PLANNING FOR THE "AFTER LIFE"

Wills/ Trusts

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4th Series

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...It's all about you

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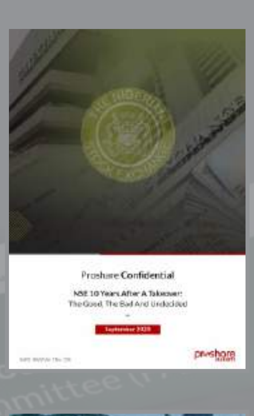

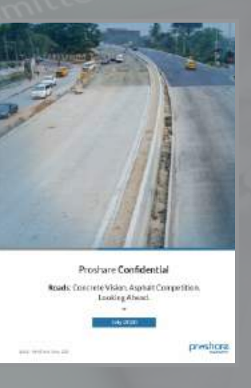

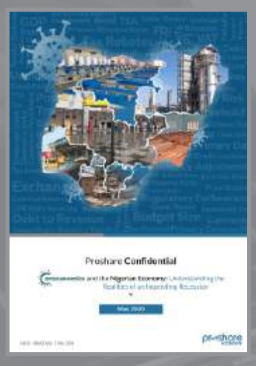

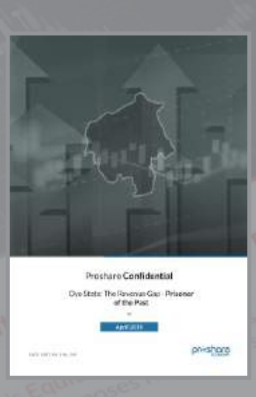

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Executive Summary - Starting the Glory Journey

Wills can be nasty affairs if not treated carefully and could be disastrous if not treated at all. Many African families have seen the bloodbath that occurs where a family patriarch dies without a will (in other words he dies intestate) or leaves a will that slices and dices his estate in unexpected ways, the battle royale between three brothers (all of whom are lawyers) over the estate of Nigerian legal doyen, Chief Rotimi Williams (SAN) is one of many notable contemporary consequences of not leaving a will.

> *There is something about wills which brings out the worst side of human nature. People who under ordinary circumstances are perfectly upright and amiable, go as curly as corkscrews and foam at the mouth, whenever they hear the words 'I devise and bequeath.*

The same internecine struggles were witnessed over the property of highlife music impresario Sir Bobby Benson, whose children allowed his popular hotel along Ikorodu Road in Lagos fall into disrepair before the Lagos State government took over the building and demolished it in overriding public interest.

The absence of a document handing over assets of a deceased individual to designated survivors creates a maze of social and legal problems that usually results in the creation of a shopping lit of 'dead' assets that in the Nigerian parlance are 'Not for Sale'. Dorothy Sayers was right on the money in the quote above when she noted that typically sane people become rabid creatures once the issue of a will arises.

The decision and preparation of a will is a necessary and meaningful exercise to ensure the peaceful intergenerational transfer of assets and the guarantee of social harmony within and between families (see illustration 1 below).

Illustration 1 Intergenerational Transfers

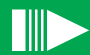

Illustration 1 Intergenerational Transfers

INTERGENERATIONAL ASSET TRANSFERS: WILLS & TRUSTS

Wills & Trusts

Wills

- Assets are distributed after a person is deceased.
- Usually written and supervised by a lawyer after a person passes on.
- Wills unlike trust could become subject of contention.
- Wills usually involve one distribution of a deceased assets.

Trusts

- Asset distribution is determined while trust owner is alive.
- Overseen by a board of Trustees.
- Typically, uncontentious.
- Trust fund is self-sustaining and generates cashflow streams for beneficiaries.

Source: Proshare Research, Ecographics

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But transfer of assets do not only occur when a person dies, it could take place while the individual is alive by way of a Trust. A trust is a fund set aside for beneficiaries to draw from while the asset owner is alive. The trust allows beneficiaries access to assets in a prearranged manner over a period of time in line with the instructions of the creator of the Trust.

A trust is usually managed by a board of Trustees appointed by the trust creator while alive. Trusts usually allow beneficiaries access to cash flows or a stream of revenues from underlying assets that guarantee a minimum wellbeing while the creator of the trust is alive and perhaps even when the person dies, notable large trusts are those created by the late Sam Walton of global consumer retail giant Walmart, Bill and Melinda Gates of the Bill and Melind Gates Foundation and Microsoft, and Warren Buffet, the investment sage of Omaha and Chairperson of Birkshire Hathaway.

The trust option is not very common amongst high ranking and wealthy Nigerians as many prefer to give designated beneficiaries of their wealth regular freebies and leave instructions on who control certain assets after their death. In polygamous family arrangements this could be difficult and have unintended consequences. Hence, a preference for a formal trust scheme and a legal will.

The Will to Support

In Nigeria the fear of death is gripping and individuals simply wish away the notion of passing to the great beyond and believe that it protects them from the inevitability of the event, it explains why several Nigerians have no retirement plan and end up broke and down at sorts after a long and healthy professional or business career.

The notion of mortality scares the average Nigerian stiff and stops them hard in their tracks from planning their personal estate for transfer to the next generation. Surprisingly this is as common amongst the well-heeled and educated as it is amongst the less literate. The decision not to plan for tomorrow's inevitable passing away of individuals has created a large and growing pool of dead assets and has allowed avoidable internal conflicts within families to flourish. The scars of strife resulting from the poor handling of a deceased's assets have bookmarked major social and economic challenges not common in more mature societies and economies.

The Nigerian has a romance with life and living that extends beyond the corporeal to the spiritual, and therefore, the thought of passing off assets to a new generation raises a mental picture of giving up on life. The aversion for wills as last testaments reflects a deep seated complex in which the Nigerian cannot come to terms with his or her mortality. This creates a major problem for value creation and asset use.

For example, in many rural communities family heads own farmlands for which there are no titles and passing on the asset after death is a treacherous path of family horsetrading, politicking and deceit. It is not uncommon for family members to throw out the children and wife of a man after he is dead claiming that the decease's assets are 'family' property. Many women have had to face the heartrending challenge of starting life anew with the burden of taking care of their husbands children without a financial fallback position or social safety net. The harrowing tales told by these women underscore the need for heads of families to obtain proper title documents for their assets and ensure that a will exists that is suitably registered and handled by a competent lawyer.

For example, the estate of Chief Moshood K.O. Abiola is still a matter of court adjudication while assets such as Abiola Bookshop, Concord Newspaper, Concord Airlines and a few other businesses have hit the deck. The same is true with other wealthy Nigerian families, but the rich have close cousins in the less privileged members of society as assets easily turn to dross as a result of lengthy battles over the property of deceased persons.

The Strength of Flexibility

A way to ensure that wills are put in place before a person dies is to have a basic will as soon as possible while one is in ones twenties and this will would be adjusted either annually or every two years to make the will as current as possible and ensure that assets accumulated are put into the document. A schedule of an individuals fixed and floating assets should be prepared annually and this should be aligned to the details of the most recent will available.

'Rolling' or regularly adjusted wills ensure that contention concerning a person's assets at the time of death are reduced to the barest

minimum. This protects the immediate family from the onslaught of third parties keen on taking predatory advantage of the deceased's direct family. The deceased would do well to ensure that the will includes liquid and near-liquid assets that could be used in paying the required duties and taxes on property transfers. For example, as part of the will process if the writer of the will has assets in the form of equities listed on the stock market, pre-signing undated share transfer forms would make the process of selling some of the shares to raise urgent cash easier for the beneficiaries of the will, particularly if one of the beneficiaries is made next of kin to the decease's bank account/s.

As the will writer acquires more shares the will can be updated or a general commitment to transfer all equities in companies listed on an official stock exchange anywhere in the world could help reduce paperwork.

Avoiding a Sting in the Tail

As good as a regular review of a will is, there are some overlooked parts of a will that must be addressed. For instance If a will refers to Mr. and Mrs. X such a will can easily bring about confusion and even chaos where the exact Mrs. X is not clearly identified. If there is a hidden Mrs. X that appears at the demise of Mr. X the courts may have a tough time untangling the knot where the newly discovered Mrs. X has children for the departed Mr. X. Mr. X must state clearly in his will which Mrs. X is a beneficiary of what. For example, the will should mention Mrs. Margaret X and not Mary X.

Other tail stings could occur in wills but the writer of a will should ensure that ambiguity is removed from the will and that the will is registered at a probate office.

Illustration 2 **Wills: Avoiding Booby Traps**

WILLS: AVOIDING BOOBY TRAPS

Wills

Clarity

- A will could be a booby trap if it lacks clarity.
- People that were not expected to be beneficiaries of an estate could smuggle themselves in if the will is poorly worded or neglects to qualify provisions.

Specificity

- To avoid problems of 'strange' beneficiaries, a will should have specific beneficiaries mentioned with full names and a will should attempt to avoid ambiguity and vagueness.

Flexibility

- This refers to wills being updated at pre-arranged periods.
- The periodic update allows for the inclusion of new assets and new houghts concerning beneficiaries.

Intentionality

- A will should be deliberate, contemplated and executed transparently and diligently.
- The writer of a will must have a clear mind uncluttered and withered by age or infinity.
- The will is a writer's eye on the future.

Source: Proshare Research, Ecographics

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This House is Not for Sale

A story of a Benin family told by a law firm Eghobamien & Eghobamien is instructive in understanding how wealth accumulation without appropriate legal backstops could lead to asset destruction and avoidable family infighting, the story goes as follows:

The practice of inheritance as a means of devolution or disposal of property has in recent times been divisive. This age-long concept is particularly sacred to the Benis who ascribe significance to customary devolution of property. However, this practice is not without some challenges, with the attendant effect of creating family feud and disenchantment among family members.

In a bid to secure the assets of a deceased

relative, families have resorted to various means of ensuring that the properties do not fall into the hands of undeserving individuals. Some of these means are in fact detrimental to the value of the property. The story of Mr. Imafidon is commonplace as it underscores the need to avoid property devaluation and deterioration.

Mr. Imafidon was a very educated, wealthy and industrious man who had amassed so much wealth and assets in his lifetime but died in his prime subjecting his properties to the vicissitudes of disposal under native law and custom. As a young man he excelled in academics obtaining a Masters degree from University of Nigeria, Nsukka at the age of 24 and was very knowledgeable in the area of financial accounting. His excellent academic records did not go unnoticed as he was invited as a keynote speaker at the University of Alberta, Canada where he obtained his Doctorate degree.

While on his visit to Canada, he came down with severe cold and shortness of breath, he was later diagnosed with acute pneumonia. Having exhausted all options of English medicine to no avail, he was flown back to Nigeria for traditional treatment. His family rallied around to provide the best healthcare for Mr. Imafidon whose ill-health had deteriorated so badly and was now receiving treatment at home. For about two years, he had suffered severely with this illness and on the 24th of March, 2014 the cold hands of death greeted Mr. Imafidon who by this time was 45 years old.

Soon after the conclusion of the burial rites, Mr. Imafidon's second son, Omoruyi Imafidon who has always had a witty attitude and has been nursing intentions of relocating to the United Kingdom, began selling off his father's properties to enable him gather funds to cover his travel expenses. Also, Mr. Nosa who is the deceased elder brother, was very close to him during his lifetime and being one of his closest confidant had managed to lay hands on some documents relating to the Late Mr, Imafidon's assets also sold off some of the deceased properties.

The Late Mr. Imafidon's wife and other children upon having knowledge of the sale by Omoruyi and Mr. Nosa took steps to prevent them from further selling off the remaining properties owned by their father by putting up the inscription 'THIS HOUSE IS NOT FOR SALE' on the deceased properties.

THIS HOUSE IS NOT FOR SALE: THE RAGE OF THE IMAFIDONS

Imafidon Snr

Brilliant finance specialist and entrepreneur, accumulates impressive wealth but dies at a young age of 45.

