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Subject: |PSG| Big Picture Insights | Leaving a legacy when the world feels upside down

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Leaving a legacy when the world feels upside down

The pandemic has undoubtedly turned the world upside down. We have all witnessed how circumstances can change, emphasising how important it is to get and maintain your affairs in order.

Estate planning is more than just having a will

Without a proper estate plan, you have no guarantee that your wishes as stipulated in your will, can be fulfilled. You might be under the impression that you have an uncomplicated will and estate, but the complexity is often underestimated. Even if you had an estate plan done but have not reviewed it as circumstances change, you cannot guarantee that your plan is still relevant and executable without unintended consequences.

Holistic estate planning is more than just looking at your personal estate

When you undertake estate planning, you should consider who your heirs are and what their needs are, as well as the overall liquidity of your estate. Besides your personal estate you should also - if you are a business owner - consider what happens to your business in the event of your death. Business assets often make up a significant portion of a business owner's estate and when doing estate planning you can be faced with the complex task of the continuation of your business, retaining its value, or the challenge of liquidating the assets to the benefit of your dependants.

Marital regime and maintenance obligations play a very important role

Careful consideration should, where applicable, be given to your marital regime to ensure that your estate plan is aligned with the rights and obligations that flow as a consequence of your marriage. In South Africa, there is freedom of testation. This means that you can bequeath your assets to whoever you want, but this is often affected by your matrimonial property regime. The accrual claim (if applicable) and the maintenance claim of a spouse should also be carefully considered. Your spouse will be able to claim against your estate if they are unable to meet their maintenance needs. This accrual claim in favour of your spouse is also a claim against your estate. If adequate provision is not made, this can lead to unintended consequences as these claims must be settled before your estate can pass to your heirs. The importance of these claims was highlighted in a recent supreme court case, ruling that the right to income of a living annuity forms part of an estate for calculating an accrual and/or maintenance claim.

Everyone wants to leave a legacy, but this is not always as easy and as straight forward as it seems.

A qualified fiduciary expert will help you avoid the pitfalls of unintended consequences. They can create a comprehensive estate plan addressing all elements, providing you with peace of mind. You can contact your adviser to arrange this on your behalf.

Research done by PSG Technical Advisory Services team and PSG Wealth Fiduciary Adviser: Eben Nel.