



TRUSTS AND ESTATES ALERT

TAKING STOCK

To ensure you have an appropriate and workable foundation to a Will, begin by taking time to gather essential financial and legal information and reflect on your wishes.

A Will has two distinct dimensions. The first has to do with your assets - what you own, minus what you owe. The second deals with people – those to whom you wish to leave your net estate. In this alert we will focus on the first component.

At the very least you will need to compile a basic balance sheet listing your assets and their current values. You will also need to list your liabilities and the amounts you owe.

Doing this exercise focuses attention on the nature of your assets and helps you to appreciate the size of your estate. It allows you to consider whether your assets can be divided or shared between beneficiaries, or if they should be sold.

What you regard as an asset in the context of your estate may in fact fall outside your estate for purposes of devolution and estate administration, for instance, half of a joint estate if you are married in community of property, or an asset to which you have a limited right, such as an asset subject to a *fideicommissum* (an amount bequeathed to you, which devolves in terms of the Will of the person from whom you inherited the assets) or a trust.

Other assets that you may at first glance include may fall outside your Will, such as pension fund benefits or proceeds of a life policy.

Certain assets may specifically be burdened, for instance a mortgage bond on fixed property. Bear in mind that liabilities, which may not be immediately due and payable, will have to be settled on your death. You will need to consider whether there will be sufficient cash in your estate to settle these liabilities and whether you need to take steps to provide the necessary liquidity through extra life cover. Death gives rise to further obligations such as capital gains tax, estate duty and estate administration costs, all of which must be brought into the equation.

What about your ongoing obligations of a non-commercial nature, such as the monthly maintenance obligations to an ex-spouse or for children from a dissolved marriage? The obligations to support a surviving spouse and children are also relevant. There are also contingent obligations that may arise, for instance, if you have stood suretyship for a family member or a business entity.

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While these may not be an issue while you are alive, on your death the creditor will inevitably call up the payment. This would then reduce the amount in your estate available to distribute to beneficiaries.

Drawing up a list of your assets and liabilities will draw attention to the value of your estate and the money that will be needed by your dependents and available to potential beneficiaries. Will there be enough funds to meet your family obligations? Will your estate attract estate duty? What strategies can you implement to reduce the latter?

Therefore, an equally important but usually neglected exercise is the need also to draw up a simple income and expenditure statement, much like a budget during your lifetime. This exercise will determine whether, along with any capital benefits they will receive, your dependents and/or beneficiaries will have enough funds to meet their ongoing living expenses. Generally speaking, this exercise is more crucial while you are still relatively young and more likely to be an active earner with debt and dependents.

Although your death might trigger life and pension fund benefit payouts to your estate, you still must consider whether your dependents will inherit enough to provide for their needs, taking into account the capital growth and income flow that will accrue to them in real terms. Clearly, estate planning is not the preserve of those advanced in age.

Often, Wills are drafted with elaborate schemes, but without any reference to the deceased's balance sheet and income and expenditure statement. The unintended consequences can be at best a hit or miss but often lead to untold problems.

It goes without saying that you do need to revisit and update your Will whenever there are significant changes affecting your balance sheet, your income and expenditure, or your obligations to your dependents and creditors.

Johann Jacobs

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