Omoruyi (Son of Imafidon Snr)

Omoruyi (2nd Son) sells father's properties and travels abroad

Mrs Imafidon

Puts other houses under "**Caveat Emptor**" and puts the sign "**This House is not for Sale**" on the properties.

Mr Nosa

Sells off his late brother's assets as one of his deceased brothers' closest confidant.

Source: Eghobamien & Eghobamien, Proshare Research, Ecographics

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Not properly tidying up matters related to inheritance could result in family tragedies but beyond family woes there is the wider issue of the economic consequences of a sprawling mass of 'dead' or unusable assets across the country, whose economic values have been bootstrapped in court cases.

Section 1 of the report takes a bird's eye view of the concepts of wills and trusts and identifies parties to a will or trust and why they should be concerned with both types of asset transfers. It deals with the issue of who should plan for the afterlife, why they should plan for the afterlife, how they should plan for death, and when the afterlife planning should commence.

Section 2 of the report looks at the planning of a will writer's (testator's) estate. It clarifies issues around the estate planning of the will writers properties (management of the deceased's assets fixed and movable). The author's of the report bust the myth around wills and the argument around when people should start planning their affairs with regards to death, the "too young to write a will" argument.

The section also explains the various types of wills and the existing administration of will laws in Lagos State.

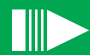
The third section, **Section 3**, features a

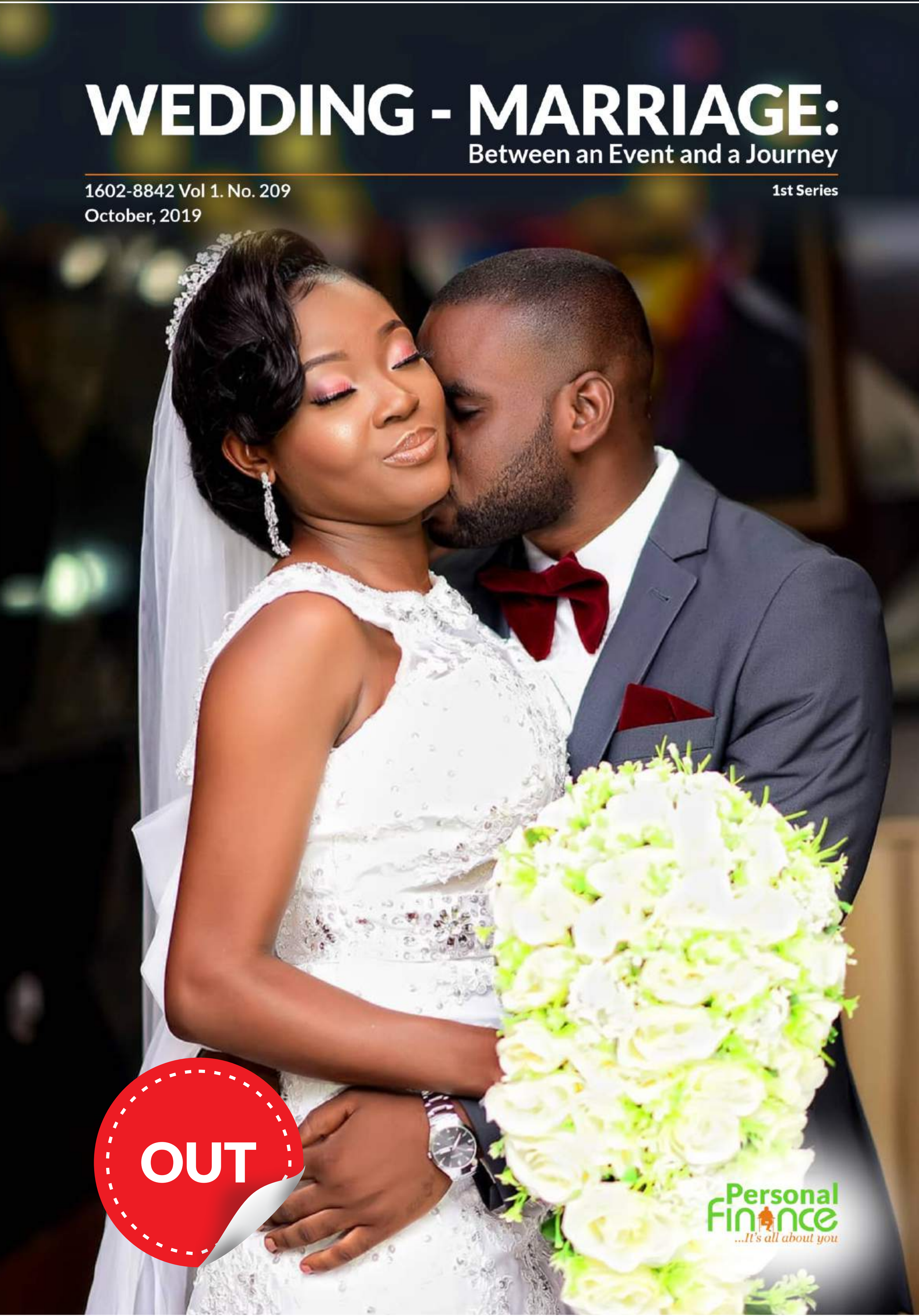
contribution from a legal practitioner enlightening us about the common mistakes made in drafting a will and what the government and individuals need to do to facilitate seamless wills administration.

Section 4 of the report deals with what beneficiaries should know at the death of an individual. Rather than flaying around blindly trying to find direction, the section lays out the process of addressing issues related to the decease's bequest. It particularly provides guidance for those whose loved one passed away intestate (that is, without a will as is common in Nigeria).

The last Section of the report, Section 5, explains how people should order their affairs to ensure that they pass into the afterlife in a way that leaves little if any room for friction amongst family members and any other interested persons.

PART ONE – Introduction - Seeing The End At The Beginning

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PART ONE – Introduction - Seeing The End At The Beginning

Can one chart a better life for his/her dependents while alive? Or build wealth that can be easily transfer after life? These and many more are the questions that need to be answered as one acquires wealth and journey through adult life.

a. Who should Plan for the After Life

Anyone should plan the arrangement of their after-life affairs. This includes and is not restricted to every adult who has attained the legal age of 18 years. This is premised on the provisions of the Wills Law which is to the effect that no will made by any person under the age of eighteen (18) years shall be valid.

Therefore, an underage person cannot make a Will, except he is a seaman, mariner or part of a crew of a commercial airline. The hazardous nature of their jobs makes the law envisage that there is more likelihood for them to die in the course of their duty. Hence, the law allows them to make a valid Will even though they are less than the statutory age.

It should be added that the Wills Law of Lagos State1 makes it lawful for every person to devise, bequeath or dispose of by will all real estate and personal estate which they are entitled to in law or equity.

Contrary to widespread opinion, making a will is not only about planning for death but also about ensuring that your family and loved ones are adequately protected. In effect, making a will is one of the most critical things a person can do for his or her loved ones.

There are a lot of dissenting opinions among professionals about who should plan for the afterlife and make a will. However, while it makes compelling argument that it is always better to have a will, it must be mentioned that there are specific categories of people who need a will.

1. For **married couples**, a will becomes very important to protect the interest of each other, as it is important to put into writing what assets a partner gets upon death. Traditionally, a spouse would likely inherit a deceased partner's things even if he or she dies without a will, but that should not be left to chance.

2. Wills are also very important for **parents** because their kids are likely to inherit their assets if they die intestate (i.e., without a will) after their spouse, but not necessarily. This means parents that want their kids to inherit after their spouse need to put that in writing so there is no room for error or interpretation by the courts.

3. Those that are **single and don't have kids, but have a high net worth** should have a will. Specifically, people who own assets that exceed more than

N50 million should have a living trust which goes into effect right after it's signed.

In essence, for people who have assets that need to be distributed upon death, it's almost always easier on their family when a will or trust is in place. Once death is involved, clarity should be the operative word.

b. Why should you Plan?

There are many reasons why every person must make plan for the afterlife which include having a will while they are still alive. This is because of the polygamous nature of our legal system which often suggests that citizens should be judged by their lifestyle and by implication you are subject to the whims and caprices of the court who may decide as to the application of law which may vary. Where a person dies without a will, often referred to as dying intestate, the Courts will distribute the estate of the deceased according to the provision of the law.

There are three systems of law governing intestate succession in Nigeria. They are:

1. Common Law
2. Laws of various states (customary) and
3. the Statutes of General Application/Acts and Statutes, Customary Law and Islamic Law.

The decision of the court would be premised according to the type of marriage contracted by the maker of the will, and where such a marriage was contracted outside Nigeria, the law of the last longest domicile of the maker of a will, will apply in the case of movable properties.

Where however it relates to immovable properties, the principle of lex situs (i.e. Law of the place where the land is situated) will apply. Also, if the immovable property is based in Lagos, Ogun, Oyo, Ondo or Edo state, the administration of estate law will apply when customary law does not apply. Where also, the property involved is movable and the deceased died domiciled in any of the five states listed above, then the administration of estate law applies notwithstanding the location of the property2.

The case of **Cole v. Cole (1898) 1 NLR 15** is instructive as it highlights the instance where a person who died intestate contracted a marriage outside Nigeria and his estate was distributed according to the English Common Law.

c. When should you Start Planning?

Every person should begin planning their will early on in other to ensure that they are not caught by chance to the whims and caprices of life especially as no one knows their last day on earth. The ideal age for planning a will is 18 Years. See Section 3 of the Wills Law.

It is important however that you sit down to count the costs, in counting the cost it is important to consider the following:

i. Your Income Level?

Income received monthly and yearly is a consideration when discussing when an individual should begin planning his/her estate. It however should not be a consideration for you to postpone planning your estate on the ground that "you are not earning enough". Other considerations which shall be discussed below will also provide more insight in this regard as every individual has a unique experience and life trajectory and as such should not be subject to a yardstick which may not be entirely applicable to them.

ii. How many dependents do you cater for?

The number of dependents which you currently cater for is important in determining the income which would be required to be generated by the estate upon your demise to ensure that your dependents do not suffer adversely. It would also be important in allocating gifts to them as you are better equipped to make a well-informed decision as to how you would be gifting your dependents on a "needs basis" and not "wants basis".

Section 2 of the Wills Law is also instructive as it provides that the wives, husbands or children of the deceased may apply to the court for an order on the ground that "the disposition of the deceased estate effected by the will is not such to make reasonable financial provision for them (the applicant)". The Act also defines **Reasonable Financial Provision** as "such financial provision as it would be reasonable in all the circumstances of the case for husbands or wife to receive, whether or not that provision is required for the applicant's maintenance".

iii. The adverse effect likely to be encountered should you fail to plan your Estate today?

The effect of your demise must be properly considered and in this instance need not only apply to your immediate family but is also inclusive of employees (where you are an employer of labour). You must thus draw up your will bearing in mind that where it is not properly considered, it can lead to a citation of your will which may be upheld or set aside and would undoubtedly lead to unnecessary litigation expenses.

iv. Debts owed (if any)

It is important to consider existing debts and consider them in two tranches, which are those which are payable within a reasonable time possible or a long period of time. Where it is the later, it is important to provide how such debts are to be cleared from your estate which may be from the income or residue of the estate.

v. Existing Contract and obligations at the point of drawing up your will.

It is presumable that during your lifetime, you may possibly enter into agreements which binds yourself, assigns and successors-in-title. It is also agreed that each of those agreement bears its own peculiarities, it is however important to collate and indemnify your successors or dependents of any liabilities where possible and where this is not possible, it is important to properly include necessary

details which they should be aware of in the will. This may be further amended by a subsequent codicil depending on the circumstances of the case surrounding a specific agreement which is binding.

d. Who should you talk to when planning?

Generally, anyone can plan the affairs of their estate whilst still living, it is however advised that professionals be involved in this process particularly legal practitioners and trust firms.

