



STBB

The essentials of planning your estate

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Proper estate planning and a clear, well-drafted will are essential to protecting your assets and giving you and your loved ones peace of mind.

How important is having a will?

To ensure that your estate is administered efficiently, cost-effectively, and with minimum delays for your chosen beneficiaries, it is important that you draw up a valid will and seek professional advice in doing so. Without a valid will, your estate will devolve according to the laws of intestacy, which may not reflect your wishes and cause disharmony among your loved ones.

Your will must consider many things, the most obvious being the nomination of heirs and the appointment of an executor to administer your estate after your passing.

In your will, it is possible to create a trust to control any assets being awarded to a minor child. You can also nominate a guardian to take care of your minor children in the event of your untimely death.

If you have an *inter vivos* trust, which is set up during your lifetime, the trust deed may need to be reviewed, particularly regarding the appointment of suitable trustees to manage the trust after your death.

Key considerations for your will

When drafting your will, it is important to keep certain considerations in mind.

These include:

- ▾ Do you have business interests which may be vulnerable?
- ▾ Will there be sufficient liquidity in your estate to pay your debts and at the same time provide for the financial security of your family?
- ▾ Is your mortgage bond covered by insurance?
- ▾ Can estate duty be minimised?
- ▾ If applicable, where will the funds come from to meet your obligations in terms of a divorce order? What are the capital gains tax implications?
- ▾ Is your will correctly structured to cover your offshore assets?

Any or all of these aspects may have relevance for you. By seeking the best possible professional assistance, you will be able to identify problem areas, investigate solutions, and achieve the peace of mind of knowing that you have done everything possible to streamline your financial affairs and ensure that your will is a sound legal document.

Should you regularly review your will?

Events which shape one's life, such as marriage, the purchase of a property, birth of a child, death of a loved one, divorce or emigration, all lead to a change in personal circumstances, which may require updating your will. Either way, it is advisable to regularly review your will to ensure your wishes are accurately reflected.

Our fees for will preparation are competitive and we will not charge you for keeping your original will in safe custody.

Should you create a will trust?

A will trust or testamentary trust, as the name implies, can be created in terms of your will and does not require any further formalities. Such a trust comes into operation upon your death and may have various advantages.

- ▾ You can ensure that minor beneficiaries receive their inheritance at an age when you feel they will be sufficiently responsible to manage it.
- ▾ You can protect the interests of your surviving spouse and children by ensuring that they receive income or capital in predetermined amounts.
- ▾ A testamentary trust is ideal when bequeathing a right to receive an income from specified assets to a beneficiary, while at the same time safely preserving the capital of the trust for the benefit of the beneficiaries who will inherit the actual assets.

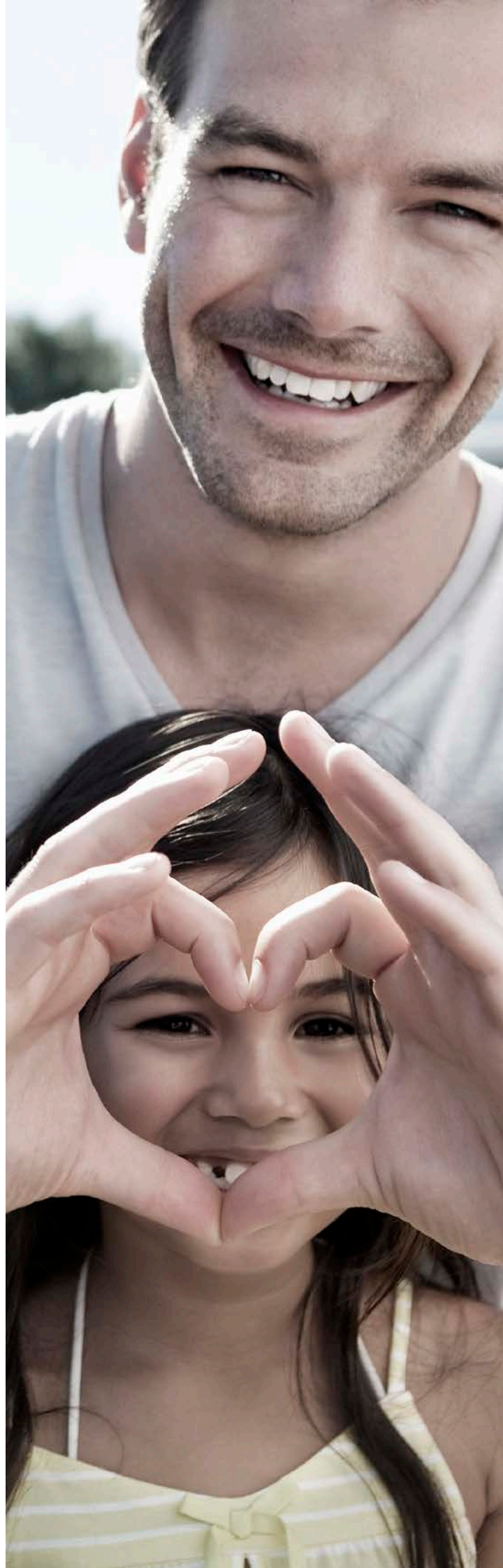
How can you benefit from an *inter vivos* trust?

An *inter vivos* trust is an entity, which is set up by you during your lifetime and is effective as soon as you have complied with certain formalities and registered the trust at the Office of the Master of the High Court.

Such a trust can be a useful tool in planning your estate with a view to minimising the estate duty that is payable on your death. Currently, estate duty is payable at the rate of 20% on the amount by which the value of your net estate exceeds R3.5 million and 25% on the portion exceeding R30 million, subject to certain rebates.

