

# Webinar

## Questions and answers



**NEDBANK**  
PRIVATE WEALTH

Thank you to everyone who attended our **How to avoid financial disasters for your loved ones** webinar in September with Tracy Muller (Head of Fiduciary Advice at Nedbank Wealth Management South Africa), Lesego Vilakazi (Manager of Wills Drafting at Nedgroup Trust) and Portia Khoabane (Regional Head for the Gauteng region at Nedbank Wealth Management South Africa).

A number of interesting questions were raised by attendees, some of which we could not answer at the time. Below are our responses to some of those questions.

### Want to know more? Here's what to do:

- Contact your wealth manager.
- If you're not a client yet and want to find out more, we would love to hear from you. You can call us on 0860 111 263 or email us at [contact@nedbankprivatewealth.co.za](mailto:contact@nedbankprivatewealth.co.za).

No.	Question	Response
1	If our properties are in both our names, what are the implications when we pass on?	This depends on the marital regime. If married in community of property, the immovable properties will form part of the joint estate. However, bear in mind that each spouse is entitled to 50% of the net joint estate which can be bequeathed to a party other than the surviving spouse. If married out of community of property, each party owns 50% of the immovable property.
2	Would it help if my wife and I had property in our names, eg Mr and Mrs. Joe Soap?	Refer to the response above.
3	Why does it take so long for Nedbank to open up an estate late account?	If Nedgroup Trust is appointed as an executor, it takes us an average of two working days to open an estate late bank account as we use Nedbank Corporate Saver (a corporate banking account used for the estates administered by Nedgroup Trust).
4	How do you know how much pension you should put aside (every month) if you are self-employed?	Contact your wealth manager: <ul style="list-style-type: none"><li>• Tel no: 0860 111 263</li><li>• Email: <a href="mailto:contact@nedbankprivatewealth.co.za">contact@nedbankprivatewealth.co.za</a></li></ul>
5	Does one have to appoint a legal or financial firm as an executor, or can one appoint a family member to act in that capacity?	You can appoint a family member who can then appoint an agent to attend to the estate administration. The process is very complex and that's why it's important to appoint a professional executor.
6	Is the continuation of maintenance a function of the pension? What would the discussion entail and what would the clauses be?	If the deceased had a pension, all financial dependents of the deceased can lodge a claim with the trustees of the pension fund in terms of section 37C of the Pension Funds Act. However, where the deceased did not belong to a pension fund, then ideally, he or she should have taken out a life cover to provide for the maintenance of any dependents.

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7	What is the benchmark cost of putting a will together?	Nedgroup Trust do not charge a will drafting fee if appointed as an executor. If Nedgroup Trust is not appointed as an executor, it charges R2 500.
8	Does one need a separate will for South African and offshore assets?	This was addressed during the webinar. You can also read our article: 'Owning assets in a foreign country – is there a need to have a separate will?', which can be found at: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus5thEdition-Wills.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus5thEdition-Wills.html</a>
9	Does one need separate wills for onshore and offshore assets?	Please refer to the response above.
10	Can inter vivos trusts be explained further please?	An inter vivos trust is created by means of a trust deed during the lifetime of the founder. The trust is usually funded by means of a donation or loan. In most cases, the reasons for creating such a trust are for purposes of estate planning and tax-efficient structuring and to a lesser degree for protection purposes.  See our article: 'Choosing the right trust', which can be found at: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html</a>  Also refer to our legal ownership guide: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/new-and-insights/current-news.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/new-and-insights/current-news.html</a>
11	Please clarify what inter vivos pertains to and the difference between that and a 'normal' will?	The context of inter vivos relates to a trust and not a will. See above articles.
12	What are the benefits of having a family trust?	See our article: 'Choosing the right trust', which can be found at: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html</a>  Also refer to our legal ownership guide: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/new-and-insights/current-news.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/new-and-insights/current-news.html</a>
13	What are the pros and cons of trust funds? If you put things in a trust, is a will needed? How do you write a will when you co-own assets?	Refer to previous answer above explaining the benefits of a trust. You don't need a will to deal with assets held in a trust. A will is needed for all your personally held assets. Your will must say what you want done with assets that your own. For example, if you own a 50% share in property, you need to specify who you would like to benefit from this.
14	What is the benefit of a family trust?	Refer to the following article setting out the benefits of an inter vivos and testamentary trust: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html</a>
15	Is it wise to open a trust while you're still alive?	Refer to the following article setting out the benefits of an inter vivos and testamentary trust: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus07Trusts.html</a>