Any person who seeks to make a will or plan their lives after their death is advised to engage the services of a legal professional or a trust firm who exudes skills and experience in this regard. The reasons for such choice are numerous but the major reasons are highlighted below:

A legal practitioner will help in preparing a legal binding document, this he/she will do by asking the necessary questions and providing you with options on how to leave your property.

By Virtue of the Rules of Professional Conduct, which guides the actions and behaviour of legal practitioners in Nigeria, it mandates Legal practitioners to do the following:

i. They are required to devote their attention, energy and expertise to the service of his client (a prospective testator) and to act in a manner consistent with the best interest of the client (Rule 14 (1)).

ii. A legal practitioner is also estopped from abandoning or withdrawing his employment once assumed except for a good cause. This provides a prospective testator with the security of his estate during the period of appointment of a legal practitioner to draft his wills (Rule 21 (1)).

iii. Communications shared with the legal practitioner are also deemed highly confidential and cannot be shared with third party except with where the confidence or secrets necessary when permitted under the RPC or law or a court order (Rule 19(3)(b)). This loosely translates as meaning that the legal practitioner can be called in to testify and give evidence should any issue relating to an executed will be an issue of contention before a court of law.

iv. The legal practitioner is also not expected to call at a client's house or place of business for the purpose for giving advice to or taking instruments from (Rule 22). With the only exception in this case being when the prospective testator is unable to attend due to an urgent reason which usually in practice is ill health or old age of such a testator.

Other persons you can and should speak to when planning the affairs of your estate are:

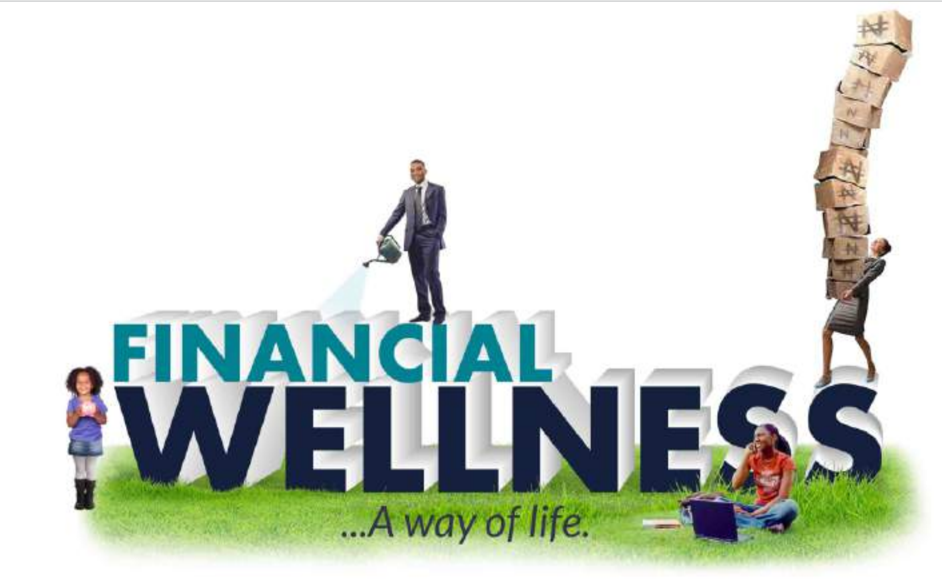
Asset Managers – Speaking to Asset Managers is important because they possess specialized skill in management of assets and as such will provide quality financial advice which will be instrumental when applied to a Trust. This also often guarantees income for the estate.

Estate Planners – This may be an attorney who is skilled with knowledge in Estate Law. Estate Planners help to draw up an estate plan which could be long or short term in nature. Where required they provide advice on how an estate can be properly dispensed and aid the smooth handover of documents relating to the real estate of a deceased person.

Portfolio Managers – The importance of portfolio managers is becoming increasing important especially as the world becomes more technology inclined and has resulted in the use of safe locks, passwords and important information locked in the cloud. Persons who engage the services of a Portfolio manager preferably a company, provides their estate with appropriate security and access to the assets gifted to them which may range from shares and stocks in companies, to crypto currencies and title ownership documents as a proper planning with portfolio managers will ensure the security of assets of a deceased person and escapes liquidation by regulatory bodies which may be as a result of legislations passed from time to time.

Financial Analyst – You should also consider seeking advice from a Financial Analyst who can properly advise you on expected future returns of your estate within a specified interest as well as render necessary advice on your stocks/shares.

You may also wish to speak to your intended Executors and Trustees intimating them of your desire to appoint them under your will and clarifying if they would like to act in such role as gratuitously or at a fixed fee. This is so important especially where you decide to create a secret trust under your will.



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PART TWO – Estate Planning- Carefully Covering The End Game

a. What is Estate Planning

Estate Planning has been defined by Laura Hendrix Ph.D (Assistant Professor Family and Consumer Economics, University of Arkansas System Division of Agriculture Research & Extension) as arranging for the orderly transfer of your assets (property following death).

I.O. Smith in his book; "The Law of Succession in Nigeria" also defines Estate Planning as an arrangement for the use, preservation, and transfer of one's property for one's lifetime and at death. The process of creating an estate plan is called "Estate Planning".

Estate planning takes different forms; ranging from Wills and codicils to Trusts to Deed of Gifts and Power of Attorney.

b. Importance & Myth around Estate Planning

Estate planning is important for a variety of reasons one of which is that it is ambulatory as it speaks from the grave. It is regarded as speaking and taking effect immediately as if it had been executed immediately before the death of the testator unless a contrary intention appears in the will.

There exist several myths around estate planning as culled from Forbes which includes and are not limited to:

I. **"I'm too young for estate planning"**

Human beings overestimate their mortality, this is further compounding by the uncertainty as to when every individual will be no longer exist on the face of the earth. Planning one's afterlife allows for the families which a deceased person leaves behind to be better provided for such that they are not incapacitated and are prepared to deal with the demise of the deceased.

ii. "Estate Planning is just for the wealthy"

The idea that one must plan their estate when hit they a major milestone financially or investment wise is best described as "being penny wise and pound foolish" which loosely translates to being careful about small amounts of money and not being careful about larger amounts of money. An individual can also update/amend his estate planning instruments at any time regardless of what was already in the earlier which is to be revoked or further amended by a codicil or addendum to agreements.

iii. "I need a lawyer to draft these documents"

Although, it is emphasized that parties who seek to plan their estate should seek the professional services of a lawyer to draft the necessary documents. This myth is limiting and evasive as realistically not every individual can afford the services of a legal professional. It is also not in all circumstances, that an individual will have the luxury of time to settle the affairs of his estate which might also include the period of the lawyer commuting and appearing in time just before any uncontrollable circumstance has taken its course. Any individual can plan his estate in so far as the instrument drawn by the individual meets the requirement of the Wills Law.

iv. "I don't need a lawyer at all"

It is highly doubtable that the services of a lawyer can be dispensed with by an individual when drawing up the instrument of estate planning, he/she decides to opt for. This is especially as failure to meet these requirements could result in the commutation or the misinterpretation of the true intent of the individual who may at such point be deceased and unable to guide the interpretation of the court where such a dispute becomes contentious.

v. "If I pass away without a will, the state gets my assets"

This myth is wrong and misleading as the state does not receive the assets of an individual when he/she is no more. The customary law would apply in an instance where it can be proven that he faithfully abided by the rules during the period of his life on earth, where he contracted marriage under the statutory law of the state and transacted his business whilst alive under the common law, the statutory law governing his marriage to his/her spouse will apply.

Section 49(1) of the Administration of Estates Law of Lagos State provides for the order in which everyone shall take under the deceased's estate, and it is as follows:

I. The husband or wife where either of them leaves no issue, parent, brother, or sister of whole blood.

ii. Where the intestate leaves no husband or wife, no issue and both parent, then the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely.

iii. Where the intestate leaves no husband or wife and no issue but one parent, then the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely.

iv. If the intestate leaves no husband or wife and no issue and no parent, then the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely;

(1i) Blood Brothers and Sisters of the intestate

(1ii) Half Blood Brothers and sisters of the intestate

(1iii) The grandparents of the intestate and if more than one survives the intestate in equal shares

(1iv) Uncles and Aunts of the Intestate (being brothers or sisters of the half blood of a parent of the intestate)

It is only where there exists no family relation whatsoever to the intestate as mentioned above and where there exists any such person; but such a person has defaulted in taking absolute interest that the residuary estate of the intestate will belong to the state as ***bona vacantia*** (which means a property which is left without any clear owner), and in lieu of any right to escheat.

vi. **"If I have a will, I don't have to worry about probate"**

Probate is a process which can be described as giving legal validity and enforcement to a will made by a testator. This is done through the official proving of the will by beneficiaries under the will and any other interested party to the will. It is thus impossible that a testator will not have to worry about probate as executors appointed under a will are required to approach the probate registrar for a set of application forms in the absence of any opposition or citation of the will.

Obtainment of Probate from the Probate Registry of the state in question entitles the executors to a Bank Certificate in order to provide them with the assets which may range from shares, monies and stock which formerly belonged to the deceased testator.

c. Estate Planning Mechanisms

Estate planning takes various forms but the popular of which are:

Wills and Codicils

A Will may be described as a testamentary document which is made and executed voluntarily by a testator/testatrix with a sound disposing mind in which he gifts his beneficiaries and which when the testator is late and no more is used to direct the affairs of the deceased. The gift which he bequeaths to the beneficiaries could be real, moveable, and immoveable property.

K. Abayomi in his book **"Wills: Law and Practice"** defines a Will "as a testamentary and revocable document, freely drawn up, executed and witnessed by a testator according to law with a sound mind in which he disposes off his property subject to any restriction imposed by law and in which he disposes of his property subject to any restriction imposed by law, and in which he provides such other orders, as he may deem fit to his personal representatives otherwise known as his executors, who administer his property in compliance with his wishes manifested in the will".

A Major aim of making wills is that it allows a person/testator to order his affairs even after his death. In practice, the disposition of real and personal property in such will, makes the will a devise.

The structure of Wills and its application as we have known it to be is a three thronged approach, which largely involves:

i. The testator who expresses his desire to make a will. A LAST WILL if properly put in order to not leave room for manipulation when the testator or testatrix is no more.

ii. The person who carries out the expressed wishes for intention known as the Executors/Trustees.

iii. The beneficiary in whose interest the expressed gift or donation was made.

The following are the most essential characteristics of a Will, they are:

1. It is a declaration of a testator's wishes.

A Will is an evidence of the true wishes of the testator as to how he would share his property(ies) amongst his beneficiaries at the time it was made.

2. A will is revocable.

A Will cannot be deemed as irrevocable during the lifetime of the testator. This position has been upheld by the court where it stated that it would be against the nature if a will to be so absolute that he who makes it cannot countermand it. (Forse and Hembling Case (1588) 4 Co. Rep. 60b). The law also frowns upon any contract which prevents a testator from exercising his right to revoke his will during his lifetime (Re Heys (deceased) 1914 P.192) and where such exists the claimant shall be entitled to compensation upon proof of damages suffered by such contract (Synge v. Synge (1894) 1 QB. 466).

Conditions contained in the will may also be held as void. In the case of **Morse v. Blood** (71 N.W. 682, Minn (June 8, 1897)), where the testator left his entire property to his wife "on the condition that in no case shall she give or bequeath one cent of said estate to any member of my family or any relation of her own". The court held in this instance that such a condition should not be allowed where it is so vexatious as to prevent any alienation for a limited time, in this case, the effect of such condition was such that tied up the real estate during the widow's life as no purchaser could safely take the property, when it can be forfeited at any time by the widow giving a drink or other trifling drink to any of the forbidden persons.

Notably, **Section 20 of the Wills Act, Section 17 of the Wills Law of 1958 and Section 11, 13 Wills Law of Lagos State** provides for instances when a will can be revoked. They are:

i. Revocation by Subsequent Marriage of Testator

This principle of revocation of a will on the ground of subsequent marriage is one which is judicially noticed by the courts. It entails that where a testator made a will and subsequently married under the statutory laws of Nigeria, the Will, will be automatically revoked, with the only exceptions being:

a. A marriage made in accordance with customary law.

b. A will made in exercise of a power of appointment which the property thereby appointed would not default of such appointment.

c. A will expressed to be made in contemplation of the celebrating of that marriage provided that the names of the parties to the marriage contemplated are clearly stated.

