FISA®

THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA

ESTATE PLANNING
TRUSTS | WILLS
ESTATES | BENEFICIARY FUNDS

Many people may have come across the word "fiduciary" and yet may not fully understand what it means.

The word comes from the Latin "fiducia", meaning "confidence, trust, or reliance". In its most literal sense, "fiduciary" means looking after something on someone else's behalf. In fact, the mere act of entrusting someone with something to give to another involves a fiduciary relationship.

Most home-owners will have come across the concept of "fiduciary" when buying a house. The deposit on the property is paid into the trust account of the transferring attorney until the date of transfer. The transferring attorney in this instance is acting in a fiduciary capacity.

Put in a more technical way, a "fiduciary" is 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 word "fiduciary" also denotes a legal duty of loyalty and faithfulness towards another.

In South Africa, the fiduciary industry has come to represent the activities of those involved in estate planning, drafting of wills, the setting up and management of trusts, estate administration, and so forth. Hence the name of the only body solely representing fiduciary practitioners is The Fiduciary Institute of Southern Africa.

The fiduciary industry as it is known in several jurisdictions around the world in fact has its roots in South Africa, where the first estate in the world to be handled by a corporate body occurred in 1834. From there the concept of trust companies and boards of executors grew around the country, and elsewhere in the world.

In short, a fiduciary duty is the obligation to act with care, diligence and skill, and in the best interest of the person whose affairs are managed.

Fiduciary touchpoints

There are potentially many stages in the life of an individual where he or she could be affected by or involved in a fiduciary relationship. These could include the following:

- A minor child becomes the beneficiary of a testamentary trust set up upon the death of his or her parents; here the trustees of the trust will act in a fiduciary capacity on behalf of the child.

- When you have your will drafted, it is strongly advisable to use someone skilled in fiduciary matters. Even the simplest of estates can lead to complexities of interpretation if not drafted by an expert. Do-it-yourself and online wills are not advisable unless at least checked by a fiduciary practitioner.

- Your will should be reviewed regularly. In particular, life-changing events such as marriage, divorce or the birth of a child lead to a need to review your will. Again, fiduciary advice is best sought.

- Before receiving or accumulating assets, you may wish to set up a trust to hold such assets. A fiduciary practitioner can help set up a trust and act as independent trustee, again in a fiduciary capacity.

- Many people are nominated as executors in the will of a testator. The appointed executor must be very aware of the fact that in this capacity as the appointed executor, he/she will act in a fiduciary capacity, regardless whether the executor appointed an agent to administer the estate or not.

- If you do financial planning for a client, you act in a fiduciary capacity.

- If you are a director of a company, you act in a fiduciary capacity.

- If you are the treasurer of your local sports club, you act in a fiduciary capacity on behalf of the sports club members.

The above are just some of the many areas in which the average citizen can be affected by or involved in a fiduciary relationship. So, don't be put off by the high-sounding word – it will increasingly become known as a household concept in South Africa.

Go to the FISA website to find a FISA member who can assist with fiduciary matters.