

PLANNING YOUR ESTATE

APRIL 2018



STBB

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BUCHANAN BOYES



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 90 professionals practising from 12 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 REVIEWED 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.

Our fees with regard to will preparation are competitive and we will not charge you for holding your original will in safe custody.



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.
- In situations where it is desirable to bequeath an income right over certain assets to a beneficiary, while at the same time preserving the capital of the trust in a safe environment for the benefit of the beneficiaries who will ultimately inherit the actual assets concerned, a testamentary trust can be an ideal solution.

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.

In addition it is advisable to periodically review your existing inter vivos trust deed so that any potentially problematic areas can be identified and rectified where necessary.

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



HOW IS A DECEASED ESTATE WOUND UP?

- The Administration of Estates Act prescribes the formal procedure which must be followed insofar as the winding up of a deceased estate is concerned.
- The executor who is nominated in the will must make application to the Master of the High Court for Letters of Executorship to be granted in his favour. No executor has any power to act on behalf of an estate before he has been issued with this document.
- An executor who is not himself proficient in estate administration normally chooses a professional agent to assist him with his application to the Master and to attend to the administration process on his behalf.
- The executor must attend to the following:
 - Handling each asset forming part of the estate in an appropriate manner.
 - Settling all liabilities.
 - Obtaining all necessary tax clearances ie. estate duty, income tax, capital gains tax.

- Complying with the provisions of the Administration of Estates Act including the placing of statutory advertisements and formal accounting to the Master.
- Communication with the heirs and all other interested parties.
- Collection and investment of all cash forming part of the estate.
- Payment and transfer of inheritances to the heirs entitled to same.

CAN EXECUTOR'S FEES BE NEGOTIATED?

Yes, there are ways to ensure that this will be possible.

WE CAN ASSIST YOU

We have a department which specialises in deceased estate administration which offers a professional, efficient, personal and cost effective service.

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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
- LOCAL GOVERNMENT, PLANNING,
DEVELOPMENT AND ENVIRONMENTAL 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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