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Facing death planning

Death planning is a vitally important part of overall personal financial planning, say financial advisors, yet too many South Africans neglect to draft a will, or to ensure that sufficient assets and life insurance policies are in place to care for their loved ones

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Death – it's the one event in our lives that is certain to happen, yet most people are reluctant to plan for it. No-one likes to face their own mortality, says Richard Sparg, an investment planner at financial planning firm Netto Invest. "It's probably a psychological issue." But there's another factor that makes this planning difficult, he points out: "Some difficult decisions need to be made, such as how to allocate your assets. Sometimes it seems easier just to avoid making the hard decisions."

Difficult though these decisions may be, it is essential that everyone make them while they are still able to do so, says Ronel Williams, chairperson of the Fiduciary Institute of South Africa (Fisa). "You don't want your family and friends to have to worry about finances at a time when they are grieving your loss," Williams cautions. "Your debts will have to be settled from your estate and there are costs associated with certain administrative processes that need to be followed when somebody dies." She recommends planning as soon as one starts accumulating estates and/or liabilities.

"It's very important to plan for your death, especially if you have financial dependents," says Sparg. "If your affairs are not well planned, then there can be costly delays in distributing your assets and possibly even family disputes."

He explains that anyone over the age of sixteen can make a will. "Estates with a value in excess of R125 000 should be reported to the Master's Office," he advises.

Having a validly executed will in which you indicate how your assets will devolve after your death, is one of the key elements of planning for death, says Williams. She points out that the absence of a will could mean that your estate devolves on intestacy and your family members will inherit your estate according to a specified 'formula.' "Intestacy could also lead to unnecessary taxes and costs and could delay the finalisation of your estate," she says.

It's also important to ensure that you have sufficient cash in your estate to settle all debts and liabilities when you die, she adds, so that your executor is not forced to sell estate assets to generate the necessary cash.

Williams recommends consulting an expert in will drafting. "An expert will ask you about your wishes and will make sure that you have a validly drafted and executed will," she says. "If you are unsure who to use, Fisa has a directory of its services on its website at www.fidsa.org.za. Fisa members are bound by a strict disciplinary code and code of ethics."

But it's relatively easy to draw up a will, says Sparg, pointing out that templates and examples are widely available on the internet. In fact, unless the will is contested, it can be relatively informal, he says. "However, it is always be a good idea to have it signed and dated, and witnessed by two people who are not beneficiaries. If the will is likely to be more complex (e.g. a testamentary trust for minor children), then it is worthwhile getting an attorney to draft it properly." A will should ideally be as simple and clear as possible, and it's important to review it every few years as family situations (and assets) can change, he says.

Both Williams and Sparg say that it's important to ensure that you have sufficient cash available in your estate or life cover, to provide funds to settle debts you may have incurred during your life. "When a person dies, his debts have to be settled out of the assets in his estate. An heir inherits an asset of the estate without the corresponding debt, unless the testator had indicated differently in his will. Let's assume A owns a house and owes money to the bank on a mortgage bond. In A's will he leaves the house to his wife. When he dies, his wife will inherit the house free from the bond, which means that the executor of his estate will have to settle the bond from estate assets before transferring the house to the wife," says Williams.

Sparg adds that in planning for death, one needs to understand what the financial requirements of one's beneficiaries are. "Once you have quantified this, and taken account of any existing assets and income that they can earn in their own capacities, then you can decide on whether you require life insurance for their benefit," he says.

"It is also important to understand that your will covers the distribution of certain assets (e.g. property, cash, unit trusts, motor vehicle etc.), while your retirement funds and life insurance policies will be distributed according to the beneficiary nominations recorded on them," he adds. "If one wants to avoid your beneficiaries having to sell property to pay for estate duty, capital gains tax and executor fees, then it may be necessary to ensure that your estate has adequate levels of liquidity (cash) or life insurance (to provide the cash). If your beneficiaries are minor children (or incapable of looking after their own finances) then you may want to establish a trust (created in your will) for their benefit."

"A trust provides good protection of assets for beneficiaries who are too young or too irresponsible to look after the assets themselves," he says. "However, there are legal and accounting costs associated with running a trust and the beneficiaries (who are responsible) can sometimes be frustrated by not being able to use the assets as they choose, because these decisions are subject to trustee approval at all times."

Williams agrees that trusts are beneficial in that they can be used to ensure that incapacitated beneficiaries like minor children do not inherit directly. They also give some protection to a family member against a bad marriage or bad business decisions, she says. "Ownership of the trust assets vest in the trustees, but are by law held separate from the trustees' personal assets. This ensures that the assets are protected from a possible attack by a trustee's creditors," she adds. "There's also continuity in the case of a parent passing away, for example. The trust will continue and the assets will not be impacted by the death of the parent. Also, property registered in the name of a trust does not increase the value of the founder/beneficiary's estate, facilitating a saving in estate duty," she says.

Richard Sparg (above) and Ronel Williams (below). Photo: Les Hammond and Louis Green

But there are downsides too, she says. "The founder who settles assets into the trust loses control of the assets as soon as ownership passes to the trust. In addition, a beneficiary is generally not entitled to any of the trust income or capital and has to approach the trustees for assistance, as the trust document usually authorises the trustees to decide whether to award income and/or capital to beneficiaries. The trustees are under the obligation to act in the best interests of all the beneficiaries."

When a person dies, he is deemed to have disposed of all his assets to his deceased estate, and this deemed disposal is a capital gains tax event that may trigger capital gains tax, which will have to be paid out of the assets of his estate, says Williams. These taxes could amount to big liabilities. "It is therefore very important to plan for these taxes by doing at least a basic estate plan at regular intervals during your lifetime to ensure that you have the necessary cash available in your estate to settle the taxes (and other costs)."

The good news is that estate duty is only levied at 20% on assets above R3.5million. "Given that retirement funds fall outside of an estate (they are taxed separately) the reality is that the vast majority of South Africans are not going to have an estate duty problem," says Sparg.

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