UCT Wills Week Info Session

Questions asked in the Teams Webinar chat | 15 September 2026

Note: Questions are listed in chat order. Comments about slide visibility have been excluded.

1. Can the executor of one's estate be a family member, such as a brother, who resides overseas?
   - Yes. In South Africa, a family member such as a brother may be nominated in a will as executor, even if he lives abroad. However, whether he can ultimately be appointed by the Master of the High Court depends on his circumstances and the Master's requirements. The Master's Office retains discretion regarding the appointment of executors and the furnishing of security. The specific facts of the estate and the nominated executor's circumstances should be reviewed before finalising the will.

2. How is the UCT death benefit and process affected if you have, or do not have, a will? What are the implications for beneficiaries in the two scenarios?
   - The UCTRF death benefit is governed by section 37C of the Pension Funds Act. This means that the UCTRF Board has a legal duty to identify dependents and allocate the retirement fund death benefit in a manner it considers fair and equitable, considering the member's beneficiary nomination form and the financial circumstances of dependents. Therefore, having a Will does not determine who receives the UCTRF death benefit, although it can assist in understanding the deceased's wishes.

3. Are there differences in how a will is structured for a spouse versus a cohabitant or life partner?
   - Yes, but the difference is usually not in the basic format of the Will. The Will can be structured in exactly the same way whether the heir is a spouse, life partner or cohabitant. The important differences lie in the wording, protections, and legal rights that exist outside the Will. Historically, cohabitants had far fewer protections than married spouses. South African law does not recognise a "common law marriage" simply because people live together. The rights of surviving life partners have evolved through constitutional developments and legislative amendments. The precise position should be checked against the current law and the client's specific facts before drafting or reviewing a Will for a cohabiting couple.
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4. If the person who passed away is retired and bequeaths the estate to a wife who is also a pensioner, are there different tax implications?
   - The fact that both the deceased and the surviving spouse are pensioners does not, by itself, create different estate tax consequences. The key tax considerations are determined by the nature of the assets and the relationship between the deceased and the heir, rather than their retirement status.

5. With loans to a company that one owns, where the loan is an asset in one's statement of financial position or balance sheet, will the loan be valued at cost as it is a loan or borrowing to the company? How does one ensure that this does not affect one's statement of financial position or balance sheet, or that it is transferred at the same cost to the company or beneficiary? I have heard that one needs to bequeath the loan to the company so that it is transferred at the same cost or balance owing and has no estate duty consequences. Please clarify and advise how this loan should be bequeathed in a will to allow for this.
   - As mentioned in the session, this question is very specific based on a specific set of circumstances. The precise tax consequences of cancelling or bequeathing a shareholder loan depend on the company's balance sheet, solvency, nature of the loan, and current tax

legislation. This scenario should therefore be reviewed with the client's tax adviser and estate planning practitioner.

6. What are the chances of estate tax being abolished?
   - For estate planning purposes, I would advise clients to assume estate duty will remain part of South African law and plan accordingly. It is generally prudent to structure estates based on the current rules rather than expecting abolition.

7. What is a legal firm allowed to charge to manage an estate as executor or otherwise?
   - In South Africa, an executor's remuneration is regulated by the Administration of Estates Act and the prescribed tariff. The current tariff entitles an executor to charge:
   - 3.5% of the gross value of the estate assets (excluding VAT); plus
   - 6% of income collected after death (for example, rental income, interest, dividends) (excluding VAT);
   - plus, VAT, if the executor or the firm acting on behalf of the executor is a registered VAT vendor.

8. How are will-related disputes handled?
   - In South Africa, will-related disputes are usually dealt with through the Master of the High Court and, where necessary, the High Court. A person cannot successfully challenge a will simply because they are unhappy with its contents. The challenge must be based on recognised legal grounds.

