

A focus on estate planning

Liberty Group Advisory Services

Estate planning is not just about wealthy people avoiding tax; it is a way to ensure that your dependants are cared for when you are no longer able to provide for them.

We spend most of our lives working hard to accumulate assets and much of what drives us is our desire to provide for our children.

A well planned estate protects the hopes and dreams you have for your dependants. The following ten points need to be considered when planning your finances.

1. **A valid will**

Your will needs to make sense so keep it simple. Make sure it is written in a way you understand. Many people make the mistake of trying to rule from the grave which complicates the will and makes it difficult to execute.

2. **A testamentary trust**

A testamentary trust as part of your will is a necessity if there are minor children. If you are divorced a testamentary trust also prevents your ex-spouse from having access to your children's inheritance.

3. **Cover your taxes**

Make sure you have enough liquidity in your estate to cover taxes on your death. Many people leave assets such as holiday homes to their children without understanding that if they can't pay the taxes or debts, the assets will have to be sold. Ensure that you have some liquid assets or specific life cover in your estate to cover these taxes and liabilities.

4. **Your marriage contract**

If you are married in community of property (COP) there are some legal commitments you need to understand before handing down your assets. For example, you may wish to leave your home to your child from a previous marriage but if you are married in community of property, your current spouse is entitled to half the house. Even if you are married out of community of property but under the accrual system, if your estate for example has grown by R1 million more than your spouse, your spouse is entitled to R500 000 from the estate. Another very important issue with COP is what constitutes your estate. When your spouse dies the estate will be all of "your" assets and liabilities as well as his/hers. Therefore the executor fees of 3.5% plus VAT will apply to your assets as well. The entire estate will be frozen so it is important that you and your spouse take out life cover to provide immediate liquidity for the surviving spouse as well as to pay for potential executor fees on the entire estate.

5. Choosing an executor

It is important to find an executor who is an expert in estate law. Cutting costs by choosing a family member may cost your dependants in the long run as it may take longer to wind up the estate. Negotiate your fees in your will by stipulating that a discounted rate will apply if your estate exceeds a certain value.

6. Liquidity through policies

A life policy to provide immediate cash flow to your dependants is critical. An estate could take between 12 to 18 months to wind up. A life policy will pay out immediately and does not fall under the executor. Also, the proceeds of a life policy cannot be attached by creditors if your estate is insolvent (this does not however apply if you are married in community of property or if you have stood surety for your spouse's debt). A pension fund or retirement annuity is not a substitute for life cover as the final decision of who the proceeds go to is left to the trustees and they can take up to 12 months to rule.

7. Use your abatements

An abatement is a portion of your estate which is exempt from estate duty. Currently individuals qualify for a R3.5 million abatement. From 2010, if you leave everything to your spouse your R3.5 million estate duty abatement will roll over to your spouse's estate. This means that your spouse will be entitled to a R7 million abatement on his/her estate. It is still worth considering using your abatement to leave assets to your children as your spouse may remarry and not leave any assets to your children as you intended. No estate duty is payable on any assets you leave to your spouse.

8. Consider your foreign assets

Foreign assets are included as part of your South African estate. You need to understand whether the country where your assets are held has a double taxation agreement with South Africa. It is also practical to have a separate will in the foreign country as this assists in administering the estate.

9. Taxation of retirement funds

Since 2009, retirement funds no longer attract estate duty as long as you received a tax deduction on your contributions. They will, however, attract income tax.

10. Understand capital gains tax

There are three taxes payable by your estate: estate duty, income tax and capital gains tax (CGT). If you leave your house to your spouse there would be no taxes payable. However if you left your house to your children, both estate duty and CGT would be charged even if the house was not sold. For example if you bought the house for R1 million and on death it is valued at R3 million, after your primary residency exclusion of R1.5 million your estate would have to pay CGT on the R500 000 capital gain. Once the CGT is paid the new base cost of the property is now R3 million and if the beneficiaries did sell they would only pay CGT above R3 million. On death there is an exclusion of R120 000 in respect of capital gains tax.