

# Money Matters

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## Drafting a will

### Wills and trusts

Estate planning is the process through which you accumulate assets and manage your financial affairs in order to increase, preserve and protect those assets for the maximum benefit during your lifetime, as well as to provide for their disposition and continued use after your death. It is therefore a continuous process which is aimed at ensuring that you can enjoy the maximum benefit from your estate during your lifetime and that your nominated beneficiaries can derive the maximum benefit after your death.

The main idea behind estate planning is to structure your affairs in such a way that you achieve some or all of the following objectives:

- Minimisation of tax
- Provision for liquidity
- Provision of financial security
- Harmony in the family
- Provision for retirement
- Protection of assets
- Protection of business interests
- Facilitation of the administration of the estate
- Succession planning

There are many ways of achieving the abovementioned objectives. Two of the most common tools are wills and trusts. In this first Money Matters column by FISA we will discuss points to consider in drafting your will.

You can have a will on its own representing an estate plan, but you cannot have an estate plan without a will. Note that if the value of an estate is not large, this does not necessarily mean that its administration will not be complex.

The following points may be useful to you when advising your clients to create or update their will.

*Updating your existing will can be just as important as drafting a new will.* This is because people you expected to inherit may have died, your own personal and financial circumstances may have changed (such as marriage, divorce, retirement or retrenchment) and even the nature of your assets may have changed (assets held in a company or close corporation may now be in the process of being re-registered in your own name following the SARS amnesty on these transfers).

*Some of the heirs you are appointing may now be non-resident in South Africa.* If the 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 their inheritance can be paid to them. This can delay the winding up of an estate.

*When deciding on an executor and / or a trustee for a will trust (also known as a testamentary trust, usually created to accept assets for the care of minor children), have you probed their ability to deal with estates and will trusts?* Ask questions such as how long have they personally done this type of administration work, how many matters do they attend to, what qualifications do they have, what are their turnaround times, and what fees do they charge. In the case of a trustee for a will trust, you should also ask if they have investment management expertise to look after the assets you will be leaving in the trust for the ultimate benefit of your heirs.

*Has the person drafting your*

*will investigated the estate duty, capital gains tax, and liquidity aspects of your estate, and planned the will accordingly?* For example, is there enough cash available if you were to die today to pay off mortgage bonds, last illness debts and any other outstanding or future debts such as conveyancing fees, and estate administration costs?

*Are there any offshore assets / liabilities to be dealt with? Who will inherit these assets and have you taken the implications into account around ownership of assets offshore? Have you placed the same facts on record with the Reserve Bank? A single will can deal with your offshore estate as well as your local estate. However, depending on the complexity of your offshore estate, you may wish to have a separate will appointing a trusted executor in that jurisdiction. Care must be taken to ensure no conflict with your local will.*

*How are you married and what implications does this have on the rights to assets of your spouse?* For example you cannot give away more than half of your assets if you are married in community of property, as your spouse has an undivided one-half share of ownership of those assets even if they are not registered in his or her name. If you are married by antenuptial contract, there is an accrual calculation claim to be worked out, which also impacts on the distributable estate.

*Contributions to this column came from FISA members Trinetta Burger, Fiduciary Special-*

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