

You need to decide whom you want to benefit from your assets or for whom you wish to provide financially, Riëtte Brune says.

You should be clear on how you want your beneficiaries to benefit – do you want them to inherit an asset, an income or cash?

You will not dictate who inherits the benefits from your life assurance policy, Brune says.

Many people think they can revoke the beneficiaries they have nominated on a life assurance policy

## Who receives your life policy and retirement fund benefits

by simply nominating other beneficiaries in their will. However, this is not the case, she says.

The life assurer has a contractual relationship with you, the policyholder, she says, and will pay out the benefits to the beneficiaries nominated in your assurance contract, regardless of whether your will states otherwise.

Brune says if you want to change

your life policy beneficiaries, you should do this directly with your life assurance company.

When it comes to your retirement fund benefit, in terms of section 37(c) of the Pension Funds Act, the discretion to distribute your death benefit lies with the trustees, and they will not necessarily follow your wishes as stated on your beneficiary nomination form, Brune says.

Your beneficiary nomination form serves only as a guide to the trustees and is one of many factors they have to take into account.

In terms of Section 37(c) of the Pension Funds Act, the trustees have a fiduciary duty to trace all your dependants and to make sure they are provided for. This involves establishing the people who are currently dependent on you or who

will become dependent on you, despite the fact that you do not have a legal obligation to support them.

Brune cited the example of a fund member who is paying for the education of his domestic worker's child. A "factual obligation" may exist on the member's death and the child may share in the death benefit.

"You need to be aware of consequences such as this when

you create a factual obligation," Brune says.

If you have minor children, you can attach a "letter of wishes" to your beneficiary nomination form that requests the trustees to pay the benefit into a testamentary trust created in terms of your will.

Brune says this should be a vesting trust, which means the trustees of the trust merely manage the assets for the benefit of the child until he or she reaches the age stipulated in your will.

# Make sure your will is done after you die



If there are problems with implementing your estate plan, there may be a big gap between how you intended your assets to be distributed after your death and what actually happens. You must ensure your intentions are clear so that your estate plan will be executed according to your wishes. At a recent series of meetings of the acsis/Personal Finance Financial Planning Club, acsis financial planning coach Riëtte Brune (left) discussed what you should take into account when drawing up your estate plan. **Neesa Moodley-Isaacs** reports

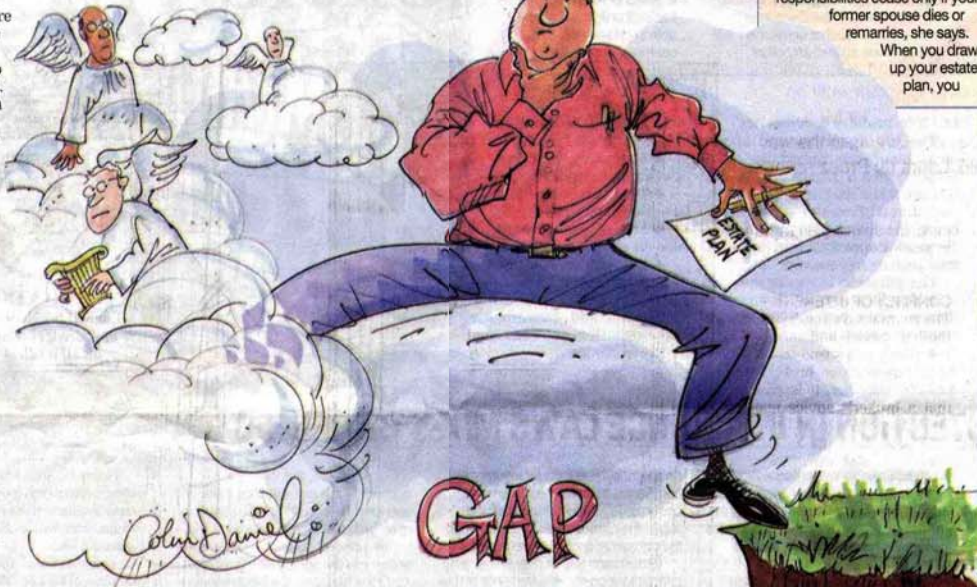
"We all plan for retirement, although we are not assured of living long enough to reach retirement. But, despite knowing that we are all going to die, many people still fail to draw up an estate plan," Riëtte Brune says.

Another reason you need an estate plan is to ensure that your estate has the most beneficial tax structure. Although it is not possible for your estate to pay no tax, you can minimise the tax your estate pays, Brune says.

However, you should not focus only on minimising the tax your estate pays when you die; you should also consider the tax consequences for your beneficiaries, Brune says.

