

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



GIVE LIFE TO **YOUR LEGACY**

Key considerations when
having your Will drafted.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



YOUR LEGACY IS A FINGERPRINT ON THE LIVES YOU TOUCH

When embarking on the process of doing a Will there are various influencing aspects that need to be considered. These factors play a pivota role in balancing personal wishes and financial independence for your loved ones. What follows are some key considerations in protecting your legacy for your loved ones.



At Standard Trust Limited, we pride ourselves to be on this journey with you, **ensuring you give life to your legacy.**



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

ROLE OF THE EXECUTOR & TRUSTEE

Executor

Trustee

Who can act as an Executor
and Trustee?

Appointing a foreigner as
a Trustee



EXECUTOR

The Executor is the person that is appointed to administer a deceased estate. The duties of the Executor include taking control of all the assets of the deceased, payment of all the debts of the deceased and distributing the balance of the assets of the estate in accordance with the wishes of the deceased, as contained in the Will.



TRUSTEE

The Trustee is the person that is appointed to administer a Trust. The duties of the trustee include the administration of all trust assets in accordance with the provisions of the trust instrument and his/her fiduciary duties.

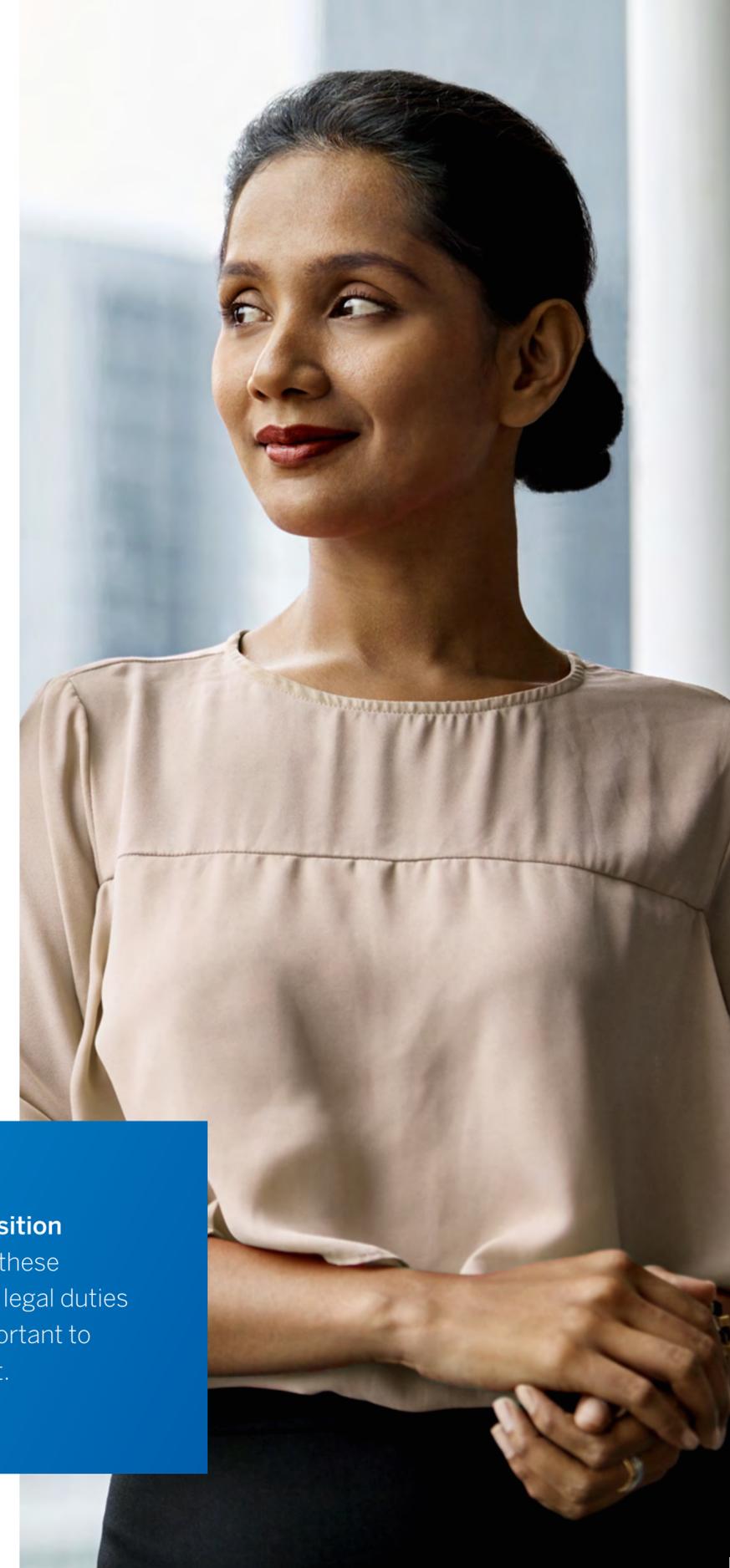
WHO CAN ACT AS AN EXECUTOR AND TRUSTEE?

Presently only an attorney, trust company or auditor can be appointed as executor without requiring a bond of security to be lodged. In instances where other individuals are nominated and ultimately appointed as an executor, such as a surviving spouse or close family member, the Master of the High Court may require that a qualified professional agent be appointed to assist that individual. It is further noted that there are individuals who are permanently disqualified from being appointed as Executors.

In instances where the total gross value of the Estate is less than R 250,000.00, a master's representative may be appointed. Any person may be nominated to be appointed as a Master's representative but the appointment of a person remains within the discretion of the Master of the High Court.

No prescribed qualifications apply to the appointment of trustees. In general, any person can be nominated and appointed except for persons disqualified in terms of the Trust Property Control Act or the trust instrument.

An **Executor/Trustee is appointed in a fiduciary position** and the law imposes a high standard of conduct upon these individuals. This requires a thorough knowledge of the legal duties that accrue to these positions. Consequently, it is important to **nominate a professional Executor/Trustee** to assist.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



APPOINTING A FOREIGNER AS A TRUSTEE

Presently there are no prohibition on the appointment of a foreigner as a trustee in a South African Trust. It is however important to note that the appointment of a Trustee remains the prerogative of the Master of the High Court who may require that the foreign Trustee provide a domicilium address in South Africa and/or security, subject to the master's requirements.

Where the **foreign Trustee is the only Trustee** of the trust, the Master may have **additional requirements** to be complied with.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

INTESTATE SUCCESSION

Default if you do not leave a Will

Prescribed formula/devolution
by closest blood relation

Impact on administration time as
well as expenses

No control over who the executor is
going to be

Guardians Fund administered by
the state for minor dependents

Do not have the right to decide what
happens to your assets when you
pass away

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



DEFAULT IF YOU DO NOT LEAVE A WILL

A person dies intestate if they die without a valid Will. A person can also die partly intestate where they do not bequeath all their assets in the Will or if a part of the Will is invalid.

The Intestate Succession Act 81 of 1987 contains the provisions in terms of which a person's estate is to devolve if they die intestate.

PRESCRIBED FORMULA/ DEVOLUTION BY CLOSEST BLOOD RELATION

1

The person dying intestate has no control of who their heirs will be.

Their heirs will be determined by the Intestate Succession Act from the blood relatives of the deceased.

2

In summary, in terms of the Act, where there is only a surviving spouse, the spouse will inherit the deceased's estate.

3

However, when there are also children, regardless of their ages, the spouse and children will each inherit a portion of the estate as set out in the Intestate Succession Act. The surviving spouse is entitled to an amount of R250 000 or a child's share, whichever is the greater, while the children are entitled to the balance of the estate in equal shares. A child's share is determined by dividing the value of the estate by the number of surviving children, the offspring of any deceased children including legally adopted children and the number of spouses who have survived the deceased.

4

If there is no spouse or descendants, the deceased's parents and/or their descendants (collateral relatives of the deceased) inherit the estate. If there are no parents or descendants of parents, then grandparents and other collateral relatives will inherit the estate.

5

If there are no intestate heirs (living family members) the entire estate may be forfeited to the state after 30 years, after being advertised in the Government Gazette annually for that period of time by the Guardians Fund.

6

It is important to note that the law of intestate succession does apply to spouses to a customary marriage as well as partners in a partnership in terms of the Civil Union Act.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

DO NOT HAVE THE RIGHT TO DECIDE WHAT HAPPENS TO YOUR ASSETS WHEN YOU PASS AWAY

The person's estate will devolve as per the formula set out in terms of intestate succession as discussed under the previous tab.

