

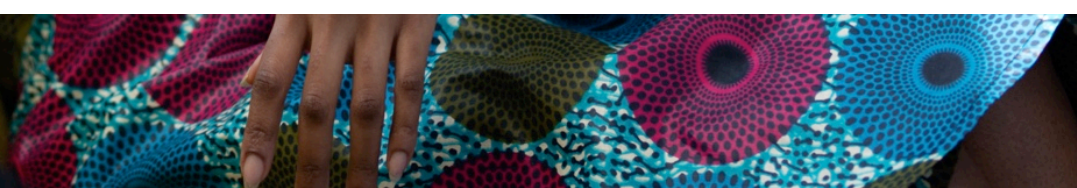


OLDMUTUAL

ESTATE PLANNING

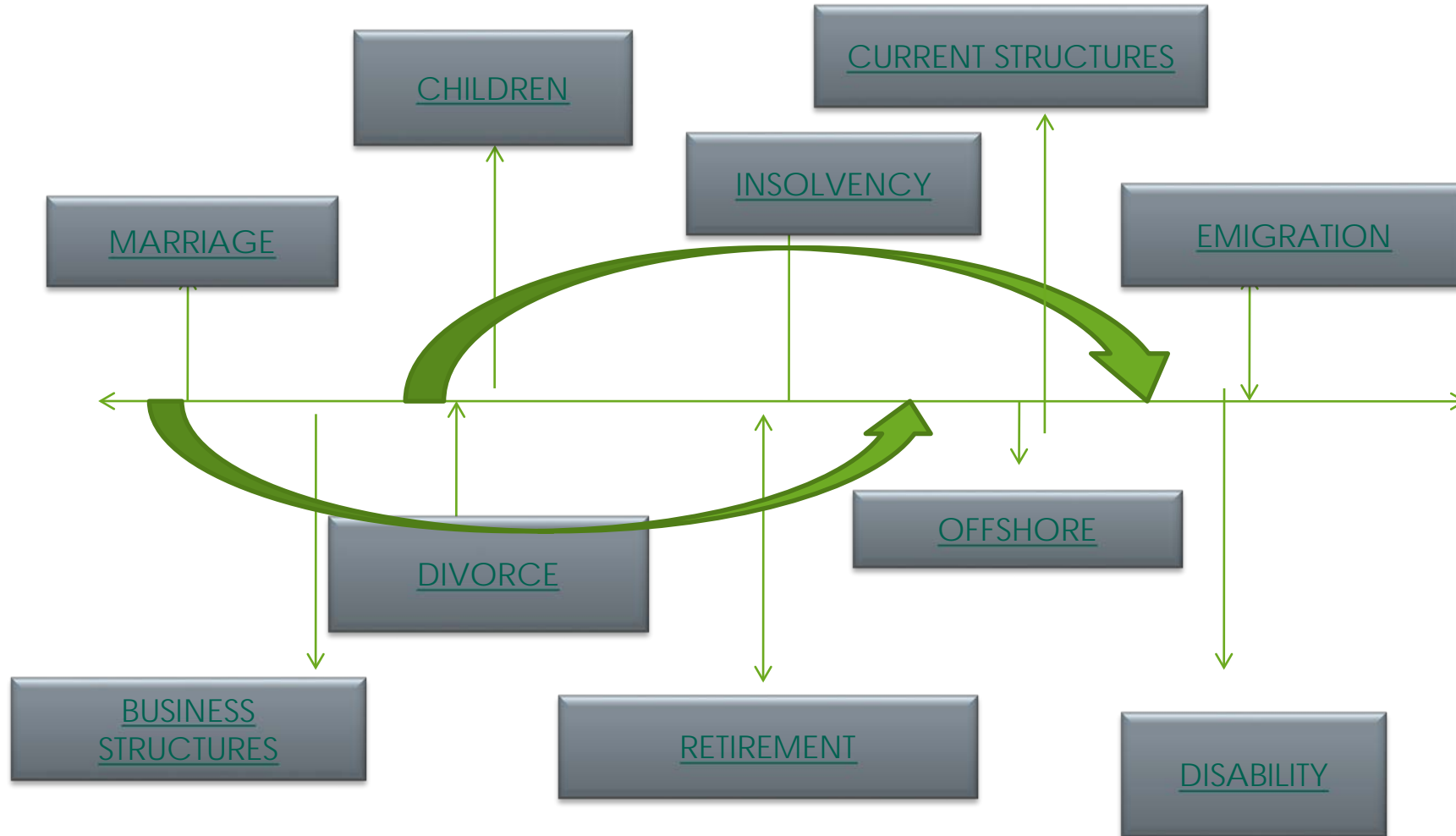


DO GREAT THINGS EVERY DAY





WHY ESTATE PLANNING...BECAUSE LIFE HAPPENS!





WHAT IS ESTATE PLANNING

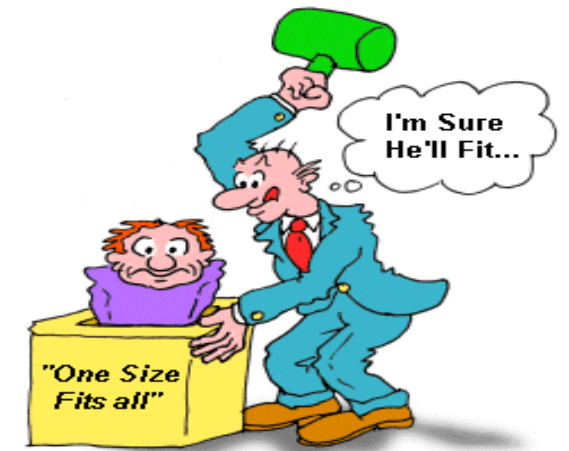
■ What is it all about ?

1. Preserve, increase and protect the estate planner's assets
2. Ensure the most effective and beneficial distribution thereof to beneficiaries according to planner's wishes

■ Common misconception:

That it revolves solely around the making of a Last Will and Testament OR
That it is purely to reduce estate duty

- It is NOT a once-and-for-all activity
- It is also NOT a ONE-SIZE-FITS-ALL activity
- It is a strategic exercise, which involve commitment from all the parties involved.





WHO SHOULD BE INVOLVED ?

- A TEAM:
 - The Estate Planner
 - The client's spouse
 - Accountant/Auditor
 - Attorney/Legal Adviser/ Fiduciary Specialist
 - Financial Adviser





AIMS OF ESTATE PLANNING

- To achieve efficient deceased estate administration
- To appoint heirs of choice and distribute assets according to the client's wishes
- To provide liquidity
- To provide for dependants and protect minor beneficiaries / beneficiaries with special needs
- To minimise impact of taxes on the estate
- To provide for future growth outside the planner's estate
- To deal with business interests effectively
- To provide for client / family's unique circumstances
- To take account of offshore assets (if applicable)
- To decide whether client wants a living will
- Minimise costs
- Ensure that the plan is practical, legal and efficient





ESTATE PLANNING – IMPORTANT CONSIDERATIONS

- Accept that Estate Planning is a complex matter with many pitfalls.
- It should also always be remembered that estate duty is a tax, and as such is subject to change and modification, like any other tax.
- Estate plan must be flexible to meet the needs of changing times.





RECENT TAX CHANGES THAT COULD AFFECT A CLIENT'S ESTATE PLAN

- **VAT** increase from 14% - 15%
- Maximum **EXECUTORS FEE** increase from 3.99% - 4.03% (if VAT registered)
- **ESTATE DUTY** increase for dutiable estates **above R30m** from 20% - 25%

