

What happens to a home when the owner passes away?

The answer depends on whether the owner had a will or not says Bruce Swain, MD of Leapfrog Property Group.



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“Finalising the estate of a deceased relative is a fairly complex process, one which is made infinitely more costly and time consuming if said family member died intestate (without a valid will), especially if a significant asset such as a property is involved,” says Swain.

Not all wills are created equal

“Even if a homeowner has written a will, it may not be valid. In order to ensure that their final testament is legally binding, it needs to meet the requirements outlined in Wills Act 7 of 1953,” explains Swain.

According to the Wills Act 7 of 1953 three conditions need to be met for a will to be valid:

- The writer of said will has to be over the age of sixteen.
- The will must be in writing.
- Each page, including the last has to be signed by the testator. The final page also needs to be signed by two competent witnesses (who have to be fourteen years of age or older). All witnesses need to be present at the same time at the signing of the will and cannot be beneficiaries of the will.

What happens to a deceased's property?

“I strongly recommend that home owners ask an expert attorney to draft their will, stipulating who is to inherit, appointing an executor, and to advise the home owner as to possible estate duties, capital gains tax and the cost of finalising the estate so that they can prepare properly – ensuring that their will is valid, their dependents are provided for and the costs determined, and limited where possible,” advises Swain. “Each estate is unique but there are situations where no capital gains tax or even estate duty will apply and it’s best to consult with an attorney to do proper estate planning – sooner rather than later. Remember, if this wasn’t done properly the owner will no longer be able to make amends, hence the importance of sorting this out in time – for the sake of the people left behind.”

Who inherits

If the owner has indicated who will inherit, then the matter is simple (if the will is not contested). However, if no valid will was in existence and the estate is solvent, the assets will be disposed of as per the Intestate Succession Act no 81 of 1987. If no provision has been made for taxes (and limiting them where possible) the burden on the inheritors could be significant.

Selling property from a deceased estate

It might be that assets need to be sold to finalise the outstanding debt in the estate, or that the heirs want to sell it.

Law firm Smith Tabata Buchanan Boyes (STBB) explains that should a home owner have drafted a valid will and appointed an executor of their estate, “the nominated executor must first establish his or her authority to act on behalf of the estate by applying for and obtaining Letters of Executorship from the Master of the High Court”.

“Establishing an executor’s authority can take some time, depending on the case load at the High Court, but not having nominated one means that the heirs will need to wait for the court to appoint an executor which can well cause significant further delays,” believes Swain.

It is important to note that a deceased’s property cannot be sold before the executor has been formally appointed by the Master of the High Court. STBB indicates that, “No matter how great the opportunity, a purported sale will not be valid if the executor signing off has not been appointed, nor will a later signature ratify the sale.” Swain also points out that the written consent of all heirs has to be obtained when selling property belonging to the deceased’s estate - upon the consent of the Master of the High Court.

Normally an executor will first determine what, if any outstanding debt the deceased had upon the time of their passing – that debt has to be settled first, which may well necessitate the sale of the family home. “I would strongly advise home owners to share all the relevant documentation (from the will to bank statements and the like) with a trusted family member / executor so that they know where everything is, and how to proceed. Should the home need to be sold, this will speed up the process considerably,” advises Swain. “However, even with everything in place, heirs need to know that concluding an estate can be a lengthy process and that it will be some time before the executor will be able to proceed on a property sale, if needed.”