9. If the value of assets cannot be determined in the open market, how is the market value determined?
   - For Estate Duty purposes, section 5(1) of the Estate Duty Act requires assets to be included at their market value at the date of death. If there is no active market: - SARS generally accepts a reasonable valuation methodology supported by evidence or independent valuation reports depending on the assets in the estate

10. If PPS drafts the will, does PPS insist on being the executor and charging the 3.5% professional fee?
    - PPS does not require you to appoint PPS as executor to have a valid Will. However, PPS waives the Will drafting fee when PPS is nominated as executor. If another executor is chosen, the applicable Will drafting fee is charged. Should PPS ultimately administer the estate, executor's fees are charged at the statutory rate.
11. If you are a member of PPS, do you pay for will drafting?
    - PPS draft wills for PPS members & non-PPS members and does not charge a drafting fee where PPS is nominated as executor of the estate. Future amendments to the will are also indicated as being free of charge.

12. If you have debt, such as car finance or bonds, is it better to leave your life insurance to the estate rather than to a specific beneficiary?
    - In most cases, it is not an either/or decision. The better approach is often to ensure that you have enough liquidity/cash in the estate to settle debts and costs, while still providing funds directly to your dependents.
13. Is there a ceiling value that determines whether an institution or a private family member must be the executor? I was told that if an estate exceeds R1 million, it must be handled by an institution, which charges a set percentage as an executor’s fee, whereas a family member may not charge that fee.

- No, there is no legal rule in South Africa that an estate exceeding R1 million must be administered by an institution. A family member, friend, attorney, accountant, trust company, or other suitable person may be appointed as executor, provided the Master of the High Court is willing to issue Letters of Executorship and the person is able to fulfil the duties of the office. The figure that is often confused with this issue is R250,000, not R1 million:
  - 13.1. Estates with a value of R250,000 or less may qualify for the simplified Section 18(3) process, where the Master issues Letters of Authority rather than Letters of Executorship.
  - 13.2. Estates above R250,000 require the appointment of an executor and the issuing of Letters of Executorship

14. Can you nominate a sibling as an executor?
    - Answered in Point 1
15. What is the difference between an administration fee and an executor's fee?
    - An administration fee/cost and an executor's fee are not the same thing, although people often use the terms interchangeably. This is the fee charged by the appointed executor for administering the deceased estate. The fee is regulated by the Administration of Estates Act. Administration fees/cost are the other costs incurred in winding up the estate, separate from the executor's remuneration.
16. Can the executor hire PPS to administer a will after the person's passing if the will was not drafted by PPS and does not mention an intention for PPS to administer it?
    - Yes. If the deceased's will nominates an individual (for example, a spouse, child, sibling, attorney, or friend) as executor, that person may be appointed by the Master of the High Court and can then engage a professional firm such as PPS Fiduciary Services to assist with the administration of the estate as the executor's agent. The executor remains legally responsible to the Master but may delegate much of the practical administration to professionals. This is a common arrangement in South Africa.
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17. If PPS drafts the will and keeps it in safe custody, would PPS still be able to execute it if the person's legal jurisdiction has changed by the time the will needs to be executed?
    - Generally, yes, but it depends on what "jurisdiction change" means. - If the client moves to another province in South Africa - Usually not a problem. The estate would still be administered and reported to the appropriate Master's Office. The fact that PPS drafted and held the will would not, by itself, prevent PPS from acting.

    If the client emigrates or acquires domicile/residency in another country - The position becomes more complex. Other factors that would then need to be considered include:

    - Whether the South African will remains valid in the new jurisdiction
    - whether the will was intended to deal with worldwide assets or only South African assets,
    - whether a separate foreign will was later signed

18. How long does it take to distribute the assets if there is a will?
    - Having a valid will generally make the distribution process smoother, but it does not mean assets can be distributed immediately. Timeframes are estimates only. Delays often arise from Master's Office backlogs, SARS processes, property transfers, obtaining valuations, or disputes among interested parties

19. If a person has left drafting a will until very late, for example until they are very ill, how should they proceed to minimise unnecessary disputes?
    - If someone leaves drafting his/her will until they are seriously ill, the greatest risk is a later challenge based on lack of testamentary capacity, undue influence, or allegations that the will does not reflect their true wishes.