By acquiring assets in the name of an *inter vivos* trust instead of your personal capacity, any increase in the value of such assets over the years will be the property of the trust and won't form part of your dutiable estate. In addition, it is advisable to periodically review your *inter vivos* trust deed so that any potential issues can be identified and rectified, if necessary.

Our estate planning attorneys are able to advise you on whether the creation of an *inter vivos* trust is advantageous, depending on your personal circumstances.



How is a deceased estate wound up?

The Administration of Estates Act prescribes the formal procedure to be followed when winding up a deceased estate.

The executor nominated in the will must make application to the Master of the High Court for Letters of Executorship to be granted in their favour. No executor has any power to act on behalf of an estate before they have been issued with this document.

An executor who is not proficient in estate administration normally chooses a professional agent (often an attorney) to assist them with the application to the Master and to attend to the administration process on their behalf.

The executor has the following duties:

- ✚ Handling each asset forming part of the estate in an appropriate manner;
- ✚ Settling all liabilities;
- ✚ Obtaining all necessary tax clearances, i.e. estate duty, income tax, and capital gains tax;
- ✚ Complying with the provisions of the Administration of Estates Act, including the placing of statutory advertisements and formal accounting to the Master;
- ✚ Communicating with the heirs and all other interested parties;
- ✚ Collecting and investing all cash forming part of the estate; and
- ✚ Paying and transferring all inheritances to the heirs entitled to same.



Can the executor's fee be negotiated?

It is always possible to negotiate the executor's fee.

Planning for additional expenses

When administering a deceased estate, various expenses may be charged over and above the liabilities of the deceased. In addition to the executor's fee and estate duty, other expenses include:

- ✚ The Master's fee (R600 to R7 000);
- ✚ Transfer costs (if a property is being transferred to an heir);
- ✚ Bond cancellation costs, if applicable;
- ✚ Sworn valuation fees;
- ✚ Bond of security;
- ✚ Capital gains tax;
- ✚ Advertisement costs; and
- ✚ The costs associated with setting up and administering a trust.

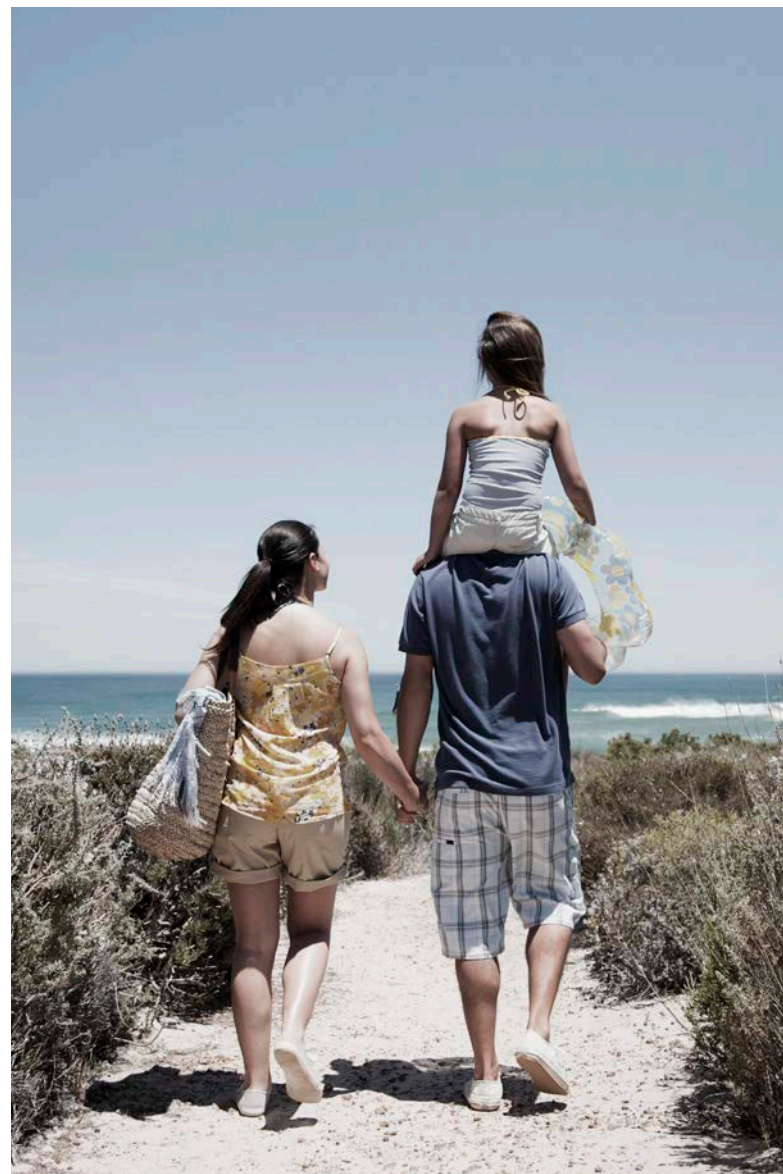
Let us connect you.

STBB offers access to a powerful team of attorneys, conveyancers and notaries, who are specialists in numerous fields of the law.

Commercial Law | Conveyancing | Development Law | Labour Law
Estates | Family Law | Litigation | Personal Injury & Third Party Claims

Let our estate planning specialists assist you

STBB's Wills, Estates, Curatorships, and Trusts department specialises in estate planning and the administration of deceased estates. With clients' needs and objectives in mind, our team offers a professional, efficient, personalised, and cost-effective service.



Good estate planning and a well-drafted will can provide you and your family with peace of mind.

For further information, contact our team at:

estates@stbb.co.za