

ESTATE PLANNING

Acknowledgements and Prologue:

I dedicate this manual to my daughter Bontsi and grand-sons, Katleho and Oagile who, when things got really tough and it felt like giving up on this work, would remind me of what I frequently say to them- “that good things come through hard-work, tenacity and resilience”. I value your inspiration and encouragement. You continue to add happiness, contentment and fulfilment to my life.

My hopes and aspirations; -

- That this humble and hopefully empowering piece of work will reach as many households and as many productive individuals as possible to enhance the ability to engage and interrogate the increasingly complex field of personal financial planning so as to reap the benefits thereof.
- Personal financial planning in general and estate planning in particular ties very well with the objective of harnessing household savings in order to boost investment and create jobs. I hope this humble effort shall contribute positively to this end.
- If more wealth creators could make sure that the assets they so painstakingly accumulated is preserved for future generations who, should use that wealth to create more wealth, a modest dent in the deepened poverty can be made, and a “live and let live” attitude can, in deed, be cultivated.
- One of the major benefits of rapid, sustained economic growth is the broadening of the tax base which directly leads to reduction in individual and other taxes, thereby releasing more money for consumption, saving and investment. We can achieve all of these, hopefully, if we undertake to manage our finances more prudently.

Introduction:

The SA economic landscape is a fluid one, at times in line with the dictates of the global economic trends and that brings with it profound financial challenges which have a direct impact on our lives and those of future generations. As individuals and households, we are confronted by these rapid economic and financial variations, which make financial planning increasingly necessary for survival. We therefore would like to advice as to the importance of every income earning individual and or household striving to be familiar with the basics of “financial planning” in order to make sound financial decisions.

The starting point is to cultivate the habit of drafting a personal monthly budget, making sure you enter as accurately as possible all expenditure items and compare total expenditure to gross income. By taking ownership of this exercise you are preventing a situation where your personal financial management veers off track and you find yourself having to grapple with income shortfalls from time to time.

Budgeting in the context of an individual or household, is not a forecast but an expression of a planner's financial intention given fixed income. Such expression focuses on expenditure measured against income. Forecasting on the other hand may be viewed as the process of predicting the future based on past performance and present data.

The Purpose of this Manual:

- To make available to you the user, information that arms you with the basic understanding of the concepts estate planning, the conservation and final distribution of the deceased estate so as to enable you to interact meaningfully with your professional financial advisor.
- To highlight the importance of estate planning in your personal financial planning effort.
- To give you the tools that will enable you to conserve your estate and ensure that only those you want to benefit do so optimally.
- To familiarise the habit of minimising the costs and time born by the process of unwinding an estate.
- To ensure the protection of your business continuity.

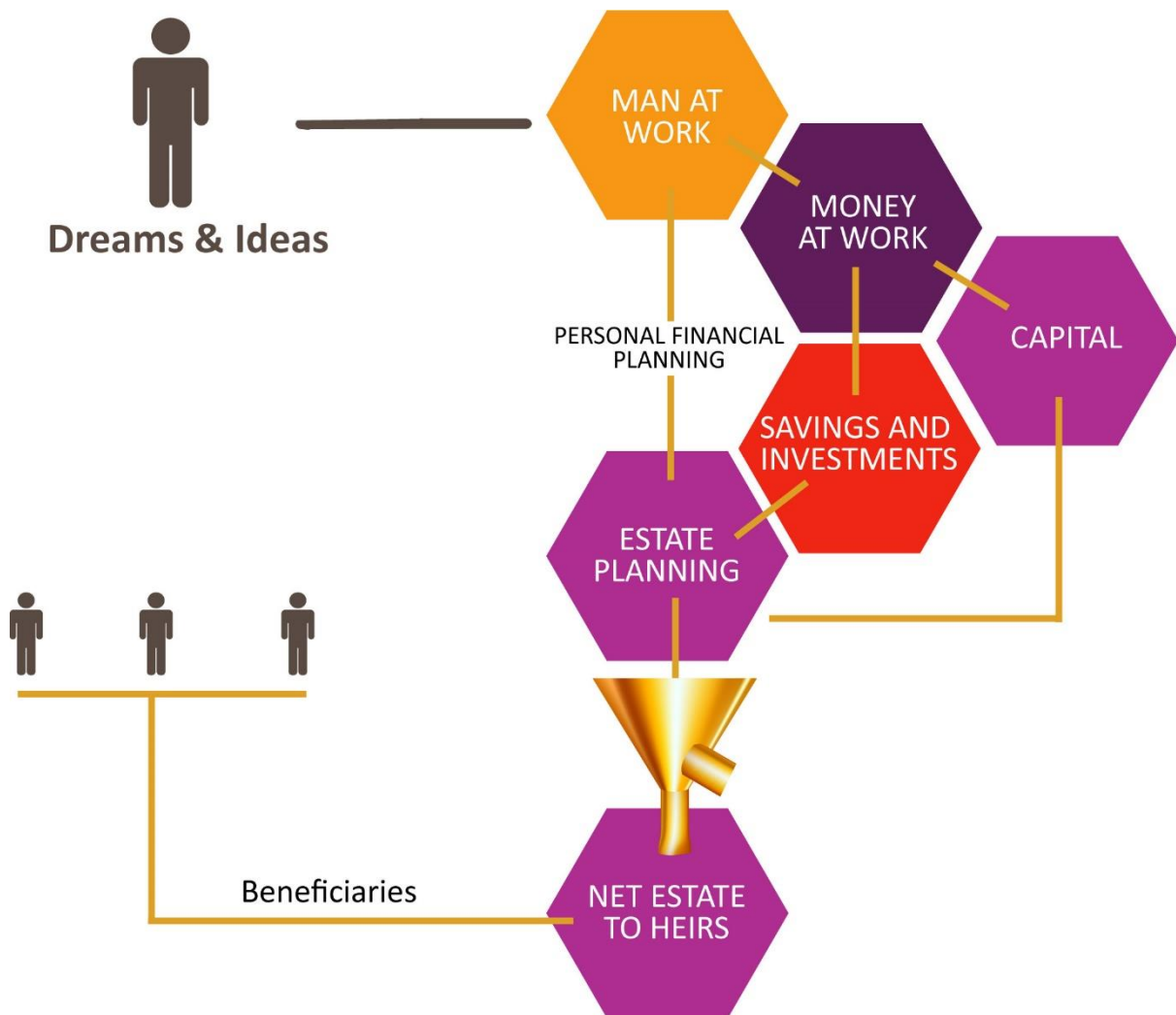
The following sequence is preferred in addressing this subject.

Wealth Creation	Chapter 1
The Concept of Deceased Estate	Chapter 2
The Estate Planning Process	Chapter 3
Consevation	Chapter 4
Distribution	Chapter 5
Conclusion	

WEALTH CREATION

Wealth Creation.

Wealth creation is not an event but a complex process of risk taking that involves the employment of available resources necessary to accumulate assets. The resources could vary from labour to capital and from raw material to manufactured goods and so forth.



The diagram above shows a situation where a young person starts work or a business and begins to save money to work for him or her. By means of this bi-employment strategy, income is derived from two instead of one source, namely, labour and investment, thus availing more disposable income to consume and or invest. To this end, and provided one spends wisely, growing one's wealth could be accelerated.

Many people get on the business of creating wealth by locking the money earned in land and buildings – households and motor vehicles – shares and business ventures etc. Then one day we disappear from this world – leaving behind not a big pile of cash, but a huge accumulation of illiquid assets. When these assets, in their illiquid form, are left behind for beneficiaries and or heirs, the situation is akin to transferring your liabilities to dear ones you intended to benefit. Suddenly they have to scurry around in search of money necessary to meet the settlement costs borne by the estate. These costs include, but are not limited to; last expenses, legal and administration cost, outstanding taxes, estate duty, transfer costs, interim income and other liabilities.

When faced with the problem of lack of liquid cash to meet the settlement costs, the only solution may be to seek funds in the financial markets at very high costs of borrowing. While they are in search of external financial help, the settlement costs may increasingly grow bigger with time, making the situation more desperate. Another problem for the beneficiaries and or heirs could be the inability to provide security for the required loan, especially where an outsider is also entitled to benefit from the deceased estate.

Even famous people make the error of not planning for the conservation and final distribution of their assets because, they're too busy and preoccupied with the task of creating more wealth in their lifetime.

An individual's wealth comprises both the tangible and intangible assets.

Tangible assets are those possessing an objective, physical existence and are therefore capable of being seen and or touched. They are cash, savings and investments, fixed-income instruments, real estates, business interests.

Intangible assets are non-physical resources and rights that possess a value and advantage in the market place.

Examples are;

- non-financial assets like goodwill, copyrights, trademarks, patents and computer programs.
- financial assets such as accounts receivable, bonds and stocks.
- Given this large amount of leverage, a very small move in the price of a commodity could result in large gains or losses compared to the initial margin. Unlike option, futures are the obligation of the purchase or sale of the underlying asset. Simply not closing an existing position could result in inexperienced investor taking delivery of a large quantity of an unwanted commodity.
- Alternative assets are those assets that were not considered part of the investment portfolio until recently. They are non-traditional assets that have potential economic value such as hedge funds, private equity, credit derivatives and commodity futures.
- Hedge Funds are funds that can take both long and short term positions, buy and sell undervalued securities, trade options or bonds, and investment in almost any opportunity in any market where impressive gains at reduced risk are anticipated. The primary aim of most hedge funds is to reduce volatility and risk while attempting to preserve capital and deliver more than expected positive returns under all market conditions.

- Private Equity serves venture capitalists, lawyers, accountants, consultants, investment bankers, buyout specialists, institutional investors etc. It refers to a type of investment aimed at gaining significant or even complete control of a company in the hope of earning a high return. Private equity funds invest in assets that are owned privately.
- Credit Derivatives are financial assets like forward contracts, exchanges by way of barter and options for which the price is driven by the credit risk. They are privately held negotiable bilateral contracts that allow users to manage their exposure to credit risk. Example a bank concerned that one of its customers may default on loan repayment could protect itself by transferring the credit risk to another party while keeping the loan on its books
- Commodity Futures is an agreement to buy or sell a set amount of commodity or raw material at a predetermined price and date. Buyers use these to avoid the risks associated with the price fluctuations of the product or raw material. Sellers try to lock in a price for the products and, as in all financial markets, use such contracts to gamble on price movements. Trading in commodity futures contracts can be very risky. One cause of this high risk is the high amount of leverage generally involved in holding futures contracts.

