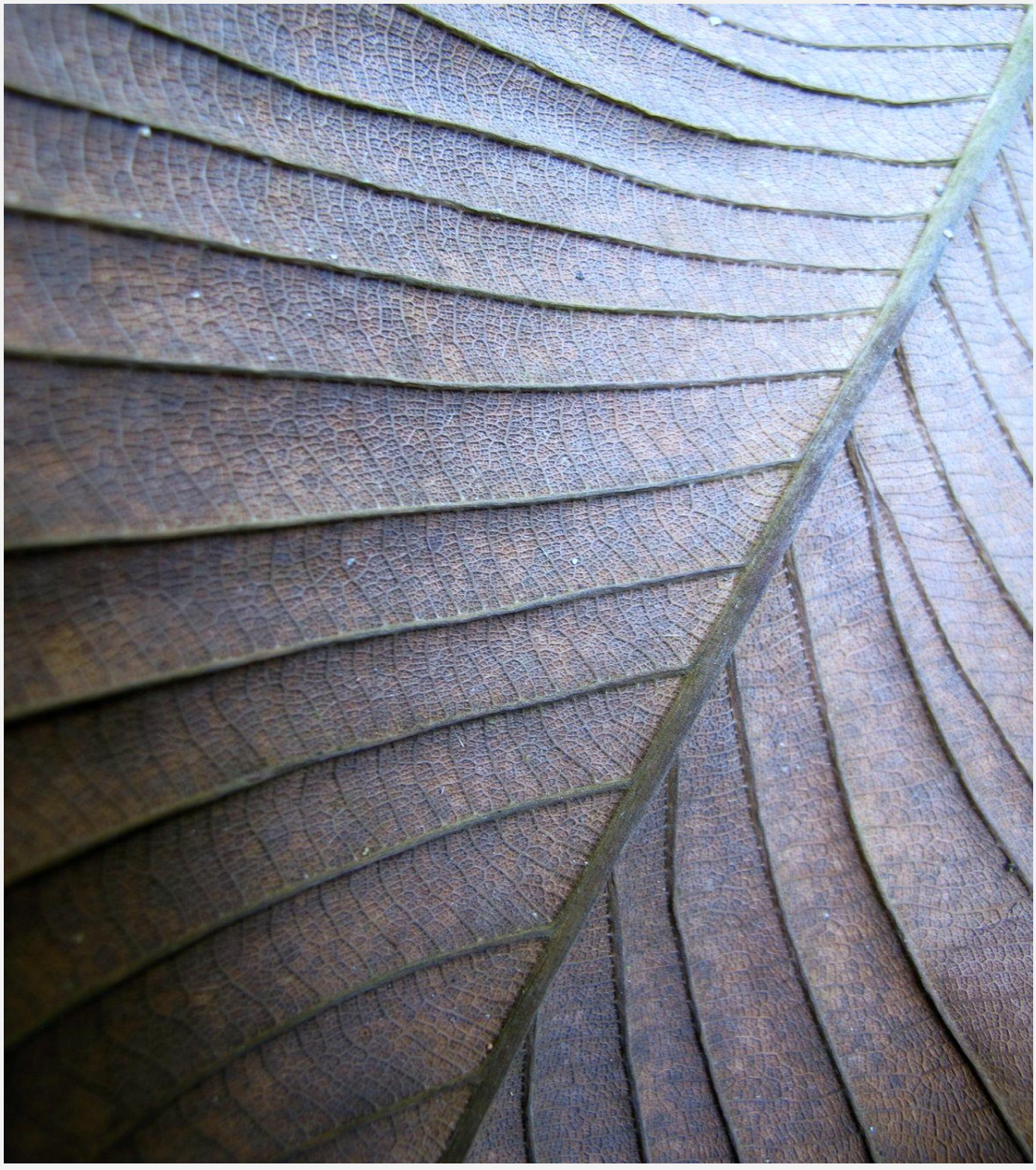

INHERITANCE & SUCCESSION:

WHAT OR HOW WILL YOU PASS IT ON, WHEN YOU PASS ON?

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In Nigeria, inheritance and succession planning are governed by the Wills Act and the personal laws, customs and religion of the deceased. It is important that one is prepared for the inevitable, otherwise you run the risk of the unintended consequences of: making ineffective gifts, thereby leading to either depriving your rightful and preferred heirs of your Estate or having your Assets ending up with unintended beneficiaries. In some cases, a lack of preparation can lead to waste and a total loss.

We have a duty to our families, partners (personal and professional), dependents etc. to leave a legacy or inheritance that is free from contention, stress and unnecessary expenses.

Life can be complicated with people living in one place but having the cultural beliefs of another; multiple families; assets in different jurisdictions and ever-changing tax and inheritance laws and provisions. I will restrict this piece to Estate and not financial planning and leave that for financial experts.

What are your Assets?

Your Assets are anything that you own either solely, jointly, in a partnership etc. and can include, property, jewelry, cash, shares, furniture, art, cars and so on. It is important that you compile a list of everything you own before you decide how to pass it on and who to pass it on to.

