

Fiduciary Matters

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Estate planning in uncertain times

Estate planning

One of the most neglected items on people's "to do" list is to revise their estate and financial planning. This should be an ongoing process and not something to attend to only when a personal crisis occurs. It should take cognisance of changes in personal circumstances, changes in legislation and other events that may have an impact on your estate planning to ensure that it remains current.

Very few people have an effective and updated estate plan in place that is revised on an ongoing basis with their estate and financial advisers. Their estate planning can best be described as one of reactive crisis management where a lot of money is paid in unnecessary costs and punitive taxes whilst jumping from the one solution or investment to the other. A well thought through estate and financial plan must always be flexible enough to handle the current market volatility and economic uncertainty.

An effective estate plan does not necessarily have to be an overly complicated structure that is expensive to set up and maintain. A well drafted will of a few pages by an experienced and knowledgeable estate planning adviser, based on the client's unique circumstances, can be sufficient to ensure that the deceased estate is wound up in the shortest possible time with the resultant cost saving.

A properly drafted estate plan should also only be the end result of a structured process whereby the estate planning adviser takes

all relevant circumstances into consideration and does a proper analysis of assets and liabilities before a plan is structured and implemented.

This plan should focus on the goals of the estate planning exercise as opposed to just trying to avoid taxes. Many a well-structured estate plan has failed because, although very tax efficient, it neglected the needs of family members.

I often see estate plans that are based on the premise that a trust can solve all problems.

It can't.

Trusts are often formed and used for the wrong reasons without taking a holistic view of the estate owner's estate and financial planning. It is also important to ensure that the drafting of a trust deed is done by an expert in trust law as mistakes and a wrong understanding or application of the relevant legislation can have dire consequences for the adviser and client alike.

The use of trusts in South Africa has gained a lot of momentum over the years but unfortunately not always for the correct reasons. Trustees need to ensure that they read and understand the provisions of the trust deed, that they understand why the estate owner needs to sacrifice control over the assets in the trust and what that actually means.

The office of trustee comes with a great deal of responsibility and the dereliction of that duty carries with it personal liability.

The legal system is currently inefficient to ensure compliance with

the many duties and responsibilities attached to the office of trustee. Stringent compliance is on the cards and the appointment of a professional trustee will become the norm.

A common estate planning mistake is that little or no attention is paid to the contents of a will. The pre-printed version obtainable from the local bookstore is in most cases inappropriate as part of an estate plan based on the individual's personal circumstances. Preparing wills, trust deeds and other estate planning documents helps to ensure that the estate owner's wishes are clearly documented. Regardless of the size of the estate, preparing a will can help to prevent quarreling and bitterness among beneficiaries who may otherwise feel that they are the rightful beneficiaries of an estate.

Many opportunities exist to do proper estate planning.

The optimal use of the annual donations tax exemption, the

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abatements in the Estate Duty Act, the nomination of beneficiaries on policies and retirement benefits and making sure that there is adequate life cover to provide liquidity in an estate, are all prerequisites to create an effective estate plan.

Regardless of your level of income, having adequate life insurance is also vital to ensure the effective working of any estate planning exercise.

Low-income households can benefit from life cover to replace income lost as a result of the death of the primary breadwinner, while affluent families may need the proceeds from insurance to provide liquidity upon the death of the insured to pay for estate and other taxes.

Each person has unique circumstances and therefore each estate plan needs to be structured accordingly, taking the bigger picture into consideration and based on the requirements of the estate owner and his/her family.

Expert advice is also critical for the successful implementation of any estate plan and the money spent in obtaining the best advice will ensure that the correct plan for a client's particular circumstances are implemented.

This article was written by FISA member Willie Fourie, chief executive officer, PSG Konsult Trust. A list of FISA-registered practitioners is available from secretariat@fidsa.org.za. Visit our website at www.fidsa.org.za

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