This distribution of his/her assets may not be in line with the wishes of the deceased.

GUARDIANS FUND ADMINISTERED BY THE STATE FOR MINOR DEPENDENTS

Where the deceased has minor children there may be a need to make provision for Testamentary Trusts to safeguard their inheritance. If there is no valid Will regulating these aspects, the inheritances due to the minor heirs, will be paid to the Guardian's Fund, administered by the Master's office.



IMPACT ON ADMINISTRATION TIME AS WELL AS EXPENSES

Where the intestate heirs cannot reach an agreement, if the devolution is not practical, it may lead to the assets in the estate being sold, that would cause a delay in the administration of the estate and could lead to additional costs.

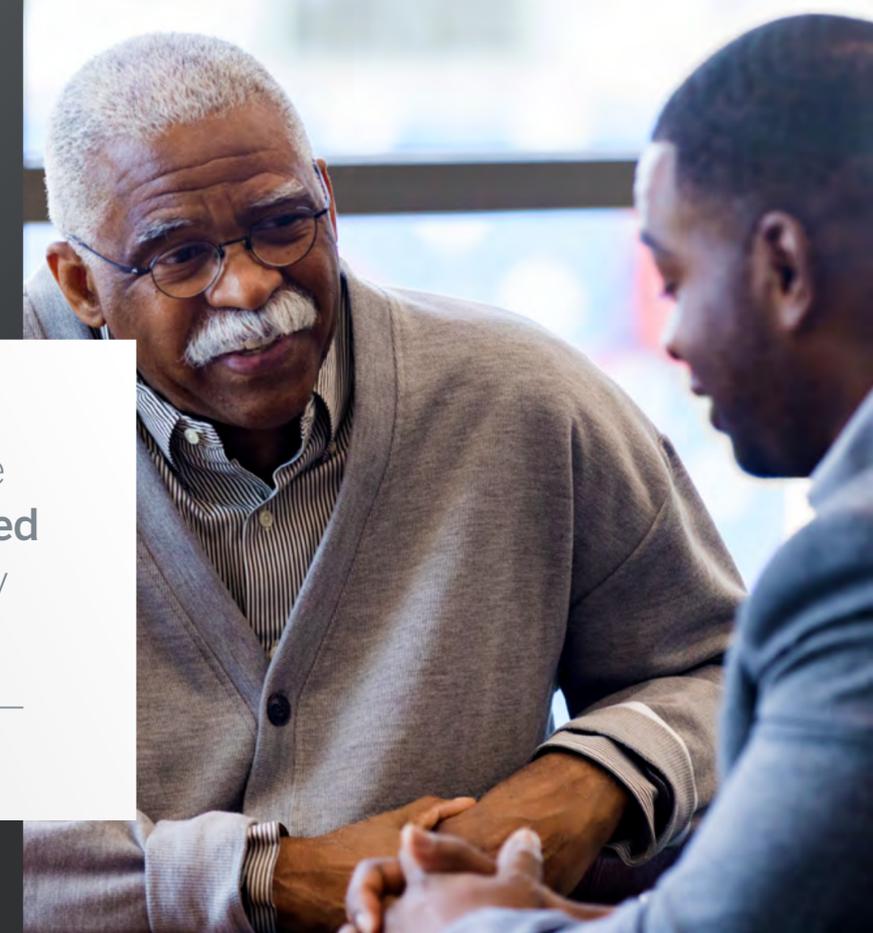
Assets may also then be sold during undesirable market conditions, which will have a negative effect on the estate. Certain assets may also not be apportioned from a legal perspective (e.g. agricultural property may not be owned by more than one natural person due to legislation prohibiting this).

Intestate succession could also cause **practical problems** where the **deceased owned business interests**, especially from a succession point of view.



NO CONTROL OVER WHO THE EXECUTOR IS GOING TO BE

By drafting a Will, a person can nominate an executor of their choice. If the person dies intestate, the Master of the High Court will consider nominations for an executor which may not be the testator's first choice, and which could lead to a delay in winding up the estate.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

DOMESTIC ASSETS

Practicality of bequeathing assets to more than one person

Bequeathing assets that belong to a CC and PTY Ltd

Maintaining financial records for your business and Trusts

Formal transfer process required for some assets

Bequeathing co-owned assets

Limited interests

Traditional land

Farm property

Loan account in a Trust

Collation

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

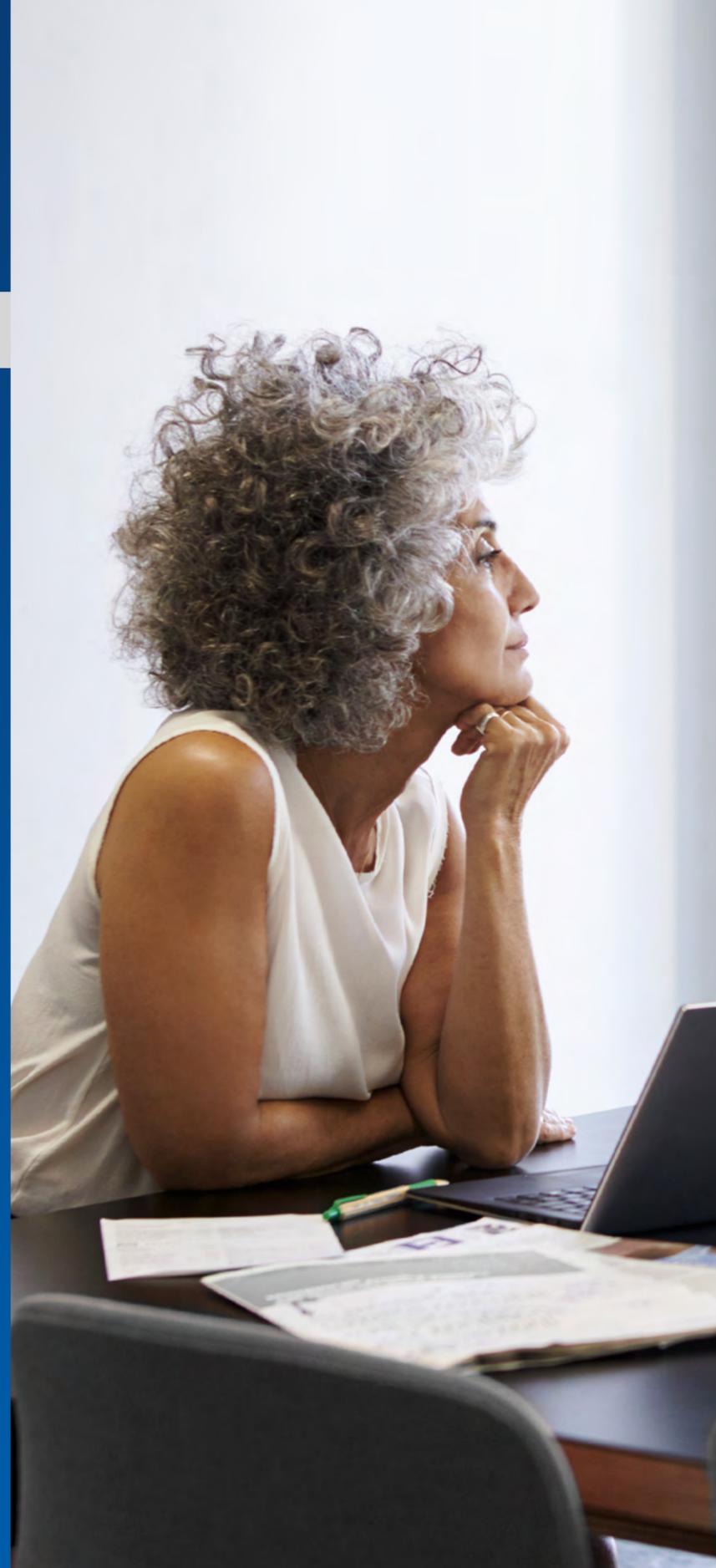
Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



PRACTICALITY OF BEQUEATHING ASSETS TO MORE THAN ONE PERSON

It is important to consider the practicality of bequeathing a single asset to more than one beneficiary. For example, if a motor vehicle is bequeathed to two beneficiaries, who would have the right to use it and who would be responsible for its maintenance and upkeep.



BEQUEATHING ASSETS THAT BELONG TO A CC AND PTY LTD

Assets held by a CC and PTY Ltd. belong to the specific legal entity and are not owned in a personal capacity. Accordingly these assets cannot be bequeathed individually but form part of the assets of the legal entity.