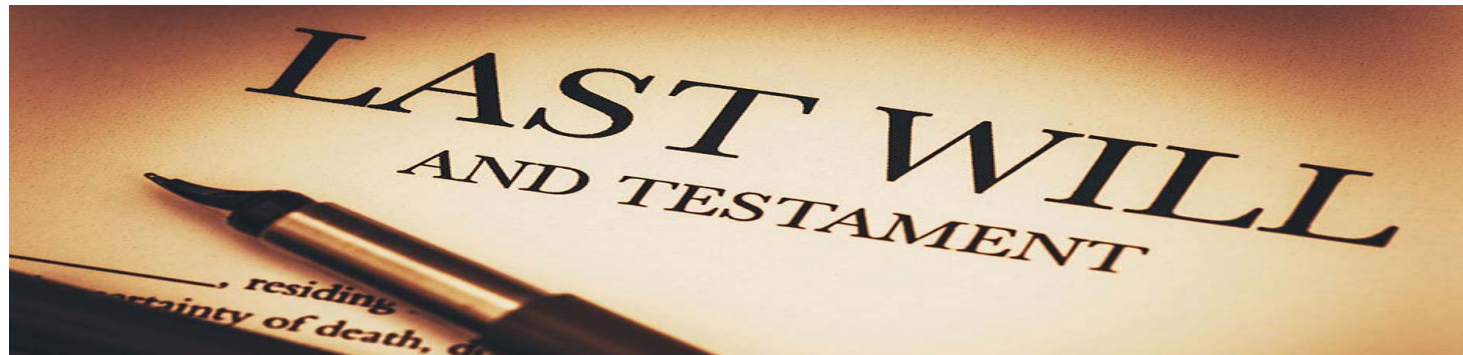
DUTIABLE ESTATE	ESTATE DUTY RATE
R 0 – R 30 000 000	20% for every R 1
R 30 000 001 and above	R 6 000 000 + 25% of the value of the estate above R 30 000 000

- **DONATIONS TAX** increase for donations **above R30m** from 20% - 25%
 - *donations tax free inter-spousal donations still available*
 - *R100 000 annual exemption still available*



TOOLS FOR ESTATE PLANNING – THE LAST WILL AND TESTAMENT

- One of the most important tools
- Should be reviewed and updated on a regular basis
- Advisable to consult a specialist when drafting a will
- Prevent Intestate Succession (dying without a will)
- No will – will delay the winding up process, creating hardship for the family.
- The Master may require the executor to provide security – which If you may create an unnecessary cost for the estate, further delay in having to raise the security.





SUMMARY INTESTATE SUCCESSION

Survivor/s	Rule
Spouse and no descendants	The spouse will inherit the intestate estate.
Descendant/s and no spouse	Descendant/s will inherit the intestate estate.
Spouse and descendant/s	The spouse will inherit a child's share of the intestate estate or R250 000, whichever is the greatest. The descendant/s will inherit the balance, if any.
Both parents, but no spouse or descendants	The parents will inherit in equal shares.
One parent and descendant/s of the other predeceased parent	The surviving parent will inherit one-half of the estate, and the descendants of the predeceased parent will inherit the remaining half in equal shares.
Two (2) half-brothers related to the deceased through his predeceased father and three (3) half-sisters related to the deceased through his predeceased mother	The two half-brothers will inherit one-half of the intestate estate in equal shares [1] and the three half-sisters will inherit the remaining half of the intestate estate in equal shares.
Blood relations	Blood relations in the nearest degree will inherit the intestate estate in equal shares.





VALID EXECUTION OF THE WILL – THE WILLS ACT

- A person 16 years or older that is mentally capable of appreciating the nature of his acts at the time of signing the will
- Witness – from the age of 14 years, provided that he/she is not incompetent to give evidence in a court of law
- What do they witness ?
- **MOST IMPORTANT REQUIREMENT – ALL the witnesses and the testator should be present at the SAME TIME, when the will is signed !!!!**





NOMINATING THE EXECUTOR

- Where layman is appointed, Master requires a certificate from attorney/accountant that they will assist with the administration of the estate
- Offshore assets – exclude it from your SA estate, and draft a will in the foreign jurisdiction, and appoint an executor in that jurisdiction
- Executor is entitled to the following remuneration:
 - 3.5 % of gross assets
 - 6 % on income accrued & collected after death
 - PLUS VAT @ 15 %, where executor is registered as VAT vendor





IMPORTANT CONSIDERATIONS: MATRIMONIAL PROPERTY REGIMES

- ❖ In Community of Property
- ❖ Out of Community of Property
- ❖ Accrual System
- ❖ Life Partner



k0451491 www.fotorearch.com



DIVORCE FURTHER CONSIDERATIONS

- Divorce order
 1. Maintenance spouse
 2. Maintenance for children

Pitfalls:

