

# WHERE THERE'S A WILL THERE'S A WAY

**T**he Fiduciary Institute of South Africa (FISA) encourages every South African over the age of 18 to have a will, which needs to comply with the Wills Act. The main requirements of the act are that the will is dated and signed in the presence of two witnesses who also need to sign it. In addition, each page needs to be initialled by the testator/testatrix and the two witnesses.

John Gibson, FISA chairman, said, "We strongly advise against do-it-yourself wills as the process around wills can be complex and needs further consumer education." He cautioned advisers to be aware of the following issues when it comes to drafting wills:

- Updating an existing will is as important as drafting a new will. Personal and financial circumstances change (potential heirs pass away, people get divorced or retrenched, stock markets collapse), as do the nature of assets (assets held in a company or close corporation may be re-registered following the SARS amnesty on transfers).
- Some of the heirs appointed may no longer be South African residents. If heirs have not formally emigrated, but are living abroad as citizens of another country, they will need to regularise their emigration standing with the Reserve Bank before receiving their inheritance.
- Executors and trustees for a will trust must be chosen based on their ability to deal with estates and will trusts. Find out how much experience they have in this

type of administration work and what are their qualifications, turnaround times and fees. In the case of a trustee for a will trust, investment management expertise is invaluable, as the trustee will be responsible for the management of assets in the trust.

- The estate duty, capital gains tax and liquidity aspects of the estate must be investigated and the will planned accordingly. For example, is there enough cash available to pay off mortgage bonds, illness debts and any other outstanding or future debts, such as conveyancing fees and estate administration costs?

- Are there offshore assets or liabilities that need to be dealt with? Who will inherit these assets and have the implications around ownership of offshore assets been taken into account? Have these facts been placed on record with the Reserve Bank?

A single will can deal with offshore and local estates. The complexity of offshore estates, however, may necessitate a separate will which appoints a trusted executor in that jurisdiction. In such instances, care must be taken to ensure that there is no conflict with the local will.

- Whether clients are married in or out of community of property will have implications for the spouses' rights to assets. For example, clients married in community of property cannot give

away more than half of their assets, as their spouses have an undivided one-half share of ownership of those assets. An antenuptial contract requires that an accrual calculation claim to be worked out, which also impacts on the distributable estate.

FISA recommends that all the above issues be raised, as they apply to a client's personal circumstances while a will is being drafted. It's important to remember that the administration of a will is a complex process, even when an estate is not large.

Complications can arise due to the nature of the assets and liabilities, the liquidity of the estate and obligations of the deceased, for example the division or disposal of assets, maintenance payments to former spouses, minor children or business relationships.

A list of FISA-registered practitioners is provided at [www.fidsa.org.za](http://www.fidsa.org.za). All registered practitioners are obliged to adhere to high fiduciary standards.