A notorious case authority for this purpose is the case of **Mrs. Alero Jadesimi v. Mrs. Victoria Okotie-Eboh & Ors.**, where the court held that the will satisfied the requirement of being in contemplation with the statutory marriage which was with the same woman.

ii. Revocation by Destruction

This is described in latin as "Destruction animo revocandi" which translates to mean "the intention to revoke and also the state of mind to revoke, recall or annul". A testator may revoke his will by destruction of same will and it may still not be recognized as valid where it is lacking of the intention and state of mind to destroy and revoke the contents of the will from not applying. A will may be destroyed by tearing,

burning, shredding or any other suitable method as the testator deems fit.

In the case of **In the Goods of Brassington**, the court upon considering evidence given by the testator's doctor which showed that the testator at the time of the destruction of his will, did not know what he was doing as a result of the state of his drunkenness and even tried to stick the will back together held that the tearing of a will by a testator while

he was drunk does not suffice for a valid revocation and hence admitted the will to probate.

In the same vein, **In Re Booth**, the court decided that there was no revocation where a will was accidentally destroyed by fire. Likewise, in **Giles v. Warren**, it was held that a will is not revoked where it is destroyed under a mistaken belief that it was invalid.

iii. Execution of another Will or Codicil

A testator may execute another will or make a codicil and this is expected to be spelt out clearly in the new will or codicil. Where disposition of property in the subsequent will is not consistent with the old (intended revoked will), the court will hold the previous will as being revoked by implication.

In the **Estate of Brian**, the testator made a will prepared by her solicitors, appointing her son, Albert executor and trustee. Later she made another will, appointing her grandson Brian Douglass executor. She made a disposition which was endorsed upon the first will and stated; "I revoke all wills made out by me as from this date, the codicil to this will is to take the executor and trusteeship from my grandson and give it to my son. The issue in question here was; whether extrinsic evidence can be used when ascertaining the intention of the testator to revive a will. It was held that extrinsic evidence of the testatrix's knowledge when preparing the will was admissible on the basis that there was an ambiguity in that the words "this will" could apply to both wills.

3. It is Ambulatory

A Will is Ambulatory in that it speaks from the grave and can be revoked, altered or modified by the testator before his death. Section 19 Wills Act 1887 provides that every will shall be construed with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. In Osemwigwe v. Osemwigwe, the court held "A will is ambulatory. It can be changed by the testator before his death."

4. **It takes effect after the testator's death**

In **Re Westminister's Deed of Appointment**, Evershed M.R. stated; "A Will in no sense is effective until the testator's death".

The court also held in Okelola v. Boyle, the supreme court held that a will speaks only from the dead deceased and since the deceased had become the sole owner of the property at the time of his death, the devise in his will was valid despite the deceased not having capacity to

Types Of Will

1. ORAL WILL

This type of will is unknown to the Wills Act 1837 and the Wills Law enacted by various states in Nigeria. It is however largely known and acceptable to Customary Law and is better envisaged and understood as oral declaration by a deceased during his lifetime before other members of society; usually his nuclear and/or extended family whether in good health or

otherwise which is deemed binding on them and carried out by the elders of the society in conformity with the prevailing native law and custom.

The Principle of Family Property, is intricately tied to Oral Wills and was first laid down in the case of **Nelson v. Nelson**, and has seen to the courts applying same principle to several other cases which has arisen and has some common grounds which it shares. A case for consideration is **Olowosago v. Adebanjo**, where the court per **A.G. Karibi-Whyte JSC** had this to say:

"The concept of family property is original to our indigenous society and is the bedrock of our inheritance. It is regarded correctly as the corner stone of our indigenous land law. Judicial decisions are replete in the circumstances of the creation of family property. The most common circumstance is death intestate of a landowner, whose estate is governed by customary law. Such land devolves to his heirs in perpetuity as family land. Family land can be created by a conveyance inter vivos, where land is purchased with money belonging to the family. Family Land can also be created by the use of the appropriate expression in the will of the owner of such land".

It follows that in the dying declaration of a deceased, the extent of disposition which he tends to make to his beneficiary whether as a Family gift or individual gift, failure of which the presumption of the gift being a family gift will be made. Where such gift comes into contention, the onus would then solely rest on the claimant to not only give credible evidence which identifies the origin of the property but also its status.

Most importantly, the concept of writing and other requirements for the execution of a valid will is unknown.

2. Statutory Will

This is a will which follows and satisfies the procedures listed in a statute. More often such type of wills takes a standardized form which is readily available and just needs to be completed by the testator and executed, having the required number of witnesses in attendance.

3. Nuncupative Will

4. This type of will is also referred to as oral wills and is the type of will which is familiar to the traditional and customary society as it is made on his death bed in the presence of two or more credible witnesses.

5. Privileged Will

Wills made by any soldier in actual military service or any mariner or seaman at sea will also fall under this classification. This type of will is popular amongst service men.

6. Holograph Will

This is a type of will which is handwritten by the testator and is the opposite of a will produced by a lawyer. Although the legislations governing this type of will is silent, it is presumable that a will made in this regard shall be admitted as valid where it satisfies the basic requirements of executing a will under the Wills Act and Wills Law, respectively.

7. Prenuptial/Ante-nuptial Will

These are wills made by spouses before marriage. The validity of this will is however highly doubtful where a marriage contracted between spouses is made under the Act. The case of **Jadesimi v. Okotie-Eboh & 2 Ors. SC 188/1992**, per Uwais CJN where it was held that the only instance where a marriage contracted under the Act will not revoke an existing will is where spouses underwent a form of customary marriage before the statutory marriage as it is not intended that the marriage

under the Act should nullify the customary marriage or engagement but rather that it would supplement the practice/custom already in place.

8. Conditional Will

This is a will which has been executed by the testator, but which gifts and bequest therein contains certain conditions to be met by beneficiaries for the gift to properly be vested in them.

9. Electronic Will

This type of will is yet to gain judicial notoriety in the Nigerian legal system it is however gaining popularity amongst some states in the United States of America and is of two types: Offline Electronic Will – Which are wills typed by the testator and signed by placing another signatory mark in the document and stored on the local and hard drive of the electronic device.

10. Online Electronic Will

This type of will incorporates more than one person as they are stored using a third-party service. Usually, the third-party service has no undertaken to store the will of the testator on his behalf. Such third-party service is also not under any strict rules or regulations governing its electronic storage applications.

d. The Legal framework around Estate Planning

Wills can be traced back to the Post-Norman Conquest of 1066, where a man had the power to dispose of both his real and personal properties. In 1540, the English parliament passed the Statute of Wills, which gave landowners the power to choose how to give away their land at death and permitted of taking advantage of a written will to do so. (G.W. Beyer and C.G. Hargrove; Digital Wills: Has the time come for wills to join the digital revolution? Pg. 870)

The structure of Wills and its application as we have known it to be is a three-pronged approach.

i. The testator who expresses his desire to make a will. A LAST WILL if properly put to not leave room for manipulation when the testator or testatrix is no more.

ii. The person who carries out the expressed wishes for intention known as the Executors/Trustees.

iii. The beneficiary: in whose interest the expressed gift or donation was made.

The creation of a will in Nigeria is governed by the Wills Act 1837 which is a statute of general application received into Nigeria on 1st January 1990 and the Wills Law of the respective states in Nigeria. Under the common law, a will is only valid in the following circumstances.

1. it is in writing, and signed by the testator, or by some other person in his presence and by his direction.
2. It appears that the testator intended by his signature to give effect to the will.
3. The signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time;

Other professionals which one must take into consideration whilst planning their estates are chartered financial analysts and corporate trustees and corporate trust firms.

Chartered Financial Analyst helps with evaluation and assessment of a prospective testator's estate as well as risks and future returns. Corporate Trust provide a soft landing to prospective testator who requires the services of professionals to properly disburse and manage his estate when he's no more.

e. A Step-by-Step Planning Guide – Checklist

In drawing up this chapter it is important to think of a will from the point an individual begins to own properties in his name. Owning properties could be of any type and in any form whether movable or immovable, tangible, and intangible, personal and real.

Example of Real Property is Land, or an Interest in Land and examples of Personal Property are Monies, Shares, Copyright, Non-Tangible Token (NFT), virtual currency, online bank accounts, social media accounts, email accounts, content holders, domain names, cloud storage.

It is important to note at this juncture that although Nigeria is far behind in formulating a law to this effect, the United States passed a law in 2015; **The Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA) 2015** which enables fiduciaries of a deceased person to have assets to digital assets of deceased or incapacitated persons.
The first step to planning your estate is the Collation of all properties owned which you intend to gift beneficiaries under your will.
Subsequently, you expected to identify the beneficiaries who you intend to gift such properties. Beneficiaries under your will need not be related to you by blood, as it suffices that they are your friends, your friends' offspring.

It is also important to identify the persons who you intend to act as Executors of your will. In selecting persons who would in such positions, it is important to pay attention to the following considerations:

i. Will the Executors be paid for their duties under this will out of the Estate?
This consideration is so important as the general rule is that where this is not expressly stated the law will deem such executors as acting in such capacity on a pro bono basis. In such an instance that the executor will require to be paid to take on his duties under the will, he can exercise a valid right to turn down such an appointment on the ground of non-payment for services to be rendered under the will.

Such an executor is not expected to witness the will under which he takes benefit by reason of the charging clause in this regard. See The Estate of Bravda (1968)1 WLR 499. The fees payable to the executor under the will is provided for in a "charging clause" which is drafted below as:

"I DECLARE that my executors, trustees, solicitor and any professional engaged in any professional business shall be paid the usual professional fee for services rendered towards the administration of my estate".

ii. Are the Executors compatible?
It is very important to consider the temperament of executors which you are appointing under a will as it is highly unlikely that the instructions contained in your will, will be carried out to the letter where the executors are unable to work together due to personal bias which may range from arrogance to condescending behavior to their personal choice of language, etc which may not be accommodated by the fellow executors.

iii. Are the Executors within proximity to the properties contained in the will?
This requirement is logical as it is unreasonable to have executors who reside outside the locality where the property of the testator resides at. Hypothetically, it is illogical to expect that an executor who is resident in the United States of America can effectively carry out his duties in a

will which has its properties located and resident in the Zamfara, Nigeria, as even where the executor is able to do so, this would incur more costs to the executor and reasonably by extension the estate of the testator.

iv. Are the Executors duly skilled in the business of the will which you require them to oversee in the will?

It is more efficient to have an executor who is skilled in the business of a given part of an estate which require technical skill and expertise as this would reasonably save your estate the cost of hiring or contracting professionals at an exorbitant price. Hypothetically, it is more lucrative to appoint Mr. A as an executor who is a registered and well-known Surveyor to manage your properties and ensure proper vesting in your designated beneficiaries than it will be to appoint Mr. B an accountant with no background in real estate management to manage same properties, as depending on your wishes, Mr. B might have to engage the services of an external property consulting firm to carry out your wishes to the letter.

v. Are they young or old?

This consideration is important as the general presumption is that young executors will outlive the testator although this is however not a static rule as young executors may still die before or shortly after the demise of the testator.

