

A MATTER OF TRUST

Conflict, complications and financial hardship are certain to arise if you do not have an estate plan and appoint an executor. It's in your best interest to seek the advice of a properly qualified fiduciary practitioner when deciding how your assets will be disposed of when you die. Mark Bechard reports on how the Fiduciary Institute of Southern Africa is setting the standard for fiduciary practice in this country.

It's almost certain that, at some stage in your life, you, or your dependants, will have dealings with a fiduciary practitioner. Consider the following:

You should, if you have not already done so, draw up a will. Although anyone over the age of 16 can draw up a will themselves, it is recommended that this is done with the assistance of someone who is knowledgeable about the legal and tax implications.

An important aspect of your will is the appointment of an executor, who will step into your shoes when you die and wind up your financial affairs and distribute your assets in accordance with your will. Although it is common for a family member to be nominated as an executor, this may not be the best course of action. An executor has to follow a process laid out in the Administration of Estates Act and must be able to demonstrate to the Master of the High Court that he or she has complied with the legal requirements.

If you have dependants, you should have an estate plan drawn up to protect and preserve your assets from one generation to the next. Your estate plan needs to take a number of factors into account, including: ensuring there is sufficient liquidity in your estate to cover your debts, estate duty, taxes, cash bequests and funeral expenses; providing for your spouse and minor children, which may require setting up a testamentary trust; and succession planning if you are

the owner or co-owner of a business.

If you belong to a retirement fund and have minor children, it is likely that the trustees of the fund will pay any benefit due to a minor child into a beneficiary fund, which will be administered by its own trustees.

The term "fiduciary" indicates that someone has undertaken to act for and on behalf of another in a particular matter that gives rise to a relationship of trust and confidence. The word derives from the Latin "fiducia", meaning "trust", says Louis van Vuren, the chief executive of the Fiduciary Institute of Southern Africa (FISA).

Fiduciary services are delivered in a very complex legal and practical framework

A fiduciary could be an individual or company holding assets for another party, often with the legal authority and duty to make decisions regarding financial matters on behalf of the other party. The fiduciary has a duty to ensure that he or she acts in their beneficiaries' interests, rather than serving their own interests, says Van Vuren. In South Africa, the term

is most commonly used to refer to an industry in which the duty of care and trust is paramount, and specifically in the area of estate planning, drafting wills, and administering trusts, deceased estates and beneficiary funds, he says.

FISA is a non-profit organisation that represents fiduciary practitioners and sets high minimum standards for the industry. FISA can trace its origins to 1932, when the Association of Trust Companies (ATC) was formed to look after the common interests of trust companies and boards of executors. By 1963, there were about 50 member companies in South Africa. However, with rationalisation and economies of scale, by the time the ATC celebrated its 50th birthday, membership had shrunk drastically and continued to do so. The association therefore decided to reform itself as body representing individuals who are professionally active in the fiduciary field, rather than be restricted to companies only. The ATC was accordingly reconstituted as FISA in June 2008. In 2012, the FISA constitution was amended to cater for individual membership only.

Van Vuren says there are about 2 000 fiduciary practitioners in South Africa, of whom 750 belong to FISA. Members come from trust companies, and the legal, accounting and financial planning professions.

He says it is in your best interests to use a fiduciary practitioner who belongs to