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16	Is it possible to ensure continuous growth of assets after a beneficiary takes over?	No, unless the assets remain owned by a trust.
17	What are the implications of a joint will in other types of marriages?	Spouses in other types of marriages have the freedom to draft a joint will. Devotion of the first dying spouse will depend on marital regime (whether or not accrual applies) and content of the will. The other aspects such as massing may be considered.
18	How would the child's share appropriation of the Estate Act impact on the dissolution of the estate?	This applies in intestate estate where the deceased is survived by a spouse(s) and descendants. A child's portion or share is calculated by dividing the remaining net estate value by the number of descendants plus spouse(s). Depending on the calculation, the descendant(s) may or may not inherit.
19	Does my husband's child have to be in my will if married in community of property?	When you are married in community of property, you are bequeathing only 50% of your estate, as the other 50% forms part of your spouse's estate by virtue of marriage, so your husband can bequeath his 50% to his child.  Based on the limited facts, the answer would be no as there is 'freedom of testation' meaning you can bequeath your estate as per your wishes.
20	Does Nedbank offer life cover, and can I write my will at Nedbank? If so, where do I start?	Contact your wealth manager: <ul style="list-style-type: none"> <li>• Tel no: 0860 111 263</li> <li>• Email: <a href="mailto:contact@nedbankprivatewealth.co.za">contact@nedbankprivatewealth.co.za</a></li> </ul>
21	What happens if you make a will and leave the assets to a family member but after a while you get married in community of property? Who will get the assets when the person passes away? Is it the family member or the spouse?	The surviving spouse will receive his or her 50% share. The other remaining 50% will be distributed in accordance with the provisions of the will (family).
22	Please expand on key-person cover for a legal practice, if dependants are not necessarily in the field. Will it expand to grandchildren?	Key-person cover is life insurance (which can also include critical illness cover) taken out by a business on the life of someone crucial to the business. It provides a financial safety net if a key member of staff dies or is diagnosed with a serious illness (if critical-illness cover is included). The proceeds are paid to the business (as beneficiary) and not to the family.
23	What are some of the products that one can consider to cover transfer costs, executor fees and other estate administration costs to ensure that the beneficiaries are not burdened by such costs?	Risk products, eg life cover are generally good products to consider. Contact your wealth manager: <ul style="list-style-type: none"> <li>• Tel no: 0860 111 263</li> <li>• Email: <a href="mailto:contact@nedbankprivatewealth.co.za">contact@nedbankprivatewealth.co.za</a></li> </ul>
24	Can a relative go to the deceased's bank and withdraw money and change signatories without a letter of authority?	No.

No.	Question	Response
25	In the case of an unnatural death, if the post-mortem report was done by the state (government) and is not released despite it being years after the incident, what can be done to continue with the estate for life to carry on for those left behind?	You would have to approach the High Court to compel the authorities to issue a report as this is a requirement of the Master of the High Court to issue letters of executorship.
26	In the case of post-mortem reports not being available, can anything be done for the estate to continue?	Refer to the previous answer above.
27	Just a correction: South Africans are taxed on their worldwide income and receipts, not on source.	As stated during the webinar, South African residents are taxed on a <b>residence-based system of taxation</b> and although not elaborated on during the webinar, a residence-based system of taxation means that South African residents are taxed on their worldwide assets, ie residents are taxed on worldwide receipts and accruals in South Africa.
28	What is a reasonable charge for an appointed executor of a will?	Executor's fees are charged at 3,5% (excluding VAT) on the gross value of the estate – this is a statutory fee. Generally, professional executors will consider reducing the statutory fee considering, among other things, the value and complexity of an estate.
29	If you are unable to find the will of a family member and they never stated where and with whom they filed the will, how do you find it?	There is no central database that keeps a record or registry of wills. It is always advisable to start at the bank that holds the deceased's accounts.
30	I am a Zimbabwean with South African permanent residency. I have a property in Zimbabwe, and I am about to buy a home in South Africa. Do I need two wills for the two different countries?  Is it possible to transfer ownership of an individual home into a trust?	When dealing with immovable property, one should consider having two separate wills drafted. It is possible to acquire or transfer the existing ownership of a South African immovable property into an inter vivos trust. However, it is important to conduct a cost-to-benefit analysis based on the biggest picture and to fully understand the tax costs.
31	The bank couldn't help my mom with a will. She bought a will template from PNA and wrote the will with two witnesses. I am one of four children, and the executor of my mom's estate should she pass away. She has only a townhouse and receives a monthly grant from the South African Social Security Agency. Will this be a problem?	Providing the will meets the requirements of a valid will, then this will suffice. Read our article 'The importance of having a valid updated will', which can be found at: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus6thEditionWills.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus6thEditionWills.html</a>
32	My husband is 68 years and wants to purchase another vehicle. Is it advisable to buy it in his personal capacity? He already has two cars registered in the business of which he is a sole proprietor. How does estate duty impact on assets?	Assets held in by a sole proprietor are identical to assets held in a sole name in as much as they will be subject to estate duty.