A Checklist of the Basics

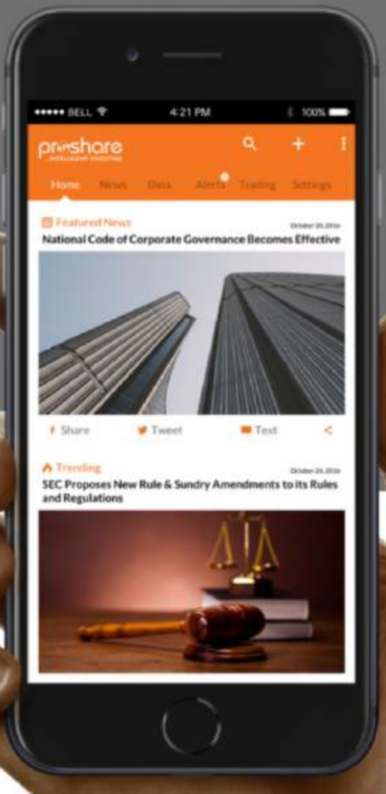
A CHECKLIST OF THE BASICS

S/N		
1.	Inventory of Your Stuff	The tangible assets in an estate may include: • Homes, land or other real estate • Vehicles including cars, motorcycles or boats • Other personal possessions The intangible assets in an estate may include: • Checking and savings accounts and certificates of deposit • Stocks, bonds and mutual funds • Life insurance policies • Retirement plans such as workplace plans and individual retirement accounts • Health savings accounts • Ownership in a business Once you inventory your tangible and intangible assets, you need to estimate their value.
2.	Account for your family's needs	Once you have a sense of what's in your estate, think about how to protect the assets and your family after you're gone. • Do you have enough life insurance? • Name a guardian for your children — and a backup guardian, just in case — when you write your will. • Document your wishes for your children's care.

S/N		
3.	Establish your directives	A complete estate plan includes important legal directives. • A trust might be appropriate. • A medical care directive, also known as a living, will, spells out your wishes for medical care if you become unable to make those decisions yourself. • A durable financial power of attorney allows someone else to manage your financial affairs if you are medically unable to do so. • A limited power of attorney can be useful if the idea of turning over everything to someone else concerns you. • Be careful about who you give power of attorney. They may literally have your financial well-being — and even your life — in their hands.
4.	Review your beneficiaries	Your will and other documents may spell out your wishes, they may not be all-inclusive. • Check your retirement and insurance accounts. • Make sure the right people get your stuff. • Do not leave any beneficiary sections blank. In that case, when an account goes through probate, it may be distributed based on the state's rules for who gets the property. • Name contingent beneficiaries. These backup beneficiaries are critical if your primary beneficiary dies before you do and you forget to update the primary beneficiary designation.
5.	Note your state's estate tax laws	Estate planning is often a way to minimize estate and inheritance taxes. But most people won't pay those taxes.
6.	Weigh the value of professional help	Whether you should hire an attorney or estate tax professional to help create your estate plan generally depends on your situation. • If your estate is small and your wishes are simple, an online or packaged will-writing program may be sufficient for your needs. • If you have doubts about the process, it might be worthwhile to consult an estate attorney and possibly a tax advisor. • For large and complex estate — think special childcare concerns, business issues or nonfamilial heirs — an estate attorney and/or tax professional can help maneuver the sometimes complicated implications.
6.	Plan to reassess	Life changes. So should your estate plan. • Revisit your estate plan when your circumstances change, for better or for worse. This may include a marriage or divorce, birth of a child, loss of a loved one, etc. • Revisit your estate plan periodically even if your circumstances do not change. Although your situation may be the same, laws may have changed. • It will take some effort to revise your plan, but take heart. The need to revise means you've already avoided the biggest estate planning mistake: never drafting a plan at all.

Source: Proshare Business, Ecographics

EVERYTHING IN ONE TAP



- Easy access to latest, trending & featured Financial & Economic News as well as Videos
- Customization of Preferred News and Videos Views
- Easy Navigation to financial data from NSE, FMDQ and NASD across multiple asset classes

PART THREE: Insights from Olisa Agbakoba Legal

In concluding this report, we received insights from Olisa Agbakoba Legal (OAL) with respect to the common mistakes made when drafting a will and advice on what individuals and the government need to do to make the administration of wills seamless.

What are the common mistakes made when wills are drafted?

A will is a legal document that expresses a testator's last wishes on how his or her property will be distributed on death. It also states how the properties are to be managed until finally distributed. The peculiar nature of will and estate planning confirms the need for a tidy will-drafting process to avoid costly mistakes. The common mistakes, problems and challenges associated with drafting a will are discussed below:

First, is the mistake of drafting a will without guidance or inputs of a legal practitioner. That could be fatal and costly.

The second relates to appointing executors; these are persons that administer a testator's estate. A testator may appoint as many executors as he wants. He can also appoint a sole executor who should not be a minor or a trust corporation. In practice, however, not less than two executors who are mentally and medically sound will be appointed. Usually, the appointed executors are much younger than the testator; as executors need to outlive the testator.

The third is the improper execution and attestation of a will. The rules relating to execution and attestation of a will are usually flouted. The law is that beneficiaries of a will are precluded from attesting to the same will. The spouse of the attesting witness can equally not benefit under the will.

Fourth, it is improper to insert burial or funeral wishes in a will. Wills are usually read after funeral rites are concluded. The practice is to write the funeral wishes of the testator in a separate document.

What are the challenges faced in the administration of wills in Nigeria?

One of the functions of the Probate Registry is the custody of wills. After a will has been prepared, it must be lodged at the probate registry of the High Court of a State and the executors are to be duly informed. Usually, testators do not lodge their wills at the probate registry; they keep it by themselves without informing the executors. Given that Probate Registry is the best place to keep a will for authenticity and safety purposes, a will not kept there is likely contested or lost.

Additionally, probate administration in Nigeria is obsolete. The manual storage of probate files and documents is slow and inefficient. In fact, in other jurisdictions, the whole will administration process is digital. Mention should also be made of the uncertainties surrounding the cost of admitting wills to probate. At times, the uncertain costs could be challenging and prone to abuse.

What should be done to mitigate these challenges?

Testators are advised to always lodge their wills at the registry to avoid disputes and litigation. Also, the traditional filing system should be replaced with a digital electronic filing system as we have in other jurisdictions. Thankfully, Lagos State has taken the right step in this direction. It is hoped that other states would follow suit. The cost of processing a grant of probate should be certain and fixed to prevent abuse and promote efficiency.

What advice do you have for persons considering drafting up their wills?

Testators must be cautious when drafting a will. While an individual can draft a will for himself or herself, the place of a professional estate planning attorney cannot be overemphasised especially concerning the distinct and peculiar nature of each estate. Therefore, the services of a legal practitioner should be engaged in drafting a will. Testators may also consider creating a trust for their estate.

What should beneficiaries be aware of?

Beneficiaries can monitor the process of probate administration; invoke their right to access to information and timeously receive entitlements under the will. When executors do not fulfil their obligations, beneficiaries have the rights to enforce compliance.

PART FOUR - The After-life Ecosystem – People, Problems And Roles

The Pleasures, Pressures and Financing

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Personal Finance

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PART FOUR - The After-life Ecosystem – People, Problems And Roles

The execution of the desires of a person after life must be done by people expected to carry out various pre-agreed roles and responsibilities. Below is a summary of the persons that make this up and their responsibilities.

WILL AND TRUST ECOSYSTEM

You (Testator)

Beneficiaries
- Children
- Relatives
- Employees
- Business Associates

Professionals
- Estate Planners
- Asset Managers
- Lawyers
- Trustees
- Executors

Courts
- High Courts
- Probate Registry

Tax & Levy Collectors

Witnesses & Custodians

Source: Proshare Business, Ecographics

Personal Finance ...It is all about you

a. Corporate Trustees

i. Who are Corporate Trustees?

Corporate Trustees can be described as a company that acts as trustee of a trust. It is usually a company registered under the laws of Nigeria but which sole object as stated in its Memorandum and Articles of Association is to act as a trustee and manage the trusts of testators upon appointment of same in a will or by the courts.

ii. What statute gives the Corporate Trustee powers to act?

In Nigeria, the Trustee Act of 1852 gives the Trustee the power to act and validly manage trusts. However, there exists the Public Trustee Law of Lagos State, which recognizes the office of a public trustee and expressly allows for the public trustee to act in the position of either an ordinary trustee, custodian trustee or a trustee appointed by the court and in either of the case, such a public trustee may act alone or in conjunction with other any person or body of persons.

iii. What are the powers of the corporate trustee?

The power of the trustee includes:

a. Except where expressly forbidden in the Will, Trustees enjoy the power to invest either in part or in full the estate of the testator. Remarkably, this power to invest is governed by The Trustee Investments Act (1957) No.16. This Act provides no limit on the types of securities that the trustee may invest in and as such leaves it to the "discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by law with respect to the investment of the funds".

b. The **power of sale** is also one which a trustee enjoys as he may sell or concur with any other person in selling all or any part of the property. He can sell such property which may be subject to prior charges, by public auction or private contract. He also enjoys the power to vary any contract for sale and to buy in at any auction or to rescind any contract for sale and to resell without being answerable to any loss.

Interestingly, any sale made by the trustee in this regard cannot be impeached by a beneficiary on the ground that such a sale was made at a depreciatory value. However, where it appears that the consideration for the sale is inconsiderate, such a sale is very likely to be impeached.

c. A trustee also has the **power to appoint a solicitor** to receive monies or valuable considerations or property receivable by the trustee under the trust in his stead, provided that the solicitor reproduces a receipt or deed. In which case such an appointment shall be deemed valid.

d. The **power to insure** resides in the trustee and throws more weight to a duty of the trustee which is to ensure that the assets which constitutes the estate do not go to waste. The trustee will however not be held liable for any loss resulting to the trust property where he decides not to insure the trust. See **Bailey v. Gould (1840) 54 E.R. 479**. The premiums which are expected to be paid over insurance covers taken by the testator in this regard are to be paid out of the income of the estate. A property which the trustee is bound to convey absolutely to the beneficiary is not to be insured by the trustee except where he acts in his discretion.

e. Trustee have the **power to accept any composition** or any security, real or personal, for any debt or for any property as he deems fit. He may also compromise, compound, abandon, any debt, account or claim without him being responsible for any loss arising or occasioned by such act if he did same in good faith.

iv. What are services offered by the Corporate Trustees?

The services offered by Corporate Trustees varies from Asset Collation, drafting of wills, updating of wills, republication of wills, the role of executors and trustees over an estate.

v. What are challenges faced by Corporate Trustees in Estate Planning?

The challenges faced by corporate trustee

includes lack of industry knowledge amongst the general population, financial crimes, low trust, internal and external conflict in managing trust as well as regulatory constraints.

vi. What are the duties of the corporate trustee?

The duties of a corporate trustee include:

Duty to receive the Trust

The trustee has a duty to formalize every necessary requirement which would ensure that he is properly vested with the Trust. As such it is expected that he inquiries about the location of the trust properties, locate them, and take possession of the trust. Where the trustee fails to do this, the trustee will be held liable where he fails to do this and as such the estate suffers some loss. Hallows v. Lloyds (1886) 39 Ch.D

Duty of Honesty, Loyalty & Integrity

This duty being one which deals with management of assets is one which it to be done with the highest sense of honesty especially as the loyalty of the trustee is expected to be towards the will first and foremost and be well balanced out with other conflicting personal interest of the beneficiaries or persons who has or claims to have an interest in the estate.

Duty to Account

The trustee is required to keep an account of his dealings with the estate especially as he owes a position which can be likened to be that of a steward; as he does not own the property but rather holds same in trust for the beneficiaries who are at all times within their right to request and inspect all trust documents and transactions arising from same. The case of O'Rourke v. Darbyshire [1920] AC 581 is instructive in this regard.

Where the trustee fails to keep account of the trust which he manages, he can be compelled by the courts to provide same.

Duty to manage and Distribute the Trust efficiently

The trustee is required by law to identify the beneficiaries under a Trust. He can do this by putting out notices in National Dallies with the country and also the last known country or state of residence of the beneficiary.

