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INHERITANCE PLANNING SERIES:

SHIRTSLEEVE-TO-SHIRTSLEEVE PHENOMENON

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MUCH ADO ABOUT INHERITANCE PLANNING?

Inheritance planning simply defined is ensuring that your assets are seamlessly transferred to the next generation. The issue of the transfer of assets and/or wealth is such an interesting one because we still have a number of people with the mindset that they will rather leave the 'stress' of determining who gets what to their survivors to handle. Some people consider this a task too cumbersome or in some cases surreal, where they will be seen to be planning for their own death before the inevitable happens.

Also, in another category are people who are meticulously observing and weighing the options of who is competent to manage their assets when they can no longer do so. This set of people are looking at scenarios that include incapacitation (permanent or temporary) and death. We agree that these issues are the realities of life and if some thought and planning is done before these eventualities happen, then the consequences will be mitigated.

The love a patriarch or matriarch has for the family is shown in the plan they create for their loved ones when they are no longer around to dictate how the family affairs should be run. Often times, where there is no plan, the family is either left in disarray where they fight over what the deceased has left behind or the bereaved are perplexed as they are unsure of how to trace the assets owned by the deceased. The estate starts to incur costs by engaging a lawyer and the logistics of tracing assets can be tiring such that in most cases, some assets are left unclaimed due to the inability to obtain proof of the deceased's ownership or other requirements.

The burden of this responsibility especially for people with young children and those that have been privileged to acquire significant assets is that these young children suffer the consequence(s) of a parent or guardian that didn't care enough for the life(lives)/welfare of their loved ones after they are no longer around. Upon bereavement, there is usually a drastic change in lifestyle while some children actually stop schooling for a while or they are withdrawn from school due to lack of funds (which in most cases is inability to access the funds/assets/wealth of the deceased).

One would ask, what's the fuss about asset/wealth transfer? Why do I have to sit and start naming persons who would have access to my assets when I'm no more? Or even name persons who would take charge when I am incapacitated.

Some of the reasons are stated below:

Preservation of your assets – you decide how all you've worked for is kept and passed on across generations.

Guardianship - you have the opportunity to name a Guardian for your children/wards that are minors.

Asset Distribution – you decide who benefits from your assets. You have the opportunity to distribute in line with your desires.

A lot of celebrities and non-celebrities have left their estate in a mess from badly drafted inheritance planning documents to those that actually had protracted terminal illnesses that never took out time to have a document stating the plans for their estate or the royalties that maybe accruable to them from works earlier done.

Passing on assets/wealth across generations requires a lot of time, professional guidance, careful selection of persons/institution that will manage the assets/wealth

What steps can be taken to prevent disgruntled persons from scuttling the good plan you've drawn up?

How do you ensure the assets/wealth is enjoyed by the right beneficiaries in line with your desires?

How do you wish to pass on the succession of your thriving business?



"Heads we create an estate plan, tails we leave it to the courts to decide."

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WHAT IS THE SHIRTSLEEVE-TO-SHIRTSLEEVE PHENOMENON?

The shirtsleeve-to-shirtsleeve phenomenon refers to the situation where wealth gained in the first generation will be lost in the third.

"In China, they say wealth never survives three generations."

"The Scottish say – the father buys, the son builds, the grandchild sells and his son begs."

"The Japanese say rice paddy to rice paddy in three generations."

The various sayings in different countries implies that wealth cannot successfully be passed to the next generation because they are unable to manage the wealth. While in some cases, this might be accurate, however we have some global empires that have passed to the second and third generation. An example of this is the Lacoste family wealth which was passed successfully to the second generation but experienced problems at the third generation due to influence of family member who inherited shares but had little or no knowledge of the business. In addition, the family constitution governing the running of the business had not been updated since it was drawn up in 1986.

An example of an asset owner that did not leave any estate plan even at the age of 69 years is the Proprietor of a well-known school in Lekki who died without even a basic tool of planning like a Will. Her children are currently in court, locked in a dispute over who to run the school. This could have easily been prevented.

Also, the Gucci family drama as described by Time in their publication of November 24, 2021 is one that should be a lesson for business owners and the need to ensure a proper estate plan is put in place for their assets.

One can attribute the inability to pass on wealth across generations to a lack of understanding and communication and not preparing the next generation adequately for the task ahead. You do not saddle a person with responsibilities they haven't been used to or groomed for and expect magic! Rather you inform, educate, prepare the person and confirm suitability after some tasks have been accomplished. It is also recommended that whoever will be running a business must understand the business and be financially savvy to ensure profitability and growth.