MAINTAINING FINANCIAL RECORDS FOR YOUR BUSINESS AND TRUSTS

At time of death the financial records of a business and Trust are required to establish the value of the entity as well as for calculation of income tax. It is therefore important to ensure that these records are up to date to avoid delays during the estate administration process.



FORMAL TRANSFER PROCESS REQUIRED FOR SOME ASSETS

There are formal processes that exist when it comes to the transfer of assets from an estate i.e. in the case of fixed property there is a formal transfer of ownership registered in the Deeds office.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



BEQUEATHING CO-OWNED ASSETS

When co-owning an asset it is important to bear in mind that the beneficiary of your share of the asset will continue in partnership with the remaining co-owner. Consideration should be given for example, if an individual bequeathed their share of a property co-owned with a spouse of a second marriage, to children of a first marriage.



LIMITED INTERESTS

Limited interests are utilized where one wishes to bequeath a specific asset to a beneficiary and provide a benefit of that same asset to another beneficiary.



FOR EXAMPLE

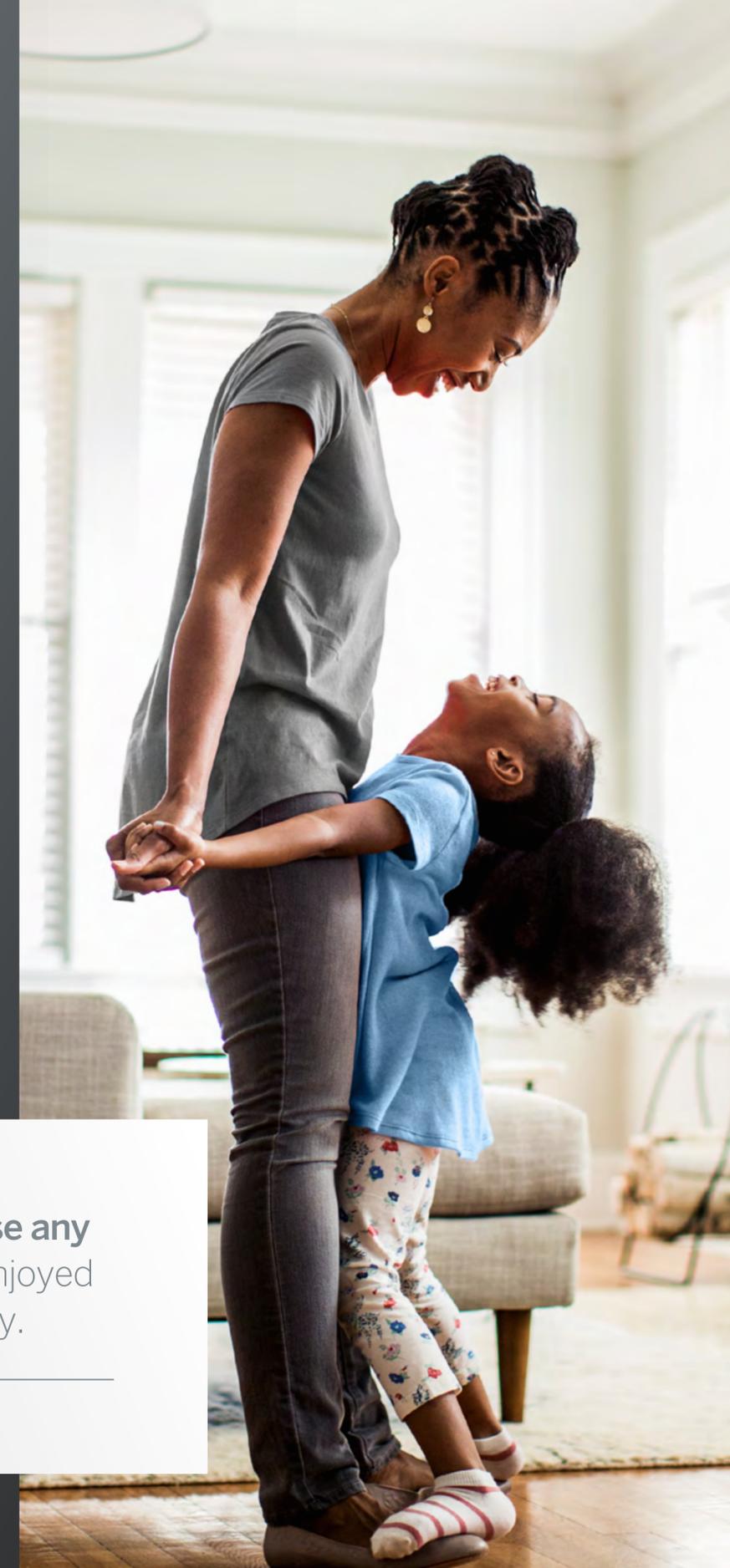


If a property is bequeathed to a child subject to a spouse's usufruct;



the spouse would be entitled to all benefits of the property except ownership which would vest in the child.

Similarly, **the child could not exercise any ownership rights** while the spouse enjoyed the right of benefit to the property.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



TRADITIONAL LAND

An individual who enjoys rights to traditional land needs to bear in mind that ownership of that land rests with the governing entity or the traditional leader. In the absence of any formal contract the individual enjoying such rights to traditional land may not be in a position to transfer such benefits.



FARM PROPERTY

Section 3 of the Subdivision of Agriculture Land Act prohibits the subdivision of agriculture land unless it can be justified that the divided shares can be farmed economically and only with the consent of the Minister of Agriculture. Under these circumstances the use of a company or Trust could be considered for ownership.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

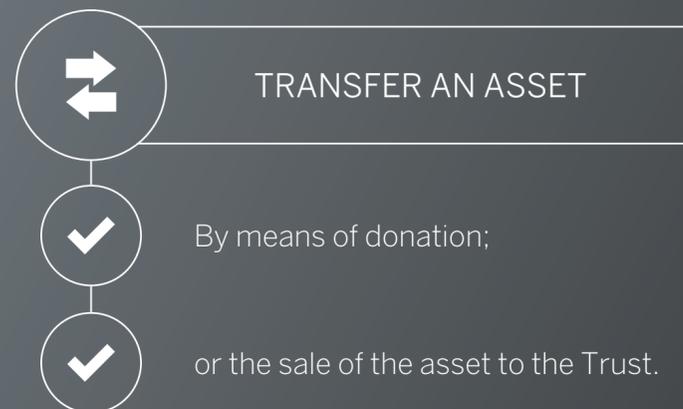
Will Review

Contact Us



LOAN ACCOUNT IN A TRUST

An individual can transfer an asset owned into a Trust either by means of a donation or the sale of the asset to the Trust. In the case of selling an asset to a Trust, use can be made of a loan account, whereby the Trust owes the individual the sale amount of the asset.

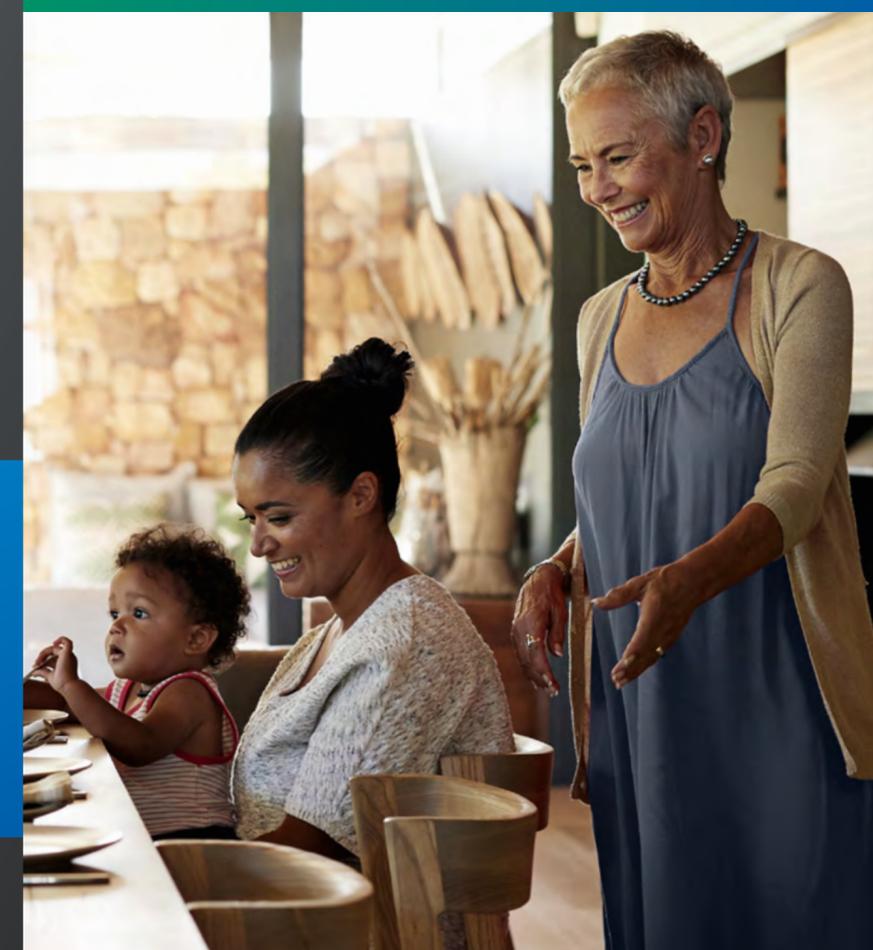


The loan account forms an asset in the estate of an individual and careful consideration needs to be taken when deciding who the beneficiary of this loan account should be, in terms of the individual's Will.