Where after this effort, it is seen that the whereabout of the beneficiary is unknown, the trustee can apply for a Benjamin Order, which has its roots in the case of Re Benjamin; Neville v. Benjamin (1900) 1 Ch. 723. The effect of this order is that the trustee and beneficiaries are protected any frivolous application brought by the beneficiary at a later time. The trustee in applying for a Benjamin order must show proof that he has conducted numerous searches which has proved futile. Depending on the circumstances of the case, he may be required to provide proof of a death certificate or having waited seven (7) years with no signs of the beneficiary being found.

Duty to Consider Beneficiaries

The trustee has an implied duty to at all times consider the interest of the beneficiaries placing premium on making decisions in their best interest and the collective interest of the trust. He must also take into consideration peculiar needs of each beneficiary in the dispensation of his duty under the trust. This needs may be hypothetically exemplified through their means of communication, means of payment of benefits under the trust etc.

Duty to act gratuitously

A Trustee owes a duty to act gratuitously in the interest of the estate except where otherwise expressly stated in the Will which creates the

trust. He is expected at all times to put in his best skill and effort in administering the estate as he must treat the trust like his own and exercise care, skill and diligence.

- **Duty not to deviate from the terms of the trust**

The main purport of a Will is to ensure that the last wishes of the testator are strictly adhered to, thus in the instance where a trust under the will, it is important that the trustee does not deviate and is not seen to deviate from the terms of the trust. More often, beneficiaries under the trust can bring an action before the court requesting an order from the court which will be binding on the trustee and correct any wrongdoing of the trustee whilst holding him liable for any damages arising from such action.

vii. Can a Solicitor act as a Trustee?

The answer to this question is Yes. The case of Cradock v. Piper (1850), the court allowed a solicitor-trustee to charge for professional fees from the estate of the testator despite the will not containing a charging clause and contravening the principle of the law of trusts that trustees are to act without remuneration. The major consideration of the court in this case was that the connection was too tenuous to not give rise to an issue of conflicting interest.

It thus follows that an individual who considers a solicitor to act in a position of trust over his estate, must provide for same and expressly indicate if such services are to be done gratuitously, fixed fee or usual fee which would ordinarily apply.

It is however important to note that a solicitor can recover remuneration for professional trustees where he acts on behalf of his fellow co-trustees. The case of Re Corsellis (1887) 34 Ch. D is instructive in this regard.

The Role of Trustees

The role of trustees includes and is not limited to:

- They must ensure that they properly gather the estate of the testator/settlor at least within twelve months of his death.
- They are always expected to act in good faith failure of which they would be liable for conversion.
- They have a role of paying for the funeral

expenses of the testator of the estate. Funeral expenses by practice comes first in this regard.

- They are to issue Assents to the beneficiaries.
- They are also required to file accounts and inventories of the estate and giving account to the beneficiaries where requested and where required.
- They are to properly invest the assets of the estate to produce income sufficient enough to meet the needs of the estate.

Types of Trustees and their importance

There are two main types of trustees. They are Private Trustee and Public Trustee.

a) Private Trustees

Private Trustees are defined in Section 24 Public Trustee Law of Lagos State as "A trustee other than the Public Trustee". This implies that every other type of trustees who was appointed by a testator or creator of trust or who was appointed by a trustee(s) to an estate or who applies in their individual capacity or corporate capacity; in so far as they are not created by statute falls under the definition of a private trustee.

The traditional idea behind Private trustees was described by Lord Hardwicke LC, 1740 as what the court looked upon as "honorary, and a burden upon the honour and conscience of the person entrusted and not undertaken upon mercenary views". The "landed" class employed this framework in preserving their family estates and adopted the means of private arrangements.

In Modern day, Private Trustees are those trustees appointed under a will and who accepts same under the will or declaration instrument which gives them the right to act in such capacity. Such type of trustees thrives on building an interpersonal relationship with the beneficiaries of the trust and showing accountability towards them and the probate registry.

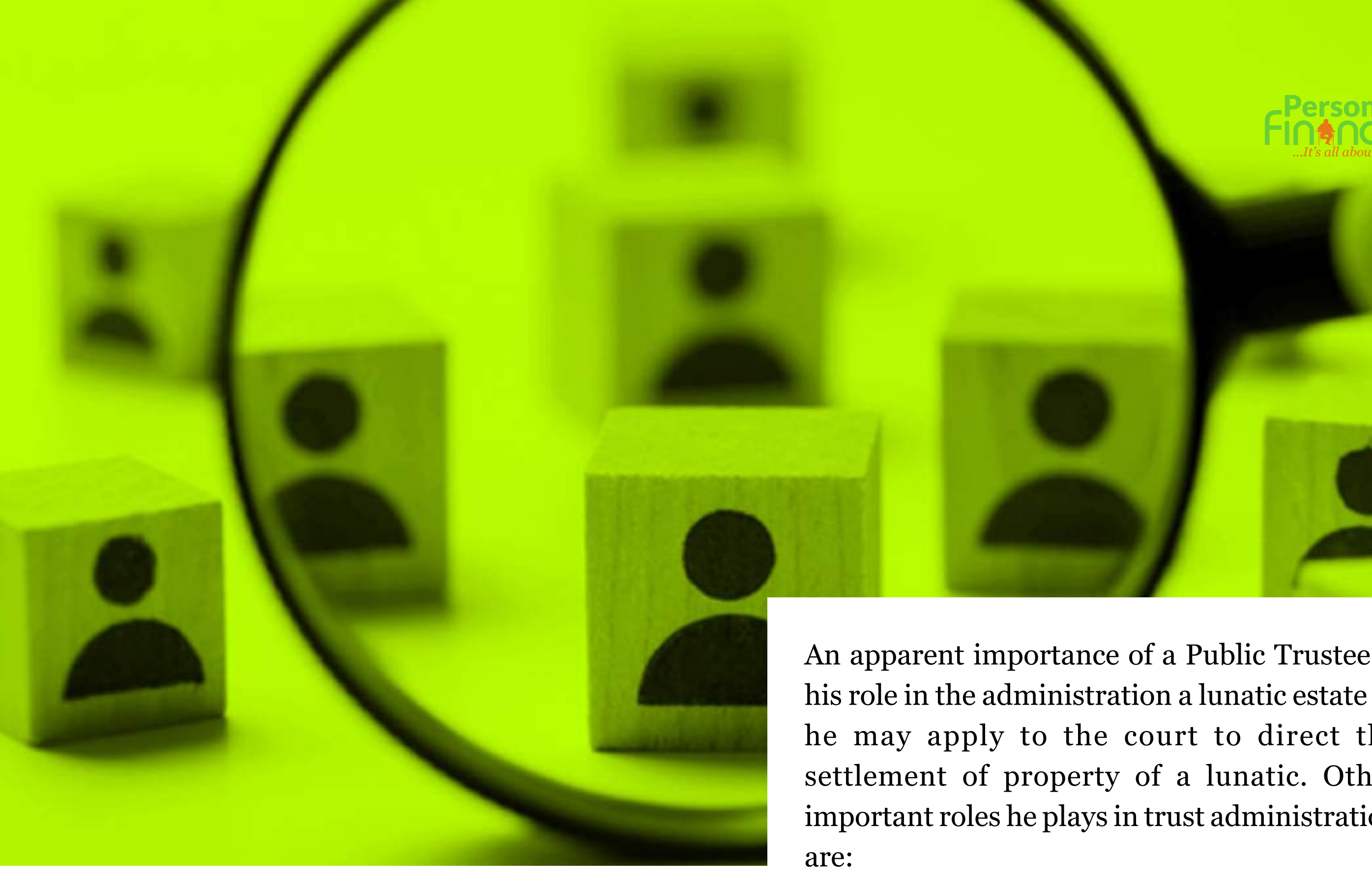
There is a new variation to the form of trustees which we are notoriously popular, and this is the corporate trustees who are increasingly becoming ubiquitous in Nigeria, this is by reason of the Registration Requirement of Trustees required by the Exchange & Exchange Commission Nigeria in order for public entities to operate as corporate private trustees. This requirement is also to be regulated by the Trustee Investment Act. These corporate private trustees offer services which includes Institutional Trust and Loan Agency, Estate Planning, and Inter-generational wealth transfer amongst others.

A major difference between these type of the trustees as we have come to know them will include and may not be limited to: Professionalism, Knowledge and Skill, Will and Estate Planning, Educational Trust and in the case of an institutions, they offer services which ranges from facility agent, security trustee, escrow agent, trust scheme, employee share option scheme, public trust; upon receipt of fiat from state government and a licence from the regulatory body; securities and exchange commission.

b) Public Trustees

There exists no Federal Public Trustee Act, however, the issue of Wills & Trust may be implied to fall under the Concurrent Legislative List and as such under the purview of state house of assembly powers. Consequently, the Public Trustee Law of Lagos shall be the reference point for the purpose of this article in examining the role, power, and importance of the Public Trustee.

The position of the Public Trustee is a creation of



statute and a corporation sole with perpetual succession and an official seal; as such it may sue and be sued. The public trustee enjoys the power to act as either an ordinary trustee, a custodian trustee, or an appointed trustee by the court. He may also act alone or jointly with other person or body of persons in administering trusts which are for religious or charitable purposes.

The importance of the trustee can be delineated to the flexibility of his office, which enables him act in the position of a custodian trustee, ordinary trustee.

Where a Public trustee acts in the role of a custodian trustee, the trust is transferred to him as though he is the sole trustee, he is also entitled to the custody of all securities and documents of title relating to the trust property as he is required to account for the income and capital of the trust.
Where he acts as an ordinary trustee, he can validly act as the only trustee to the estate despite the requirement of the non-availability of any other trustee, thus negating the requirement of a minimum of two trustees acting to administer a trust.

An apparent importance of a Public Trustee is his role in the administration a lunatic estate as he may apply to the court to direct the settlement of property of a lunatic. Other important roles he plays in trust administration are:

i. He employs for the purpose of the trust legal practitioners, bankers, accountants, brokers and other persons as he may deem necessary.
ii. He ensures the fulfillment of the wishes of the testator, as well as the wishes of the other trustees and beneficiaries.
iii. He acts gratuitously for the estate and is only paid for services required by the Law which creates it. It is important to note that under the subsidiary legislation; The Public Trustee (Fees) (Amendment) Regulations Law [26 May 1986], provides for applicable fees although it is submitted that the fees contained therein are not feasible as they are not the true state of economic affairs in the state.
iv. Public Trustee position also exhibits to a large extent accountability for monies and securities in his care, as his accounted is usually audited from time to time by person(s) appointed by the Governor of the state.
v. They make proper investment of the trust in any investment whether subject to the will of the testator.

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b. The Role of Beneficiaries

The role individuals have to play in the society after the death of a beloved one particularly in the context of families united by blood is one that is very delicate and can either make or mar the process of divestment of gifts under a will or intestate proceedings.

Typically, the procedure for determining the affairs of a deceased person is often dependent on two issues which are: Whether the deceased died with a will in existence or whether the deceased died without a will in existence.

In answering this question, the **first role** of the beneficiary begins as he is expected to identify if the deceased died with a will. This he can do by carrying out a search at the Probate Registry of the last known residence of the deceased or preferably the probate registry of the state or country in which he lived his longest. This is because currently, there exists no federal probate registry as each state manages its probate registry.

Notably, Lagos State Probate Registry currently has an Automated System known as the Lagos Probate Registry Automated System (LAPRS) to ascertain if there is a will lodged within the probate, where the result of this search is Negative, he should do his best to identify the deceased person's legal representative as the common although unethical practice is that individuals lodge their will with their legal advisers. Alternatively, the individual can apply to financial institutions which offer the services of a digital or electronic SAFE to carry out a search in other to ascertain the location of the deceased will.

Where the will is found at the probate registry, it will be read at a designated time or day as may be determined by the probate registrar. The Will must be read in the Probate Registry or any place the Probate Registrar determines, and he shall be the supervising officer.

The Probate Registrar may summon any person who has an interest in the will for the reading of the will, the record of the proceedings is also made by the probate registrar and available to any person upon a proper application duly approved by the registrar.

