

## **Guide to Estates / Wills / Trusts**

### **1. Your will**

Everyone should have a will. Even if your assets are few in number or low in value it makes things very much easier for those left behind who have to look after your affairs.

### **2. What is a will?**

A will is document in which the person making it (the testator) disposes of his/her assets after his/her death.

### **3. Who may draw my will?**

You may draw your will yourself or you may ask someone to draw it for you. Please remember though that a will is a legal document. Several institutions offer to draw your will at a low charge. Always be aware however that they are not practicing attorneys. In the same you would consult a doctor for medical treatment, so too you should consult an attorney for legal assistance.

### **4. What is an executor?**

An executor is a person appointed by you to administer your estate and dispose of your assets after you have passed away. You may appoint anyone you like. Our advice is that you appoint a close family member such as a wife or son/daughter or your family attorney. The reason for this is that your estate will then be dealt with on a personal basis by persons who are involved and know your views. Institutions tend to deal with matters at head office in an impersonal manner.

### **5. May I change my will?**

You certainly may. In fact we advise you to take a look at your will on a regular basis – say once a year – to make sure it is the way you want it. Circumstances may change within your family or work environment and your will should be adapted accordingly. You may change your will either by drawing a new will or by drawing a codicil, which is an addendum to your existing will.

### **6. Who may administer my estate?**

The executor appointed in your will is required by law to administer your estate in terms of the estate act, which sets out the administration procedure. Your wife/husband or son/daughter will probably not have the necessary knowledge or expertise to carry out these duties. This is

where our estates department will assist you. We have the necessary specialized skills and experience to carry out the administration duties promptly and efficiently. We do this on a personal basis making sure that your executor is consulted and kept posted at each stage of the proceedings.

## **7. What happens if i die without leaving a will?**

There is a common misconception that if you die without leaving a will your assets will go to the state. This is very rarely so. The intestacy act makes provision as to who inherits your assets on intestacy. I.e. Dying without a will. It is usually the surviving spouse and children who inherit under these circumstances. However if there is no will there may be delays in appointing an executor and your cash assets will be frozen pending the appointment.

Also, your assets may then devolve on persons you may not have wanted to inherit. In addition the cash inheritance of any minor child will be paid into the guardians fund at the masters office whereas you may have wished such inheritance to be invested by your executor for the best return.

## **8. What is estate planning?**

Estate planning involves the preparation of a plan during your lifetime to deal with your assets when you are no longer there. The purpose of estate planning is to ensure that the process of administration proceeds without unnecessary problems, and, more importantly, to leave your dependants properly cared for. Everyone therefore should undertake at least some elementary estate planning. Estate planning can be relatively simple involving only taking out life assurance and making a will. However your estate planning may need to be more comprehensive, possibly including the establishment of trusts during your lifetime which will enable you to peg values and thus ensure tax savings.

## **9. Trusts**

As mentioned above one may need to establish a trust during one's lifetime (an inter vivos trust) and transfer certain assets to it. A trust is a separate legal entity and there are usually three separate role-players in the trust, namely:

- The founder – yourself
- The trustees – usually yourself and other family members,
- The beneficiaries – those who are to benefit from the trust.

A trust may also be created in your will. This is known as a testamentary trust or mortis causa trust. To ensure good planning you may wish to leave certain assets in the hands of trustees to administer for certain purposes and certain periods. This quite commonly occurs where you leave minor children and do not wish their cash inheritance to be paid over to the guardians fund referred to above.

If you require any further information or advice please do not hesitate to contact:

**Andrew Murray**

He is an experienced senior attorney who heads up our estates department and is geared to giving you personal advice and assistance.