Example: for an initial amount of \$5 000, an investor can enter into a futures contract for 1000 barrels of oil valued at \$50 000.

Thus:	Value of contract	=	\$50 000
	Less initial amount	=	\$ <u>5 000</u>
	Leverage		<u>\$45 000</u>

Given this large amount of leverage, a very small move in the price of a commodity could result in large gains or losses compared to the initial margin. Unlike option, futures are the obligation of the purchase or sale of the underlying asset. Simply not closing an existing position could result in inexperienced investor taking delivery of a large quantity of an unwanted commodity.

- **Futures:** An auction market in which participants buy and sell commodity or future contracts for delivery on a specified futures date. Trading is carried on through open yelling and hand signals in a trading pit.
 - **Options:** A financial derivative that represents a contract sold by one party (option writer) to another party (option holder). The option offers the buyer the right, but not the obligation, to buy (call) or sell (put) a security or other financial asset at an agreed-upon price (the strike price) during a certain period or on a specified date (exercise date).
1. **Call options** give the option to buy at a certain price. So the buyer would want the stock to go up.
 2. **Put options** give the option to sell at a certain price, so the buyer would want the price to go down.

What is a **stock**? It is ownership, ownership of a piece of everything that a company owns – from trade mark to every desk and inventory and to profits or losses. The more shares you buy the bigger your stake in the company.

Collective Investments: A collective investment, also referred to as unit trust scheme, is a way of investing money as a group or a collective in order to benefit from the pooled funds rather than buying shares directly. Collective investment vehicles are usually managed by a fund management company which is paid a fee for its services.

Bonds: It is debt investment in which an investor loans money to an entity (corporate or governmental) that borrows money for a defined certain period of time at a fixed interest rate. Bonds are used by companies, municipalities, national governments to finance a variety of projects.

The indebted entity, called the issuer, issues a bond that states the interest rate (coupon) that it will pay when the loaned amount (bond principal) is paid back to the lender on maturity date. Interest is usually paid six monthly.

Bond maturities usually range from 90day Treasury bill to a 30 – year government bond. Corporates and municipalities are typically in three to ten years range.

A perpetual bond is one with no maturity date; therefore, it may be treated as equity rather than a debt because although it is redeemable, it pays a steady stream of interest forever.

Participation Bond: is a bond that pays the holder dividends and interest, usually a corporation's debt obligation which bears interest at a certain interest rate and entitles the bondholder a portion of the corporation's earnings. Participation bonds are frequently issued by financially unsound corporations who offer extra inducement to attract investors.

Risks associated with wealth:

Most of us manage our businesses, your professional practices but fail to manage the wealth that we so painstakingly create and continue to grow. Failure to carefully plan and manage personal wealth carries the following risks;

- Assets due to loved ones may be lost when the testator and or the testatrix dies.
- Taxes and other liabilities
- Disability of the owner may result in loss of momentum and extent of growth.
- Lack or absence of the necessary sound, well-coordinated financial plan

A statement of assets and liabilities is a useful tool for measuring growth in personal wealth. But wealth is often lost through the untimely disablement or death. The loss, in consequence of the latter, does not only affect the family, but has a negating impact on the potential for the family's financial survival in the sense that assets that would otherwise have flowed to deserving heirs for use to create more wealth may be lost – and lost for good.

Example; Lesego, a trader married out of community of property, has two sons born of the marriage and one daughter out of wedlock. Through hard work he succeeded in building a large estate. The estate is comprised of 40% fixed assets, 50% is invested in partnership business of which he holds 60% interest and 40% is held by his partner. 10% Of his estate is in a variety of movable assets. He suddenly dies without a Will and has left insufficient liquid assets to settle the costs of untangling his estate. A third child born out of wedlock is claiming 25% a share of his father's estate. His two sons would like to continue to run and grow their father's business once they have bought their father's willing partner's interest in the business. They need to inject a sizeable amount of cash to achieve this goal. Meanwhile financial institutions require security to approve the required loan.

The problem here is that Lesego's sons cannot use their father's assets before ownership transfers to them because there is a third party claim involved. The two sons do not have assets of their own to secure a loan. Their dream to be the new owners of their father's business becomes just that -- a mere pipe-dream.

Had the sons, however, been the sole heirs of their father's estate, they would be able to secure a loan by applying for a bond over their late father's property.

Given the above-mentioned scenario, estate planning becomes the centre-piece that could ensure the risks associated with personal wealth are properly managed.

CHAPTER 2

Estate Planning;

Estate planning is the activity of putting together the sum of a person's possessions, (i.e. assets, interests and entitlement to property of any kind) and to prepare to transfer these possessions to others upon death by specifying to whom these assets should go while ensuring that the costs are kept to the bare minimum -- making provision that there is sufficient liquidity to meet the financial obligations that may arise. In short, estate planning is action to arrange, manage, protect and distribute personal wealth in one's lifetime.

Implied in this definition is that the estate planning process takes place within a particular "estate planning environment". Estate Planning is thus not static but dynamic because it takes place against a unique background. The need for estate planning emerges from this environment.

The estate planning environment; can be subdivided into three categories as follows:

- The legal environment
- The economic environment and
- The personal environment.

The Legal environment consists all related legislation and provision of the common law that touch on estate planning. We concern ourselves in this manual with the domestic estate planning part, deliberately distancing ourselves from offshore or foreign ramifications. The following acts have a bearing on estate planning in South Africa.:

- The Estate Duty Act.
- The Income Tax Act
- The Companies Act
- The Close-Corporation Act
- Donations Tax Act
- The Matrimonial Property Act
- The Wills Act
- The Intestate Succession Act
- The Immovable Property Act
- The Trust Property Control Act
- The Administration of Estate Act. etcetera, etcetera.

The Economic environment refers to all economic factors which must be taken into account in the estate planning activity – and that would include;

- the financial position of the planner and his family
- the mobility or absence thereof of his assets

The Personal environment refers to the personal circumstances of the planner, and his individual make up. It is common place that much in estate planning depends on the wishes, experiences and desires of the planner because the assets concerned are his. Frequently problems that arise in the estate planning process relate to the control of assets. The personal environment is also influenced by the position of the family and the planner's dependents. The estate planning process would achieve one of its major objectives if it succeeds in facilitating the proper and simple administration of the estate, both during and after life. As it were, we can conclude that as a consequence of the personal environmental influence, the estate plans will differ from one planner to another.

The definition also describes the process as follows;

- the planning takes place in an orderly manner and at the right time
- emphasis is put on the arrangement, management, conservation and final distribution of the estate
- the estate planner enjoys maximum use of the assets that comprise the estate in his life-time
- when death does occur, its timing should not have any material impact on the successful working of the estate plan.

Tools of Estate Planning:

Given an estate planning environment from which the need for estate planning arises, and the resultant objectives of estate planning, the following listed requisite tools are used to reach those objectives:

The Matrimonial Property Act: The matrimonial property law in South Africa is essentially regulated by the Matrimonial Property Act No. 88 of 1984. This Act embraces three types of marriage contract to choose from, these are; The in-community of property marriage, the out of community of property that excludes the accrual system and the out of community of property with accrual system.

Marriage Contracts: If you do not sign an ante-nuptial contract before marriage, you automatically enter into an in-community-of property marriage in terms of the South African law.

In-Community of Property means every asset that each spouse owns, including debts, get combined from pre-marriage onwards, to form one joint estate. The income earned by each spouse, including debts, is part of the joint estate as well.

Ante-nuptial contract is an agreement that spells out the marriage will exist in community or out of community of property – with or without accrual system. Considerable thought should be given to before concluding this agreement because the terms contained in it govern what happens to your and her assets and liabilities upon death or divorce.

i) **Ante-nuptial Contract without Accrual system;** Each spouse retains ownership of his or her own assets and liabilities acquired prior or during marriage. There is no sharing of profits or losses during the life or otherwise of the marriage. Both parties have full independent contractual standing, therefore the contract protects the estate of each party against claims by the other party/s creditors.

ii) Ante-nuptial Contract **with Accrual System**; Before 1984 prospective spouses who chose to get married out of community of property had no form of sharing assets accumulated by them during the marriage. The accrual system was later introduced to address this concern and remedy the anomaly. The accrual system is applicable to all out of community of property marriages unless the prospective spouses expressly exclude the accrual system in their contract. In terms of this regime both spouses have and can enjoy their separates and do not have to share each other's profits or losses during the currency of their marriage.

- Donations between spouses
- Donations
- Companies and Close Corporations
- Co-shareholder and partnership agreements
- Trusts
- Life assurance
- Limited interests
- The Will

Objectives of estate planning:

- Flexibility
- Minimization of estate duty
- Minimization of taxes.
- Provision of liquidity
- Provision of capital and income for dependants
- Provision of retirement income for spouse
- Capital appreciation
- Protection against insolvency
- Protection against third parties
- Facilitation of the administration of the estate
- Protection of business interests

Flexibility:

While flexibility may not be, strictly speaking, regarded as an objective of estate planning, it is an essential requirement because estate planning takes place in a particular environment. It is therefore important to build in the required level of flexibility into an estate plan to cater for changes in the environment and more importantly in the personal circumstances of the planner and the family.

Minimizing Estate Duty:

Although it is not an overriding objective of estate planning, minimizing estate duty must be provided for in estate planning because its payment can and does impact on the objectives that follow and how they will be met.

Minimizing Taxes:

The objective here is not to save income tax per se, but to ensure undue tax is avoided; especially where trusts are concerned. Minimizing other taxes such as transfer duty may be important in the structuring of an estate plan. A flexible estate plan should make room to accommodate future changes in taxation.

Providing for liquidity: The argument for the provision of liquidity in the estate to meet its liabilities and taxes following the death of the planner is a compelling one. The avoidance of having to dispose of asset probably at the wrong time and price is perhaps the overriding objective of estate planning. Other needs for liquidity are;

- Income for dependants during the period of untangling the estate, which may take a year and more to finalize.
- Income generating capital for dependants
- Retirement income generating capital for the spouse
- Donations
- Education fund etc.
- Liquidity provisioning is also vital to protect the estate that consists of one or more large assets that should not be disposed of (example would be the estate planner is a commercial farmer who bequeath the farmer to one of the children to continue the farming business).

