

2. What is an estate?

An estate is defined in section 4 of the Estates Duty Act [Chapter 23:03] as “(a) All property of that person as at the date of his death which is defined in subsection (2) and which was acquired by that person on or after the 1st January, 1967; and (b) All property which, in accordance with subsection (3), is deemed to be property of that person at the date of his death; and (c) All property of that person as at the date of his death which is defined in subsection (6) and which was acquired by that person before the 1st January, 1967.”

Further, property is defined by the Act to mean any right in or to property, movable or immovable, corporeal or incorporeal, and includes—1. Any fiduciary, usufructuary or other like interest in property (including a right to an annuity charged upon property) held by the deceased immediately prior to his death; and 2. Any right to an annuity (other than a right to an annuity charged upon any property) enjoyed by the deceased immediately prior to his death which accrued to some other person on the death of the deceased.

2. What is estate planning?

The process of planning and arranging ones assets in anticipation of death. It is to ensure that one's heirs are legally and financially catered for and it is a way of greatly minimising the taxes and legal costs associated with estates.

3. Who needs Estate Planning?

1. Anyone who owns property or assets;
2. Anyone who has dependants;
3. Anyone who owns a business.

4. How does one plan his/ her estate?

There are several ways one can plan his/her estate but the most commons ways are Testamentary Wills and setting up Trusts.

5. What is a will?

It is a legal document which communicates a person's final wishes, in particular, it sets out the manner in which ones estate is to be managed and distributed after death. In Zimbabwe, wills are regulated by the Wills Act [Chapter 6:06], and this Act applies to all wills made on or after the 1st of January 1988. In terms of the Act any person who is over the age of 16 may make a will unless he/she is mentally incapable of appreciating the nature and effect of this act. Additionally, any person under a legal disability, such as an insolvent, shall not require the authority or assistance any other person in making a will. A will may make provisions for the transfer, disposal, or disposition of the whole or part of a person's estate and provisions for the custody and guardianship of the Testator's minor children. It can be witnessed by any person above the age of sixteen years, or who is competent to give evidence in a court of law, and/or a person physically capable of seeing the Testator signing his will or acknowledge the signature of the will.

Advantages of a Will

- It is relatively easy to set up; and
- A Testator has the ability to dictate personal issues such as guardianship over his or her minor children; place of burial or funeral arrangements;

- The probate process protects the estate from fraud, embezzlement and general mismanagement of the estate.

Disadvantages of a Will

- The probate process may be lengthy especially if the validity of the will is challenged or part of the property is out of the country
- Once the Will is filed with the Master of the High Court registered it becomes part of the Court records and can be viewed by the public. One's privacy is thus compromised
- Because it is operational only when one dies, it does not cater for one's incapacitation prior to death.

What is a trust?

A Trust is a universitas created by way of a Trust Deed and once created, has the capacity to sue and be sued. In fact, once a Trust is created it becomes operational and the Donor(s) or Founding Trustee(s) can transfer their assets into the Trust, which thereafter are managed by the appointed Trustees. The Trust holds the property for the benefit of the beneficiaries who would have been designated by the Donor. It can be created during the life of the Donor- inter vivos or by a will upon the death of the Donor.

Advantages of a Trust

1. Privacy is assured, unless the Trust is registered with the Registrar of Deeds; and
2. One can enjoy the prior to death and during incapacitation; 3. Avoid probate; and
4. All assets are protected regardless of location; and
5. It is a mechanism of reducing estate duty.

Disadvantages of a Trust

1. Unless specifically set out in the Trust the settler cannot dictate personal issues such as guardianship over his or her minor children; place of burial or funeral arrangements, etc; and
2. It is more costly to establish as it has to be prepared by a Notary Public at a nominal fee set out by the Law Society, and which amount can be more depending on the complexity of the deed.
3. The trust funds can be abused by the Trustee as there is no actual mechanism to guard against same.

One can still use both. There is no harm in having a Trust, at the same time having a Will.

When is it necessary to plan ones' estate?

As long as you are above 16; have dependants and assets, the time is NOW. The above methods are flexible and can be amended at any time to adapt to the dynamic circumstances in life and in the economic environment. Most importantly "No one can confidently say that he will still be living tomorrow. Euripides ". Be prepared for all eventualities in life

For more information and Legal Advice



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