How can you pass these on?

How you pass these on, is a function of how you own them, where they are located, your religious or cultural beliefs and practices. The most common forms of disposal are Wills, Trusts, Powers of Attorney, outright gifts, beneficiaries of pension plans and insurance policies, although Nigerian law recognizes customary laws, practices and religious beliefs in the management and distribution of Assets and Estates.

Wills – this is a written legal document prepared by an adult of sound mind, signed before at least two witnesses, that clearly states what happens to your assets upon your death. The person making the Will is known as the Testator. If you die without a Will, you are said to have died intestate.

A Will only takes effect after death and states who will be responsible for executing its provisions. Your executors should be trusted and reliable persons, who will follow your mandate and instructions honestly and responsibly. If you die intestate, the probate court will appoint Administrators (usually upon a request by the family members or potential beneficiaries) to Administer the Estate i.e. your assets. As life can and does usually change, you should make changes to your Will as and when necessary.

Changes could be made either by revoking a previous Will or by codicil. Codicils are essentially supplementary documents adding to or revoking all or part of a Will. You should ensure that copies of the Will and any codicils are kept in safe custody to avoid loss, damage and potential disputes.

Your Will must be clear, specific and the intended Beneficiaries clearly stated. Provisions can also be made for Residual matters which may accrue after you pass, such as additional shares or dividends. Conditions can be attached to bequests and time frames set for when bequests can be passed on e.g. upon reaching the age of 30; completion of formal education. Provisions can also be made for the care and maintenance of minor children, elderly parents, wards, dependents; financial support to churches, associations, educational institutions and charities you wish to support. It is important that any intended beneficiary is not a witness to a Will.

Trust – Whilst a Will takes effect upon death, a Trust can be effective even when you are alive. As the name implies, it is an agreement entered into between parties for the benefit of a third, known as a Beneficiary. Trust can either be Revocable – which allows you the freedom to change the Trustees, the Beneficiaries or even the terms of the Trust. Conversely it can be Irrevocable, where you cede control to the Trustees. An executor in a Will can effectively become a Trustee by virtue of the powers conferred on him/her in the Will.

Power of Attorney – A POA can be a particularly useful tool that can be used to give authority to a trusted person(s) for certain aspects of one's life or assets (including real estate). For example, in the event of a Donor becoming incapacitated, a POA which states how the Donor should be medically looked after, cheque signing provisions, care and maintenance of children, funeral arrangements, can be extremely useful.

Next of Kin – Your NOK is usually entitled to the benefits of the particular aspect for which they have been so indicated. It is important that your particular circumstances be taken into consideration when designating a person as NOK. This should also be updated when your circumstances change such as when you get married, divorced or have children.

As mentioned above, Nigerian law recognizes other systems under **Religious laws and Customary beliefs –** Nigeria has numerous tribes and cultures but most operate under a patrilineal umbrella and practice the principle of primogeniture – succession by the eldest male child in the case of intestacy. Therefore, in the absence of clear instructions in a Will, Trust, power of attorney or outright gift, the law of the land or culture to which the deceased belonged or practiced i.e. his/her personal customary law will prevail, irrespective of where the property is situated or where he/she died. In *Olowu vs. Olowu*, where a Yoruba man, who spent his entire life in Benin, married Bini women, acquired property and adopted Bini custom, died intestate, his Estate was distributed under Bini native law & custom as he was held to have naturalized as a Bini man.

In several cases the Supreme Court (*Ukeje vs. Ukeje*), has held as unconstitutional any culture which seeks to exclude women from inheriting from their husband or father. In **Ibo** custom (amongst others) where this is commonly practiced, it is not unusual to allow female children inherit their late mothers' clothes and jewelry but not her landed property. Where a deceased has no male children, his brothers will usually step in and "inherit".

The courts however will generally allow for and accept oral (non-cupative) Wills if the laws/custom of the deceased allow for this.

In **Yoruba** land, generally speaking, the eldest son inherits the property for himself and as a Trustee on behalf of the wife/wives and children of the deceased. Succession is therefore usually as a "family". Where the Estate is to be divided, in some cases, male children get more than females; or the division can be split into the different branches (where there are multiple wives), with each wife/mother constituting a branch – Idi Igi; in some cases, each child gets an equal share – Ori Ojori. The right of a wife to inherit is usually tied to her children's inheritance or restricted to a right to remain in her husband's home, which she loses once she remarries.

Under **Islamic (Sharia)** Law, applicable to Muslims, the Quran provides a formula which ensures that primary and legitimate heirs are not denied their rightful inheritance. Primary heirs are spouses, children and parents. The existence of this class of heirs excludes others. For example, a son excludes a grandson and a brother. Full brothers exclude half-brothers. Before any portion of the Estate is shared, the deceased's debts and funeral expenses (if any) must be settled.