The Provision of Capital Appreciation: Frequently many estate plans separate the planner and his growth assets legally, and this applies to tax planning approaches rather than an estate planning ones. But this is an area to consider when undertaking estate planning.

1. Provision for children's maintenance and education.
2. Provision for retirement income for the spouse for a certain period before her retirement and or at her retirement.
3. Protection against insolvency is by no means a by-product of estate planning. It is an important aspect of estate planning because it impinges on the ultimate benefits that accrue to the heirs. Protection against Insolvency also has to do with ensuring the avoidance of dissipation of assets of the planner after his or her death which could result from the spendthrift lifestyles of beneficiaries or through inept administration. Such protection of assets must enable the beneficiaries to enjoy their inheritances without endangering the position of other beneficiaries.
4. The protection of assets earmarked for beneficiaries against intervention by third parties who may get involved in the family matters is often a priority of estate planners.
5. Facilitation of the administration of the estate is necessary where the spouse and dependants of the planner are not able to take control of the assets, and the potential diversion or dissipation of assets is feared. The planner must ensure simplicity of administration in a complex estate planning situation to ensure that the plan operates smoothly in his absence or that of his original advisor.

6. Protection of Business Assets: It is vitally importance to note that the estate planning of each individual partner or co-shareholder will impact on the estate planning of other partners or shareholders – thus consultation with others is necessary to make it possible for the plan to run smoothly. The objective here is to ensure that the spouse or heirs of a particular partner or co-shareholder do not step into the position of the deceased in the business.

The Structural Perspective of an estate;

Your estate comprises four classes of assets, namely; personal assets, fixed properties, insurance and business interests.

**Consolidation of Assets.
Gross Estate**



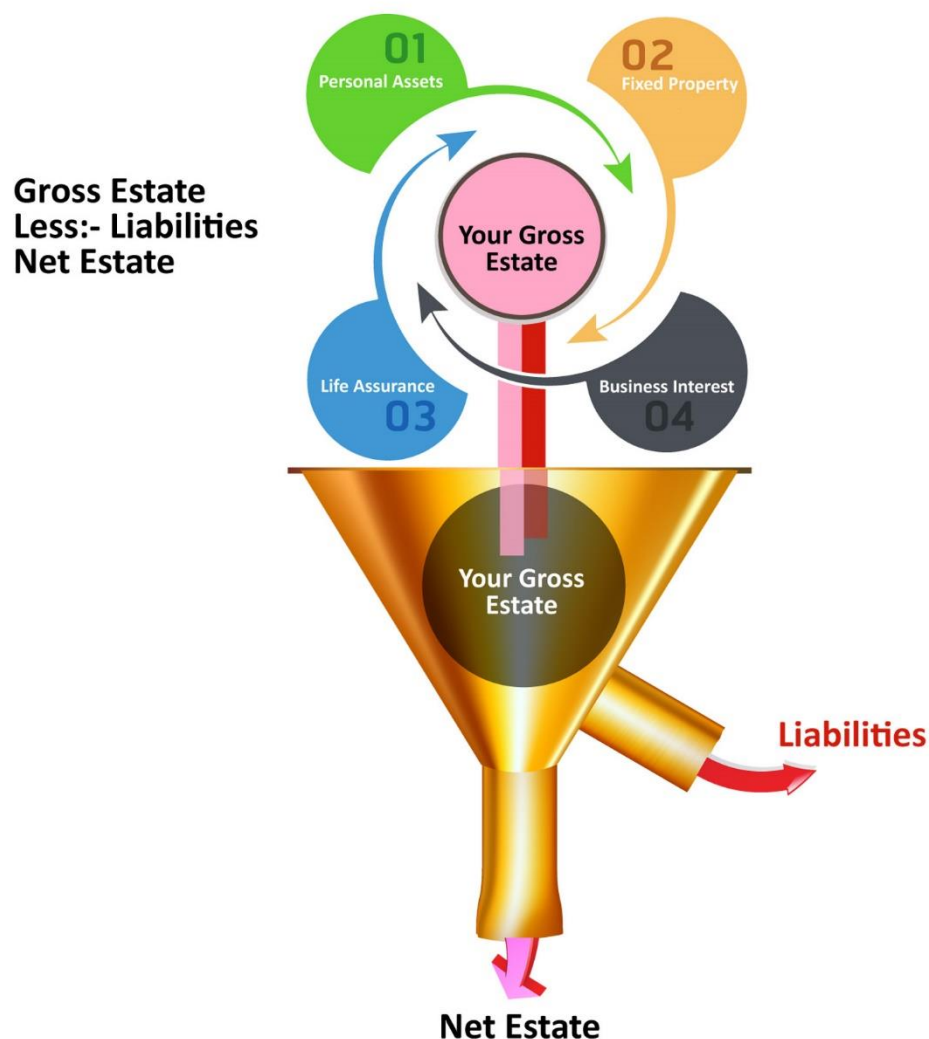
Diagram B above.

1. Movable assets would include cash on hand, credit balances in your bank account, motor car, and personal or movable assets such furniture and other household goods.
2. The second type of asset class is your fixed property, which includes your home and any other fixed property you may own, whether for personal use or for income producing purposes.

3. The third classification of property is your assurance. Here we refer to all policies which you have purchased whether life, endowment, or retirement annuities.
4. The fourth and final heading is your Business Interest and Incorporeal Assets (e.g. unit trusts, shares, government bonds and pension funds.). This means your actual interest in any business, whether it is a sole proprietorship, partnership or company. Fringe benefits supplied by the employer, such as a pension plan, also fall under this category of assets.

THE ESTATE PLANNING PROCESS:

Structural Perspective OfThe Estate Planning Process



The estate planning process can be classified into the following five steps;

- Gathering the total value of a person's combined assets and liabilities.
- Calculating estate duty, capital gains and income taxes.
- Analysing ways to minimise the estate duty, capital gains tax if this is a problem and this could entail;

- Donations; you can reduce your estate by making tax-free donations of up to the allowable maximum to your spouse or anybody annually to reduce the value of your estate.
- A certain amount of capital gain in the year of your death is exempt from CGT.
- The first R1 500 000 profit on your primary residence is exempt from CGT and this amount may change.
- Long-term Insurance policies are exempt from CGT.
- Creating a liability or gearing option; monies borrowed to invest in assets like an RA which is exempt from estate duty, are deductible for estate duty purposes. This option should only be considered if you have sufficient income to service the interest on the debt.
- Using a third party like a trust or child to pay the life assurance premiums on your life to generate liquidity. Although the proceeds are normally “deemed property” in the estate, you will benefit from the deduction of all premiums +6% compound interest paid by the third party from these deemed proceeds and if structured correctly, . certain policy proceeds such as pure key person assurance, policies ceded in an ante-nuptial contract or used to fund a buy-and-sell agreement between partners or shareholders are entirely exempt so far.
- It may be advisable in certain instances to leave assets to a surviving spouse. This option may, however, prove problematic because it may only defer the liability to the next spouse or the spouse to whom the assets are bequeathed may predecease the planner. Another problem may be that the planner may not wish to bequeath the full estate to the spouse
- Ensuring each spouse deducts the allowable estate duty abatement. It could also be advisable in certain instance to, instead of leaving the entire net estate to the surviving spouse, rather bequeath his or her allowed abatement to the children or to a trust and the balance to the spouse. This simple planning technique could save a lot in estate duty.
- Considering freezing the value of your growth assets by transferring them into a living trust. This tool takes away from the estate planner growth assets, usually in return for a credit loan account, while retaining some measure of control over those assets and benefiting from the use and enjoyment thereof. A trust is the most frequently used estate planning vehicle for this purpose.
- Preserving the estate can be achieved by planning in order to ensure sufficient liquidity in your estate at the right time in order to meet the following settlement costs;
 - estate duty, capital gains tax and income tax
 - executor’s fees.
 - liabilities such as mortgage bonds, bank overdrafts, transfer duty.
 - hospital fees and funeral expenses
 - income needs of a spouse and dependants
 - cash bequests
 - divorce order obligations
 - an accrual claim of the surviving spouse

What remains after the deduction of all settlement costs is what your beneficiaries and or heirs will get. It is the responsibility of the Executor of the estate to make sure that the settlement costs borne by the late estate are paid and paid in cash. This means a certain portion of the total estate will be deducted to pay for:

- Outstanding Income Tax
- Outstanding Rates and Taxes
- Capital Gains Taxes
- Legal Fees
- Administration Costs (i.e. master’s Fees and Executive Charges)
- Last Expenses and Interim Income
- Estate Duty
- Transfer and other costs

Estate Duty Calculation: (@20%)

	R
Property	18 000 000
Plus, Deemed property	<u>2 000 000</u>
Gross estate	20 000 000
Less: Deductions	<u>4 800 000</u>
Dutiable estate	15 200 000
Less Abatements (currently)	<u>3 500 000</u>
Net dutiable estate	11 700 000
Estate Duty at 20%	<u>2 340 000</u>
Net Estate	<u>9 360 000</u>

Assessing Estate Liquidity:

The absence of sufficient cash or other liquid assets can seriously threaten the core assets that were intended for beneficiaries and or heirs. It is therefore necessary to ensure that;

- The beneficiaries have enough cash to live on while the estate is being untangled.
- There is sufficient cash to meet all liabilities to ensure the core assets are not threatened.

Analysis:

i) Cash Available:	R 200 000	Totals
- Investments	R 80 000	R
- Insurance	R 0	
Other	<u>R 20 000</u>	
	R 300 000	300 000
Less:		
ii) Cash requirements:		
Liabilities	R 4 800 000	
Last expenses	R 250 000	
Estate duty	R 2 340 000	
Bequests	R 10 000	
Interim Income (2 yrs)	R 840 000	
Other	<u>R 160 000</u>	
Total	<u>R 8 400 000</u>	<u>8 400 000</u>
Shortfall		<u>8 100 000</u>

Saving Costs:

There is a saying that time is money and this can simply be illustrated by a person who fails to pay his/her financial obligations in time. Interests on the principal owing is charged and each time one defaults in making payments due additional interest is charged. The longer the non-payment continues, the higher the interest because of the compounding effect. In the case of winding up an estate, the longer it takes to complete the process, the higher the costs. It is therefore one of the primary objectives of estate planning to eliminate any obstacles that may delay the activity of winding up an estate as quickly as possible.

Note that interest on debt does not stop accruing after death.

