

# Take care of your heirs and bequeath any fixed estate wisely, says financial adviser

WHEN it comes to leaving fixed property to someone in your will, you may be creating unnecessary complications for those you intend to inherit as dealing with fixed properties held in your estate can easily be a problem.

This is a warning from David Knott of Private Client Trust, the fiduciary services division of Private Client Holdings, and a member of the Fiduciary Institute of South

Africa. He says that you first need to consider how you are married, as this influences your capacity to distribute assets after your death.

"If you are married in community of property, you own one half of all assets registered in your name and that of your spouse – notwithstanding how the assets may be registered and when the assets were acquired. Your spouse therefore still remains a 50 percent

share owner of any fixed property you may have bequeathed to a third party, a child or children for example.

"To complicate matters further, if you have bequeathed your half-share to your minor children and the property is bonded, the property will probably end up having to be sold if there are insufficient monies to discharge the bond, as financial institutions are unlikely to agree to lend to minors."

He says that any property bequeathed in terms of a will must devolve upon the beneficiary free of any mortgage bond, and testators should ensure that there is either bond liability insurance cover or assets held in the estate which may be easily realised to discharge this liability.

"If you are married in terms of the accrual regime, the calculation to determine which spouse has a claim

against the other to equalise the growth of the respective estates, only occurs at death. Your spouse may therefore have a substantial claim against your estate, necessitating the sale of assets you had not intended to be realised," says Knott.

"In any co-ownership situation, you may wish to consider whether your spouse should have occupation rights until her death or until some other

specified event, or if you are happy to leave it to the co-owners to squabble about. Likewise you may wish to direct under what circumstances the possible sale of the fixed property or repairs, alterations and improvements can occur. Co-ownership of a fixed property does bring its own problems and you should think carefully before forcing this upon your spouse."

Knott says it is often unwise

to describe the bequest of a fixed property by the address as you might move house and be remiss in not updating the will. If the property described in your will by its address has been sold, the bequest will lapse. It would be sufficient for the will to refer to your residential property unless of course you flit between houses and then you should be more descriptive.

He says that agricultural

land may not be held in the name of more than one person in terms of the Subdivision of Agricultural Land Act.

"There has been talk about the repeal of this act for many years, but for the moment if you wish your farm to devolve upon several beneficiaries, you need to create a company and bequeath the farm to this."

Knott says it's usually wise to employ a professional to draft your will.