Generally speaking a wife or wives are entitled to a quarter of the Estate and male children inherit twice as much as the females. Parents are also entitled to inherit from a deceased child. If none of these exist, then full uterine siblings are next in line and thereafter half siblings and so on. A non-Muslim, adopted or "illegitimate" child cannot inherit from a Muslim and neither can one who commits murder. Any residue in the Estate may be shared amongst the heirs.

Contrary to some practices and beliefs, a Muslim may dispose of up to a third of his assets by a written Will. Similarly, he/she may also gift some or all of their assets in their lifetime unless this is made as a "death bed" gift. In such a case, the consent of all the rightful heirs will be required for such a gift to take effect, otherwise the one third rule applies.

How do I set up a Will or Trust?

In summary, death is unpleasant yet inevitable; preparing a Will can be emotionally upsetting but extremely necessary and highly recommended to provide for ones selected beneficiaries and avoid the complications, squabbles and legal battles that could arise where there has been no planning or preparation.

Once you attain the age of maturity, and have even a simple savings account, you should write a Will. Death happens to all and at any age. The last thing that should happen is for your wealth to end up with unintended beneficiaries or administrators.

There are self-help tools now readily available to assist in drafting and preparing Wills, but it is advisable that if you have significant and multiple assets or sources of wealth, or an extended family set up, that you seek the advice and assistance of a lawyer. Similarly, you should discuss financial and tax planning with experts and in the case of setting up a Trust, use professional trust companies. This of course does not preclude you using individuals you know and trust as Trustees.

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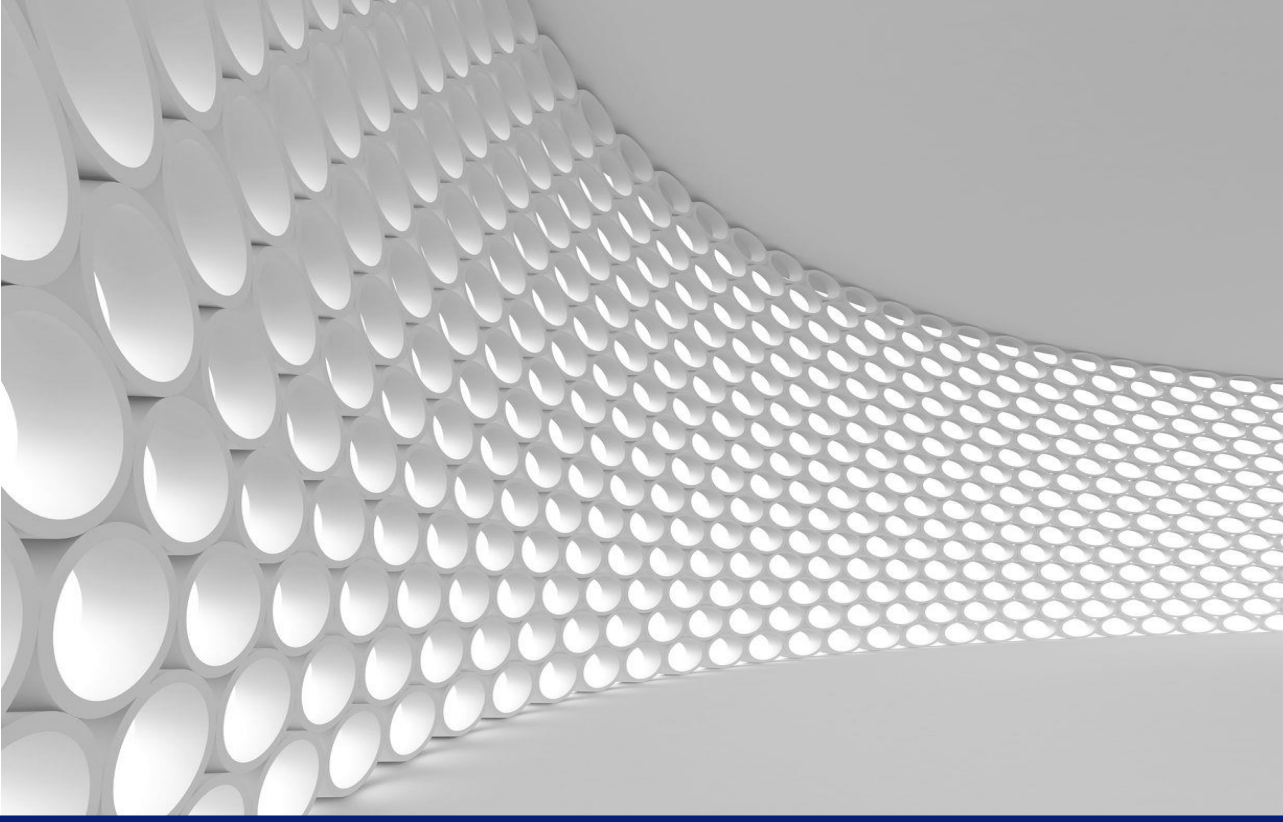

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