

ESTATE AND FINANCIAL PLANNING

The maxim of "*failing to plan is the same as planning to fail*" is, unfortunately all too true. Our own mortality is often not a concept we wish to ponder for too long, however, the consequences of not planning, unfortunately often only become apparent when it is too late. Comprehensive planning of your estate is a complex process, and involves both:

- **estate planning**, the main aim of which, is to make the process of succession as problem free as possible, to make adequate provision for the care of your dependents after your death, the liquidity of your estate after your death, and to consider your potential estate duty liability, and
- **financial planning**, which would involve maximising the growth of your estate while you are still alive, taking into consideration how best to survive financially after your retirement, how/where to invest your assets, how to best prevent the erosion of your estate by, for example setting up the most efficient tax structure for your situation.

These processes are *inter-related*, and any action taken in regard to the one has an influence on the other. The task is a multi-disciplinary exercise, involving your attorney, accountant/auditor, insurance broker, tax consultant, board of executors, bank and even your estate agent. Various tools can be used, such as a Last Will & Testament, lifetime donations, and trusts, which will all merge together to create a most effective plan given your particular and unique circumstances.

In addition, the political, social and economic environment of the day will have an impact on your decision making process... however, at the most elementary level ...and whoever you are...whether you are a young, unemployed single man, a married Director & Shareholder of a company with minor children, or a retired granny, your most basic and essential planning requirement is a validly drafted Last Will & Testament. By having your Will in place, you will prevent delays in the administration of your deceased estate. An Executor will have been appointed in your Will, and thus your dependents' continued maintenance during the winding up process will not be adversely affected. In addition, your named beneficiaries will obtain their bequests sooner than in the case where an Executor would have to be appointed by the Master of the High Court, in the absence of a Will.

Setting up a trust is, in many cases, a very effective tool, be it a *testamentary* trust (which is set up in your Will) or an *inter vivos* trust (which is set up during your lifetime). Where you have minor children as dependents, the advantages of setting up a testamentary trust are many, and include the fact that any bequests to the minor will not fall into the Guardian's Fund, (which is administered by the Master until your minor reaches majority), but rather to Trustees who would be empowered to invest any assets as they deem fit, with a view to achieving maximum returns. In addition, there are many tax efficiencies available for a prudent Trustee to implement, notwithstanding the fact that SARS will treat this type of trust as a "special trust" and will accordingly tax it at the same rates as individuals, as opposed to the top marginal rate of 40% (as for *inter vivos* trusts).

Even the *inter vivos* trust can be effectively used in your plan, especially currently while we are experiencing a huge appreciation in property prices...it may be advisable to put some your appreciating assets into a trust, being assets that you wish your family to keep forever (for example a holiday home or blue chip shares). Another tool for a married couple with children to take advantage of, is the R1.5 million estate duty rebate. Instead of leaving everything directly to your spouse, rather leave R1.5 million to a testamentary or *inter vivos* trust. This prevents the "roll on" effect or second estate duty problem. A saving of some R300 000 in estate duty results, usually to the benefit of the ultimate

beneficiaries (the children) on the death of the second spouse, which, even in today's terms, is a substantial amount.

The basic tools of planning have been outlined to you in this article, however, there are many more at the planners disposal. This article purports to give the reader a general idea of the importance of casting your mind to this aspect of your physical life here on earth.

Your plan should be reviewed on an ongoing basis, and adapted to your changing circumstances, especially when radical changes take place, such as a divorce or the birth of a child.

In short, it is vital to review your estate planning, so that:

- Your dependents are left provided for and protected;
- You are sure that delays in the administration of your estate will not complicate the maintenance of
- your dependents;
- You are aware of the erosion of your estate, mainly by income tax, estate duty, and possible future taxes;
- You are sure that after your death your estate will not fall into the hands of strangers (In-laws) or
- estranged parties;

In the end, it is not really the material things that matter. But, by setting your affairs in order, your own immortality is ensured as the legacy that you leave will reflect your time here on earth. Your beneficiaries will take on your projects and assets in the most seamless way possible, and carry them on after your death. Your dependents will be left protected and provided for, so that they may continue on in the human condition.....and so it goes on.....

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