For example, you may bequeath an asset to your spouse to ensure that no capital gains tax (CGT) or estate duty is paid on that asset when you die. However, when your spouse dies or sells the asset, your spouse's estate will have to pay CGT on that asset. The capital gain will be calculated from the time you bought the asset and not from the time it came into your spouse's ownership. So, all you have done by bequeathing the asset to your spouse is defer the tax liability.

Brune says even if you have a large estate, you should keep your estate plan as simple as possible so that it will be easy to execute.



## Common problem areas

### MAINTENANCE

In terms of the law, you can bequeath your assets to whomever you choose. But in terms of the Maintenance of Surviving Spouses Act, you cannot disinherit a spouse, so your surviving spouse can claim maintenance from your estate to the extent that he or she cannot provide for his or her own means, Riëtte Brune says.

People often fail to provide adequately for their surviving spouse or minor children, or for maintenance claims a spouse may have against an estate as a result of divorce orders.

There is a common misconception that maintenance responsibilities cease when you die, Brune says. But if you have a maintenance order against you, your maintenance responsibilities cease only if your former spouse dies or remarries, she says.

When you draw up your estate plan, you

should work out the capital amount that will be required to pay maintenance to your former spouse for the rest of his or her life, and you should provide for this amount in your estate plan, Brune says.

If you do not plan for this amount, a maintenance claim may be lodged against your estate that could deplete the value your estate.

### LOAN ACCOUNTS

You should be wary of bequeathing an outstanding loan account to a trust, Brune says.

Traditionally, if your estate planner puts your assets in a trust, the trust owes your estate for the assets and a loan account is created in your estate. You then bequeath the loan account to the trust in your will.

However, Brune says, writing off a debt in this way is considered a capital gain. The trust will be deemed to have made a capital gain equal to the outstanding loan account.

Bear in mind that individuals pay capital gains tax (CGT) at a maximum rate of 10 percent, while trusts pay CGT a rate of 20 percent.

Brune says the way around this is to amend the wording of your will or estate plan.

Instead of bequeathing the loan account to the trust, you should bequeath an actual sum of money to the trust. For this wish to be carried out, however, your estate must have sufficient cash to pay the amount you bequeath to the trust.

"Your other option is to work out the CGT liability and provide funds for that amount for the trust," she says.

### POST-DIVORCE WILLS

There is a three-month rule relating to your former spouse inheriting from you after your death, Brune says. This means that if you die within three months of divorcing your spouse, your will is treated as if your former spouse had died before you, and he or she will not inherit anything from you.

She says this rule is an acknowledgement that because divorce is a traumatic event, people often do not get around to changing their wills immediately after their divorce.

However, Brune says, if you die more than three months after your divorce, it is assumed that you did have time to change your will but chose not to do so. So if you do not change your will within three months of getting divorced and you then die, your ex-spouse could inherit your assets as stipulated in your will.

People who have recently divorced should consider revising their existing wills as a matter of urgency, Brune says.

## Check list for ensuring your will is in order

A will is the most basic estate-planning mechanism and ties together your estate plan, Riëtte Brune says.

The bulk of your assets will often be disposed of in your will.

It requires expertise to draft a will, and you should not even consider buying a standard will from a stationary shop, Brune says.

If you die without a will, your assets will be distributed in terms of the law of intestate succession, she says. This will also happen if your will is invalid.

Brune says you should check the following to make sure your will is in order:

◆ **Is your will valid?** Check that

your will is signed and witnessed in all the correct places. Also check that your witnesses are valid. A valid witness is someone who is over the age of 14.

◆ **Is your will current?** You may find that your circumstances and/or your wishes have changed since you drafted your will. Legislation that affects your estate plan may have changed since you drafted your will, and these changes need to be taken into account.

Brune says ideally your financial planner should review your will and your estate plan annually. Your planner should also review your will after any changes to legislation or if your personal circumstances



change, such as through marriage, the birth of a child or divorce.

◆ **Where is your original will?** You may know where your original

will is kept, but you need to tell someone close to you so that when you die, your family can find your original will.

If your original will cannot be found, a High Court order will have to be obtained before the Master of the Court can accept a copy of your will. This will lead to additional costs and delays in finalising your estate.

Brune says it is a good idea to have signed duplicate originals of your will. You can print out your will four times and have all four copies signed by yourself and your witnesses. Each copy will be considered an original because it bears original signatures.

You can then arrange for

yourself, your financial planner, your executor and a family friend to each keep one copy.

◆ **Have you appointed a guardian for your minor child (under 18 years), and do you want that guardian to manage money on behalf of your child?** If you want the guardian to receive and manage funds on behalf of your child, you must stipulate as much to prevent money or proceeds being paid into the Guardian's Fund, which is managed by the Master of the High Court.

If this happens, every time the guardian wants money for your child's expenses, he or she will have to apply to the court for the money.