The **second role** of the individual is ensuring that an executor who is appointed under the will, performs his duty under the will and assume same position as well. This he can do by ensuring that the executor applies for probate and proves a will. Where the executor does not comply, the individual can serve the executor a notice (known as Citation) directing him to prove the will or renounce probate within 21 days after service of the notice. See **Order 62 Rule 28 High Court Civil Procedure Rules 2019.**

It may appear that the role of the beneficiary is well spelt out however this is subject to the peculiar circumstances each case brings up. In most cases where a will is contested the individual has problems which ranges from:

- **Disputes as to whether the will should be admitted to probate**
  Agreeably the role of the individual may often time mix and be in dispute especially where he has an interest in the case. The Individual enjoys a right against Discrimination.

- **Disputes as to entitled beneficiaries under a grant**
  The Individual enjoys a right against Discrimination provided for in **Section 42(1) & (2) of the 1999 Constitution**. This right as will be seen in Judicial Precedent; **Mark v. Ironu & Ors. (2019) LPELR-**

47026(CA), **Okeke v, Okeke (2020)LPELR-50612 (CA).** In the case of **Igbozuruike & Ors v. Onuador (2015) LPELR - 23330 CA**, it was held that the circumstances of birth of an individual is no ground to discriminate against him in sharing or succeeding to property of a grandfather or mother.
It thus follows that no beneficiary should suffer any discrimination from taking his legacy under the will on the ground of customs which are repugnant to natural justice, religion, type of marriage contracted by his parents, etc.

Disputes as to whether a grant should be revoked or otherwise
The nature of disputes which could arise in this regard are such that may further encumber the procedure to obtain a grant of probate and may be brought by external parties to the immediate family of the deceased, in some cases it could also be from within the family. There exist several reasons where if proved to the letter will warrant the grant of probate to an estate. Maladministration and intermeddling of the estate by executors or invalid delegation of authority are valid reasons to bring an application to revoke probate.

c. After Life Beneficiaries - Hearing from the Ancestors

i. What beneficiaries should know before & after the death of a loved one
Undoubtedly, no one is ever prepared for the vacuum the death of a loved one leaves and the plethora of issues it raises with it. Some of the issues it raises are so fundamental that beneficiaries and anyone having an interest in an estate must take notice of, to forestall liabilities and contention which are otherwise preventable.

Beneficiaries of an estate must before the death of an estate be aware of the following:

GIFT CLAUSE: Where the beneficiary is acquiesced of information to the effect that the respondent is writing his will. He or she must know that where there is no gift clause bequeathing the legacies, it means that there is no will ab initio.

REVIVAL OR REPUBLICATION OF A WILL: It is also important for him to note that where a will has been revoked or has survived a long number of years whilst the testator was alive that it is necessary to revive or republish the will as the circumstance requires In order for a revival to be valid, it is important that it is re-executed in the manner in which it was previously executed and that such revival should apply to any attendant codicil in order for the codicil to be deem valid.

Republication of the will it is advised applies as a means of confirmation or affirmation of the validity and contents of the will. This can be done in two ways which are: Re-execution of the will with the proper formalities required under Section 9 of the Wills Act, Section 4 Wills Law of Lagos State or a duly executed codicil which makes reference to the will or codicil sought to be republished.

LAPSE: In the instance where the beneficiaries predecease the testator such a gift shall be said to be fail lapse and fall into residuary estate of the testator.

ADEMPTION: Beneficiaries must be aware that where a legacy bequeathed on them by the testator is lost or destroyed or sold before the

death of the testator, such a gift will be said to have failed.

FRAUD: It is important to draw the attention of the beneficiary to this very important factor as where the beneficiary fraudulently caused the testator to bequeath a legacy(ies) to him. He must, hence, do everything to not be seen to wrongly influence the testator or have any suspicious relationship with him as this could bring the will into contention.

MENTAL HEALTH: The beneficiary must know that any history of ill health during the lifetime of the testator which can be adjudged to affect his mental health can be deemed to likely bring the will into contention.

After the death of a deceased they must know the purport of the following:

PROBATE: The obtainment of probate may take as much as two years or less to obtain depending on the size of the estate and the contentions raised around a will. In the case of a living trust, this is easier to administer as the issue of contention raised by persons who have interest in the estate of a settlor is minimally reduced.

LIFETIME ASSET MANAGEMENT: They must understand that no profits accrue to them during the lifetime of the testator except where it is a living trust. It is thus important for them to pay serious attention to professional financial advice which shall be used in ensuring that the estate continues to generate income which is important for its proper functioning and satisfaction of the intention of the testator.

EXPENSE: Beneficiaries must be willing to pay attendant statutory fees prescribed by the probate registry to be granted probated. This fees will include Estate Taxes, Capital Income Tax (as provided under Section 6(1), 7(4), 8(4) Capital Gains Act) which shall be calculated according to the prevailing fee schedule in use by the relevant regulatory body. The executor may also levy the estate for their services, or any extra services rendered to the estate which is outside the scope of their duties.

PRIVACY: They must also be willing to forfeit the privacy which they may have previously enjoyed before the submission of the will to probate. As a will submitted for probate is automatically deemed as a public record and can come under public scrutiny or the court of public opinions (whether physically or via social media).

CONVENIENCE: The obtainment of a probate provides the estate laxity to enjoy convenience in dealing with the estate of the deceased and also saves them bottle necks which they may otherwise have encountered should they have been acting without probate. An example of such bottle neck is accessing the bank accounts of the testator.

THE BENEFICIARIES: That they enjoy a great advantage and protection of their gifts under the will as they are very likely to be put in possession of the assets allotted to them upon a grant of probate upon an assent by the executor/personal representatives to them.

ii. A typical process involved after the death of a loved one

In discussing the process involved after the death of a loved one, it is important to address the definition of Probate Action and the types of grant which can be obtained from the court as this will shed more light in this regard.

Probate Action as defined by Coker JSC in the case of Fadayomi v. Sodipe (1986) 4 SC 299

defines it as "an action for the grant of probate of will of a deceased person, or for the revocation of such grant or for a decree pronouncing for or against the validity of an alleged will".

From this definition, a grant must be given by the court through the probate registry to a will whether contentious or otherwise. Now the grant to be given by the court may be either full or limited. A Grant is deemed to be full where the executor enjoys the power to administer the estate in such a manner which is fair and just to the beneficiaries and also in concordance with the wishes of a testator. It is said to be limited where it is to serve a specific purpose. Examples of such types of grants in this regard are Grant ad Litem, Grant Ad Colligenda Bona, Grant Pendente Lite.

Having discussed the above mentioned, we now proceed:

- Death intestate

Where a person dies intestate; it means that he died without having a will which contains the declarations with respect to his Estate in which instance his real and personal estate, shall be deemed to have been vested in the chief judge of the state.

Meaning that in an instance where there is a will in existence, the will fails to contain declarations over a part of the testator's estate, this unattended portion of the testator's estate is such that forms an intestate estate. Where members of the deceased family or any third party is appointed as Administrators of the deceased estate upon a grant by the chief judge, they shall have the same rights and liabilities and also be accountable as if he were the executor of the deceased.

Personal Representatives of the family of a deceased who died intestate are to approach the probate registry with an application for the grant of letters of administration made to the probate registrar of the High court of the state containing the full names of the deceased, date of death of the deceased, the deceased's the deceased's last known address in the state, names and addresses of all the proposed administrators. This application is to be accompanied by the following:

- A certificate of death obtained from the National Population Commission.
- Two passport photographs of each proposed administrator.
- An affidavit of No previous process sworn by one of the proposed administrators; indicating that there has not been an earlier application for the grant of letters of administration (initiated or concluded) on the estate of the deceased before the court or any other court (in any other state).
- Valid means of Identification of all proposed administrators
- an inventory of all assets and liabilities which the deceased owned as at the day on which he died.
- an affidavit of next of kin; a standard form of this affidavit is available at the registry; this affidavit must be filled accordingly to show the relationship of the heir and other family members or third parties who are the applicant (depending on the circumstance).
- an administration bond which requires the proof of financial standing of the applicant who is to be guaranteed by a senior officer of the Public Civil Service; and serves the importance of showing that an applicant who is applying to be an administrator shall conduct their duties in accordance with the legal jurisdictions of the state in question where an application for grant of

administration is made.

- Bank Certificate from the banks which the deceased-maintained accounts with during his lifetime.
- Particulars of the landed property(ies) of the deceased
- Schedule of debts and funeral expenses
- A list of sureties. This requirement is disposed of with where the grant is to be made to the creditor, persons beneficially entitled to the estate, persons who are applying on behalf of the beneficiaries of the estate who are minors or of unsound mind, the administrator general.
- A certified true copy of the will; in an instance where the estate of the deceased is partly testate and intestate.
- Evidence of payment of any fees required of the applicants to pay.

Grant of Administration will not be granted to more than four (4) persons and not less than two (2) in respect of the same property. Where there is only one personal representative, which is not a trust corporation, the court may on the application of any person interested or of the guardian, committee or receiver of such person, appoint one or more personal representatives in addition to the original personal representative in accordance with probate rules and orders.

Where a trust corporation is appointment by representatives of the deceased, it is important to note that the court will not grant administration to a syndic or nominee on behalf of the trust corporation.

It is important to identify persons who are entitled to letters of administration under the Administration of Estates of Law of Lagos, they are:

- Surviving spouse or spouses of the deceased

  In UBA v. Obianwu [1999] 12 NWLR (Pt. 629) 78 CA, the court held that the surviving spouse enjoys precedence over the children and the relations of the intestate.
- Children of the deceased or offspring of the children of the deceased, where the direct children of the deceased have predeceased the deceased.
- Father or Mother of the deceased
- Brothers or sisters of the whole blood or the issue of any brother or sister who died in the lifetime of the deceased
- Brothers or Sisters of the half blood or issue of any such brother or sister who died in the lifetime of the deceased
- The grandfather or grandmother of the deceased
- Uncles and aunts of the whole blood or the issue of any uncle or aunt who died in the lifetime of the deceased
- Creditors of the deceased
- Where there exist none of the above, the Administrator General

Applications for the grant of letters of administration are published by the Probate registry for the attention of the general public who may enter a citation against such an application. Where there is a citation entered against such an application, an applicant of a grant of letters of administration is required to address such a citation within eight days.

During the period where the administrators act in this capacity, they have several duties, right and obligations which includes and are not restricted to:

i. **Duty to keep an Inventory:** The Administrators are required to keep a true and perfect copy of the inventory. This inventory it

is expected will contain an account of the real and personal estate of the deceased. This duty may also be exercised by the administrator where the court requires personal representatives to bring in inventories.

ii. Right of action by or against personal representative: Actions which subsist against or vested in the deceased before his death shall survive against or the benefit of his estate, with exception of the cases of defamation or seduction or for inducing one spouse to leave or remain apart on the ground of adultery.

iii. Right of Distress: A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased will have done should he be alive.

In an instance where there are pending issues on validity of the will of a deceased person, the court may on application by representatives of the deceased grant rights and powers of a general administrator with an exception to a right to distribute the residue of the estate. Such an administrator shall be subject to the immediate control of the court and is required to act under its command.

Notably, a question which comes to mind now is: "In an instance where the Legal Representative who has been granted Special Administration is resident outside the county, what options are left to interested parties to an estate?". The answer is simple; Where after twelve months, since the death of the deceased, the representative has been based abroad, the creditor or any person having an interest in the estate of the deceased may apply to the court for a special administration grant to oversee the estate of the deceased.

Alternatively, the legal representative could appoint an attorney to act on his behalf upon the consensus of all beneficiaries of the estate and with notice to the probate registry. In this instance, he could apply for either of the following grants:

- Grant Ad Colligenda bona

This is a type of grant is necessary where the probate registry is yet to grant letters of administration due to caveats entered by anyone having an interest in the will. A grant issued in this regard does not vest the holder with the right to distribute the assets but only with rights to prevent the estate from going to waste and acting in good faith towards the part of the estate which are likely to perish. While the dispute surrounding the will is resolved.