SHIRTSLEEVE-TO-SHIRTSLEEVE SCENARIOS

Chief M1 family

The children of the late Chief M filed suits and counter suits over the distribution of their father's multi-billion Naira estate in various Nigerian courts. With varying claims filed by the children of the deceased, one of the sons sought a declaration that he and his siblings are entitled to equal share of their father's estate whilst a counter claim was filed in opposition to the claim in which one of the daughters of the deceased urged the court to declare that only persons whose paternity is confirmed by a diagnostics center in the United States are entitled to an equal share of the estate.

This embarrassing situation could have been avoided if the deceased used settlement inter-vivos i.e., passing his legacies and gifts to all his beneficiaries in his life time, well ahead of his demise. Since he was aware of the large size of his family and the potential for problems in the future, the deceased should have made adequate preparations for settling his beneficiaries in his life time. The deceased should have taken a cue from the dispute over the administration of the estate of his own father, in which the deceased joined his siblings to sue his father's widow contesting the validity of the will of their father.

The deceased could have also created a trust settlement in which the properties of the deceased are passed to a trust entity in the life time of the deceased and the trust deed clearly spelling out the bequests of the deceased.



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Bob Marley's Estate

Although Robert Nestor Marly (popularly known as Bob Marley) died in 1981, the [Daniell & Andy Mayoras Newsletter](#)2 reported that schisms that had occurred over Bob Marley's estate do not seem to likely to heal any time soon. Bob Marley died intestate even though he knew he had cancer at least eight months prior to his death. He did not write a will due to his religious belief prohibiting the writing of a will.

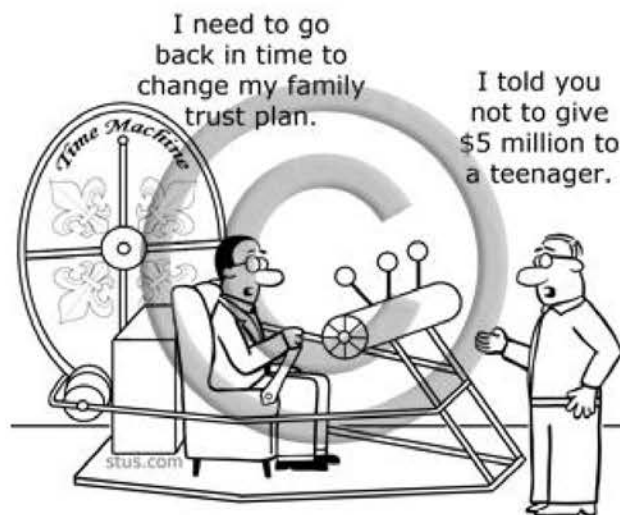
His estate had to follow the intestacy laws of Jamaica which gave 10% of his assets to his wife in addition to a 45% life estate. His whopping eleven children were left with the remainder 45% of the estate to inherit equally. It is the law that determines when and where customary or religious law is applicable in the distribution of an estate, for example, an estate without a will is governed by the intestacy law of the locality of the estate.

The complications arising from Bob Marley's intestacy included the non-entitlement of his wife or children to Bob's name or image whereas his estate was reportedly worth \$30 m when he died and which earns \$23m a year. His estate also had dozens of claimants to part of it. During probate it was discovered that Bob Marley's wife had forged his signature on several documents in an attempt to transfer the majority of his estate to herself based on the advice of Bob's accountant and attorney. There was also an attempt by the president of Bob Marley's record label to sell the Marley's house in which his mother was resident along other estate asset despite public knowledge of the house as his gift to his mother.

Also, Bob Marley's wife and children had to sue his half-brother who was using his name to market a music festival and the court ruled that Bob Marley's wife and children had the exclusive right to use his name and likeness. In view of the fact that Bob Marley's estate comprised on his intellectual property rights which would continue to generate income to the estate, he could have set up a trust to continue to provide for how the fees and royalties were to be applied after his demise.



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Michael Jackson

[Forbes'](#) reported that Michael Jackson's estate have also had a fair share of duels owing to improper estate planning when the King of Pop unexpectedly died. His Mother and father had sued the executors of his estate. It was reported that the executors had successfully managed the estate from being about \$ 500m in debt after his death to enormous profits of about \$475m in three years. The executors were accused of gold digging as the probate judge had assented to a special arrangement that gave them a 10% share in every deal cut by the estate.

Also, Michael's siblings were accusing the executors of fraud, forgery, exploitation and abuse. In 2002, the siblings claimed that Michael Jackson's will was fake, flawed and fraudulent. They claimed Michael could not have signed the will as Michael was not in Los Angeles that day. They also claimed that Michael told them in the months leading up to his death that he despised the pair and didn't want them to have to have anything to do with his life or estate. The siblings also claimed that the executors led and had taken advantage of their 82-year-old mother, managing to get her to agree to increases their percentage fees from the gross income of the estate.

Whilst it appears, the executors may have had the financial intelligence to manage the estate from debt to profitability, their integrity and ethics have been questioned. The appointment of executors/trustees of an estate is an exercise that should be devoid of sentiment. Michael Jackson should have been advised to conduct layers of integrity checks on his proposed executors.