An appropriate estate plan will also ensure, through an efficient distribution plan that, not only will the costs be controlled, but also ensure the fulfilment of the wishes of the testator – that of benefiting legitimate heirs.

Settlement costs consist of;

- Executor's fees, the Master's fees, administration expenses, last expenses, creditors.
- Taxes: these are estate duty, capital gains tax, donations tax, outstanding municipal rates and taxes and property transfer costs.

Executor's Remuneration:

- i) The remuneration may be fixed by deceased in the will or
- ii) 3.5% plus VAT = 3.99% of gross estate.

The Master's Fees; Usually a fixed amount to the maximum of R600.

Transfer Costs; These are costs related to the transfer of property from the deceased owner to the heir.

Last Expenses; Last expenses include death-bed expenses, burial cost, and other expenses related to the passing on of the estate planner.

Creditors; If you have credit card debts, vehicle, housing, or furniture finance, a debt to a business partner and surety etcetera, all these will become due and payable on your death. Life insurance ensures that your family will not be forced to sell essential assets such as their home to obtain the necessary liquidity to finance debt.

Taxation;

What is tax? It is a compulsory contribution to state revenue by levied by the government on certain income

earned by either man-at-work, money-at-work and capital-at-work. The state needs this money to provide social services to its citizens.

Capital Gains Tax;

Capital investment is said to be the engine of wealth creation. The fruits of capital creation and conservation are jobs, careers and the fringe benefits associated them, namely, company cars, medical aid schemes and pension funds.

Capital Gains Tax on private property; Creating and protecting private wealth has the potential to broaden the tax base in the long run as economic growth reaches out to more

and more people. As the tax base broadens, the possibilities exist for treasury to reduce tax rates and if this happens more money is released for consumption, savings and investments.

Taxation of Trusts:

- All taxable income is levied at the fixed rate of 41% as of the tax year 2016.
- A loss incurred by a trust may not be passed on to beneficiaries. The loss is retained in the trust to be carried over to the following tax year as an assessed loss.
- When distributing the proceeds from a trust, the income or capital gains is retained and taxed in the hands of the beneficiary, subject to certain deeming provisions.

Donations Tax:

By Natural persons: Levied at a rate of 20% of the value of the property donated (after exemption of R100 000 in that tax period)
By companies not considered / classified as public companies up to R10 000 per annum is tax free within a given tax period.

The above-mentioned costs to the estate are generally referred to as settlement costs that give rise to a shrinkage in its final value.

Diagram C. 1 below, depicts a scenario where the estate is substantial and no planning was done. In this case the settlement costs are substantially high, and there is no liquidity in the estate to meet the administration costs.

The estate is insolvent because its liabilities equal or are greater than the assets.

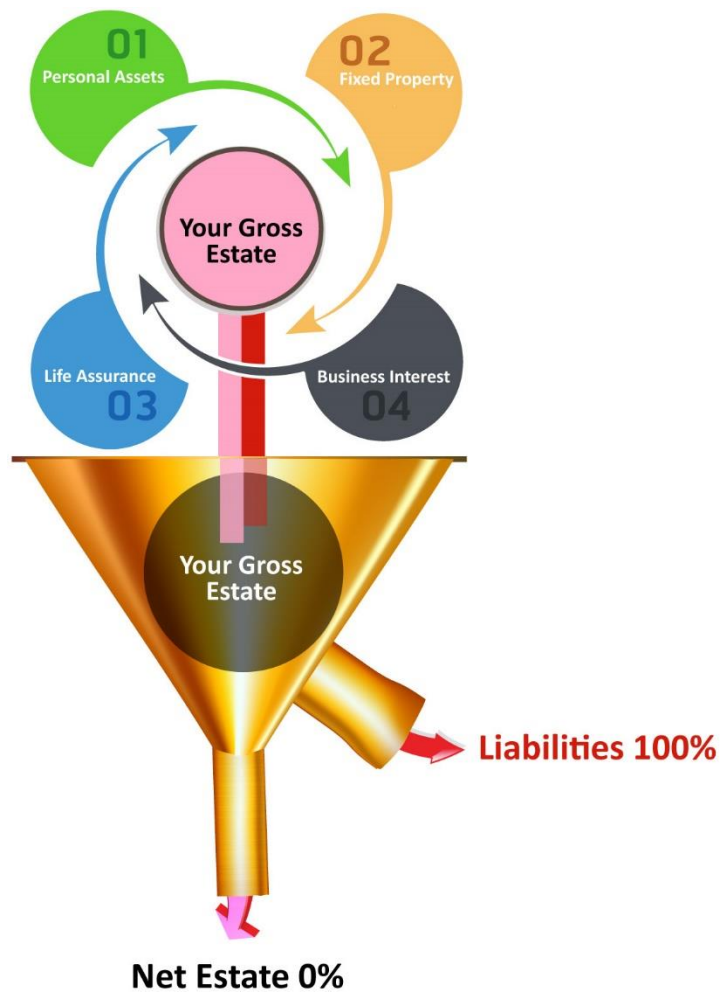
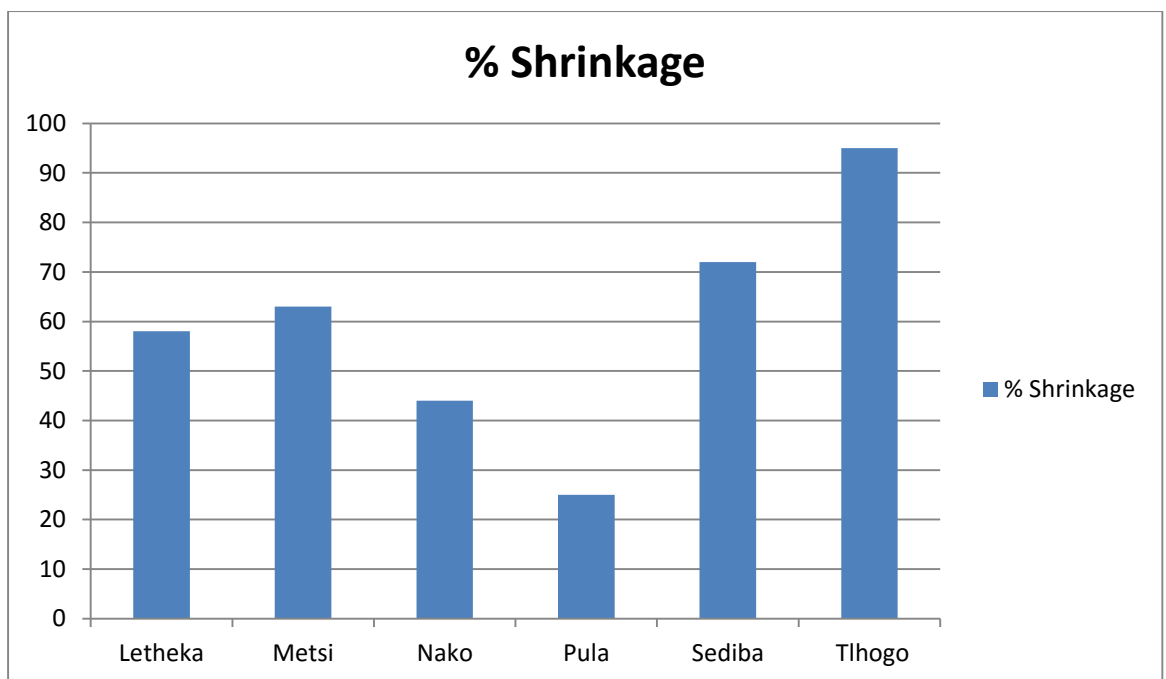
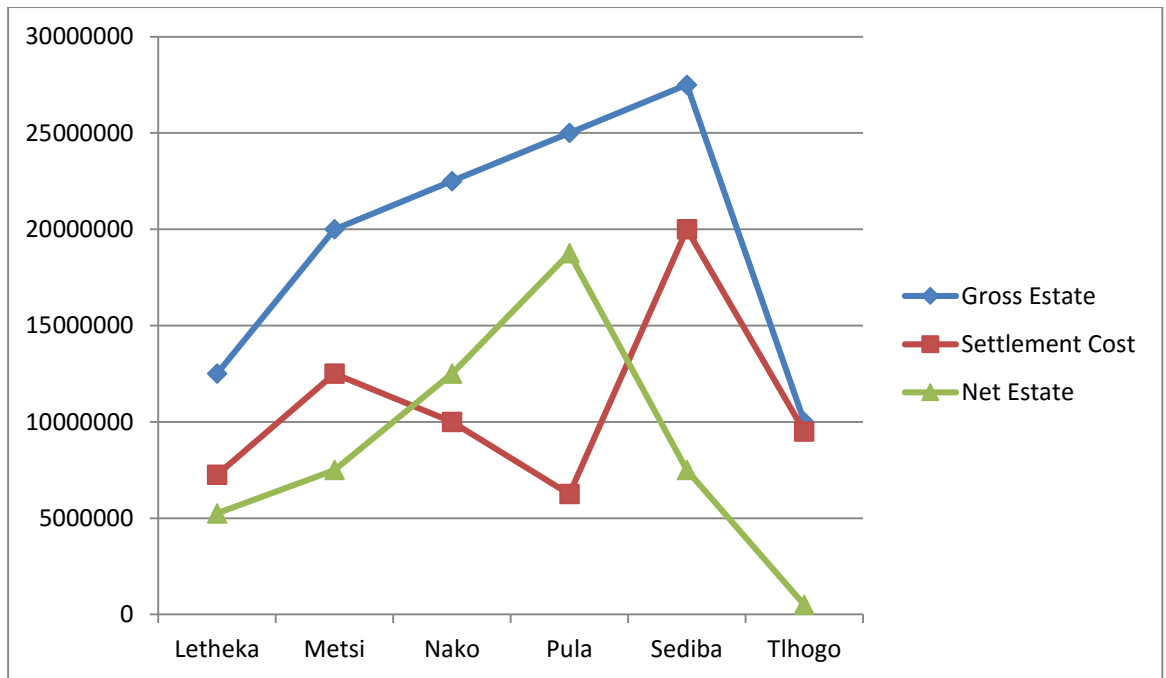
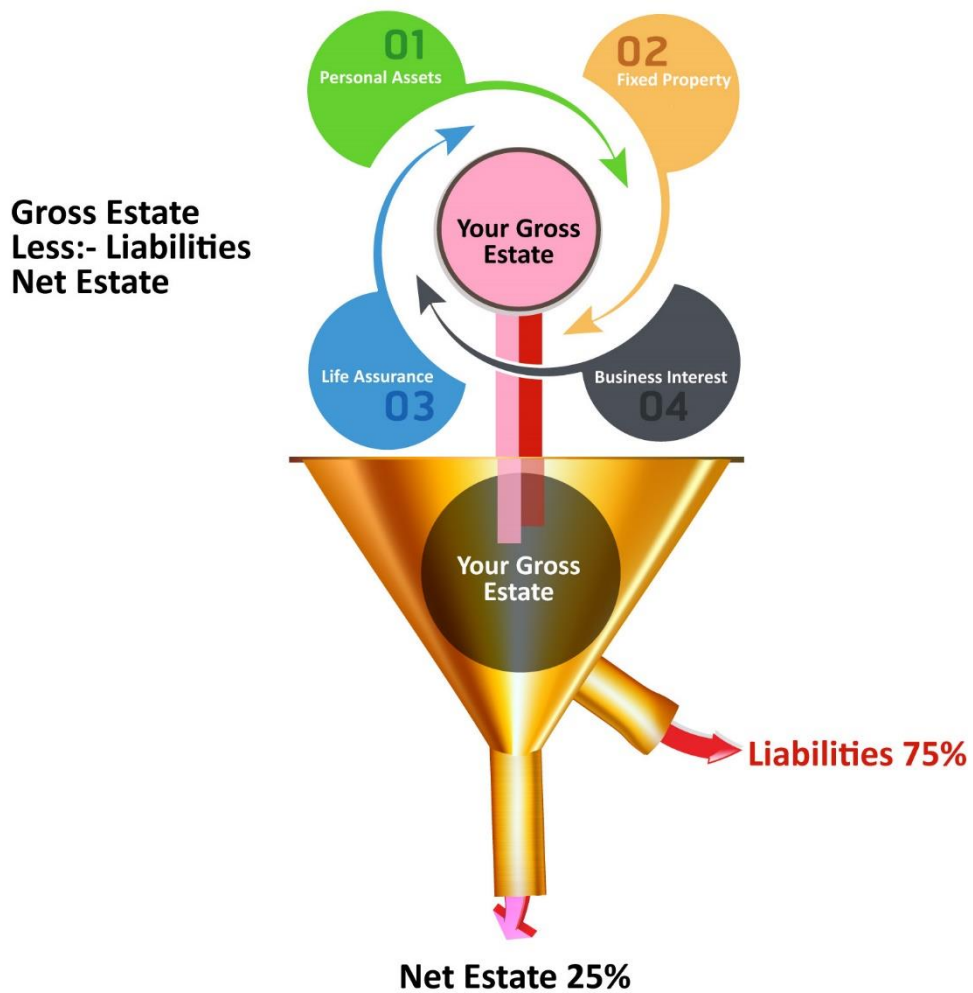