- **Grant durante dementia**

This is a grant issued where the executor is mentally or physically incapable of managing his or her own affairs.

- **Grant durante minore estate**

This is a grant issued where the executor of a will is a minor. Its lifespan depends on the minor attaining the age of minority. A new grant will subsequently be issued to the minor upon the attainment of the age of majority.

- **Death with a testament**

The general belief is that where the deceased died with a will, the carrying out of his last wishes is a less tedious. Whilst this might be true in several circumstances; in practice, most wills are contested on several grounds which shall be mentioned below.

In an instance where the deceased died with a will, he is described as a testator and the legal authority to such a will by the Probate Registry is known as a Grant of Probate.

Where the will of a testator is lodged in the Probate registry of a state, at his death, persons having interest in his will, must approach the probate registry to request for a reading of the will.

In practice, it is advised that at the death of a deceased, a search be carried out at the probate registry, to ascertain if a will of the testator has been lodged therein, this is especially in an instance where parties are uncertain about the existence of a will of the deceased to that effect.
In the instance where a will exists at the probate registry, the probate registrar shall before reading the will send out a notices to parties having interest in a will; requesting them to be in attendance at a given place and time for the reading of the will.

It is not surprising in modern reality as portrayed by the media and live experiences, that the lawyer often times plays this role. This portends a good and bad effect depending on the side of the coin from which the circumstance requires.

In an instance where the will asides from being lodged with the lawyer of the testator in his chambers and also with the probate registry; it appears that there will be no reason to worry. However, in an instance where this is not so; parties may likely contest the will on several grounds which includes and are not restricted to: Age, Fraud, Mental Incapacity, Undue Influence.

This sets the tone for deciding the procedure to adopt where a testator died without a will, as it leads to the following questions:

i. Is the validity of the will being contested by anyone having interest in the will?
ii. Is the appointment of an executor being challenged?
iii. Where probate is already being granted, is it being sought to be revoked?

In the instance where there is no contention bordering on the validity of the will, the procedure to be adopted is known as the "Non-Contentious Grant (Solemn Form)", here in this case after the death of the deceased and the search of the will in the probate registry, where none is found, but there appears to be evidence to show that that the will is in the possession of any other person, such a will must be sent by such a person to the probate registry within three months upon the knowledge of the testator's death. Where the will cannot be found and there is sufficient reason to believe that a person has knowledge of the will, an application may be brought before the court requesting such a person to be examined or interrogated.

An application for the grant of probate in this instance is to be done through a letter which contains the following information:

a. Details of the testator; name, marital status before death, names of spouse and children
b. Date and place of death of the testator
c. Evidence that the testator lived within the jurisdiction of the court shortly before his death
d. That the testator has a will
e. That the applicants are named as executors in the will

Other documents to accompany this letter are:
f. A copy of the will
g. The death certificate of the testator issued by the Nigerian Population Commission
h. Proof of Identity of the applicant and proof of identity of the testator. In this instance, the documents which will suffice are: drivers licence, national ID,

international passport

i. Affidavit stating the place of domicile of the testator shortly before his death and also the death of his death.

j. Declaration of all the personal properties of the testator.

In an instance where the Will is being contested; the procedure to be followed in applying for probate will be slightly different. Where the executor is required to prove; i.e, prove a will, the will and fails to do so, he may renounce the will where it deems fit do so within twenty-one (21) days in notice and fourteen (14) days in Abuja, after the notice. He must also enter an appearance to the citation within 8 days' failure of which the citatory will apply to the judge to declare the will as being invalid.

In proving a will, due execution of the will must be proved, and this can be done by calling in witnesses to that effect. Failure to prove a will sufficiently, is enough reason for the registrar to refuse to grant probate.

Another instance where a will could also be contested is when an executor has intermeddled with the estate without the grant of a probate to him, in this instance a citator can apply for summons for the executor to take out probate within a specified period.

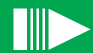
As stated in (i) above, the same documents would be required to be submitted when applying for a probate upon a successful proving of the will.

It is important to note that a grant of double probate is feasible and will apply where probate is granted to someone or some persons. To join other executors of an estate who has already been granted probate. The instance where a grant of double probate will be activated are:

- Where an executor cannot join in the proper administration of an estate by reason of being outside the country at the time or after the grant of the probate.
- Where an appointed executor of an estate was a minor as at the time of an initial grant and such an initial grant was made with power for additional grant reserved for him.
- Where an initial executor who was appointed in the will was because of mental or physical infirmity not able to take up such a role.

  Where the testator had appointed more than four executors. The other executor can apply to fill the role of an executor where any of the initial four executors is deceased.

Conclusion- Going Home Gladly



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Conclusion- Going Home Gladly

The next step after the death of a deceased is the burial rites of such a deceased, the vesting of the estate in the beneficiaries, the management of trusts and the accountability of same to the probate registry division of the court.

a. Dying with Dignity

Dying with dignity could be a lot of things to different people. In a poll conducted by Death with Dignity National Centre, this phrase meant a lot of things to different people but the reply which stands out for us the most is "To die without suffering and not have my family suffer as well" by Joni Hazle Ray.

This phrase it is submitted encapsulates the intention of this article summarily; which is to plan well for the future so much that loved ones who will be left behind in this world after you are gone still enjoys some level of security in the estate which is vested unto them, knowing that perhaps living in this world without you in it is a bit bearable, that they are able to receive precise directions on how you want your affairs ordered without necessarily assuming what your true desires would be, that your name would be mentioned with reverence without anyone having regrets as to your passing on, to your legacy being preserved through trusts which you may have set up for purposes which may be charitable, educational, cultural, etc.

The court in **Idehen v. Idehen (1991) 6 NWLR Part 198 Page 382**, describes it succinctly the purpose of making a will as one which "allows owners of property or rights to indicate how their affairs on their death could be arrange. This involves the person to whom their property could be given to or those to succeed them".

Another angle to consider this phrase is from the angle of a Living Will. A Living Will which is not popular in the Nigerian Legal System finds its statutory backing in the English Common Law, principles of equity and case laws, appears to be notoriously popular in the United States of America which has been signed by at least 750,000 Americans.

The Black's Law Dictionary defines Living Will as a written document that states a person's wishes regarding life-support or other medical treatment in certain circumstances usually when death is imminent. It is a written document that specifies what types of medical treatment are desired. A Living Will can be very specific or very general.

The Living will is usually drafted in the same style as a testamentary document, such that the maker is able to decide unilaterally his preferred mode of death, although such the maker of such a will must be competent and in the best state of mental health. His competency is further solidified by the execution

of witness signatures on such a document.
Although the practice of the Living Trust is one which leaves a person to the dictates of their family and physician, it is hoped that this will not be so in the nearest time.

Ademola Okeowo, in his article; "Living Will and the Nigerian Law: The Need for Legislative Intervention" advocates that the advantages of a living trust are that it respects the patient's human rights, it encourages full discussion about end of life decisions, the doctors are more likely to give appropriate treatment and take decisions which would have otherwise been difficult because they are better informed about the patient's choice.

Although supported by Common Law and Equity, it appears that the criminal laws of Nigeria forbid a Living trust especially as Section 377 of the Nigerian Criminal Code Act provides that any person who does any act or makes any omission which causes the death of another person especially where such an act or omission is made, is under some disorder or disease arising from another cause is deemed to have killed that person. The punishment for such an action is one which is Death as such as it is deemed as being murder.

Another angle which the Living trust presents is the angle of an individual creating his trust and directing his estate to be administered during his lifetime. Such a trust may also be revocable by the settlor/deceased during his lifetime.

b. How to get started

You can contact your legal adviser to draw up a will or trust declaration, alternatively you can contact the nearest corporate trustee to help you in planning your estate. You may also like to liaise with your portfolio manager for a proper account of all your stocks and shares, whilst taking into consideration active steps to ensure smooth transmission of title of ownership of such shares to the beneficiary.

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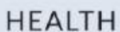

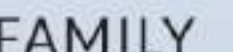

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MD

Managing Editor

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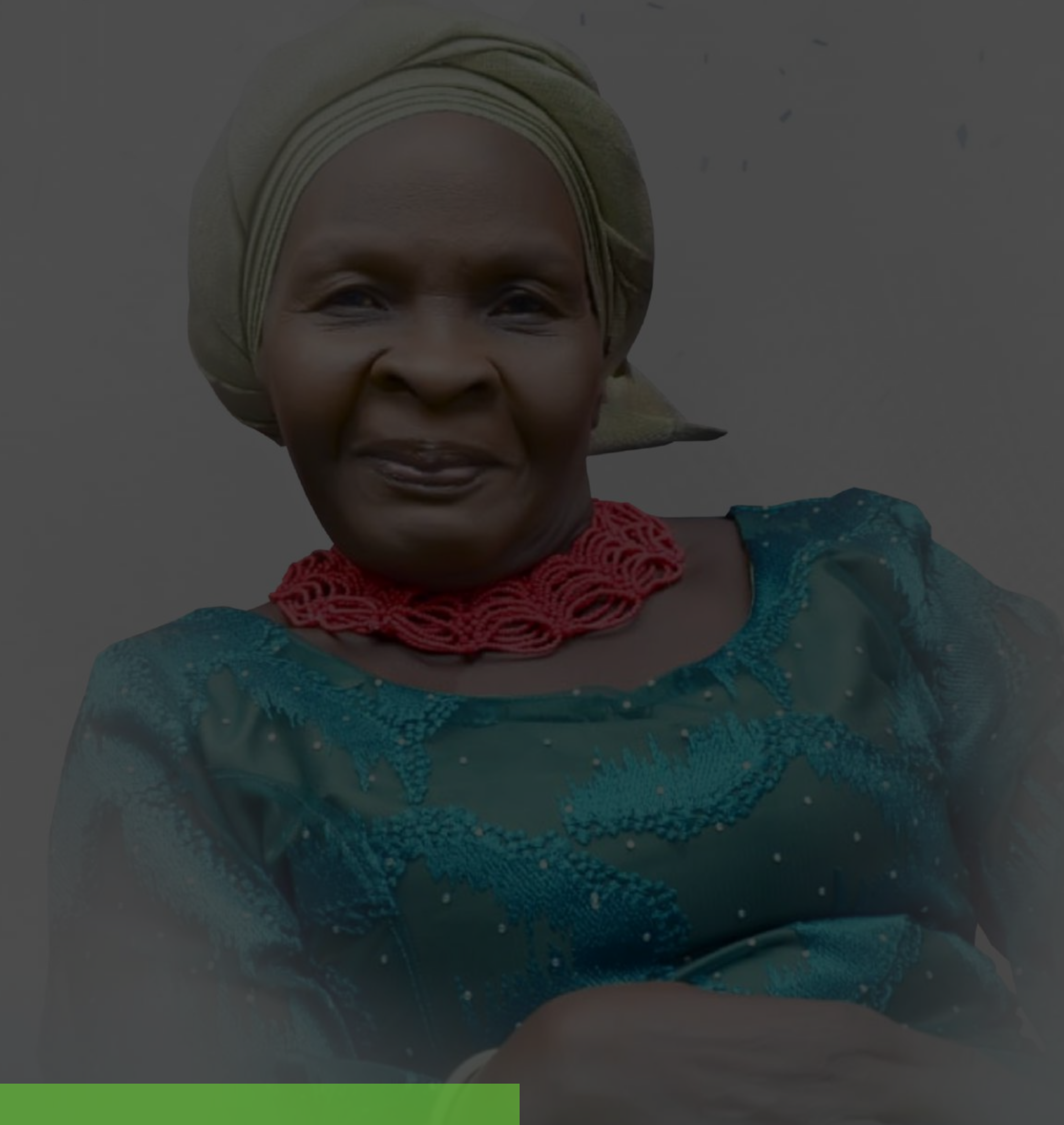

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