



PROVIDING FOR MINOR CHILDREN IN YOUR WILL

In the unthinkable event that both you and your spouse die suddenly, have you given some thought to what will happen to your children and who will look after them?
MARTIN HESSE explores options to consider in your will.

IN SOUTH Africa, minor children (those under the age of 18) cannot inherit money or assets left to them in a will. On the death of a parent, if other arrangements have not been made, assets bequeathed to children must be sold and the money invested in the Guardian's Fund until the child turns 18.

WHAT IS THE GUARDIAN'S FUND?

This is a fund specifically established for the purpose of holding and administering money for minor children and for people incapable of managing their own affairs. Each Master has its own Guardian's Fund.

According to the Department of Justice and Constitutional

Development website, when the Master receives or accepts any money bequeathed to a child, he or she must open an account in the books of the Guardian's Fund in the name of the person to whom the money belongs or the estate of which that money forms part.

Interest is payable on money in the Guardian's Fund. It is calculated monthly at an annual rate determined from time to time by the Minister of Finance. An applicant, such as the guardian of the child, can claim maintenance or an allowance from the Guardian's Fund to care for the child.

The Master may pay from interest, as well as up to R250 000 from the invested capital, for expenses such

as school and university fees, clothes, medical bills, accommodation and any other needs that can be fully motivated. Payments can be made directly to service providers such as schools, universities and bookshops.

A child can claim the invested money, as well as the accrued interest, on reaching the age of majority (18 years of age). However, in your will you can stipulate another age as to when your child is entitled to the invested capital.

THE TRUST ALTERNATIVE

Phia van der Spuy, a Fiduciary Practitioner of South Africa and the founder of Trusteeze, a professional trust practice, says the transfer of assets to the Guardian's Fund

is something most parents would want to avoid. "So, the first thing every parent should do is to have a properly drafted will. Second, the parent should consider setting up a trust to prevent assets from being liquidated and paid into the Guardian's Fund," she says.

A trust gives you far greater control of how minor heirs can benefit from their inheritance. Like the Guardian's Fund, it prevents children receiving large amounts of money before they are at an age at which they can handle it responsibly.

You can either set up a testamentary trust (in your will), which comes into effect on your death, or an inter vivos ("living") trust during your life.

The main difference between a testamentary trust and an inter vivos trust is that if you create a testamentary trust, capital gains tax, estate duty and executor's fees will be payable before the assets are

transferred into the trust, whereas assets accumulated in an inter vivos trust will not attract any taxes on your death," Van der Spuy says.

If you decide on a testamentary trust, you should spell out in your will who the trustees and the beneficiaries will be, the responsibilities of the trustees, and any other conditions. These provisions should be detailed enough to protect your assets for your heirs.

"Often, wills do not provide sufficient measures to ensure that trusts are executed properly," Van der Spuy says.

This type of trust, which is set up in terms of a person's will specifically for the benefit of minors who are relatives of the person who died, is known as a special trust, says Van der Spuy. It ceases to be a special trust at the beginning of the year of assessment in which the youngest beneficiary turns 18. Special trusts are taxed at the same rate as individuals for both

income and capital gains, unlike normal trusts, which are taxed on income at a flat rate of 45%.

POWERS OF TRUSTEES

You (the testator or testatrix) serve as the founder of the trust and in your will you must appoint a trustee or trustees to run the trust. Van der Spuy says the role of a trustee usually ends after a predetermined period, or at a determined date, such as when a child turns 18.

She says it is important to note that you cannot delegate your powers in a testamentary trust by giving the trustees wide powers. Only you can instruct how your assets should be dealt with after your death.

She says the child's guardian does not necessarily have to be a trustee. "In fact, it is often a good check and balance to have a separate, independent person, who is financially astute, as a trustee," Van der Spuy says.

