Publication: Personal Finance (Independent on Saturday)
Date: Saturday, August 26, 2017
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Know how love and marriage can affect your finances


ILLUSTRATION: BETHUEL MANGENA

ALTHOUGH more and more women are entering formal employment, it seems that many of them do not take charge of their finances, particularly if they are married or in a long-term relationship. Financial well-being covers a broad spectrum of issues, but here are some basic tips.

Marital regime. If you are getting married, obtain legal advice about the different marital regimes. Each regime has consequences, and you need to choose a regime that is best suited to your and your future spouse's circumstances. Although you can change your marital regime after getting married, this has to be done according to prescribed legal processes and can be expensive.

If you are already married, make sure you understand which marital regime applies to your marriage and what the legal consequences are.

You can be married in community of property, where the assets of both spouses are combined in a joint estate, out of community of property without accrual, where the assets are completely separate, or out of community of property with accrual, where only the assets accumulated during the marriage are shared. The latter two options require an ante-nuptial contract.

Foreign-citizen spouse. If you were married in South Africa and your husband was not a South African citizen at the time, do not assume that South African law will apply to your marriage.

Our law provides that a husband's domicile at the time of the marriage determines the matrimonial property system. Your domicile is essentially the place you regard as your home, and to where you return after travelling.

You can be domiciled in Country A but travel abroad and even live in another country without losing your domicile if you regard Country A is your home. If, for example, your husband was domiciled in England and you were married in South Africa, English law will apply to the marriage. In the absence of an ante-nuptial contract, the marriage will be out of community of property, not in community of property, as it would be if he had been domiciled in South Africa.

Rands & Sense

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Ronel Williams

Importance of a will. Make sure you and your spouse have a will. It seems that women in particular do not draft a will or understand what the impact will be if their partner or spouse dies without leaving a will that provides for them.

If you die without a will, your estate will be distributed in terms of a "formula" set out in the Intestate Succession Act.

It is particularly important to have a will if you are married and have children. If you do not, your spouse will inherit R250 000 or a child's share, whichever is greater, and the children will inherit the rest. (A child's share is calculated by dividing the estate between the total number of children and the spouse of the deceased.)

However, it is not enough to have a will; you need to ensure that it is valid and up to date. To be valid, a will must have been drawn up in terms of the formalities prescribed in the Wills Act. The basic requirement is that you sign the will in the presence of two competent witnesses, who must also sign the will. The will must reflect your current personal and financial situation.

I saw first-hand the problems that occurred when a man who was married in community of property failed to update the will he drew up before his marriage bequeathing his entire estate to his sister.

Your will on divorce. Our law provides for a "grace period" of three months after your divorce. If you die in that period and your will still names your former spouse as your heir, he or she will be assumed to have predeceased you and any inheritance to him or her in your will simply falls away, unless you expressly state that he or she will inherit, even if you are divorced. Once the three-month grace period has passed, the assumption falls away, which means your ex-spouse will inherit whatever you've left to him or her in your will.

Living together. If you do not get married or enter into a civil union, make sure you understand the legal consequences when your partner dies.

Although our law extends many benefits to life partners who do not marry or enter into a civil union, there are certain areas where benefits do not apply. For example, if a partner in such a relationship dies without a will, the surviving partner is not entitled to inherit anything. It is essential for such partners to draft a will or enter into an agreement to deal with the distribution of their assets.

Death of a spouse. Make sure that you understand your income and capital needs in the event of your death, or that of your spouse or partner.

One of the biggest investments most couples make is their home, and this is usually funded by way of a mortgage bond, which may be based on the contributions of both parties. If you died and your spouse was heir to your estate, your heir could apply for a new bond, but if he or she was not financially in a position to pay the monthly repayments, a bond would not be granted. In that case, the bank would insist on the bond being settled before the heir inherited the property. The reality is that most people do not have enough cash in their estate to settle a mortgage bond, with the result that the executor will have to sell the house.

It is also important to consider what happens on the death of the non-breadwinner spouse or partner. We often find that only the breadwinner's life is insured. The reality is that, if the non-breadwinner dies, someone will have to be paid to perform the tasks that the non-breadwinner did, and this could lead to financial strain.

The above matters are a few examples of why it is important that you seek expert advice when planning your finances.

Ronel Williams is the chairperson of the Fiduciary Institute of Southern Africa.