Diagram C depicts a worst case scenario where everything is lost and the heirs are left destitute

Name	Gross Estate	Settlement Costs	Net Estate	% Shrinkage
Bonolo	R12 500 000	R 7 500 000	R 5 000 000	58,0
Dineo	R20 000 000	R12 500 000	R 7 500 000	62,5
Gontse	R22 500 000	R10 000 000	R 12 500 000	44,4
Katlego	R25 500 000	R 6 000 000	R 19 500 000	23,5
Lesego	R27 500 000	R20 000 000	R 7 500 000	72,7
Tau	R10 000 000	R 9 500 000	R 500 000	95,0





In the case of diagram C, 2, the estate is of the same size as that of diagram C. 1, where an estate plan was in place, however the plan was not updated in say, the last five years whence it had grown considerably and had become more complex.

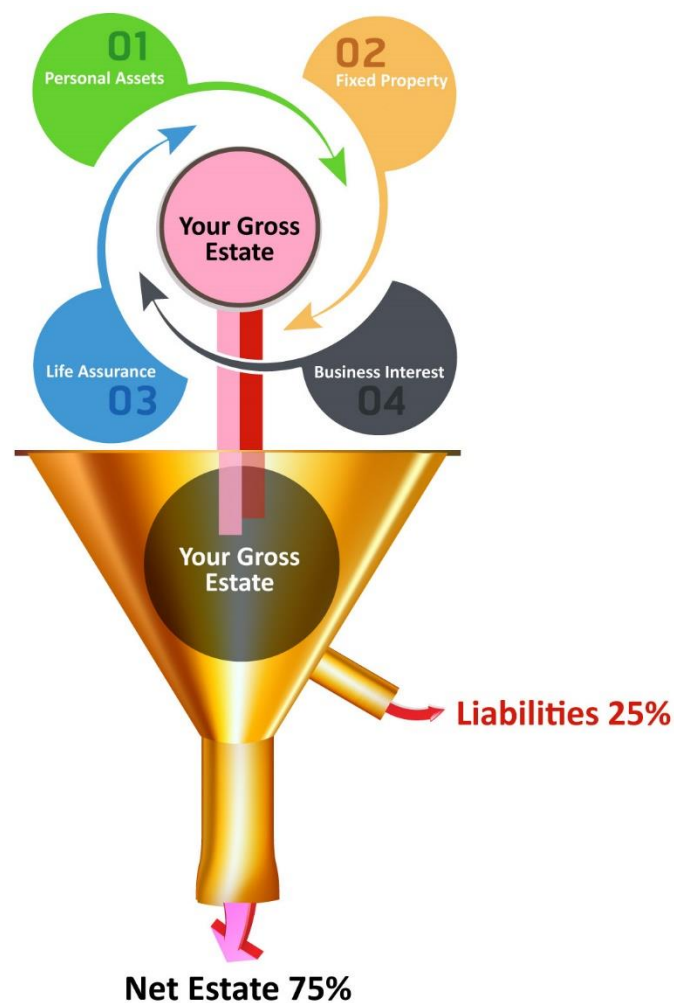


Diagram C. 4 is the ideal situation where the estate is substantially big and its planning regularly updated. The settlement costs are kept to the bare minimum, ensuring that the net estate preserved is larger and conveyed to the rightful heirs as quickly as possible.

TOOLS THAT MAY BE USED TO REDUCE THE COSTS OF THE ESTATE:

BEQUEATHS:

When the estate planner chooses to invoke Section 4A, an abatement applies before estate duty is calculated. A choice of Section 4Q entitles a spouse to bequeath all of his or her share of the estate to another, free of estate duty.

THE ACCRUAL SYSTEM: It is marriage out-of-community of property, commonly referred to as an “ante nuptial contract”. If you are married in terms of ante-nuptial contract you will be married out of community of property with accrual, unless you specifically exclude the accrual system.

The ante-nuptial contract is therefore divided into:

- Ante-nuptial contract with the “accrual system”. The “Accrual System” is designed to allow each party to be accountable for their own financial affairs while the marriage is on.
- An ante-nuptial contract that specifically excludes accrual means each spouse has complete control over the separate assets he or she owns.
- Marriage in-community of property; If you do not have an ante-nuptial contract, you are automatically married in-community of property. This means all assets and liabilities, including those acquired before marriage, are combined into a single estate, in which each spouse has half-share.

1. DISSOLUTION:

- At Divorce; At dissolution of the marriage the value of each spouses or person’s estate “at the time of marriage” will be calculated and then adjusted for inflation over the term of the marriage. The monetary value of the smaller of the estate will be subtracted from the larger – the couple will then split the difference. That means the spouse with the larger estate will pay the one with the smaller 50% of the difference in monetary value. If the wife’s estate is valued at R3 million and the husband’s at R13 million when the marriage is dissolved, the following is the calculation illustrates;

$$(13 - 3) \text{ divided by } 2 + (3 \text{ divided by } 2) = (5 + 1.5) = R6.5 \text{ million each.}$$

- At Death; The problems arise at the death of a spouse because the accrual contract precedes claims against the spouse’s estate by other family members or beneficiaries. The effect of having to settle the accrual claim before any other could lead to a situation where the estate is required to unnecessarily liquidate some assets. An accrual claim against the surviving spouse is a claim against the estate of a deceased spouse therefore it ranks as a liability that has to be settled before the estate passes over to the heirs or beneficiaries in accordance with the Will.

On the contrary, if the accrual claim is against the surviving spouse, it is a claim in favor of the estate and is regarded as property in the estate. That means the surviving spouse has to pay the accrual claim to the estate in addition to having to deal with the loss of a partner.

Example:

Spouse A (surviving wife)

Spouse B (deceased husband)

At marriage: Assets

Assets

N/L

N/L

Accumulation R5million

R35 million mostly fixed Assets

He bequeathed his estate to his children of previous marriage.

However, under the accrual system the surviving wife will be entitled to an accrual claim of R15 million

Calculated as follows:

$$\begin{array}{r} \text{R } 35\text{mil} \\ \text{less } \text{R } 5\text{mil} \\ \hline \text{R } 30\text{mil} \div 2 = \text{R } 15\text{mil} \end{array}$$

The claim must be settled before the heirs receive their share – clearly there will be an estate liquidity shortfall in this situation. If each spouse leaves their entire estate to the surviving one, then the accrual will not cause any liquidity shortfall on its own. The difficulty arises when one leaves some or all of his estate to a third party. An accrual claim can be settled in cash or assets or a combination of the two.

The problem in a case like the one above arises where there are only illiquid assets such as immovable property and business interest that are bequeathed to third parties and not the surviving spouse.

1. Donations exempt from Donations Tax:-

- Donations between married spouses
- Bona fide maintenance payments
- Donations to public benefit organisation and other charity organisation
- Donations where the donee will not benefit until the death of the donor (or will only benefit after the death of the donor)
- Property disposed of under or in pursuance of any trust.
- Donations between companies forming part of the same group of companies
- You may donate up to R100 000 worth of assets tax free to your dependents and or heirs annually.

2. Trusts:

A trust is a legal agreement between the owner of assets and the trustees. It is used where the owner of assets wants to benefit someone but want to entrust the control of those assets in someone else's hands. The person to whose benefit the trust is set up is called a beneficiary. The persons who control these assets are referred to as trustees.

Trusts have many varying uses and benefits including the main reasons for its creation such as:-

- pegging the value of your assets
- protecting your assets
- preserving wealth for future generations
- providing for minor children
- tax planning.

