

LEAVING A LASTING LEGACY

Mandy Dix-Peek, the head of Fiduciary at Private Clients by Old Mutual Wealth, has almost 30 years' experience in the fiduciary field and has a legal and tax qualification.



Estate planning conjures a variety of emotions: worry, fear and sadness, to name a few, making it an easy topic to defer. Yet, estate planning is one of the most important aspects of wealth management as it ensures a meaningful legacy. And although a will forms a significant part of any estate plan, it is too often undervalued. MARANA BRAND spoke to Mandy Dix-Peek, head of Fiduciary at Private Clients by Old Mutual Wealth, about some key considerations to ensure that your assets and loved ones are ultimately taken care of.

“JUST AS ACCUMULATING wealth takes careful planning, so too does preserving and transferring wealth to future generations,” says Mandy. “And while a will is a relatively straightforward document, it’s the most crucial document you’ll ever draft and sign in your life so you need to ensure that it is valid, updated and clearly reflects your wishes.”

DISCLOSURE IS KEY

Estate planning for high net worth individuals specifically can be quite complex and it is therefore important to partner with the right fiduciary specialist to help you put appropriate structures in place and create a suitable wealth transfer strategy aligned to your objectives. According to Mandy, this is where full disclosure becomes key as in order to be effective, your fiduciary specialist needs to know everything about your assets, your life and even your family dynamics.

“The information-gathering phase of creating a will and estate plan is crucial. Your fiduciary specialist should have a comprehensive understanding of all aspects of your life, even seemingly insignificant details. For example, you may have a trust and believe that it’s not included in your estate, but there may be a loan account in that trust that forms part of your estate. Similarly, you may own shares in companies that you’ve forgotten to mention, but which will become apparent after your death. It’s often the seemingly small details that can cause significant issues if they’re not addressed,” explains Mandy.

TAKING FOREIGN ASSETS IN ACCOUNT

With South Africans increasingly acquiring assets offshore, many may be unaware of

the unforeseen tax and fiduciary hurdles associated with ownership of foreign assets.

“This is more than simply an annoyance in the case of deceased estates. Complications can easily hold up processes when multiple jurisdictions are involved, effectively jeopardising the financial well-being of dependants and affected family members,” Mandy explains.

Currently, by law South Africans don’t need more than one will if they have assets locally and elsewhere in the world. However, a South African executor is only permitted to manage matters and assets that are held domestically. An offshore asset would, therefore, have to be handled by a professional in that jurisdiction or permission would have to be sought for the South African executor to deal with assets. This process can take time and can draw out the estate administration further.

Generally, if someone dies without a foreign will and has assets in a country that recognises South African wills, their assets will devolve according to the South African will stipulations. However, some territories that are popular with South African investors, such as Portugal and other European countries, have forced succession in their inheritance laws. “If someone dies without a will in countries with forced succession, their foreign assets may devolve according to the laws of the country in which those assets are situated,” cautions Mandy.

Another factor for South Africans to consider when planning their estates is double taxation that occurs when winding up an estate. To avoid this, investors should eye jurisdictions with whom South Africa has double taxation agreements (DTAs). Currently, South Africa has DTAs

with Botswana, Lesotho, Swaziland, UK (including Northern Ireland), the USA and Zimbabwe.

According to Mandy, there are a few things all South Africans should consider when planning multi-jurisdictional estates. “The first port of call is engaging with specialists and getting advice on the best course of action. Broadly, this will involve the jurisdiction of choice, the nature of the assets and DTAs. Depending on how these three circumstances stack up, a decision needs to be made about whether a will in the foreign jurisdiction is necessary,” she says.

SHARE YOUR WILL WITH LOVED ONES WHILE YOU’RE STILL ALIVE

Mandy believes that people should be upfront not only with their fiduciary specialist, but also with their family and their heirs. “Conflict and expensive and time-consuming litigation contesting your will or your competence as a testator can be avoided by taking the brave decision to sit down with your loved ones and explain why your will has been drafted in a certain way. If your heirs know what they are inheriting they can also help you structure and word your bequest in the most cost-effective and tax-efficient way for them and their unique circumstances.”

While disclosure might seem difficult to many, it provides loved ones with an opportunity to undertake an effective testamentary process, not only from an emotional acceptance point of view, but also from a practical, legal, tax and cost perspective. “For example, disclosure provides an opportunity to share the contents and intentions of details like living wills, ensuring that everyone knows what to do

in the event of you being incapacitated. It’s also important for your heirs to understand how your living will works in tandem with your insurance policies, as some policies for terminal illness stipulate specific periods of care and treatment, and if these aren’t met, the policies might not pay out,” Mandy explains.

FINALISING AN ESTATE TAKES TIME

Heirs often believe that they will receive their inheritance immediately after someone passes away. However, transferring a property to an heir, for instance, can only happen when the entire estate has been finalised, which can take up to two years.

“If there are no issues with transparency, amnesty, VDPs or taxes, and no family disputes or litigation, an estate can be finalised within 12 to 18 months,” Mandy says.

This, however, does not imply that dependents left behind will be unable to access money to cover living expenses and monthly deductions. “Our wills are quite lengthy, but we will not omit a single clause; every clause authorises the executor to use his/her discretion in any eventuality, like permission to pay advances to the heirs while the estate is being finalised. So make sure the person who drafts your will and estate plan is a specialist and includes all the necessary clauses and implements the most appropriate structures.”

According to Mandy, taking these factors into account will go a long way towards ensuring that you leave a legacy of support and gratitude rather than inconvenience, conflict, expenses and regret. **V**

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