



# Fiduciary experts hold third annual conference



of intestate succession. He emphasised the delays and costs of dying without having made your own will, and also spent time discussing how inaccurate wording in a will can have disastrous consequences. He referred to the case of *Raubenheimer vs Raubenheimer 2012 (5) SA 290 (SCA)* in which the Supreme Court of Appeals said: "It is a never-ending source of amazement that so many people rely on untrained advisers when preparing their wills, one of the most important documents they are ever likely to sign."

Tiny Carroll, a fiduciary specialist at Glacier by Sanlam, pointed out the effect of the different matrimonial property regimes on estate planning. He stated that, although they do not realise it, most people have four different estates. These are (1) the personal assets; (2) the trust assets if the person had estate planning done and a family trust is in existence; (3) contractual arrangements like life assurance with nominated beneficiaries; and (4) the retirement benefits, the latter three which the person cannot bequeath in their will. He referred to the fact that the usual clause in a will stating that any inheritance shall be free from the consequences of the heir's marriage may create a false sense of security. It does not protect the inheritance against the creditors of the other spouse in a marriage in community of property.

Dr Henk Kloppers, a senior lecturer at the faculty of law at North West University (Potchefstroom), discussed the potential use of trusts for corporate social responsibility (CSR) by businesses in South Africa. He alluded to the tension in any business between achieving strategic business objectives and practising philanthropy. Trusts are very popular for CSR purposes because of the loose legislative framework and the flexibility of the trust form. He has, however, posed the question how a CSR trust deed could be amended if the original parties to the trust were no longer around.

Prof. Francois du Toit, deputy dean of the law faculty at the University of the Western Cape, focused on the so-called 'joint action rule' in trusts. This rule requires trustees to act jointly and take consensus decisions on all matters, except if the trust deed makes express provision for majority decisions. Even then, trustees must take care that all trustees are properly informed and invited to all trustee meetings, and in a position to take part in decision-making. This also applies in those cases where a trustee(s) does not agree with the majority. If there is a minority who does not agree with the majority, the minority has to accept and implement the majority decision. A trust engages with the world at large through the trustee resolutions.

The Fiduciary Institute of Southern Africa (FISA) held its third annual conference on 19 September in Midrand. The aim of the annual event is to bring fiduciary practitioners and academics together to discuss industry issues with a view to lifting the standards of fiduciary practice in South Africa. The conference was attended by 200 people, including FISA members, as well as guests and other stakeholders.

Fiduciary practice includes estate planning, the drafting of wills and the administration of trusts, beneficiary funds and deceased estates.

Here are executive summaries of some of the eight papers given at the conference.

Ronel Williams, a fiduciary specialist at Nedbank Private Wealth, spoke about the practical problems the executor in a deceased estate faces in cases where potential heirs are disqualified, either by the mentioned existing provisions of the Wills Act, or by the *bloedige hand* rule. The consequences of a disqualification are usually disruptive on the performance of the functions of executor.

Anje Vorster, a lecturer in estates and financial planning at North West University (Potchefstroom), spoke about the corporate liability of trustees. She emphasised that trustees are duty bound to understand the contents of the trust deed, and to execute it faithfully while exercising an independent discretion. A further point of emphasis is that trustees are sometimes



Back row:  
Arnold Shapiro, Louis van Vuren (Conference chairman),  
Adv Lester Basson (Chief Master), Ms Anje Vorster,  
Prof Francois du Toit, Dr Henk Kloppers

Front row:  
Angelique Visser (National Chairperson, FISA),  
Tiny Carroll, Ronel Williams, Suraj Lalchand  
(MD, Standard Executors and Trustees (event sponsor))

lulled into a false sense of security by indemnity clauses in trust deeds, while these have limited effect. This is mainly the case because the trustee is under the so-called fiduciary duty to act with care, diligence and skill and with utmost good faith.

Arnold Shapiro, director and head of the wills and deceased estates department at attorneys Routledge Modise, spoke on wills under the title: 'Your will – a legacy of love or a deluge of destruction?' He pointed out that all people die with a will. You either make your own will, or the law makes it for you – under the rules