1. Nominating ex-spouse as beneficiary on life policy to cover maintenance obligations
2. Make provision in Will for a maintenance trust
3. Important that divorce orders are drafted correctly in terms of Retirement Benefits. "Has to refer to pension interest"





DOMESTIC PARTNERS





DOMESTIC PARTNERS (1)

- Research shows that more than 2,5 million people in SA is living together.
- Many of our laws have changed to remove discrimination on the basis of marital status.
- Since 2004 many Court cases dealing with this issue
- Definition of “spouse” was widened as follows: **SARS Definition**

“[S]pouse”, in relation to any person, means a person who is the partner of such person—

- (a) in a marriage or customary union recognised in terms of the laws of the Republic;*
- (b) in a union recognised as a marriage in accordance with the tenets of any religion; or*
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent,*

and “married”, “husband” or “wife” shall be construed accordingly: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union without community of property;



DOMESTIC PARTNERS (2)

- A “spouse” includes a person who is the partner of such person in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.
- Factors that may indicate an intention of permanence include:
 - partners living together in the same residence
 - sharing the same postal address and bank accounts
 - dependants or beneficiaries of the same pension fund, medical scheme and insurance scheme.
 - Joint ownership of assets
 - Time period of relationship
 - Will where the partner is nominated as a beneficiary
- The assessment of whether a relationship is intended to last for an indefinite period, and is thus considered permanent, will be based on a review of all the facts and circumstances applicable to the particular case.





DOMESTIC PARTNERS NOT PROTECTED IN FOLLOWING LEGISLATION (3)

- ❖ You are not protected i.t.o the following:
 - ❖ Intestate Succession Act
 - ❖ Maintenance of the Surviving Spouses Act
- ❖ Make sure that your partner provides for you through other means / benefits



DOMESTIC PARTNERS (4) - PROVIDE FOR YOUR PARTNER

- Draft a Will
 - Cater for the "partner"
- Enter into a proper co-habitation agreement
 - that deals with the breakdown of the relationship
- Life Policy
 - Provide maintenance for the "partner"





POLICIES: ADVANTAGES OF BENEFICIARY NOMINATIONS ON POLICIES

- **Proceeds can be paid to beneficiary directly.** Beneficiary does not have to wait for the estate to be winded up first.
- If payable to beneficiary - **saving on executors fees** – 3.5 % + VAT = NOW 4.03 %
- Proceeds of **life policy** will **NOT** form part of an insolvent deceased estate, but will pay to the beneficiary





DISADVANTAGES OF BENEFICIARY NOMINATIONS ON POLICIES

- ITO Wills Act, if divorced then there is a 3 month period where if the client passed away, then the ex-spouse will not inherit, if the client pass away 3 months after being divorced, and he didn't change his will, then the spouse will inherit. Thus **3 months "Protection" in the Wills Act.**
- **No such protection if ex-spouse is the beneficiary on the policy.** Thus Beneficiary nominations are not automatically changed when someone gets divorced/remarries.





DISADVANTAGES OF BENEFICIARY NOMINATIONS ON POLICIES

- If life assured dies, and **beneficiary is staying offshore**, important to note that payment of the proceeds is not automatically exempt from exchange control regulations.
- **Inheritance from the estate of a deceased may be freely transferred to a non- resident** on production of the L & D account BUT if it is policy proceeds through a beneficiary nomination, it does not automatically qualify for the exchange control exemptions. Conditions may then apply that the beneficiary need to formally emigrate before they are regarded as non-residents for purposes of this concession.
- **Nominating a minor on a life policy** – be **careful on divorce**. If the ex-spouse is the legal guardian of the minor child, the guardian will have power over the proceeds of the policy. Avoid that. Use a testamentary trust !





REALITY CHECK.....

- ☐ Are you busy gambling
- ☐ Is your will updated, signed correctly, practical ?
- ☐ Have you planned for your unique circumstances ?
- ☐ Do you have a plan ??
- ☐ Make contact with your financial planner,
and start planning today !!





THANK YOU