The main reason for the creation of trusts is for children's benefit:

- If you leave money to minor children, generally that money has to be paid into a government fund called the Guardian's Fund. The rate of interest here may not be the most competitive. The whole money (capital) is then given to the child only when he or she becomes of age 18. This period cannot be extended if you feel the children are not mature enough to inherit at that point in time.
- If the property you leave to a minor child is land, a flat or house and its value exceeds the prescribed minimum value, then the minor's guardian cannot sell it without the approval of the Master of the High Court. If the money was put into a

trust instead, the trustees can invest it much more profitably and if the child needs to use some of the money in the trust, they may do so as provided for in the Will.

- A trust may be setup to ensure that the child only receives the assets in a trust at an age pre-determined by the testator in the case of a testamentary trust.
 - A trust may also be created to benefit charity.
 - The testator may state in the Will how much he wants the trustee/s to be paid for his services.
-
- The time it takes to administer the deceased estate.
 - Estate duty and other tax saving may be achieved so far. Please note that a Proposed Bill
 - **Providence;** It refers to living expenses while the estate is being wound up. It is worth providing for interim income in order to cover payments of rates and taxes and other household expenditure for at least 18 months while your estate is being wound up.
 - **Maintenance of dependants:** Your earning power will be reduced or cease in the event of your untimely death, thus ensuring the living expenses of your family are fully taken care of is vital. As a rule of thumb, the minimum life cover you should have is the capital amount which if invested at say 10% pa, would replace your monthly earnings (e.g. monthly earning x 100 / 10 = required capital).
 - **Education Expenses:** A good education is not a luxury; it is your children's birth right. When your salary or business is no longer there to finance these costs, will your children's dream of a good education be realised? A sufficient cash lump sum will ensure that the goal of a good education for children will be met even when you are no longer there.
 - **Winding-up and death bed expenses:** These include funeral, tombstone and winding up costs such as executor's and conveyance fees, arrear taxes and outstanding medical expenses that could make up a large amount of cash which could dent your estate and life insurance could make provision for these expenses.
 - **Maintenance of surviving spouse:** By law spouses have a duty to support each other according to their respective means and the standard of living they are accustomed to in terms of the Maintenance of surviving spouse Act. This obligation continues after death in the form of a claim by surviving spouse against the estate of the deceased spouse. This then removes the lump sum from which chosen heirs would benefit. **Life insurance would ensure that chosen beneficiaries receive their bequests intact.**
 - **Insufficient capital for retirement.** Often when one spouse passes on, the surviving spouse finds that the retirement capital has largely been spent or some pension may have fallen away. It is vital to anticipate this eventuality in order to provide for it.
 - **Buy-and-sell-agreements:** Life assurance is an ideal funding instrument for co-owners of a business to buy each other's respective interest upon one passing on. This makes sure that the deceased's family realises the true value of the business while ensuring continuity of the business between surviving partners, without having to settle for bringing into the business a surviving spouse or the deceased's child who may have no knowledge of the business or have a conflicting philosophy regarding the running of the business. If properly structured, these policies have the added advantage of being free of estate duty. Buy-and-Sell assurance as a means of providing liquidity in the estate of a business partner.
 - **Key Person/Man assurance:** Most business would remember to insure their equipment, machinery and their premises. Yet they usually neglect to insure their most valuable assets –

their valued personnel who often possess scarce skills. In the unfortunate event of that valued employee dying, a policy on that person's life will inject the capital necessary to recruit a person well suited to the position on the one hand while bolstering the business in case it loses customers who were close to the deceased employee only. When properly structured, such policies are also estate duty free.

- **Insolvency Protection:** R50 000 check out of the aggregate value of all life policies or their proceeds is protected on the insolvency of the life covered or his / her estate, provided the policies have been in force for 3 years or more
- **Divorce Orders:** Most divorce agreements include a clause stipulating that the divorce order is binding on the estate of the parties. Examples are;
 - Instruction for one party to pay maintenance to the other for the remainder of his/her life.
 - The deceased to pay to the children of a first marriage until they are self-supporting
 - The deceased to pay their medical scheme contributions until the aforementioned event.
 - Thus there will be a claim against the deceased's estate and this claim will rank prior to bequests and will compete with claims of family members arising from a subsequent marriage. Life cover should be considered to cater for such eventuality.
- **Accrual Claim:** On dissolution of a marriage concluded in terms of the accrual system, the spouse with the smaller accrual has a claim against the other for the difference in growth of their respective estate. Should the spouse with a larger estate die first, his/her estate will have a debt which must be paid to the survivor prior to the payment of bequests. Life cover caters for this. Conversely, should the spouse with the smaller accrual die first, the survivor him/herself carry the same debt to the deceased's estate. If his/her assets are illiquid, he/she may have to sell certain assets to raise the required cash. Life cover on the deceased's life would ensure that the surviving spouse has the necessary cash to meet this claim.
- **Beneficiary Nominations:** Allow policies to be paid directly to the intended recipient much sooner.
- **Sinking Fund:** A sinking fund is money set aside for the purpose of settling the business debts.
- **Buy-and-Sell assurance** as a means of providing liquidity in the estate of a business partner.

2. Other ways to limit Growth in the Estate:

- Sale of growth assets
- Transferring growth assets to an inter vivos trust by sale or donation
- Swapping growth assets for assets of equal value that increase or grow in value at a slower rate.

NB ! Financial advisors are advised to consult with tax or legal experts on above matters before dispensing advice to clients.

Insolvent Estate:

An insolvent estate is one whose assets are not sufficient to pay debts, taxes and administration expenses due.

What is the Remedy in Insolvent Estates;-

If one dies insolvent the following could happen:

After death any debts and related administration costs that are due must be paid from the estate before any other claims on the estate can be met and before the heirs get their share, whether a Will is in place or not. If, however, one dies and has no assets, then the debts die with the deceased and cannot be repaid. Your relatives cannot be held liable for your debts unless you have signed surety for those debts.

- Creditors are entitled to attach the properties of the late estate.
- Creditors have a right to attach the proceeds of an insurance policy where the estate is the nominated beneficiary.
- Certain assets, however, enjoy the protection from attachment in terms of the Insolvency Act. For example proceeds from a life insurance policy where a beneficiary is nominated by the insured.
- Where parties are married in community of property, both estates are declared insolvent, which means the entire joint estate is considered insolvent.

5. LIFE ASSURANCE AS SOLUTION TO PROVIDE FOR THE SETTLEMENT COSTS OF THE ESTATE;

Perception of Risk:-

<u>VALUE</u>	<u>ITEM</u>	<u>RISK</u>	Action
R 0	Valueless (e.g. Stone)	R 0	None
5-00 pencils Self insure)	Of little value (e.g. Pencil)	5	Buy more (i.e.
200 000	Motor Vehicle	200 000	Insure it
360 000 360 000 p.a.	Education Retirement Annuity,	360 000 360 000	Investment Retirement
	Fund.		Pension
Priceless	Life		Insurance

We cannot avoid all risks associated with our day to day living, fortunately those risks we cannot avoid, can be managed.

The following are known risks associated with professional practices:

- Disability
- Sickness
- Loss of Income
- Retirement Income
- Untimely Death which could result in;-
 - Loss of Income for Dependants
 - Loss of Assets

Definition of Insurance:

Insurance is a promise to compensate the insured risk for potential future losses.

Concept of insurance:

It is a social device providing financial compensation for the effect of misfortune.

The payment is made possible from the accumulated contributions of all parties participating in the insurance scheme.

Purpose: To spread risk among a larger group of similar insured risks.

Contract of Insurance: Commonly referred to as insurance policy, is a promise by the insurer to compensate for specific potential future losses in exchange for periodic payments.

Life assurance is the single most important financial instrument that can solve the financial problems arising from the death of the owner of an estate by ensuring that sufficient cash is available at the right time in the most cost-effective way to provide for settlement costs and capital needed by dependants for varying needs.

Whole Life Policy: This type of insurance cover will continue for the rest of your life provided you pay your premiums duly. The sum assured (sometimes referred to as the sum insured) is the amount you are covered for on your insurance policy. For example, in the case of a life insurance policy, it will be the amount that would be paid out after your death.

Disability: Disability, in the context of insurance, refers to the all-embracing term covering impairments, activity limitations and participation restrictions.

- **Impairment** is a challenge in the body structure or function such as loss of limbs, heart condition, liver or kidney failure. This describes a medical condition you have suffered or an event that has occurred that has reduced your functionality.
- **Activity limitation** is a difficulty encountered by a person in executing a task or action (eg. eating and, washing yourself).
- **Participating restriction** is inability to get involved in life situations such as working.

Annual Contribution Increase:

This is the percentage by which your premiums will increase each year. There are two main types of premium increases that may apply. First, the increase could be linked to how you have chosen to pay for your cover. For a level amount of cover, you can choose whether you would like to pay a premium that will stay the same, or you could choose to have a lower premium that will increase over time. The second type of increase is where your premium increases in line with your annual benefit increase.

Annual Benefit Increase:

This refers to the percentage your cover amount, or “sum assured”, which will automatically increase each year. For example, if you initially select a cover amount of R1 million and an annual benefit increase of 10%, your cover will grow from R1 million in the first year of your policy to R1.1 million in the second and so forth. The advantage of an ABI is that it allows your cover to grow alongside your insurance needs each year without you having to have your application and risk reassessed each year.

Financial Needs Analysis:

This is a process where an accredited financial adviser assesses your current financial situation and determines what financial products you need to protect your financial needs, and to achieve your financial goals and aspirations. An FNA leads to a financial plan that details your financial needs and how these can be met.

First Assured:

First assured means the person who is covered by an insurance product or benefit. Some insurance products provide the option of covering more than one person on the policy. In such cases, “first assured” is simply the reference to the first person listed.

Underwriting of risk:

Underwriting is the process that insurers follow when they are deciding if they will accept your application for an insurance product and whether any special conditions will be attached. Special conditions could include extra premiums (known as loadings) that might need to be paid or additional exclusions that need to be applied. Underwriting may involve obtaining any information related to assessing the risk of insuring you. Typically this includes:

- Details about your health;
- Details about your job;
- Any lifestyle information. For example, do you participate in dangerous leisure activities like skydiving; and
- Financial information to ensure the cover applied for is appropriate to your situation.