COLLATION

Collation is the process by which the inheritance of certain descendants of the deceased is adjusted to consider a substantial benefit received from the deceased during their lifetime. The principle of Collation will apply unless expressly excluded in the Will. For example, if the deceased gave one of his/her three children a cash amount to purchase a property during the deceased's lifetime, this amount will be deducted from that child's inheritance.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

OFFSHORE ASSETS

Need for a separate Will

Impact on your estate duty

Forced heirship rules

Offshore assets bequeathed to a local Trust

Separate estate

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



NEED FOR A SEPARATE WILL

Examples of offshore assets include immovable property situated in a foreign country, offshore bank accounts, equities listed on exchanges in foreign jurisdictions, shares in unlisted foreign companies, foreign unit trust funds and other investments held in foreign jurisdictions.

FACTORS TO CONSIDER WHEN DECIDING WHETHER TO HAVE A SEPARATE WILL

In each jurisdiction in which assets are situated or one South African “worldwide” Will, include the jurisdiction in which the assets are located, the type of assets, the value of the assets as well as the estate administration formalities that would need to be observed in such foreign jurisdiction.



Every jurisdiction has different laws regarding succession and the making of a valid Will. By drafting separate Wills in each jurisdiction in which assets are situated, a Testator can ensure that the Will complies with the laws of the jurisdiction in which it was drafted.



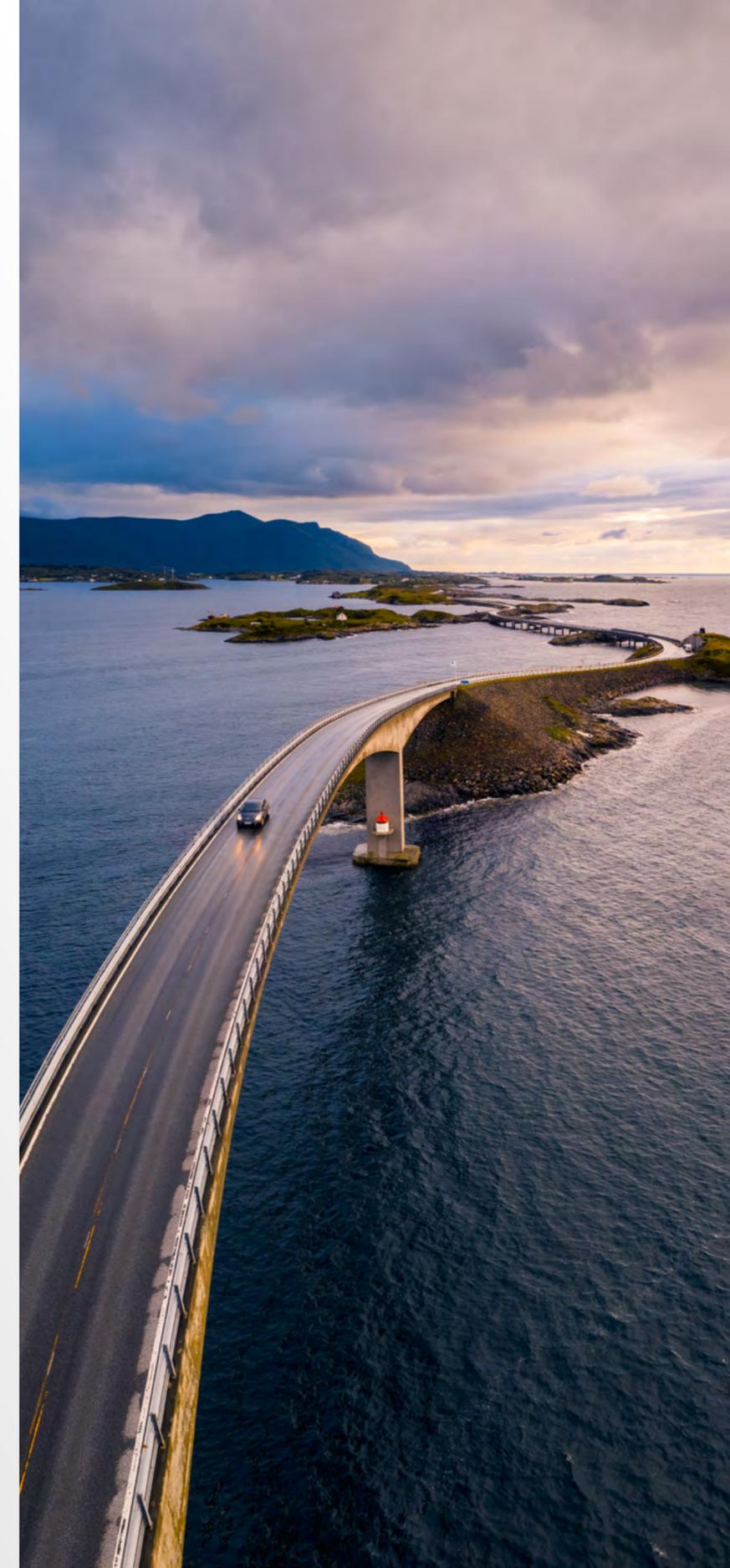
As a general rule, it is advisable that a Testator considers having a separate Will for each jurisdiction in which assets are situated. Great care must however be taken to ensure that the Will clearly states that it only deals with the assets situated in that respective jurisdiction by including wording such as “This Will deals with my assets in the Republic of South Africa only”. The Wills need to speak to one another and should not inadvertently revoke one another.



Having separate Wills for each jurisdiction in which assets are situated may be a complicated process but it will avoid possible difficulties in the administration and distribution of the estate further down the line. It will further ensure that the deceased estates will be administered simultaneously in the respective jurisdictions.



Dealing with offshore assets can be complicated and there are many factors to consider, as a result proper guidance should be obtained when dealing with the potentially conflicting requirements and laws applicable in the different jurisdictions.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



IMPACT ON YOUR ESTATE DUTY

Having a separate Will in each jurisdiction in which assets are situated will however not absolve the estate from being required to account for such offshore assets for estate duty and capital gains tax purposes in South Africa. There appears to be a perception that offshore assets are excluded from taxation in South Africa upon death and that they are only taxable in the respective jurisdiction where such assets are situated. South Africa however follows a residence-based taxation system, whereby a South African resident is taxed on their worldwide income, irrespective of where such income was earned. As a result the deceased estate of a South African resident is liable for the payment of the estate duty and capital gains tax in South Africa on both local and offshore assets.

In order to **avoid any possible double taxation on offshore assets**, South Africa has entered into double taxation agreements and estate duty agreements with numerous countries.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



FORCED HEIRSHIP RULES

Certain countries have forced heirship rules, whereby the laws of succession define certain specific rights for beneficiaries and restrict the ability of the Testator to decide how their assets should be distributed after death.

It would be advisable that in these instances, proper advice is obtained from a lawyer who is familiar with the succession laws of that respective jurisdiction as these rules can be complex.

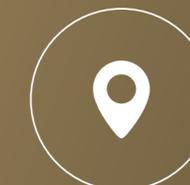
Irrespective of whether there are forced heirship rules, obtaining the required paperwork and **appointing an appropriate executor** in the foreign jurisdiction could take time and **may have delays when attempting to do so from South Africa.**



SEPARATE ESTATE

The separate foreign Will and estate of a person may have to be reported to a foreign authority for probate purposes.

The foreign authority will then also have oversight over the estate administration process in that country.



