

QUESTIONS ANSWERS YOUR

ESTATE DUTY AND WILLS

I am transferring cash from my Australian bank account to my adult child in the United States to ensure that my total estate does not exceed R3.5 million, leaving AUS\$200 000 (about R2 million) invested there.

My executor assures me it is not necessary to have a second will covering this, as my South African one will ensure this is directly credited to her as my beneficiary in the US at my death. Please confirm that this is correct.

In ensuring that I keep my SA assets below the outstanding balance of R3.5m to escape estate duty, are expenses such as master's fees, estate agent's commission on the sale of my flat and executor's fees deducted before or after the value of the estate is ascertained for tax purposes?

If I take up the offer of having a will drawn up for free, as offered on occasion by attorneys, what happens at a later date if I draw up a new will with another firm? Am I obliged to advise the original attorneys that I have done so? – Name withheld

Louis van Vuren, chief executive of the Fiduciary Institute of South Africa responds:

What follows should not be regarded as specific advice, as the full set of circumstances is unknown, but should rather be regarded as general remarks.

Whether or not an Australian or US bank will be willing to accept instructions from a South African executor is impossible to say without checking with that institution in advance. It is also unclear how the "transfer" of cash is going to happen. The reader should be aware that a significant donations tax liability could be incurred even though the funds are not in South Africa, unless one of the available exemptions applies.

The standard abatement for estate duty is currently R3.5m plus any unutilised portion of the R3.5m available to a predeceased spouse. Estate duty is calculated by adding up all property and deemed property in and outside South Africa, then deducting all liabilities and other allowed deductions, then deducting all bequests and accruals to a surviving spouse,

then deducting the standard R3.5m (or more, see above) and then applying the rate of 20 percent duty to the resultant value, known as the dutiable estate. Included in property are all rights to any tangible or intangible assets. Included in deemed property are all policies on the life of the deceased, except some legislated exclusions. Excluded, amongst others, from property are all assets physically outside South Africa if they were obtained prior to becoming an SA resident. Any property outside South Africa can qualify as a deduction if obtained from a non-resident by way of an inheritance or donation.

Attorneys and other professionals are entitled to charge a fee for drafting a will. If they decide not to, they forfeit the fee. There is no obligation to continue using the same person to draft future wills.

UPDATING A WILL ON DIVORCE

I'm in the process of getting divorced. When do I need to update my will? – Name withheld

Willie Fourie, the head of trusts and estates at PSG Wealth, responds:

Changing a will after or during a divorce is often the last thing that comes to mind, so it's good you are planning ahead. Section 2B of the Wills Act states that you have three months to "write out" your former spouse after the date your divorce goes through. This option exists so that your ex-spouse won't still inherit as you'd intended when you wrote your will, if you die within three months of the divorce. The exception to this rule allows for your divorced spouse to inherit from your deceased estate within the three months, if your will specifically provides for that. However, if you fail to amend your will within the three months after the divorce, the presumption falls away. This means your divorced spouse will stand to inherit as if nothing has changed. If you are intending to make changes before your divorce is concluded, I suggest you consult a qualified fiduciary adviser, who can guide you through the process of updating your estate plan in terms of your new marital status and wishes.