



LEGAL TAKE

— PRIVATE CLIENT · GUIDE

Wealth Preservation and Asset Protection in Kenya

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YOUR CONTACT

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Estate planning means organising, protecting and passing on what you own, during your lifetime and after. It is not only for the wealthy. Anyone who wants to provide for their family, or keep a business running, benefits from a plan.

KEY POINTS

- A will alone rarely covers everything. Most families need a combination of tools.
- Trusts are now governed by the Trust Administration Act, 2026. New and existing trusts must register and file annual returns.
- Review your plan after every major life event.

Why it matters

Without a plan, families can face long court processes, disputes over assets, and avoidable taxes and costs. A good plan also protects what you own against:

Legal claims. Structuring assets well can protect them from creditors and unexpected liabilities.

Divorce. Trusts and family companies can keep family wealth with the people it was meant for.

Incapacity. Your affairs are managed as you wish if you can no longer make decisions yourself.

The tools

1 Nominations

Nominate beneficiaries for pensions, insurance policies and some accounts, so those assets pass directly without a court process. Review nominations after marriage, divorce or the birth of a child.

2 Powers of attorney

Appoint someone you trust to manage your affairs. Set out the scope of their authority and register the power of attorney where required, for example for land. A power of attorney ends on your death.

3 Wills

Set out who receives your assets, who your executors are and who will be guardian of young children. A will takes effect only on death, and your executors will still need a grant of probate from the court.

4 Matrimonial property agreements

Agree before marriage how property will be treated if the marriage ends. They reduce disputes and clarify what was owned before marriage or inherited.

5 Family companies

Hold family property, businesses and investments in one company, with a shareholders' agreement or family charter setting out decision-making, distributions and succession. Moving assets into a company can attract stamp duty and capital gains tax, with relief available in some cases, so check before transferring.

6 Family trusts

Hold assets through trustees for your family under a trust deed. Trusts are covered in more detail below.

Separation and divorce

Family wealth planning has to account for the possibility of separation. Under the Matrimonial Property Act, 2013, property acquired during a marriage is divided according to each spouse's contribution, which can be financial or non-financial. Kenya's Supreme Court has confirmed there is no automatic equal split.

Agreements before marriage can set out how property will be treated, and are recognised by the Act.

Clear records of what was owned before marriage or inherited reduce disputes later.

Trusts and family companies can keep family assets with the people they were meant for, if they are set up and run properly.

Making a will that stands

Capacity. You must be an adult of sound mind when you make the will.

Free choice. You must sign it voluntarily, knowing and approving what it says.

Proper witnesses. Two competent witnesses must see you sign. A gift to a witness, or to a witness's spouse, is void, so beneficiaries should not witness your will.

Wills that do not meet these requirements, or the Law of Succession Act, can be challenged and set aside. Dependants who are not adequately provided for can also ask the court for provision.

Family trusts under the new law

The Trust Administration Act, 2026 came into force on 25 September 2026 and replaced the Trustees (Perpetual Succession) Act. Under the new Act:

Registration. A written trust must be registered with the Registrar of Trusts to be enforceable.

Annual return. Due within 30 days of each registration anniversary. Changes to trustees, beneficiaries or the deed must be filed within 21 days.

Beneficial ownership. Every trust keeps a register of beneficial owners and lodges a copy with the Registrar. It is not open to the public.

Existing trusts. Trusts set up under the old law remain recognised but must comply within 24 months.

Used well, a trust provides continuity if you are unwell or pass away, avoids probate for assets already in it, releases funds to children by age or milestone, and keeps family affairs private. These benefits apply only to assets genuinely transferred into the trust. Trusts suit holding assets rather than trading, so an active business may sit better in a family company owned by the trust.

Where to start

1 List what you own

and how each asset is held: in your name, jointly, through a company or in a trust.

2 Update your nominations

for pensions, insurance and accounts.

- 3 **Make or update your will**
and appoint guardians for young children.
- 4 **Put a power of attorney in place**
so someone you trust can act if you cannot.
- 5 **Review the family business**
and agree how decisions, distributions and succession will work.
- 6 **Consider a trust**
for assets you want held for the long term.

COMMON GAPS WE SEE

- Nominations that were never updated after a marriage, divorce or birth.
- Wills witnessed by beneficiaries.
- Trusts set up but assets never transferred into them.
- Existing trusts not yet brought into line with the 2026 Act.

Estate planning is a process, not an event. We can help you understand your options, put together a plan that combines the right tools, and keep it up to date.

TALK TO US

Every situation is different. This is where we get specific to yours.

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