OFFSHORE ASSETS BEQUEATHED TO A LOCAL TRUST

Offshore assets can be bequeathed to a Will Trust to be administered in South Africa.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

LIABILITIES

Liabilities must be settled before the estate is finalised

Suretyship

Impact of cash shortfalls on the estate

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



LIABILITIES MUST BE SETTLED BEFORE THE ESTATE IS FINALISED

The liabilities of an estate comprises debt incurred by the deceased during their lifetime as it exists as at date of death, as well as all interest thereon thereafter.



In addition, there are estate administration expenses as well as various forms of tax i.e.:



Income Tax



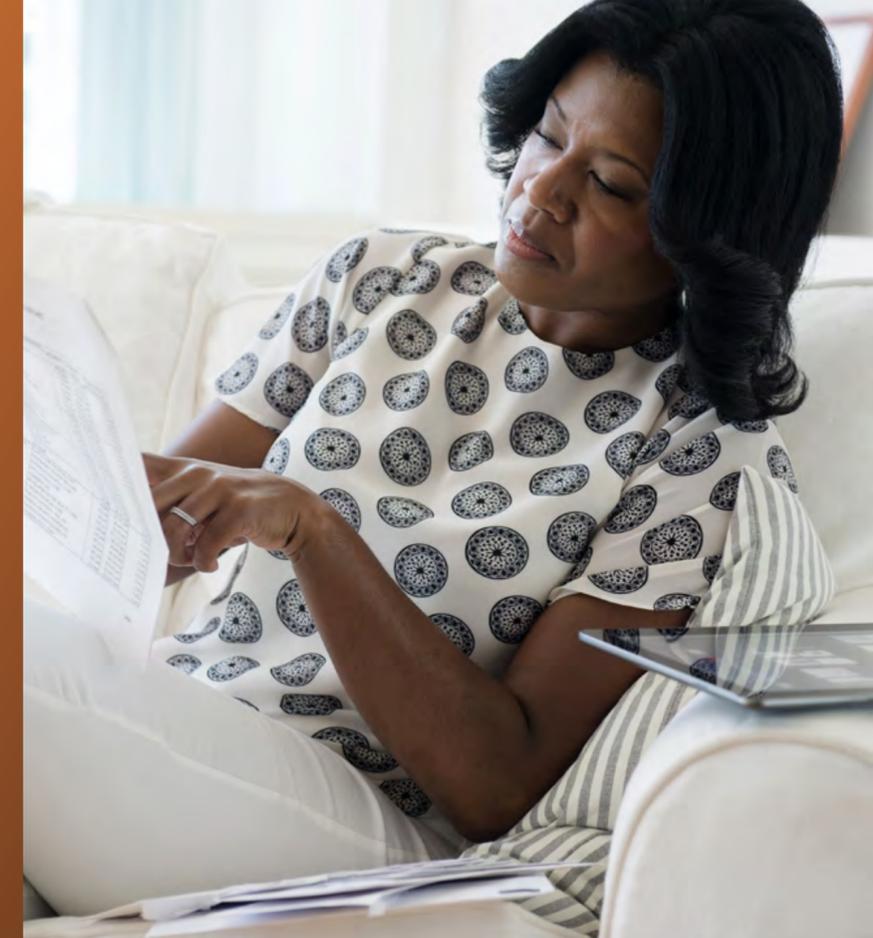
Capital Gains Tax



Estate Duty, etc.



All liabilities need to be settled in full before the final distribution of assets can take place.



SURETYSHIP

It is important to note that an individual's estate will be held liable for any suretyship undertaken by the deceased during their lifetime and which is in existence as at the date of their death.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



IMPACT OF CASH SHORTFALLS ON THE ESTATE

In the event of there being insufficient cash to cover the liabilities of an estate, there are two options.



INSUFFICIENT CASH

1

The heirs of the estate can pay in the cash shortfall;

2

or alternatively the executor would be compelled to realize so much of the assets as is required, to cover the cash shortfall.

In the case of the latter the sale price of an **asset could be negatively impacted by the current market value** for that specific asset.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

MARITAL REGIMES

Marriage in community of property

Marriage out of Community of property with accrual system

Marriage out of Community of property without accrual system

Same sex partnerships

Civil unions

The impact if you disinherit your spouse

Domicilium and its potential impact on the Will

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



MARRIAGE IN COMMUNITY OF PROPERTY

A marriage in community of property means that both spouses' assets are amalgamated into one communal estate. This means that the spouses become joint owners of all the assets that form part of the joint Estate.

It is important to note that if a spouse dies, the entire joint estate would have to be administered by the Executor.

This marriage regime will automatically apply to a marriage in South Africa unless the parties stipulate otherwise in an **Antenuptial Contract concluded between prospective spouses**, prior to their marriage.

MARRIAGE OUT OF COMMUNITY OF PROPERTY WITH ACCRUAL SYSTEM

The accrual system is a formula that is utilized to determine how much the spouse with the larger estate must pay the smaller estate upon the termination of the marriage. The purpose of this formula is to address possible inequities in instances where parties are married out of community of property and one spouse's estate grows relative to the other spouse's estate.

The accrual system will automatically apply to a marriage unless it is specifically excluded in the Antenuptial Contract concluded between the prospective spouses prior to their marriage.

MARRIAGE OUT OF COMMUNITY OF PROPERTY WITHOUT ACCRUAL SYSTEM

If parties are married out of community of property without the accrual system, each party remains the sole owners of their respective assets. The marriage accordingly has no consequence on the property of the respective parties in the event of death.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



SAME SEX PARTNERSHIPS

Presently there is no legislation that regulates same-sex relationships. This however, does not mean that there are no legal consequences that may arise in certain instances.

In the first instance:

A same-sex couple may elect to marry or register their union in terms of the Civil Union Act. In this case the same principles will apply to the dissolution of the marriage as if they were married in terms of the Marriage Act.

In the second instance:

A same-sex couple may be in a permanent relationship to such an extent that it may be regarded as a same-sex life partnership. In this regard the termination of their relationship will be regulated by the legal principles that apply to cohabitation relationships.



The following factors will be considered when determining whether a same-sex relationship will be regarded as a same-sex life partnership:

1

The period and nature of cohabitation.

2

Degree of permanence and stability of the relationship.

3

Has the relationship been acknowledge by the couple's family, friends and/or acquaintances.

4

Whether or not the relationship is exclusive.

5

The commitment of the couple to a joint household and each partner's role in the maintenance and management of the joint household.

6

The couple's financial and emotional inter-dependence.

7

Whether or not the couple has nominated each other as reciprocal beneficiaries in their respective Wills/ Life policies.

8

The content of any written agreement entered into between the couple.

9

Any conduct that may point to a life partnership.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

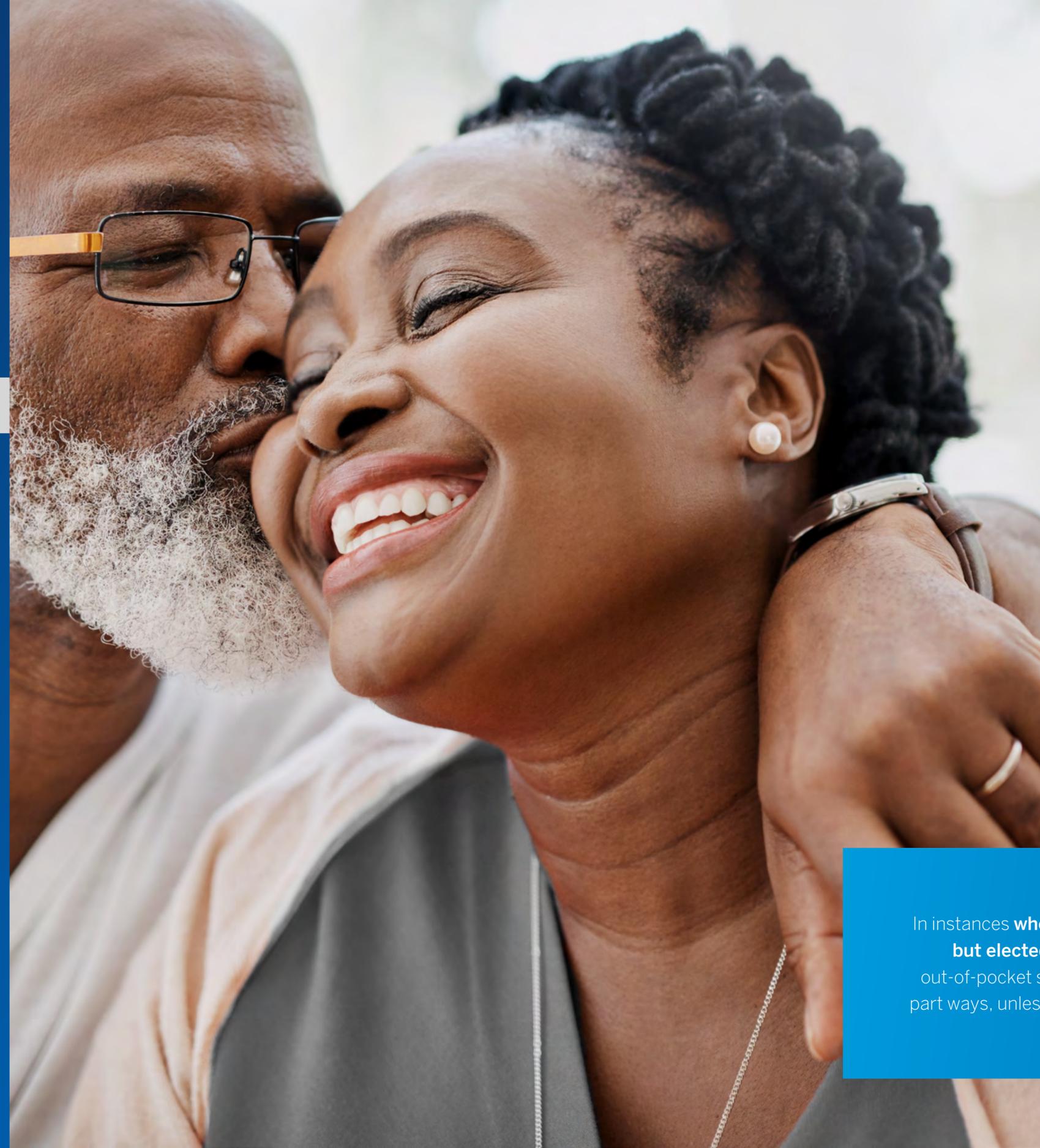
Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



