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Money Matters

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Aaron Roup, FISA Secretary

Will drafting - a case study

Wills

Consulting an appropriately qualified professional for the purposes of drafting your will is a bit like visiting the doctor – you need to bare all!

Good practitioners will have their own tried and tested way of obtaining the information they require to advise the client and prepare the draft will.

Case study:

Meet Mr and Mrs Joe Average, their three children, Tom age 5, Dick age 19 and Harry, their mentally challenged 22-year old. Joe's Dad, Granddad Joe, lives with the family and is dependent on Joe for all his financial needs, while Jane's Mom lives in the local retirement home, and is partially dependent on Joe and Jane for financial support.

Joe and Jane are married out of community of property with the accrual regime.

Joe wishes to be cremated, while Jane wants a living will with her body parts donated for medical research.

She wants to be cremated and her ashes scattered at her favorite holiday spot at the Transkei Coast.

On the deaths of Joe, Jane and the three boys, over and above looking after Granddad Joe and Grandma, they want to bequeath R100 000 to the local dogs' home and the family church, as well as R250 000 to their housekeeper or her children. Whatever is left after this is to be bequeathed equally to Joe and Jane's siblings or their respective nieces and nephews.

Joe and Jane provide a list of their assets and liabilities which comprise:

- A residential property and a holiday home.
  The family home has a small bond, which is covered by a life policy, while the holiday home is debt free;
- They have a joint savings account, a managed share portfolio, a portfolio of unit trusts and time share in the Drakensberg;
- They each own a car, as well as a car registered in Joe's name used by Granddad Joe as well as household contents and other personal effects;
- Jane has a few special pieces of jewellery she wishes to leave to each of her sons as well as Mary her goddaughter.
- Joe has life cover from his employer, while Jane has a life insurance policy;
- Jane has a pension fund with her employer. Both Joe and Jane contribute to retirement funds.
- Other than credit cards the family has no additional debt.

Both Joe and Jane are financially astute and capable of managing a combined estate failing one partner. Each partner is committed to looking after his/her in-laws. To this end, no usufructry or obligatory dependent financial support type clauses are required in the will.

On the death of the first dying spouse, a simple estate duty saving technique would be the creation of a testamentary trust for the surviving spouse, the three boys, Granddad and Grandma. Currently, R3.5 million (in cash and/or assets) can be bequeathed to this trust, free of estate duty.

By creating the discretionary testamentary trust on the death of the first dying, the future capital appreciation of the assets held in this trust will be excluded from the survivor's estate.

The residue of the estate is bequeathed to the survivor, with Granddad having a usufruct over the car he is currently using.

On the simultaneous deaths of Joe and Jane or the survivor of them, they will need to consider the appointment of a guardian and/or custodian for Tom since he is under 18 years of age and for Harry since he is mentally challenged.

They should also consider at least three trustees for the testamentary trust to be created for the sons, Granddad Joe and Grandma - ideally a professional person and a responsible member from each of Joe and Jane's families.

This composition of trustees allows for balance in the decision making when it comes to the specific financial needs of each beneficiary.

The trust will support Harry, Granddad and Grandma for the remainder of their lives. Jane believes that once Tom and Dick attain the age of 25 years, each boy will be entitled to receive his portion of the trust fund.

Except for the retirement fund assets, all other assets will be bequeathed to the trust.

The trustees have the discretion to support each beneficiary based on his/her current living requirements and needs.

As an effective estate duty saving technique, the retirement funds are bequeathed equally to the sons and/or their guardians.

On the death of the Average family, the executor is to determine an amount for Granddad Joe and Grandma based on their current financial needs and life expectancy.

> **On the death of the first dying spouse, a simple estate duty saving technique would be the creation of a testamentary trust for the surviving spouse, the three boys, Granddad and Grandma**

This sum is bequeathed to the trust for the two beneficiaries while the residue of the estate is divided amongst Joe and Jane's brother and sisters.

The dog's home and the church will be thankful for their windfall.

Giving a will instruction is not just about the figures.

It encompasses an understanding of the family relationships and dynamics, and their attendant obligations.

Keep the structure simple. Ruling from the grave is one legacy that should not be left behind.

This column was written by FISA exco member Cheryl Howard of Cheryl Howard & Associates.

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