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33	<p>What happens if a will is rejected by the Master of the High Court due to the fact that there is no witness signature on the will?</p> <p>Does this mean extended family members' wishes supersede the wishes and rights of the deceased child?</p>	<p>Where a will is rejected by the Master of the High Court due to lack of validity, the family may approach the court (which can be costly) in terms of section 2(3) of the Wills Act to obtain an order for the will to be declared valid. Failing which, the deceased will be deemed to have died intestate and the intestate succession law will apply.</p> <p>Read our article 'The importance of having a valid updated will', which can be found at: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus6thEditionWills.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/FiduciaryFocus6thEditionWills.html</a></p>
34	<p>How does emigration affect estate planning?</p>	<p>Emigration, like divorce, death, marriage, or a birth of a child, is a life-changing event and whenever there is a life-changing event, it is important to revisit your estate planning. Also see our article and download our emigration guide at: <a href="https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/considerations-before-you-emigrate.html">https://www.nedbankprivatewealth.co.za/content/private-wealth-sa/south-africa/en/info/considerations-before-you-emigrate.html</a></p>
35	<p>Having bought a property as partners married in community of property, is it possible for one partner to draw a will and have conditions on the jointly owned property?</p>	<p>Effectively, each spouse has 'freedom of testation' in terms of the 50% share in the undivided immovable property. To avoid any practical problems which may arise in the division of the joint estate, a communal estate clause may be included in the will. This allows the surviving spouse to select items as he or she may wish to receive in full or part satisfaction of their share (50%) of the joint estate.</p>
38	<p>If you are a member of a close corporation or a director of a proprietary company, how do you leave this to successors other than your married partner if you are married in community of property?</p>	<p>This is where a buy-and-sell agreement can ensure a smooth transfer of shareholding between partners. This guarantees continuity for the business and peace of mind for the deceased or disabled partner and their family.</p> <p>Traditionally, a life insurance policy is used to fund the sale and purchase of the shares or member's interest. It is important that the policy be structured correctly to sufficiently cover the actual market value of the shares or member's interest being purchased. If correctly structured, a policy funding a buy-and-sell agreement transaction will not be subject to estate duty.</p>
36	<p>I am not married, so how do I keep my partner as a beneficiary or at least have him as a claimant and have a say in the estate? We have two properties in our names.</p>	<p>These circumstances amplify why it is so important to ensure you have a will drafted to reflect your wishes.</p>
37	<p>I have just got my permanent residence in South Africa. I am married to a Zimbabwean, who does not have permanent residence, and our kids were born here in South Africa, and they also don't have permanent residence yet.</p> <p>We have just bought a house here in South Africa and I am trying to sort out my wife and kids' permanent residence status. How do I protect my family and the investments I have in the country?</p>	<p>These circumstances amplify why it is so important to ensure you have a will drafted in South Africa to deal with your South African assets that reflects your wishes.</p>