HOW TO AVOID THE SHIRTSLEEVE-TO-SHIRTSLEEVE PHENOMENON

- 1 Prepare a detailed inheritance plan/estate plan that would capture all your instructions including the persons who would administer your assets/wealth when you're no longer in the picture.
- 2 You need Estate Planning professionals to guide you in the preparation of your estate planning documents.
- 3 Ensure you are clear on how you wish your legacies will be passed on.
- 4 Carry your family along when you've prepared the documents. Explain the steps you've taken and the reason for taking the step.
- 5 Try to include clauses in the document that would prevent lump sum pay-outs. This helps to eliminate that mentality of 'taking a windfall' and squandering it.
- 6 When there is a clear understanding of how assets/wealth was acquired, how it was maintained and the plan on preserving same, the next generation will fall in line because the 'absolute' control does not lie with them that is why the choice of the executors/trustees is very important.



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WILLS

One of the ways to escape or avoid the shirtsleeve-to-shirtsleeve phenomenon is by writing a Will. A Will (more formally known as a Last Will and Testament) is a testamentary document that discloses the intention of the maker of the Will (who is known as a testator) with regard to his assets, property and other matters that are important to the testator. A Will is known as a testamentary document (or a testament) because it comes into force upon the death of the testator.

There is the wide spread belief in Nigeria that writing a Will is an invitation to calamity, disaster and eventually death. There are married people who look at spouses who urge them to write their Will with suspicion. The belief is that a spouse urging you to write your Will does not have your best interests at heart and must have an ulterior motive. However, there needs to be an attitudinal change and a shift in people's mindset. Writing a Will is not an invitation to death or destruction but an act of love and a way to protect your dependents and those you love.

In 2022 as reported in the September 16 online edition of Business Day the United Kingdom government released the names of 56 dead Nigerians with unclaimed assets in the country. According to the report, in the event that some of the assets remained unclaimed by December, 2022 they would be forfeited to the Crown. I doubt the assets were acquired by the owners with the intention of forfeiting the assets to the British Crown. However, when one fails, neglects or refuses to put a Will in place so that one's dependents are aware of the assets owned by the testator, one of the unintended consequences is that the assets one has acquired over one's lifetime might end up in the hands of those they did not intend to get them.

As stated earlier, a Will sets out the intention of the testator not only with regard to the assets owned but also sets out the wishes of the testator with regard to other matters. For instance, not only can the testator leave assets in the form of cash in the bank and in the form of property (cars, land and houses) the testator can also leave shares in a company, whether or not the company is public or private. In addition, a testator can create what is known as a testamentary trust in respect of the assets owned. The trust could be created for educational purposes in respect of underage dependents or it could be to create a lifetime annuity for the dependents left behind.

While a Will sets out what is to happen to assets owned, it can also deal with practical matters such as where the testator is to be buried, money for the funeral expenses relating to the burial of the testator and other expenses. The Will can also contain words of admonition or advice left by the testator for dependents on any matter or issue. However, while a Will helps a testator to dispose of assets acquired during his or her lifetime, there are certain exceptions. Several Wills Laws of various states like the Wills Law of Lagos State expressly state that a Will cannot be used to evade an obligation placed on a testator by his customary law and the bequests in the Will are subject to Customary Law.

For example, under Bini native law and custom, a house where a Bini man lived and died must go his first son. While the testator can choose to disinherit the first son with regard to other assets, he cannot give the house in which he lived and died to anyone other than the first son. This position has also received the backing of the Supreme Court, the highest court in the land. However, there are certain caveats. The Customary Law in question must be one recognized as Customary Law by the people and the courts, especially the Supreme Court. Also, such custom must not be repugnant to natural justice, equity and good conscience.

In addition, Islamic Law is also considered to be customary law. The Qur'an already sets out a sharing formula for the assets to the dependents of a Moslem who dies with a Will. If a testator who is Moslem wishes to deviate in any way from the sharing formula in the Qur'an, then the assets he or she wishes to dispose of to other people other than the dependents listed in the Qur'an need to be given to the beneficiaries as a gift by the testator during his or her lifetime.

FAQs

- What is wealth transfer?

- Can I draft my will by myself?

- Do I need to use a lawyer to draft my will?

- What is a Trust?

- Who can be my trustees?

- Can the executors of my will be my trustees?

- Can I invest my estate properties before I die?

- Can I give my beneficiaries my properties while I am alive?

- Can I give part of my estate to charity?

- Will the government tax my estate when it is passed to my children?

- What is Probate?

- If I have a living trust, do I still need a will?

- Who needs Estate Planning?

- What does a well-designed estate plan look like?

- I have only one dependent, do I still need a will?

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