

MoneyMarketing

In today's newsletter we focus on the important matter of a will. The Law Society is holding a 'national wills week' from 17-21 October. A will is one of the most important financial documents everyone should have – we have an article on our website looking at various considerations to take into account when drawing up a will and below we look at the issue of why we should have a will and why expert advice is essential.

Would you pay more for a restaurant meal than a Will? By Tanya Cohen, head of Fiduciary at Glacier by Sanlam, and FISA member

It would appear that some South Africans are prepared to pay a couple of hundred rands for a restaurant meal, yet are not happy to pay an expert the equivalent to draft their Will, a vital document that speaks for you when you are gone.

Recent affluent (see note 1) and high net worth (see note 2) market research commissioned by Glacier Fiduciary Services, a division of Glacier by Sanlam, revealed a startling disparity in the public's understanding of the importance of having a professionally drafted Will. Furthermore, many affluent and high net worth individuals do not recognise the expertise required to draft a Will that you can trust to have the consequences you intend. The necessary area of expertise required to draft a competent Will includes not only estate planning in the narrow sense, but also marriage law and planning, insolvency law and asset protection, the intestate succession rules, the administration of deceased estates, all areas of tax law, trust law, exchange control etc.

Wills are drafted by a wide range of organisations and service providers, including attorneys, banks, accountants and financial advisers. Members of the public should ensure that the person they consult to draft their Will is properly qualified and experienced to do so. One's Will dictates the manner in which your assets will be divided and your dependants looked after when you are not around to help them or remedy any mistakes or misunderstandings. Accordingly, anyone with dependants or with assets they wish to leave behind, needs to take the process seriously and not simply focus on getting a Will drafted as cheaply as possible, or free for that matter.

The objectives of the Glacier research were to provide detailed information about the current behaviour of its target market of affluent and high net worth (HNW) individuals with regard to Wills, family trusts, offshore trusts and estate planning advice, as well as to explore attitudes towards the concept of "free advice".

The questions asked about Wills in particular revealed a huge disparity in market perceptions and expectations. Ninety-eight percent of respondents had a Will. However, only 33% overall said their Will was updated in the last year (39% HNW; 28% Affluent); 21% updated it one to two years ago; 21% updated it three to five years ago; and 25% updated it more than six years ago (17% HNW; 32% Affluent). Nominated executors are most commonly relatives (29%) or banks (25%). Attorneys are more commonly used by HNW individuals (22%) than affluent individuals (8%). When asked who drafted their Wills, an alarming 17% said that they had drafted their own Wills or a relative had drafted their Wills. The majority (63%) had Wills drafted by their attorneys or accountants.

The respondents were asked how much they paid for their Wills and how much they would expect to pay today. The fees paid ranged from nothing (44%) to between R15,000 and R20,000 (2%).

15% of respondents paid less than R1,000 and the balance (20%) paid between R1,000 and R15,000. Those who paid less than R1,000 are likely to fall into the category of people who have not updated their Wills for a very long time. The research also revealed a disparity between what people paid, and what they would expect to pay now. As regards what they expected to pay today – only 20% said that they expect a Will to be for free; 18% expected to pay less than R1,000; 8% between R1,000 and R2,500; 28% expect to pay between R2,500 and R5,000; and 12% expect to pay between R5,000 and R15,000.

The glaring difference between clients' perceptions was highlighted in their answers to the following questions. Firstly, the respondents were asked why they would not expect to pay for a Will.

“I did not pay for my Will as part of the service of a private bank client and the bank will make money out of the estate when they have to wind it all up one day. However, I did expect to pay for it!”

“It is part of the bank service. Banks and all financial institutions make so much money from their clients, the least they can do is to provide a free Will. After all, it takes only one hour to 'cut and paste' in preparation for Wills.”

“A Will should be part of the service I am being offered either by my private banker or my financial adviser. The cost of the Will should be included in the fees that I pay my private banker or financial adviser every year.”

But when the researchers asked, “How do you feel about people who are willing to pay more for a restaurant meal than a Will?” The response was very different.

“You're being stupid because you are gambling with lots of money. You don't want the family to sit with problems after you die. You get what you pay for. Cheap/free Wills are not worth the paper they are written on.”

“It would then appear as if there is no value perception to the Will. Wills usually need specific tailoring when assets are involved and the various beneficiaries and not just the run of the mill type Will. If it is simple and a standard template type of Will with no effort put into it, then it could be a modest meal. But I think it is foolhardy. I am willing to pay far more for a Will than a meal because I want proper professional advice that I can trust regarding tax consequences, asset details, etc.”

Regardless of whether you are paying R10,000 for your Will or if the cost is included in other fees you are paying to your adviser, just make sure that it is drafted by a properly qualified expert in Will drafting, estate planning and the related tax issues. Furthermore, don't be misled into thinking that a relatively small estate necessarily requires less Will drafting complexity or is easier to wind up when you pass on, than a large estate. A R3.5 million estate with private company shares, children from two marriages and a usufruct attached to a property would be more complex than a R20 million estate with equities, cash and a house.

Notes:

1. Annual income R360K - R1.6 mil plus net investable assets of R3.5 mil - R7 mil OR gross estate value R7.5 – R19.9 mil
2. Annual income R1.6 mil+ plus net investable assets of R7 mil+ OR gross estate value R20 mil+

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decisions please contact a professional financial adviser.

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