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attorneys

YOUR WILL AND ESTATE

Estate Planning and a properly drafted Will can ensure that you minimise Estate Duty (also known as "death taxes") and that your belongings are properly divided among your chosen beneficiaries.

Estate Duty is levied by the South African Revenue Service (SARS) on the worldwide assets of all SA tax residents. So, if you are a tax resident of SA at the time of your death, then all your worldwide assets will be levied for Estate Duty by SARS, at either 20% (for estates up to R30 million) or 25% (for estates in excess of R30 million). This makes proper Estate Planning all the more important to not only ensure that you minimise Estate Duty, but also that there will be enough money in your estate to pay SARS without having to liquidate any of your assets.

A properly drafted Will also affords you the opportunity to name guardians for your minor children and to set up a trust for them to manage their inheritance until they are old enough to do it themselves.

The task of drafting an appropriate, viable and valid Will should be entrusted to the care of a seasoned practitioner. A Will should also be reviewed and updated from time to time. A change in your personal and financial circumstances should automatically trigger a review of your Will. Life events such as marriage, divorce, new business ventures, retirement, disability and emigration are but a few events that will affect your future planning.

When drafting a Will, attention must be paid to, amongst other things, the personal and family circumstances of each individual, tax efficiency, and the liquidity of the estate.

When a person passes away, that person's estate (assets and liabilities) has to be administered or "wound up" in accordance with the person's instructions. A properly drafted Will must contain all the instructions for the winding up of the deceased person's estate in clear terms. The process itself is highly structured and follows the terms of the Wills- and the Administration of Estates Act.

In South Africa there are 2 types of trusts that are created to manage assets as part of Estate Planning and the drafting of Wills:

1. Living Trusts or Inter Vivos Trusts are established by someone during their lifetime, to manage certain assets and support beneficiaries, such as family members. These types of trusts are often recommended for saving on estate duty, but there are other reasons, such as to protect your assets from creditors or relationship claims, to provide continuity after death or to protect your assets if a beneficiary is a minor or is disabled.

2. Testamentary trusts or Mortis Causa Trusts are only created in terms of the Will of a deceased person and usually to hold and manage assets on behalf of minor children.

Trusts can form an important part of the Estate Planning process and can be used to achieve a number of goals. Contact us to discuss your options.

Contact Stefan van Niekerk to assist you with Estate Planning, the Drafting of your Will and/or the Administration of the Estate of someone who has passed away.

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