CIVIL UNIONS

The Civil Unions Act 17 of 2006 was promulgated on 30 November 2006. A civil union is defined as a voluntary union between two persons of the same sex or of opposite sexes, older than the age of 18, solemnised and registered either by way of marriage or civil partnership. A civil union will have the same matrimonial and patrimonial consequences as a marriage concluded in terms of The Marriage Act 25 of 1961. The effect of this is that a civil union will be one in community of property in accordance with the provisions of the Matrimonial Property Act 88 of 1984.



It is noted that South Africa does not recognise any form of Common-law marriage in respect of same or opposite sex couples.

In instances **where parties have contributed financially to a joint estate but elected not to solemnise their union**, one party may be left out-of-pocket should the other party pass away, or should they decide to part ways, unless they have entered into a so-called **universal partnership**.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



THE IMPACT IF YOU DISINHERIT YOUR SPOUSE

In South Africa the principle of freedom of testation applies. This means that a person has the freedom to decide who inherits from them in terms of their Will. It is however important to note that this right is not absolute and does not override a person's legal duty to maintain certain individuals such as children and spouses. It is therefore important to note that under certain circumstances certain parties to whom the deceased owes a duty of support may submit a maintenance claim against their estates which, if valid, will trump the provisions of a Will.

In respect of a surviving spouse, the provisions of **The Maintenance of Surviving Spouses Act** will apply and prescribes factors to be considered to quantify the reasonable need for maintenance of a surviving spouse, in a marriage.



DOMICILIUM AND ITS POTENTIAL IMPACT ON THE WILL

In instances where parties concluded their marriage in a foreign jurisdiction, it is important to note that the law that will determine the applicable marriage regime will be the law of the country of the domicilium of the husband, as at the time of the conclusion of the marriage.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

CUSTOMARY & RELIGIOUS MARRIAGES

What constitutes a customary marriage?

Religious marriages

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

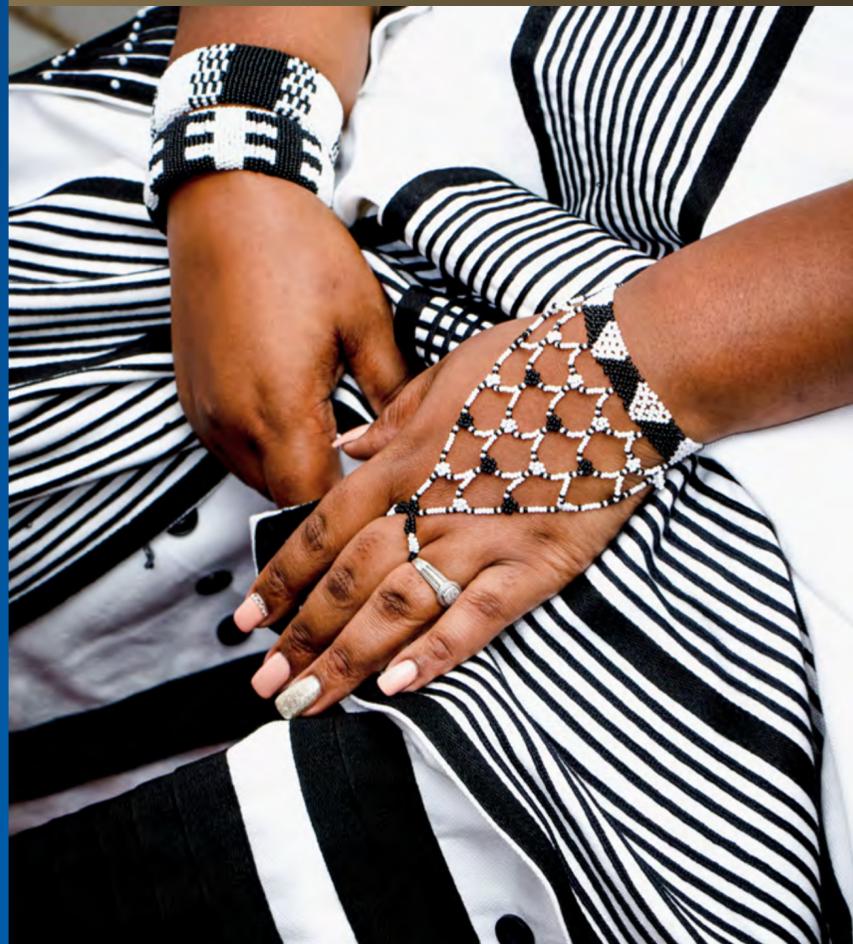
Will Review

Contact Us



WHAT CONSTITUTES A CUSTOMARY MARRIAGE?

A customary marriage is generally defined as a marriage that is “negotiated, celebrated or concluded according to any of the systems of indigenous African customary law which exist in South Africa”. This doesn’t include marriages concluded in Hindu, Muslim or other religious rites.



Since 15 November 2000, Customary Marriages that comply with the provisions of Recognition of Customary Marriages Act 120 of 1998 will be legally valid.

The requirements for a valid customary marriage include the following:

- 1 The marriage must be negotiated, entered into or celebrated in accordance with customary law.
- 2 The parties must be majors (18 years or older). In instances where either of the parties are below the age of majority, then both legal guardians must consent.
- 3 Both parties must be competent to marry each other. The parties can therefore not be blood relatives.
- 4 Both parties must consent to the marriage.
- 5 The marriage must be lawful.



It is further noted that the **marriage must be registered at the Department of Home Affairs within 3 months of its conclusion.** However, failure to register the marriage with the Department will not invalidate the marriage.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