20. When PPS administers an estate, does the executor have to sign a power of attorney?

- Usually, yes, if PPS is acting as the agent and not the appointed executor.

There are two common scenarios:

Scenario A: PPS is nominated and appointed as executor. PPS (or its nominated representative) receives the Letters of Executorship directly from the Master of the High Court. No separate power of attorney from another executor is required because PPS is the executor.

Scenario B: A family member is appointed as executor

- The family member accepts the appointment from the Master.
- The family member then signs a power of attorney, authorising PPS to administer the estate on their behalf.

-There is no one-size-fits-all answer.

Advantages of a professional executor (attorney, fiduciary company, trust company)

-Experience with Master's Office requirements,

-Familiarity with estate duty,

-CGT and tax compliance,

- Reduced administrative burden on family members,

-Independence where family conflict may arise,

-Continuity if the administration takes several years

21. Is it advisable to appoint a bank or an attorney as executor?
    - Answered in Chat during the session
22. Does the UCT Law Clinic offer free will-drafting services?
    - The UCT Law Clinic provides a pro bono will-drafting service to vulnerable members of the public and the communities it serves, subject to clients meeting the Clinic's eligibility requirements. All prospective clients are required to undergo a screening process, which includes a financial means test, to determine whether they qualify for assistance. Clients who meet the prescribed criteria may receive assistance with the drafting of a valid will at no cost.

23. What is the difference between a will and a trust with beneficiaries and appointed trustees?
    - For estate planning purposes, a will and a trust achieve different objectives, even though both can benefit the same people.

Trusts can operate during a person's lifetime and after death, whereas a Will only takes effect on death.

Trusts also involve trustees who manage assets for beneficiaries, while a Will relies on an executor to administer the estate:

A typical structure is:

A will nominate an executor.

The will directs certain assets into a testamentary trust on death.

Trustees then manage those assets for the beneficiaries.

24. What are the criteria for pro bono services for UCT staff?
    - All clients seeking assistance from the UCT Law Clinic must meet the Clinic's eligibility requirements. Prospective clients are required to undergo a screening process, which includes a financial means test, to determine whether they qualify for services. Clients who meet the prescribed criteria may receive assistance.
25. If the nominees on a pension fund are minors and the will provides for a testamentary trust to be opened, will the pension payout go to the testamentary trust?

- In short: A pension fund death benefit may be paid into the testamentary trust, but it is not automatic merely because the will creates such a trust. The retirement fund trustees must independently decide whether payment to that trust is appropriate. The precise outcome depends on the rules of the specific retirement fund, the wording of the will and testamentary trust provisions, and the trustees' section 37C investigation. This should be reviewed on a case-by-case basis.

26. What happens to a deceased estate if a person dies intestate, has no children or dependents, and both parents have passed away?

- The estate then passes to the deceased's blood relatives in the next line of succession, siblings or descendants of such siblings. The Intestate Succession Act determines how the estate will be distributed.

27. Where can one find legal practitioners participating in National Wills Week?

Answered during session and links were shared.

28. What is the likely time range for winding up an estate when a good will is in place, taking all role players into account, from a best-case to a worst-case scenario?
    - If there is a properly drafted will, a competent executor, no disputes, and the estate is reasonably straightforward, beneficiaries should expect the estate administration process to take approximately 12 to 18 months from date of death to final distribution. Simpler estates may be finalised sooner, while complex estates can take several years. A well-drafted will certainly help, but it does not eliminate the statutory process. The timeline is often driven by the Master of the High Court, SARS, financial institutions, conveyancers, creditors, and the complexity of the assets.

Important Notice & Disclaimer:

The information shared and presented during this session is intended solely for general informational and educational purposes and does not constitute formal financial, tax, or legal advice. Because every individual's financial and personal circumstances are unique, attendees are strongly advised to consult with a qualified financial advisor, tax practitioner, or legal specialist regarding their specific personal situation before making any financial, legal, or estate planning decisions.