 days. After registration of the death the family will receive a death certificate and a burial order. This allows them to proceed with the burial of their family member.

Note: *Where there is no Home Affairs Office in the area the nearest police station will be appropriate.*

After the necessary documents listed above have been handed in and the funeral director has been instructed as to the family's wishes, he/she will then assist with the number of the decisions to be made.

When someone dies, the family has to make many decisions. Some of these are listed below:

- They will need to decide whether they want to arrange a burial or a cremation, according to their beliefs. If there is a will, sometimes the deceased will give specific instructions about this. For those of the Muslim or Jewish faith, there will be a sense of urgency to arrange the burial.
- Then:
 - Christians will need to consider where the funeral service should be held – in the local church, at a crematorium chapel, even in the home or at the graveside.
 - Muslims will need to gather the mourners for the funeral prayers, traditionally said outside in a courtyard or outside the mosque, before the men only proceed to the graveside. After the burial there will be three days of mourning.
 - Jews will want to accompany the body to the graveside in a procession called the 'levayah' and afterwards organise the 'shivah' or seven days of mourning.

- African Traditional religions will need to arrange the burial for a time when the family and the community can gather for several days of mourning at the ancestral home of the deceased, if at all possible.
- Who will officiate (run the service or prayers)? This is usually a church minister, the Rabbi or the Imam. Family and friends may also want to say something at the funeral.

Burial

After the registration of death and the issuing of a burial notice, the burial can take place at an approved burial site as it is illegal to bury people on your own property or in an open plot of land. Burials cost money so you need to find out about the costs and select the burial that you can afford. Do not spend money that you do not have.

BE CAREFUL:

Having an expensive funeral is not always advisable. Families need to show their love and respect for the departed but sometimes people take advantage of this wish and it may place an unnecessary burden on the relatives of the deceased.

Pauper's Burial

Some people may be unable to afford to pay for the burial of a loved one. Many people belong to burial societies, or they have an agreement with a funeral parlour. If there is no money for the burial, the family may apply to the municipality for a pauper's funeral. This is a very simple funeral with a simple coffin made of pine and no tombstone is put on the grave.

Final check

It is very difficult to be a careful consumer when you are mourning the loss of a loved one, but there are some matters that people need to be careful of:

- Being persuaded to spend all your money on an expensive coffin or an expensive tombstone
- Spending money on an expensive flower arrangement, or even several flower arrangements
- Spending too much money on refreshments
- Being persuaded to sign a blank form or a form with numbers that have been penciled in
- Not checking up on the hidden costs involved – hidden costs like storage of the body, transport and so on.

What you should do if you are uncertain is:

- Pay for what you can afford – respect or love for the deceased can be shown in many other ways. The words you say at the funeral, the way in which the service is held are all ways of showing respect and love for the person who has died.
- Make careful enquiries about all the costs involved. Do not let people intimidate or confuse you.
- Do not be embarrassed to ask if you are not sure what you are signing.
- Contact the nearest legal aid office, advice office or pro bono office if you have any problems.

The author of this chapter also developed the *Succession Planning Booklet and Facilitation Guide* produced by UNICEF and Department of Social Development in 2009.