Chapter 5

DISTRIBUTION PLANNING

DISTRIBUTION:

The estate distribution plan is one that involves the handing over of assets and or the benefits that accrue from the estate to the rightful beneficiaries and or heirs in the lifetime and or after the passing-on of the owner. It is the apportioning of the estate of the deceased among the persons entitled to share in it.

We often rush into drafting trusts, wills, testaments and completing beneficiary appointment forms without thorough consideration of the consequences of such action for those left behind.

The balance accrues to your family.

Distribution is here sub-divided into;-

- Beneficiaries:
 - Buy and sell agreements
 - Transfer of ownership

- Will or testament
- Completed and signed beneficiary appointment forms
- Maintenance; -
 - Interim income
 - Children and other minor dependant's education expenses.
 - Children and other minor dependant's maintenance.
 - Surviving spouse's income
- Claims:-
 - Divorce orders, accrual claims
 - Maintenance payments

DISTRIBUTION CHANNELS:

These are conveyer belts that may be used to distribute a deceased person's estate and these are;-

- a beneficiary clause
- through intestate / succession law -- the remaining parent/partner is the natural guardian of minor children.
- a will
- donations;
 - between married spouses
 - up to R 100 000 tax-free annually to your dependants or heirs
 - entities not classified as public companies may donate up to R10 000 tax-free per tax year.
- final distribution to trusts, guardianships and beneficiaries

WHAT IS A WILL?

A will is a legal document which contains the free and independent wishes of the person drafting it and refers to the distribution of the assets in his / her estate upon his / her death. It is an express document signed by a person or persons instructing how the distribution of his/ her or their assets should be done and who must benefit.

A Will is an essential tool for purposes of ensuring a directed dispatch of the deceased estate.

A person who dies leaving a valid Will is said to have died 'testate', while one who dies having left no Will has died 'intestate'.

The discussion of a will as an estate planning tool is dealt with in a cursory manner given the limited space in this manual.

Dying intestate means dying without a Will; When a person dies without a Will certain rules in accordance with the S. A. law will apply such as the intestate succession rules. These rules basically stipulate that the immediate relatives benefit first, namely the surviving spouse and children. In the absence of a spouse and children, the parents and the brothers and sisters will benefit. If these people are also not alive, then the next nearest blood relatives become beneficiaries and or heirs. The type of a contract of marriage also has a bearing on the determination of who gets what. What

complicates the process of distribution further is the subject of recognised marriages of people of the same sex as well as people who cohabit. To rub salt to the wound, dying intestate may render itself open to claims from unknown sources, thus delaying the process of winding up the estate and consequently increase the settlement costs.

Dying testate:

A Will, according to the principle of “freedom of testation”, which provides that every person has freedom to leave his or her assets to whoever he or she chooses gives a person flexibility that intestate succession does not. You are also entitled to change your will when and as you wish, provided it is done within the law.

Massing of Estate:

Two or more people can combine their estates into one (called a mass) which they may leave to another person or persons. (e.g. two spouses may mass their estates and leave the mass to their children). The problem of massing is that after the death of the first dying testator / spouse, the surviving spouse cannot, in a later Will dispose of her or his share of the massed estate.

Joint Will:

It is situation where two or more people draw up a Will together. Such Wills contain the wishes of two or more people after death. The most common joint Will is one made by the spouses, especially those married in community of property. Although one document, two Wills are contained in the said document.

The advantage of a joint Will is to avoid the cost of drawing up separate Wills. Freedom of testation allows each person to change the joint Will only to the extent of his or her share of the joint estate.

Usufruct:

A usufruct makes a person the owner of property while giving another person the right to use it. At the end of the specified period of time, the person using the property must hand it over to its owner and that means;

- The first beneficiary is not the owner of the property. He /she simply has the right to use and enjoy the fruits of the property.
- The second beneficiary is always the owner of the property

Example: Lerato owns a block of flats over which he has created a legal institution of a usufruct in his Will. This is to allow his spouse to earn rental income in her life – subject to the condition that his children will inherit the flats when she dies.

A Fideicommissum is also a legal institution in terms of which the person drawing a Will transfers a benefit to a particular beneficiary for a stipulated period and this beneficiary technically becomes its temporary owner with the right to use and enjoy it. At the end of prescribed period of time, the benefit transfers to a further beneficiary, who becomes the next owner. Thus the first beneficiary owns the property for a certain period of time before the second beneficiary becomes the next owner.

Example: Mr. XY has included a fideicommissum in his Will where he leaves ownership of his block of flats to his children to manage, subject to the condition that when they die, the flats belong to the next generation. Note that a fideicommissum limits the transfer of immovable property only and that the third generation inherits free of such restrictions.

1. Guardianship; -

Guardianship simply mean care-taking (i.e. taking care of someone else and or someone else's property).

- A court may order someone other than a minor child's parent to have custody of a child and or manage the child's property for a certain period.
- When a person of full age has a mental disease or is psychologically challenged and is incapable of managing his or her own affairs, a guardian can be appointed by the court, to manage the assets owned on his or her behalf.

A guardian fund is one created to keep safely and administer funds paid to the Master of the High Court on behalf of various persons, those known and those unknown, who are incapable of managing their own affairs, unborn heirs, missing and absent persons, including those having an interest in the moneys of a usufructory, fiduciary or fideicommissioory nature. The Guardian Fund will pay out the capital to the child when he/she is 18 years or more. If you have a minor child you may nominate a guardian for him/her in a Will.

Bequests to Inter Vivo Trust (living trust)

A living trust (also known as inter Vivo trust) is one created during the lifetime of the owner of assets.

Testamentary Trust: This type of trust is created in terms of the instructions of the testator/testatrix and kicks in only after his/her death.

It must be mentioned however that Trusts, for all intents and purposes, are not a "quick fix" solution to the planner's wishes and ideals. Appropriate advice must be sought to determine the suitability or not of a Trust in estate planning.

Exclusion from Community of Property Estate. You may decide to leave your property to someone and exclude that property from their joint estate.

Example: You wish to give assets to your daughter who is married in-community of property, but you do not want your son-in-law to be co-owner of that asset. It is permissible to state in your Will that her inheritance is excluded from the control of her husband.

These options give the testator a wide scope for the creation of a Will that will best suit his/her wishes.

The Will must;

- Be in writing
- Be signed by the person making the Will
- The testator must sign on every page
- Be signed by at least two witnesses who must be at least 14 years old. The testator and witnesses must sign in each other's presence. The Witnesses need only sign on the last page of the Will and must not be beneficiaries in that WILL.
- Be accurately dated.

Revocation:

To revoke your Will means to cancel it. There are a number of ways in which you may change part or the entire Will. Your last dated will should always be your last will.

Beneficiaries: (Legacy and Inheritances)

There are two types of beneficiaries, namely the legatee and the heir.

A legatee is a person who inherits a specific item or a specific amount of money. The item or money is called a legacy.

An heir is a one who inherits the rest of your estate after the legacies and all claims and settlement costs have been paid. The balance that goes to the heir is an inheritance.

Conditional Benefits;

You may leave your property to someone subject to a legal condition.

Example: You may choose to leave the balance of your estate to your children subject to each child meeting the stated condition, meaning that child will not be entitled to inherit from the estate if that condition is not met. If, however, the condition imposed in your Will is illegal, the law will then give the property to your beneficiary without the condition. An example of an illegal condition is that which states that an heir will only receive the sated property on condition he never marries someone.

Advantages of the Will

1. You decide who gets what and in what proportion.
 - A Will is the only means through which a person drafting it (i.e. the testator or testatrix) can make sure his/her/their estate will go to those he /she /they want to benefit after his/ her /their death.
 - A Will can also be used as a tax planning instrument. The deceased's estate duty can be reduced by means of bequests in the Will to a surviving spouse or charities and thereby optimizing the use of the abatement.
 - In an In-community of Property marriage, an uninsurable spouse may bequeath his/her 50% of the estate to the surviving spouse, thus ensuring there will be no estate duty payable on his share of the estate when he passes on. This may enable the insurable spouse to take sufficient insurance on his/her life to cover all liquidity needs arising from the estate. If you do not have a Will you cannot benefit from these planning strategies.
 - In the absence of a valid Will at death, the estate will be inherited in accordance with the intestate succession rule. These rules can be both inflexible and impractical and assets cannot be distributed until the rules are observed. This can lead to delays and increased costs to the estate.
 - With intestate succession, inappropriate people may benefit from your assets in contrast with the wishes and intentions expressed by the deceased during his/her lifetime.
 - The Will may also be used to provide for maintenance claims in terms of the Divorce Order.
 - The Master may also require the executor to provide security (such as a security from an short-term insurance company for at least the value of the assets reflected in the inventory), causing further delays and costs. A Will on the other hand usually contains a clause exempting the nominated executor from having to furnish security.
 - Still grieving the loss of a loved one, family member/s faced with many requirements from the Master often have no idea where to start. The surviving spouse may also

have to contend with having to administer the estate unassisted – there is no substitute for a competent executor

- The deceased's estate may also be open to contest by outsiders and or third parties in the absence of a valid Will.
 - In the absence of a valid Will where a person has minor children, their inheritance must be paid into the Guardian's Fund until the child reaches majority. The rate of interest may be low; the level of service extremely poor, making access to the fund difficult. Another problem could arise where the wife and major children are forced to sell valuable property in order to raise the money to be paid into the Guardian's Fund.
 - An heir may be immature or handicapped and, in a Will, the testator can set up a testamentary trust which stipulates how and when assets should accrue to him/her.
2. You have a choice to benefit someone other than a relative.
 3. You may donate assets to a charity organisation.

31

WHY SHOULD ONE HAVE A WILL:

Nobody knows when he or she will pass on – however death is certain. The timing is thus the problem.

A Will becomes vitally important in that when one passes on – the following benefits of having a Will happens:

1. Your assets will be distributed among the people chosen or the causes you want to recognize, such as charity etcetera.
2. Your children will be properly cared for in accordance with your wishes. In the absence of a will your children survival may be placed at the mercy of the state or unsuitable relatives.
3. A trust could be created to cater for your life assurance payout so that whoever is tasked with the caring of your minor children has controlled access to the funds until they come of age.
4. You will save your family time and money because, as part of your 'estate planning' a Will ensures that distribution of the assets takes place quicker and saves you're the settlement costs.
5. A Will is affordable and easy to form/create and this can be done by your bank, your trust company for a minimal fee.

