Publication: Without Prejudice, Supplement
Date: Tuesday, August 01, 2017
Page: 12

FINANCIAL PLANNING TIPS FOR WOMEN

RONEL WILLIAMS

Although more and more women are entering formal employment, it appears that many women still do not take charge of their personal financial well-being, especially when they are in a marriage or relationship. Financial well-being covers a broad spectrum of issues, but here are a few basic tips.

- If you are getting married, seek legal advice about the different marital regimes before the marriage, so that you can make an informed decision.

  Each marital regime has certain legal consequences and you need to find the one that is best suited to you and your future spouse's circumstances. Although it is possible to change your marital regime after the marriage is entered into, this has to be done according to prescribed legal processes and could be costly.

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

  The default marital regime in South Africa – that is if you don't enter into an ante-nuptial contract – is in community of property. The assets the spouses respectively owned at the time of the marriage, as well as the assets either of them acquired during the marriage, form part of a joint estate and the spouses are co-owners in undivided half shares of all the assets. (There are some exceptions such as an asset inherited by a spouse, where the will of the person who left the inheritance specifically excludes the asset from the heir's joint estate). Both spouses must consent to certain legal acts, for example selling, mortgaging or purchasing an immovable property. The joint estate consists not only of assets, but also of the debts of both spouses, so that each spouse is essentially liable for all the debts. On the death of one spouse, the surviving spouse continues to own one half of the joint estate and only the undivided half share of the deceased will devolve in terms of his or her will. Whilst this type of marital regime could benefit the spouse who does not have an own estate, it is hardly ever advisable in the case of a second marriage, and especially not if either spouse has children from a previous marriage.

  If your marriage is out of community of property, there is either complete separation of property or the accrual system applies.

  Complete separation of property effectively means that both spouses remain in the same financial position as they were before their marriage. Each spouse retains his or her pre-marriage assets, as well as any assets he or she acquires during the marriage, and can freely dispose of such assets in his or her will. The spouses are not liable for each other's debts. Whilst this regime will work well for spouses who are financially independent of each other, it can be prejudicial to the spouse who is not the primary breadwinner.

  A marriage out of community of property with the accrual system is an attempt to allow spouses to be financially independent but to compensate the spouse who contributes financially and otherwise to the growth of the other spouse's estate during the marriage. Each spouse retains his or her pre-marriage assets but the assets the spouses acquire during the marriage are taken into consideration when the marriage terminates on divorce or death. (Assets inherited or received by donation from a third party during the marriage are excluded from the accrual system, as are assets the spouses specifically excluded in the

Having a will is not enough though – you need to ensure that it is valid and up to date. To be valid means it must have been executed in terms of the formalities prescribed in the Wills Act – the basic requirement is that you signed the will in the presence of two competent witnesses who also signed the will.

Williams

Publication: Without Prejudice, Supplement
Date: Tuesday, August 01, 2017
Page: 13

ante-nuptial contract). The accrual regime essentially aims to balance the two estates by giving the spouse whose estate had the smaller growth during the marriage a claim against the other spouse for half of the difference between the growth of the respective estates. Each spouse can freely dispose of his or her assets in a will, but the accrual claim of the spouse takes precedence over any inheritance.

This regime could benefit the non-breadwinner spouse, but the settlement of the claim could be financially crippling for the spouse whose estate has the larger growth. The accrual system applies to all marriages entered into by ante-nuptial contract since 1 November 1984, unless it is specifically excluded in the contract.

- If you got married in South Africa and your husband was not a South African citizen at the time of your marriage, don't assume that South African law will apply to your marriage.

Our law provides that the husband's domicile at the time of the marriage determines the matrimonial property system that applies to the marriage. Your domicile is essentially the place you regard as your home and to where you return. You can therefore be domiciled in country A but travel abroad and even live in another country without losing your domicile, if your intention is that country A is your home and you will return there. If, for example, your husband was domiciled in England and you got 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 (and not in community of property as it would have been had he been domiciled in South Africa).

- Make sure you and your spouse have a will. Many South Africans die without a will and it seems that women especially do not draft a will or know 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 devolve in terms of a specific "formula" set out in the Intestate Succession Act. It is especially important to have a will if you are married and have children. If not, your spouse will inherit R250 000 or a child's share, whichever is the 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 spouse of the deceased). Imagine the following scenario:

Your husband dies without a will. You have two children and your husband also had two adult children from his previous marriage. His estate of R3 million consists of the house in which you and your two children live, a car, some shares and a small amount of cash. All of the assets in the estate, including the house, will have to be divided between you and the four children.

Having a will is not enough though – you need to ensure that it is valid and up to date. To be valid means it must have been executed in terms of the formalities prescribed in the Wills Act – the basic requirement is that you signed the will in the presence of two competent witnesses who also signed the will. The will must also be up to date, that is it must reflect your current personal and financial situation. I have seen first-hand the problems that occur when a man who was married in community of property failed to update the will he executed before his marriage and which still provided that his entire estate devolves on his sister.

- Make sure you reconsider the terms of your will when you get divorced. 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 ex-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 in your will that he or she will inherit even if you are divorced. Once the three month 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.
- If you choose not to get married or enter into a civil union, make sure you understand the legal consequences when your partner dies. Whilst our law extends many benefits to life partners who do not marry or enter into a civil union, there are still certain areas where this is not the case. One such example is on the death of a partner who lived together without entering into a marriage or civil union partnership. If the partner dies without a will, the surviving partner will not be 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 to protect one another.
- Make sure that you understand the income and capital needs in the event of your or your spouse or partner's death.

One of the biggest investments most couples make is their home and this is mostly funded by way of a mortgage bond. The bond is usually based on the contribution of both parties, but couples often don't consider what will happen when one of them dies. Let's assume the other spouse or partner is the heir to the estate. The heir could apply for a new bond, but if he or she is not financially in a position to service the bond, that is pay the monthly bond premiums, a bond will not be granted. In that case, the bank will insist on the bond being settled before the property can devolve on the heir. The reality is that most people don't have the kind of cash in their estate to allow for settlement of a bond so this could mean that the executor will have to sell the house.

It is also important to consider what will happen on the death of the non-breadwinner spouse or partner. We often see that only the breadwinner's life is insured so that there are funds to settle the bond and other obligations and provide for the family when he or she dies. The reality is that when the non-breadwinner passes away, someone will usually have to be paid to perform those tasks that the non-breadwinner used to do and this could also lead to financial strain.

The matters referred to above are merely a few examples of why it is important that you seek expert advice when putting a financial plan in place. •

Williams is National Chairperson, The Fiduciary Institute of Southern Africa (FISA).