

INSIGHTS INTO WILL WRITING AND ESTATE PLANNING – GETTING IT RIGHT



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INTRODUCTION

It is a universal observation that most people keep putting off writing a will even when they are aware of the consequential problems that could emerge by not having one in place. There are a host of reasons for this inclination in people, but what is widely acknowledged is that people generally prefer not to contemplate or dwell on the reality of the expiration of life. Understandably, the thought of mortality is dispiriting to all but the most rational of people. Hence their inaction is driven by an ingrained attitude that it will be done at some point in the future – given that people in their natural logic hope for and expect to live a long life. Following this thinking, most people take comfort in the belief that everyone will eventually get a chance to put a Will together before the occurrence of the inevitable life event. Said differently, there is no fuss or urgency about writing a Will.

This remains the established mindset for many of us, albeit a flawed one – given that longevity is not promised to anyone, and mortal events are random. Often, unexpected life imposes on us the urgency to write a Will with little time on our hands to do so in a good state of being; or in more unfortunate circumstances, the inevitable occurs suddenly, and it then too late to put one's house in order – throwing family members and loved ones into a undesirable situation that could have been avoided by far-sighted planning.

A crisis, as they say, presents us with opportunities to make positive changes. The recent global pandemic is a high impact event that should reset our thinking about our existence and the inevitability of the aftermath. Writing a Will is both a rational and pragmatic thing that should be taken seriously by everyone.

WHAT THE LAWS SAY ABOUT WRITING A WILL IN NIGERIA

In Nigeria, the Laws relating to Wills^[1] give legal validity to a Will written per the provisions of those laws. For instance, for a Will to be valid, it must be in writing and written by a person not less than 18 years of age. The requirements for the signing of a Will is also a condition that cannot be overlooked. The law requires that the testator (the person making the Will), those appointed by him or her as executors (those that will carry out the testator's wishes upon death must sign the Will to make it valid. In an instance, where a testator cannot sign the Will personally for whatever reason, he or she may appoint anyone to do so on his/her behalf in his/her presence and in the presence of 2 (two) witnesses present at the same time.

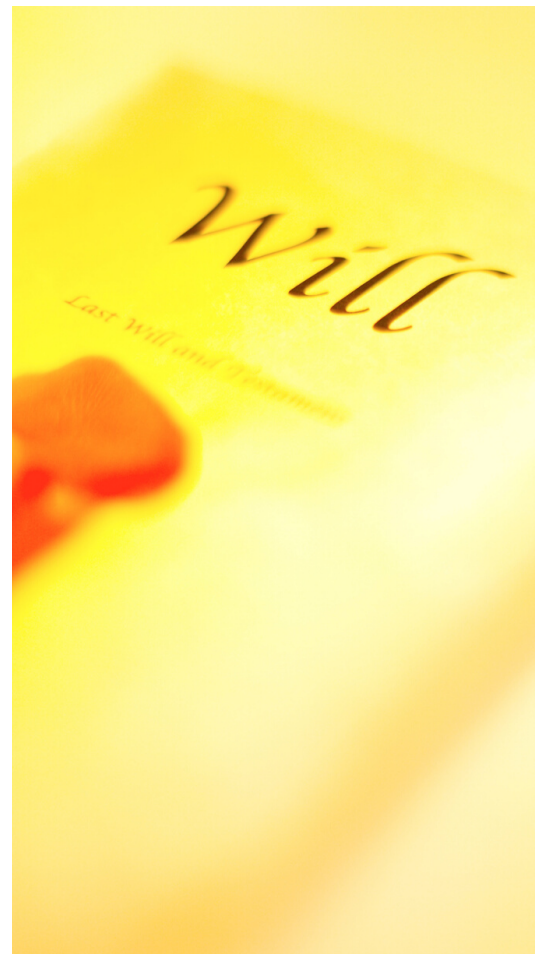
WHY IS WRITING A WILL SO IMPORTANT?

It is safe to conclude with confidence that the singularly most important reason to put a Will in place is the enablement and flexibility of being able to set out and document one's wishes about the distribution of assets to loved ones. And when they become entitled to those assets, i.e., whether immediately or upon the occurrence of an event.

The absence of a Will in place may result in one's family having to deal with the inflexible rules of intestacy after one's demise. The administration of one's estate under intestacy would be subject to the regulations under the different state laws, which is predicated on several reasons. Depending on the circumstances of an individual and the state of domicile upon death, the

intestacy rules would determine who administers a deceased person's estate as they deem fit, which often than not will be detrimental to one's loved ones. Life's uncertainties in general (again like the recent pandemic as a case in point) and the randomness of the same re-emphasises the importance of taking steps to put a Will in place. Often, one may wish to also bequeath gifts to persons other than one's immediate family members, charities or causes of interests but not having a Will that explicitly makes provisions for such gifts cannot be achieved.

Life's uncertainties in general and the randomness of the same, make it prudent to put in place a well-drafted Will as a crucial step towards the planning of one's estate.





SOME IMPORTANT CONSIDERATIONS BEFORE WRITING A WILL?

It is crucial to be familiar with the conditions to be met, making a Will valid before starting the process of putting one in place, such as considering who the beneficiaries in one's Will would be. More importantly, is deciding who the executor(s) to the Will would be. Appointing executors is also an essential part of the Will writing, which must be carefully considered by the testator as the executors appointed would be the ones to carry out the testator's wishes. Such persons must be trusted to execute the testator's wishes and have no agenda of their own.

The testator must ensure to take proper legal advice when writing a Will because a Will that is not well drafted might as well be a piece of paper with no legal validity. Such a weak Will creates legal loopholes that can foment disputes amongst beneficiaries later.

Another important consideration is the review of one's personal assets (including investments, insurance policies, pension plan, shareholding, bank accounts, digital assets etc.). Ownership of those assets needs to be diligently considered to determine if they can form part of one's assets that can be passed to beneficiaries. It is also important to consider the locations of the assets within Nigeria and if any assets are located overseas.

CONCLUSION

At Jackson, Etti & Edu, we understand that the most important skills of an estate planner are the professional insight and understanding we have of our client's interests, the objectives /wishes they may have, and what is required to move the clients closer to the realization of these/their goals. We possess the skills and expertise to professionally guide you through the process of securing a stress-free future for your loved ones.

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