ESTATE MATTERS

The financial adviser's role in estate planning

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By the time an executor is appointed to a deceased estate, they can change very little to an existing will and estate plan to ensure a speedy and cost-effective liquidation of the estate. A smooth and cost-effective transfer of assets from the estate to the heirs requires planning in advance. Financial advisers play a valuable role in the estate planning process, working with fiduciary specialists and sharing information, and can help to ensure that clients have well-considered, holistic estate plans.

Plans are for the living

When an executor is faced with a will and an estate to administer, it's a fait accompli. Any planning opportunities that presented themselves during the lifetime of the (now deceased) estate owner have either been implemented in a well-structured estate plan or have been reduced to the 'should have' list. Timeous planning is therefore a prerequisite for a smooth and cost-effective transfer of assets from the estate to the heirs, or to any of their estate structures, like trusts.

What is the process once an estate owner is deceased?

The Master of the High Court appoints the executor to take control of the assets in the deceased estate and to transfer these assets (after the payment of any liabilities) to the nominated heirs in the last will and testament of the deceased.

This seems simple enough, since the Administration of Estates Act ('the Act') and the provisions of the deceased's will govern the winding up of the deceased estate. However, there are factors that can prevent the executor from carrying out their duties and cause estates not to be wound up timeously.

Some of the issues frequently experienced by executors

- A lack of detail about the investment portfolio.
- Insufficient life cover to pay for estate duty, liabilities in the estate and maintenance claims of a surviving spouse, children and other dependants.
- Undeclared offshore assets owned by the deceased and their family.
- Lack of an investment mandate authorising the financial planner or investment adviser to continue managing the deceased's investments until these are transferred to their nominated heirs.
- Undeclared or uncertain business interests.

How a financial adviser can help

The financial adviser plays a key role when a fiduciary adviser consults with a client to draft and implement an estate plan. Financial advisers often have long-standing relationships with their clients. They are there when clients begin a business or take up employment. They see the birth of children into families and give advice regarding the funding of those children's tertiary studies. They become advisers to the client's professional or business insurance needs and eventually do retirement planning. It is a life-long journey as a trusted adviser to the client and the family. The financial adviser should therefore be an integral part of the estate planning process.

Making provision for minors

One of the most important issues to address when drafting a will is to consider the needs of minor children in the family after the death of a parent. The nomination of a guardian for the minor children in the will needs careful consideration. Even more important, however, is to set up a testamentary trust for the benefit of the minor children. If the will does not make provision for a testamentary trust, the inheritance of minor children will be paid into the Guardian's Fund, which falls under the administration of the Master of the High Court.

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Financial advisers have key information when it comes to setting up testamentary trusts

Financial advisers often have deep insights into family issues and this information can help when it comes to setting up testamentary trusts for the estate owner's minor children. Some of the issues to consider are:

- the estate owner's wishes about how capital and income are to be distributed, and to whom
- specific schooling and/or medical needs of any of the children
- how the estate owner viewed certain types of investments during their lifetime
- the need to appoint the children as co-trustees once they reach the age of 18 years and become majors
- whether any of the children should be precluded from ever acting as a trustee

Financial advisers understand the household's liquidity needs

The general rule is that the estate is frozen until an executor is appointed by the Master of the High Court. The exceptions in section 11(1)(b) of the Act deal with the maintenance of the family or household of the deceased and the maintenance of the assets. The financial planner can provide valuable guidance during the estate planning process regarding liquidity in the estate and the need for cash to be immediately available after the death of the estate owner.

A properly structured estate plan is the result of intricate planning

A properly drafted estate plan takes these intricate details into consideration and is the result of a structured process. In such a process, the financial planner and estate adviser blend all these requirements to do a proper analysis of assets and liabilities before a plan is structured and implemented.

Estate planning is about more than just avoiding taxes

The plan should focus on the goals of the estate planning exercise, as opposed to just trying to avoid taxes. Many well-structured estate plans have failed because, although very tax efficient, they neglected the needs of family members and their unique circumstances.

A team approach to estate planning, which involves a number of experts in their respective fields, is certainly more likely to achieve better outcomes.

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