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This is the **SECOND** edition of our newsletter regarding **WILLS AND ESTATE PLANNING**.

Feel free to contact us should you require a copy of our first edition regarding the **IMPORTANCE OF A VALID WILL**.

This edition deals specifically with matters to be dealt with to **PREVENT UNNECESSARY AND SOMETIMES CATASTROPHIC DELAYS**.

The ongoing theme of this newsletter is the necessity of obtaining professional advice regarding your estate affairs.

Please feel free to contact us to ensure that you do not die without a valid will!!

You are more than welcome to share this newsletter with your family, friends and colleagues as it is imperative for every adult to have a valid will.

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Yours faithfully,

**A.G. VAN BRAKEL**  
**A.G. VAN BRAKEL & ASSOCIATES INC.**

## **PREVENT UNNECESSARY AND SOMETIMES CATASTROPHIC DELAYS**

### **A) REVISE YOUR WILL REGULARLY, PAYING PARTICULAR ATTENTION TO CORRECT WORDING**

- Do regular estate planning
- Avoid contradictory terms and / or wording
- Regularly revise your will, particularly after:
  - Divorce
  - Deaths
  - Sale / alienation of major assets.
- **ENSURE THAT YOUR NEXT-OF-KIN KNOW WHERE YOUR WILL IS KEPT.**
- **THE CONTENTS OF A WILL ARE CONFIDENTIAL AND NEED NOT BE SHARED WITH ANYBODY.**



### **B) PROCEDURE TO BE FOLLOWED IN THE EVENT OF DEATH IN YOUR FAMILY :**

- Report the estate
  - All the completed and signed documents, death certificate, original will and codicils must be submitted to the Master of the Supreme Court
- The Master of the Supreme Court will then appoint an official Executor
- Delays can be experienced in instances where a valid will does not exist or the nominated Executor does not accept the nomination
- Estate affairs can only be dealt with by the Executor once the Master of the Supreme Court has appointed an Executor
- Avoid delays in reporting the estate by ensuring that all required documents are readily available and handed over to the Executor as a matter of urgency



## **C) AVOIDABLE PROBLEMS EXPERIENCED IN FINALISING AN ESTATE**

### **1. CASHFLOW SHORTAGES**

- Ensure that sufficient cash is available in the estate to cover expenses such as :
  - Outstanding taxes
  - Estate administration costs
  - Creditors up to date of death
  - Executors fees
  - Masters fees
- The Executor must ensure that sufficient cash or other assets are available to cover all estate expenses prior to the transfer of any cash or other assets to beneficiaries.
- A shortfall in available cash funds could lead to estate assets, such as a house, having to be sold by the Executor to cover costs.
- Heirs could also be required to make a cash contribution in order to prevent fixed assets from being sold by the Executor.
- A cashflow shortfall can to a large extent be avoided by ensuring adequate life cover with the estate as the nominated beneficiary.
- It is essential to obtain professional advice to ensure that adequate funds will be available in your estate in the event of your death.

### **2. POOR SERVICE DELIVERY**

- The Executor is dependent on the undermentioned organisations / institutions in the course of handling the estate affairs :
  - The Master of the Supreme Court
  - The Receiver of Revenue – all outstanding personal returns must first be finalised
  - Deeds Office
  - Insurance companies
  - Banks and other financial institutions
  - Accountants of the deceased (where applicable)

- Unqualified / incompetent executor – it is senseless appointing your husband / wife / child as Executor as they do not have the necessary expertise to finalise your estate!

**ULTIMATELY, THIS MIGHT COST YOU MORE THAN THE FIXED PRESCRIBED FEES THAT AN EXECUTOR MAY CHARGE, AS AN APPOINTED AGENT IS NOT RESTRICTED BY WHAT THEY CHARGE.**

**IT IS ESSENTIAL TO APPOINT A QUALIFIED AND EXPERIENCED EXECUTOR FROM THE ONSET**

### **3. MAINTENANCE CLAIMS**

- It can sometimes take months to agree on claim settlements resulting from divorce and maintenance court orders by surviving spouses and dependents.
- This can be avoided to a large extent by agreeing on settlement terms prior to your death.

### **4. DISPUTES BETWEEN HEIRS**

- An inheritance is a privilege rather than a right but often results in disputes between heirs
- This can be prevented to a large extent by avoiding general clauses such as ***“All the furniture to be divided equally between the children”*** and by rather specifying which items should go to which heir

### **5. TESTAMENTARY TRUSTS**

- Ensure as far as possible that qualified and willing Trustees are nominated who will not be disqualified to act as Trustees
- Ensure that sufficient assets are available for transfer to the Trust to cover all trust expenses
- The Executor cannot finalise the estate until all identified assets have been transferred to the Trust
- It is advisable to appoint at least one independent professional Trustee – preferably the Executor, on condition that they have the professional expertise

**6. OTHER PROBLEMS THAT CAN BE EXPERIENCED :**

- Where are the heirs?
- Executor cannot be traced
- Heirs that predecease you – revise your will regularly
- Testamentary provision must be made in the event that any heirs do not accept their inheritance
- Predeceased spouses or divorcees
- Information regarding the estates of any predeceased beneficiaries as well as particulars of all divorce orders must be provided to the Executor
- Provide copies of any collaboration / shareholders' agreements you may have with any other person / persons
- Unresolved court disputes

The majority of the above problems are avoidable by **REGULARLY** revising your will and by utilising a qualified Executor to finalise your estate.

**WE ARE QUALIFIED TO :**

- \* **ASSIST YOU WITH THE COMPILATION OF YOUR WILL**
- \* **ASSIST YOU WITH THE REVISION OF YOUR WILL**
- \* **ACT AS A PROFESSIONAL EXECUTOR**
- \* **ACT AS AN INDEPENDENT PROFESSIONAL TRUSTEE**

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