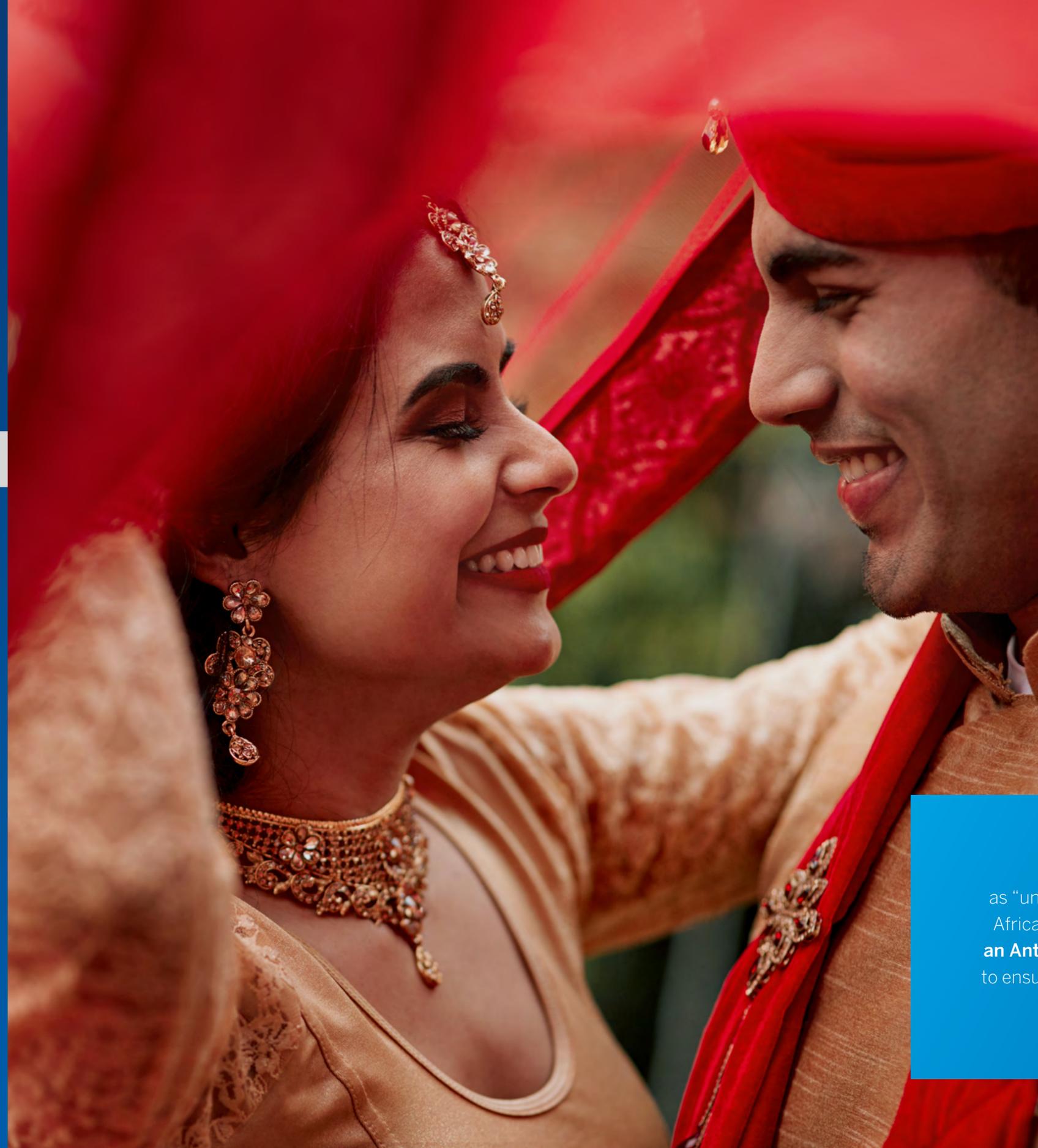
RELIGIOUS MARRIAGES

Previously, Muslim and Hindu marriages in South Africa were not recognised as having the same legal status as civil marriages in terms of the Marriage Act. In order for a Muslim or Hindu marriage to be recognised a separate civil ceremony should be held. This has, however, changed for Muslim marriages in South Africa.

From 30 April 2014 an Imam, known as a Muslim priest, who has been duly registered as a marriage officer in terms of the Marriage Act, may solemnise a Muslim marriage. The proprietary consequence of such a Muslim marriage, will be similar to that of a civil marriage. Such a marriage will be in community of property, unless an Antenuptial Contract is concluded before getting married.

This however does not mean that all Muslim marriages are now legally recognised. Muslim marriages that have not been concluded before a registered Imam will still be regarded as unmarried or married according to Muslim Rites.

Unfortunately, Hindu marriages are still regarded as “unmarried” or “married according to Hindu Rites” in South Africa. It is advisable that parties to such marriages **conclude an Antenuptial Contract and have a separate civil ceremony** to ensure that the legal consequences of marriages under South African law are applicable to their marriage.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

DIVORCE

What does the divorce order or settlement stipulate?

3 months relief rule

Death during the process of divorce

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



WHAT DOES THE DIVORCE ORDER OR SETTLEMENT STIPULATE?

1 Maintenance obligations of a deceased parent

In divorce proceedings the courts are usually asked to grant an order for the maintenance of minor children of a marriage. An order for the maintenance of a child ordinarily provides for the periodical payment of money, usually at a certain amount per month. The operation of the order is usually limited until the child reaches a certain age.

The duty of a parent to maintain a child, even if imposed by an order of court, becomes a debt resting on the estate on such parent's death. The executor of a divorced parent of a minor child must review any maintenance order that was granted to establish what the consequences are for the deceased estate.

2 Maintenance for divorced spouses

In divorce proceedings the courts are usually asked to grant an order for the maintenance of spouses of a marriage. An order for the maintenance of a spouse ordinarily provides for the periodical payment of money, usually at a certain amount per month or for a specific period of time. The order may also be for a lumpsum payment.

The executor of a divorced spouse must review any maintenance order that was granted by a court prior to death to establish what the consequences are for the deceased estate.



3 MONTHS RELIEF RULE

In terms of the Wills Act there is an assumption that, on divorce, former spouses intend to disinherit each other unless a contrary intention appears. The assumption is valid for 3 months from the date of the divorce and allows spouses suffering from the trauma of divorce a three-month period of grace to amend their Wills.



DEATH DURING THE PROCESS OF DIVORCE

If a spouse dies during formal divorce proceedings, and before a divorce order is granted, the executor of the deceased spouse will be formally added as a party to the litigation proceedings in an official capacity to conclude the matter.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

MINOR CHILDREN

Maintenance of minor children

Guardianship

Protection of inheritance of
minor children

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



MAINTENANCE OF MINOR CHILDREN

1

Funds can be held in Trust until the minor either **attains majority (age 18)** or to a later date when they have potentially **completed their education (+/-age 25)**.

2

The Will can be clear on what can be released and to whom, with basic maintenance being **paid directly to the guardian until the beneficiary turns 18 and directly to the beneficiary after that**.

3

Funds for **educational expenses** should include the cost of reasonable accommodation and transport and can be **paid directly to service providers**.



GUARDIANSHIP

A guardian/guardians can be nominated in terms of the Will, although this will not override the rights of a natural parent or an appointment by Court.



PROTECTION OF INHERITANCE OF MINOR CHILDREN

Where no provision is made in the Will for funds to be held in a Trust, the cash inheritance due to a beneficiary under the age of 18 will be payable to the Master of the High Court's Guardians Fund. Fixed property can be transferred directly in to the name of the beneficiary.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

FRAIL PARENTS

Provision for maintenance and accommodation of frail parents

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

PROVISION FOR MAINTENANCE AND ACCOMMODATION OF FRAIL PARENTS

- 1 Create a Testamentary Trust to hold the funds for the benefit of your elderly/frail/incapacitated parents during their lifetime.
- 2 Allow for the release of funds for their basic maintenance and personal expenses.
- 3 Provide for the payment of accommodation and any/all medical expenses on their behalf, including caregivers. This can include providing funds for assistive devices such as wheelchairs.
- 4 Provide for payments directly to service providers.
- 5 Trust to be administered and funds to be retained until the death of the last-dying parent.
- 6 Nominate a beneficiary/beneficiaries to inherit on termination.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

SPECIAL NEEDS CHILDREN

Provision for maintenance
and accommodation of special
needs children

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

PROVISION FOR MAINTENANCE AND ACCOMMODATION OF SPECIAL NEEDS CHILDREN

- 1 Create a Testamentary Trust to hold the funds for the benefit of any child with special needs during their lifetime.
- 2 Allow for the release of funds for their basic maintenance and personal expenses.
- 3 Provide for the payment of accommodation and any/all medical expenses on their behalf. This can include the cost of caregivers or case workers, as well as the cost of assistive devices such as wheelchairs.
- 4 Provide for payments directly to service providers.
- 5 Trust to be administered and funds to be retained until the death of the beneficiary.
- 6 Nominate a beneficiary/beneficiaries to inherit on termination.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

TAXES

Transfer duty

Income Tax

Value Added Tax (VAT)

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



TRANSFER DUTY

Transfer duty is a form of tax levied on the value of any property (land and improvements) acquired by any person by way of a transaction. The person who acquires the property pays the transfer duty. However, when a property is transferred to a beneficiary out of an estate, there is no transfer duty payable on the transaction. Only the usual conveyancing fees are payable.



INCOME TAX

Income Tax is the tax which is payable on your taxable income. Upon death, tax returns will need to be lodged for the deceased up to date of death, if required.