Executorship:

Choosing the appropriate executor is a very important part of the distribution planning of an estate. The executor must, ideally, be a professional who is familiar with the process of administration of the estate and can clearly understand the instructions contained in a Will, to ensure that your affairs will be fulfilled precisely as you intended.

An executor is the person or institution appointed in terms of the last Will to administer the estate of a person who has died. In the absence of such predetermined nomination the Master of the High

Court or a lower court will, depending on the size of the estate, grant a letter of executorship to those people who will be authorized to deal with the estate and who have agreed to accept the task.

The executor is an important appointee and may face certain risks as he / she carries out the tasks assigned to him / her.

Before one accepts an appointment as Executor, the following need to be considered:

- The powers
- Duties
- Risks and
- Responsibilities of an executor that take effect once the Master of the High Court has issued an official executor's letter of appointment.

The appointment ends automatically when the executor dies or is discharged from the position by the Master or a court. (e.g. the Master will cancel an executor's appointment if the latter is declared legally incapable of performance)

Responsibilities: The appointed Executor is responsible for payment of all taxes, even where all funds have been distributed. In such cases the executor will have to recover payment of taxes or any amount paid in error from heirs and creditors, and if unsuccessful, will be personally liable for payment thereof, including the legal expenses incurred.

Duties of the Executor: Any person who has a copy of the deceased Will is required by law to send that Will to the Master of the High Court. The Master is a state official in charge of winding up estates of deceased persons. The Master has the sole right to appoint an executor, usually a member of the family where the Will does not name the executor.

Where the executor is named in the Will that executor must report to the Master who must first confirm the appointment before the executor can proceed with his duties.

These duties and responsibilities do not end when the estate has been wound up. The executor must apply for release in writing and the appointment ends only when the Master has released the Executor in writing. If an appointed Executor resigns in writing after appointment, he will be released only after the Master has appointed a substitute Executor.

Liquidation and Distribution Account: This account, drawn up by the executor, is basically a statement of what the deceased's estate owes and what it owns. It is the duty of the executor to, after establishing what the deceased owes at the time of death, to notify the creditors through advertising and to submit their claims to him.

The debts of the deceased are added up, plus the relevant costs and taxes owed and these are subtracted from the assets. If the estate is having a negative balance in the account, it may be declared insolvent, but if the balance is positive, it will be divided among the beneficiaries in accordance with the instructions of the Will.

Should the estate have insufficient liquidity to meet its settlement costs, the executor's hand may be forced to sell some assets, often at low prices, to raise the required cash.

The executor sends the account to the beneficiaries and the Master of the High Court. He then advertises, in the Government Gazette that the account will be available for inspection in the Masters office for three weeks. Any interested party can inspect the account and if nobody raises an

objection to it and the Master is satisfied with it, the executor pays the creditors and distributes the balance among the beneficiaries. After this, the executor is paid a fee from the estate for the job done and released of his duties by the Master.

Risks Associated with Executorship: The risks that Executors may face differ from one estate to another. Only in the case of small estates heard in lower courts, including estates in community of property where no Executor has been appointed will the duties and risks of the Executor's be comparatively few.

- Knowledge of certain laws and Acts is necessary for the Executor to navigate through often complex procedures and processes necessary to effectively wound up an estate.

Fines that may result from an executor's transgression of certain sections of Acts are set out in the Estate Act and other related Acts.

The Executor may also be held personally liable for damages suffered by creditors, beneficiaries of the estate resulting from the former's negligence, maladministration and other transgressions.

The executor cannot depend on protection from the Master if he, or even the Deeds Office or the S.A. Revenue Services, make an error in winding up an estate. It is therefore recommended that an executor or his agent, must have strong legal and financial resources for possible liabilities (e.g. a financial institution).

WINDING UP AN ESTATE

INTERSTATE (No Will exists)	TESTATE (A Will exists)
1. <u>Loved one dies</u>	1. <u>Loved one dies</u>
2. Next –of-kin registers estate with Master of the Supreme Court	2. Obtain will after burial
3. Inform nominated executor of death	3. Inform nominated executor of death
4. Master appoints executor	4. Executor registers the estate with the Master of the Supreme Court
5. Assets are distributed in terms of Intestate Succession Act	5. Executor is confirmed by the Master
	6. Assets are distributed.

A CHECLIST for drawing up a Will;

- a) All names must be accurately printed in their order
- b) Identity numbers must be precise
- c) Sign the Will on every page
- d) Date the Will

- e) At least two witness who must be at least 14years old, must sign on the last page of the Will
- f) State who will get which assets when you die – stating the full names dates of birth Identity numbers and their relationship to you
- g) Appoint substitute beneficiaries in case your preferred beneficiaries die before you
- h) If you choose to exclude the spouse of your beneficiary from sharing in your property, say so in your Will.
- i) You may appoint a guardian for your minor children
- j) Consider whether you want to put your property into a trust especially where you have minor children. Nominate your trustees and
- k) Clearly state what you want them to do with the trust property.

CONCLUTION and GLOSSARY:

Personal financial planning is a financial blue-print that helps identify financial problem areas and enables one to take advantage of options available to realise personal financial goals.

Estate planning the other hand involves the co-ordination of all the various types of property into a single but smoothly working plan of distribution. The work will involve a thorough look at a person's estate assets and stated estate objectives.

THE JOB OF A FINANCIAL ADVISOR:

- a) Assist in clarifying a person's current financial situation by collecting and assessing all relevant financial data, such as assets and liabilities, tax returns, records of share transactions, insurance policies, pension or retirement plans, wills etc.
- b) Providing sufficient liquidity in an estate by means of a suitable life assurance policy as the most sensible, practical and cost effective way of covering that risk. The proceeds of such policies are free of capital gains tax.
- c) Doing a basic liquidity or capital needs analysis and recommending an appropriate life assurance product to cover the shortfall
- d) The financial planner must also look at the following need areas: Retirement and Investment Planning, Health Assurance; Distribution Plan.
- e) Establish where the person wants to go by identifying financial and personal needs and goals, such as providing for children's education, providing for retirement or reliving present financial pressure to help maintain current life style. These considerations are important in determining the best financial planning strategy for that person.
- f) Identifying financial problem areas that could make the goal of financial independence unrealisable, such as too little too much insurance cover or a high tax burden. Cash-flow may be inadequate, current investments in appropriate vis-à-vis your personal financial goals. These problems must be identified before solutions can be found.

- g) Provide written recommendations and alternative solutions.
- h) Implement the strategy to ensure the person realise their goals. A financial plan can only be of help if the recommendations are put into action.
- i) Do a periodic review (at least once a year) of financial plans to make sure the person achieves his/her goals

The Benefits of Estate Planning:-

- ❖ Estate planning ensures that there is sufficient cash (liquidity) available at death to settle debts and maintain your dependants
- ❖ Enables you to decide who should inherit what and in what proportion.
- ❖ To save as much of estate duty and capital gains tax as is possible.
- ❖ To ensure that only nominated beneficiaries (heirs) to the estate benefit.

The job of a financial advisor includes, among others, analysing a person's assets and liabilities, paying close attention to the conservation and ultimate distribution of the assets of his or her estate. Central to this analysis is the conservation and final distribution of the individual's estate in accordance with his wishes.

The entire process must be handled with great care and confidentiality.

GLOSSARY:

African customary law: The traditional black African legal system that has existed in South Africa before the arrival European colonizers.

Beneficiary: A person who inherits property.

Community estate of joint estate: When spouses are married in community of property, all their property falls into a joint estate in which they each have a half share.

Conditional Benefit: A benefit which can only be received by a beneficiary if a certain condition is met.

Customary law marriage: A marriage between black Africans according to customary law.

Deceased estate: The estate of a person who has passed on.

Estate: The assets and debts of a person or family

Executor: A person who winds up the estate of a deceased.

Fideicommissum: A legal institution in terms of which the testator makes a beneficiary the owner of property, subject to the condition that at the end of a certain period of time, the property is owned by the next beneficiary.

Freedom of testation: A principle of law that says that people generally have the right to leave their property to whoever they want to on their death.

Heir: A person receiving or entitled to receive property or inherits the rest of the estate after the liabilities have been paid.

Inheritance: The benefit that an heir receives.

Intestate: Dying without a valid Will.

Intestate succession: The law that tells us who the beneficiaries are when a person dies without a Will.

Joint Will: A document containing the wills of two or more people.

Legacy: The benefit that a legatee gets

Legatee: A person who inherits a specific item or a specific sum of money.

Liquidation and distribution account: An account drawn up by the executor. It sets out all the assets and liabilities of the deceased estate.

Massing: A will made by two or more people combining their estates into one mass which they then leave to another person.

Mater of the Supreme Court: A state official in charge of the winding up of deceased estates.

Patrilineal succession: A system of succession in which male relatives are the heirs.

Revocation: The cancelation of a Will.

Substitution: The appointment of an alternative beneficiary.

Succession: The law which explains what happens to a person's property when he or she dies.

Testate: Dying with a valid Will in place.

Testate succession: The law that sets out the requirements for the making and changing of a valid Will and explains what can be put into a will.

Testator: A person who makes a will. Must be at least 16 years old and be mentally capable of understanding the act.

Trust: A legal institution in which property is handed over to a trustee to control on behalf and in favor of a beneficiary.

Trustee: The person who administers the assets in a trust, not for his own behalf, but in favor of someone else.

Usufruct: A legal institution in which someone, who is not the owner, is given the right to use and enjoy property for a certain period of time. At the end of this period, the property must be handed over to the person who owns it.

Compiled by

CHOLETSA CAPITAL C

STATEMENT OF ASSETS AND LIABILITIES:

Non-Income Producing Assets;

R

Fixed Assets: Residential Property/s

- 1.
- 2.
- 3.

Movable assets:

Motor vehicles; 1.

2.

3.

Household goods;

Personal assets; e.g. Jewelry, firearms @ cost

Other

Income Producing Assets:

Commercial buildings

Machinery and Equipment

Business interest, Shareholding

Net capital of business

Trading stock

Flats for letting

Farming (commercial)

Shares

Savings and investments

Life Insurance

Retirement Annuity

Group life cover

Total Assets:

Less Liabilities:

Bank overdraft, credit cards

Creditors

Loan accounts

Taxes

Municipal account

Last expenses

Master's fees (600 maximum)

Executor's fees (maximum 3,9% of gross estate)

Other

Net Estate: