

**STBB**

SMITH TABATA  
BUCHANAN BOYES



PLANNING  
YOUR ESTATE

2011

## OUR SERVICE

STBB | SMITH TABATA BUCHANAN BOYES is a firm of business-minded lawyers which was established in 1900. At present the firm consists of approximately 50 professionals practising from 7 offices throughout South Africa.

By understanding our clients' needs and objectives, we strive to deliver cost-effective legal solutions to their business and personal matters. A vital aspect of the professional service we provide, is a commitment to developing close working relationships with our clients. This commitment enables us to consistently succeed on their behalf.



## WHY IS IT IMPORTANT TO HAVE A WILL?

To ensure that your estate devolves efficiently, cost effectively and with a minimum of delay upon your chosen beneficiaries, it is important that you draw up a valid will and that you seek professional advice in doing so.

Your will must take many things into consideration, the most obvious being the nomination of heirs and the appointment of an executor to administer your estate.

A trust can be created to control any assets being awarded to a minor child and it is also possible to stipulate your choice of guardian to care for your minor children in the event of the untimely death of your spouse and yourself.

However, issues which are less apparent but of paramount importance, should always be considered in conjunction with the drafting of your will.

- Will there be sufficient liquidity in your estate to pay your debts and at the same time provide for the financial security of your family?

- Do you have business interests which may be vulnerable?
- Can estate duty be minimised?
- Is your mortgage bond covered by insurance?
- If applicable, where will the funds come from to meet your obligations in terms of a divorce order?
- What are the capital gains tax implications?
- Is your will correctly structured to cover your offshore assets?

If you have an inter vivos trust, the trust deed may need to be reviewed, in particular with regard to the appointment of suitable trustees to manage the trust after your death.

Any or all of these aspects may have relevance for you, and by seeking the best possible professional assistance you will be able to identify problem areas, investigate solutions and achieve the peace of mind of knowing that you have done everything possible to streamline your financial affairs and to ensure that your will is a sound legal document.



## SHOULD YOUR WILL BE AMENDED REGULARLY?

Yes. Events which shape one's life, such as marriage, the purchase of an additional property or a first property, the birth of a child, the death of a loved one or perhaps a divorce, all lead to a change in personal circumstances which may require the updating of your will.

We have up to date electronic systems to assist in keeping your will current.



## SHOULD YOU CREATE A WILL TRUST?

A will trust, as the name implies, can be created in terms of your will and does not require any further formalities. Such a trust comes into operation upon your death and may have a number of advantages, for example:

- You can ensure that minor beneficiaries receive their inheritance at an age when you feel they will be sufficiently responsible to manage it;
- Your surviving spouse and children can be protected by ensuring that they receive income or capital in predetermined amounts;
- Various tax benefits may be achieved.



## WHAT IS AN INTER VIVOS TRUST AND HOW CAN IT BENEFIT YOU?

An inter vivos trust is an entity which is set up by you during your lifetime and is effective as soon as you have complied with certain formalities.

Such a trust can be a useful tool in planning your estate with a view to minimising the estate duty that will be payable on your death. Estate duty is currently payable at the rate of 20% on the amount by which the value of your net estate exceeds R3.5 million, subject to certain rebates. By acquiring assets in the name of an inter vivos trust as opposed to in your personal capacity, you can ensure that any increase in the value of such assets over the years will be the property of the trust and will not form part of your dutiable estate.

We are able to advise you whether, depending on your personal circumstances, the creation of an inter vivos trust would be advantageous for you.



## HOW IS A DECEASED ESTATE WOUND UP?

The law prescribes a number of steps to be followed in winding up the estate of a deceased person:

- An application must be made to the Master of the High Court for the appointment as executor of the person or persons who have been nominated as such in the Will.
- Once Letters of Executorship have been issued by the Master of the High Court an advertisement is placed in a local newspaper in the area(s) in which the deceased lived during the twelve months preceding death, and in the Government Gazette. This advertisement calls on creditors and debtors to lodge their claims and settle their debts within 30 days from the date on which the advertisement appears.
- All assets which the deceased owned at date of death must be dealt with, including but not limited to, immovable property, cash, investments, shares, unit trusts, and any personal property.
- A Tax Clearance must be obtained from South African Revenue Services.



- A Liquidation & Distribution Account must be drafted and lodged with the Master of the High Court as soon as possible after expiry of the initial advertisement.
- This Account details the assets awarded and collected and the liabilities and claims against the estate paid, and sets out the distribution to beneficiaries in terms of the will. As soon as the Master of the High Court has approved the Account, a second advertisement must be placed in the same publications detailed above notifying interested parties that the Account will lie open for inspection for 21 days from the date on which the advertisement appears at the office of the Master of the High Court and where applicable, at the office of the Magistrate's Court in the area in which the deceased resided during the twelve months preceding death. Any person wishing to lodge an objection against the Account may do so during this 21 day period.
- If no objections are lodged against the Account, distribution is made to the beneficiaries, and the estate finalised.

Due to the complexity of this process, it is advisable to seek the assistance of a professional person involved in estate administration. This will ensure that the administration is carried out as quickly and efficiently as possible.

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## SERVICES

In an endeavour to provide the optimum professional service to our clients, we have various departments specialising in select aspects of law. Any member at any branch of the firm will be able to recommend an appropriate professional to meet your needs, given their speciality and the location most convenient for you, including your home or place of business.

- PROPERTY LAW
- COMMERCIAL PROPERTY LAW
- COMMERCIAL AND CORPORATE LAW
- LITIGATION
- ESTATES AND TRUSTS
- FAMILY LAW
- LABOUR LAW
- PERSONAL INJURY AND INSURANCE LAW

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Visit our website for on-line reporting on your conveyancing transactions. All that is required is a user number and password which is sent via SMS direct to your cell phone if you are an individual client. If you are a company we will provide you with your own user number and password for 24 hour access to updates on your transactions.

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