The deceased estate may have to be registered as a taxpayer to include post death income if it exceeds a certain threshold.



VALUE ADDED TAX (VAT)

VAT is an indirect tax levied on the consumption of goods or services. If you were a registered VAT vendor on date of death, the finalisation of the VAT returns will need to be dealt with in the estate by the executor.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

SAFEKEEPING OF A WILL

Include benefits of safe custody
with emphasis why we need an
original Will to administer the estate

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



INCLUDE BENEFITS OF SAFE CUSTODY WITH EMPHASIS WHY WE NEED AN ORIGINAL WILL TO ADMINISTER THE ESTATE

The original signed Will is required at the time of death, to be lodged with the Master of the High Court. The original Will should be kept in a place that is safe and where it can be easily found after the death of a testator.

The benefits of keeping the original signed Will in Wills safe custody is that the Will is protected against manipulation, fraud, destruction, fire and theft and will be safeguarded against falling into the wrong hands and will be easily found after the death of the testator.



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

POLICIES

Paying policies into the estate

Paying to beneficiaries directly

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

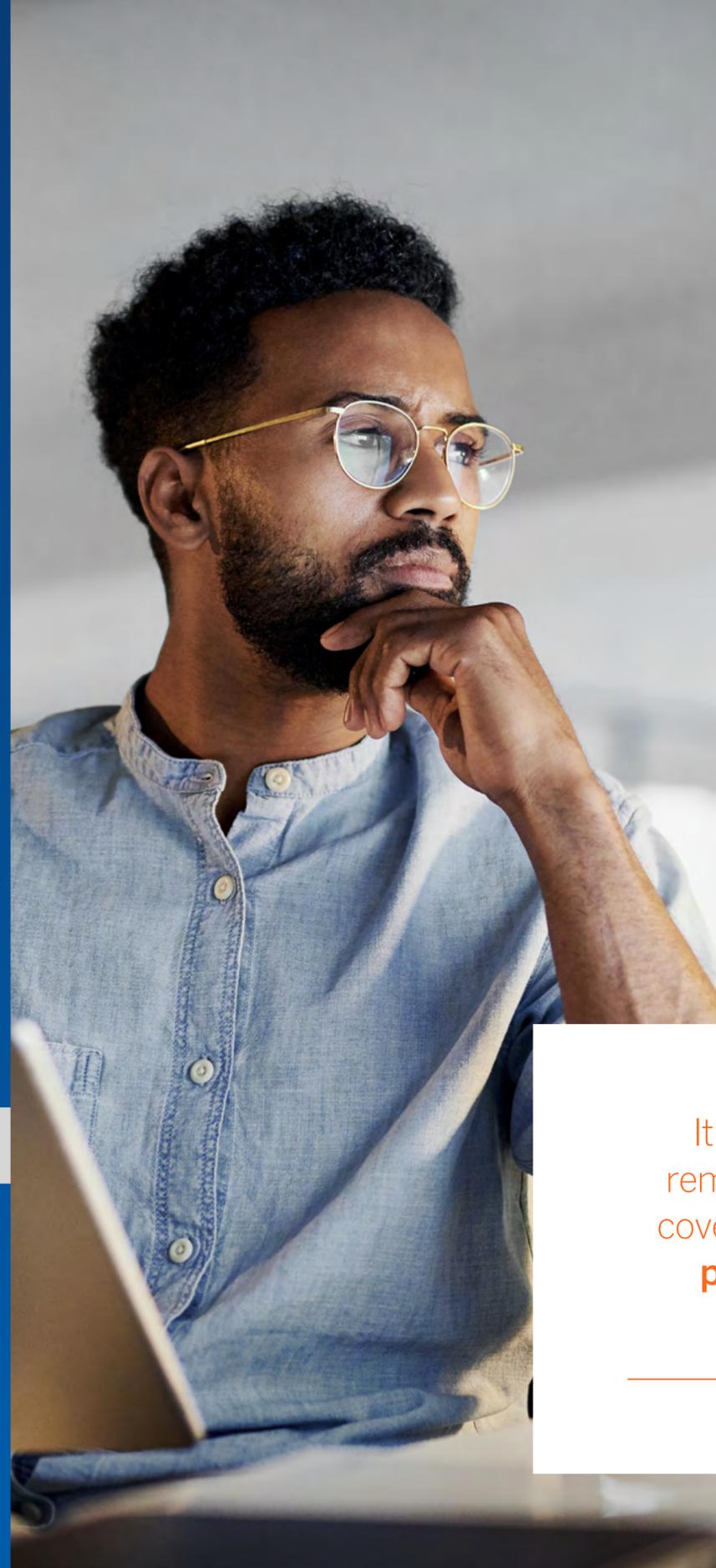
Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us



PAYING POLICIES INTO THE ESTATE

The proceeds of life policies are payable to the estate where the estate is the nominated beneficiary or no nominated beneficiary has been indicated. In these instances, the proceeds of a life policy would be combined with the cash in the estate to be utilized for the settlement of the liabilities of an estate.

The remaining cash would then be distributed in terms of the Will. It is possible to specify the proceeds of a policy payable to an estate to be utilized for the benefit of a specific beneficiary through the use of a Testamentary Trust.

It is important to consider whether the remaining cash of an estate is sufficient to cover the liabilities. The **proceeds of these policies attract executors' fees** and are **liable for estate duty**.



PAYING TO BENEFICIARIES DIRECTLY

The proceeds of policies that are payable to a nominated beneficiary, are paid directly to the beneficiary. The proceeds of these policies do not attract executors' fees but are liable for estate duty. It is important to consider the liquidity of an estate and who the nominated beneficiary of a policy is in relation to the liquidity in the estate.

If an individual bequeaths the bonded family home to his/her spouse and the proceeds of a life policy to a third party and the estate does not have sufficient cash to cover the bond, there will be a requirement for the spouse to assume responsibility for the bond.

Similarly, it is important to bear in mind that no substitution can be provided for on a policy with a nominated beneficiary. In these instances, you would need to provide for a replacement of the nominated beneficiary.

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

ISLAMIC WILLS & TRUSTS

What does Islamic Wills and
Trusts entail

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

WHAT DOES ISLAMIC WILLS

1

A Shari'ah Will fulfils an important religious duty. "It is the duty of a Muslim who has anything to bequest not to let two nights pass without writing a Will about it." (Sahih al-Bukhari).

2

If the Testator dies without leaving a Will, the Testator will be deemed to have died 'intestate' and their estate will be distributed in accordance with the South African laws of intestate succession – which does not apply the same criteria as those laid down by Shari'ah (Islamic Law).

3

A Will ensures that the deceased wishes are followed, avoiding unnecessary family disputes after they have passed.

4

The share of each heir has been defined by the Almighty, and the Almighty explained who inherits and who does not inherit. A Shari'ah Will is required to conform to Islamic principles relating to inheritance.

5

A Testamentary Trust can be created in the Will that complies with the principles of Shari'ah, to protect the assets of the beneficiaries and to provide for them.

6

A Shari'ah compliant inter vivos Trust can be created during one's lifetime, designed to provide for the protection of assets for a specific purpose and/or for specific beneficiaries. The Trust is customised, in that, the investment powers permit only for Shari'ah compliant investments and succession provisions.



It is the duty of a Muslim who has anything to bequest not to let two nights pass without writing a Will about it.

Sahih al-Bukhari

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

WILL REVIEW

When to do a will review

Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

WHEN TO DO A WILL REVIEW

While there is no specific timeframe to undertake the reviewing of your Will, it is suggested that this is done at the very least at life changing events such as:

- ✓ The acquiring of assets
- ✓ Marriage
- ✓ Children
- ✓ Divorce
- ✓ Special obligation
- ✓ Death of beneficiaries , etc.

It is considered good practice to **review your Will annually.**



Overview

Role of the Executor & Trustee

Intestate Succession

Domestic Assets

Offshore Assets

Liabilities

Marital Regimes

Customary & Religious Marriages

Divorce

Minor Children

Frail Parents

Special Needs Children

Taxes

Safekeeping of a Will

Policies

Islamic Wills & Trusts

Will Review

Contact Us

CONTACT US

Contact one of our Fiduciary Specialists should you require any additional information.

Standard Trust website: www.standardbank.co.za/wills



Sharecall Number: 0860 785 272



ContactSTL@standardbank.co.za

**LIFE IS UNCERTAIN BUT YOUR PEACE OF MIND
DOESN'T HAVE TO BE. GIVE LIFE TO YOUR LEGACY BY
CHOOSING STANDARD TRUST LIMITED.**