No.	Question	Response
38	What happens if the nominated beneficiary in a policy is not in the will under that policy?	Beneficiary nominations on life policies are separate and distinct from beneficiary nominations in a will.
39	When one nominates the bank as an executor, is it tied to an individual at the bank or is the executor the bank as a company? If in the former where the individual is nominated, what happens if that individual leaves the bank?	Every business or corporate entity has an authorised representative acting on its behalf. The same principle applies in wills where Nedgroup Trust is nominated as an executor. A nominee of Nedgroup Trust would apply for appointment at the relevant office of the Master of the High Court to take up executorship on behalf of Nedgroup Trust. If this person leaves the employment of the Nedgroup Trust, the remaining nominee will apply for replacement (amended) Letters of Executorship.
40	Does selecting a guardian of your choice rule out the living natural partner at the time of death?	This question amplifies the importance of regularly ensuring that your will reflects your current wishes in terms of guardianship.
41	There are wills being set up with trusts until a beneficiary reaches a certain age, for example 25 years. From what age would it be suitable for an adult child to inherit without a trust?	This is case specific and should be dependent on the financial maturity of the beneficiary.
42	When someone passes away, all accounts are frozen. So, how and where do you put the money for 'liquidity' for your loved ones to be able to survive?	There are a couple of options: <ol style="list-style-type: none"> <li>1. Bear in mind assets held in an inter vivos trust fall outside of an estate and are immediately available at the discretion of the trustees.</li> <li>2. Beneficiary nominations on life policies will pay relatively quick after the death of the life assured and policyholder.</li> <li>3. Consider donating assets to a spouse during your lifetime.</li> </ol>
43	An estate planner linked to an institution like a bank versus one who is operating privately in his or her private company – which is the best choice for me and why?	When considering using someone who operates on their own some of the considerations I would have or questions I would ask are the following: <ul style="list-style-type: none"> <li>• What does their support structure look like and how do they keep abreast of all the changes in legislative, regulation and best practice?</li> <li>• What does their succession plan look like?</li> </ul>
43	If I have used my full foreign investment allowance and I inherited money offshore (that is legally there from another South African), is there any forex issue?	South African residents who are entitled to a foreign inheritance from the estate of a resident prior to 23 February 2022 are required to declare such foreign assets inherited via an authorised dealer to the South African Reserve Bank in order to obtain exemption from having to sell and repatriate the proceeds. However, this requirement falls away for inheritances received on or after this date and is replaced with the requirement to these assets to comply with local disclosures and compliance. Foreign inheritances from a non-resident estate after 17 March 1983 are exempt from regulation 6 and 7.

No.	Question	Response
44	Would it be preferable to bequeath one's primary residence to one's heirs or surviving spouse, or rather arrange to have it transferred into a family trust?	<p>This is not a one-size-fits-all answer, and one needs to apply the advantages and disadvantages to one's personal circumstance and needs. Some pros and cons to holding a primary residence in a family trust:</p> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>• The current capital gains tax (CGT) on primary residence exclusion of R2 million is only applicable where the primary residence is owned by a natural person or a special trust and will therefore fall away if owned by a family trust.</li> <li>• The ultimate disposal of the property in the family trust will be taxed at a higher effective CGT rate if the gain is retained in the trust.</li> <li>• The cost of maintaining the property in a family trust can be a disadvantage, although it is an acceptable practice that beneficiaries residing in the house and not paying rent pay this as a form of rental.</li> <li>• Practicalities of selling or buying a property especially when there is a change in trustee and the letter of appointment has not been updated.</li> </ul> <p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>• Continuity after death – no transfer costs, CGT, etc.</li> <li>• Creditor protection.</li> <li>• Section 7C of the Income Tax Act excludes loans related to primary residences.</li> </ul>
45	Are there ways of reducing estate duty at a late stage of life?	<p><b>Considerations:</b></p> <ul style="list-style-type: none"> <li>• Type of assets – growth assets (trust if it makes sense for other reasons and waying up the costs versus the benefits).</li> <li>• Current estate duty and donation tax rate could be increased, so consider making lifetime donations (however it also comes with the loss of investment opportunity).</li> </ul>
46	What makes you eligible to open a trust?	<p>The short answer is that there isn't a one-size-fits-all scenario, and one needs to consider the benefits of a trust and whether those apply to you, eg where there are minor children, it may make sense for at minimum, a testamentary trust to be established in terms of your will, but it is also important to consider the costs of doing so. It is the normal cost to benefit analysis that needs to be undertaken.</p>

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