ESTATE PLANNING CLIENT GUIDEs AND FAQs

Estate Planning: Certainty for you and your family

After making provisions for the management of your Estate, to give effect to your plans, there some documents you need to execute:

i. Will – A Will is basically the foundation of your Estate plan as it contains instructions on how you want your assets to be distributed to beneficiaries of your choosing. It contains the named Executor of your choice who will see to the appropriate distribution of your assets, a nominated guardian to take care and assist in making important life decisions for your children who are minors. Where you are interested in establishing a trust for a specific purpose or for charitable purpose, a Will contains the instructions on how it should be carried out.

   The two types of Will include: Simple Will and Comprehensive Will.
   A Simple Will consists of monies in your Retirement Savings Account (RSA) and monies in all your personal account accounts. In other words, if you choose to draft a Simple Will, it will exclude your real estate properties, shares and chattels, only monies can be distributed to beneficiaries.

   A Comprehensive Will on the other hand comprises of all chattels, fixed and financial assets.

ii. Power of Attorney – A Power of Attorney is a legal document that empowers you (the donor) to appoint and authorise another person or corporation (the donee) to act on your behalf and do whatever you can lawfully do. In executing a Power of Attorney, you legally authorise a person (or a trust company) to make financial and legal decisions on your behalf during your lifetime or after your demise.

Can anyone challenge your Will?

Generally, anyone who intends to make a Will is free to distribute his/her assets however he/she pleases. However, anyone who would be personally and financially affected by the Will's terms if probate were to be granted can challenge a Will. In legal terms, these people are said to have a 'standing' in the Will.

A Will can be challenged where the person challenging is either contesting the form of the Will or the substance of the Will. When challenging the form of a Will, issues such as due execution, attestation and date are usually raised and when challenging the substance of the Will, issues such as testamentary capacity, undue influence and suspicious circumstances and limitation by law are raised. Therefore, in order to avoid any family dispute that may arise from anyone contesting your Will, it is important that your Will satisfies all legal requirements.

Which Assets can you gift in your Will?
One of the first things to do when drafting a Will is to identify assets which you have absolute legal ownership/title over and assets in which you have joint ownership/equitable interest. For obvious reasons, you can only gift in your Will assets which you have absolute legal title over to the person of your choice. Examples of assets which you have absolute ownership are; landed properties to which you have a good root of title which is not subject to any obligation to a third party, monies in your personal accounts and RSA and your life insurance policy.

However, for assets in which you have joint ownership/equitable interest, it cannot be gifted because you do not have absolute ownership of it, the Will comes in by stating how you want your interest in such asset to be treated and to which beneficiary you want tittle to pass to. Examples of such assets are; properties jointly owned and assets held in family trust.

How can you appoint a guardian for your child?
A guardian is someone you appoint that will be responsible for the welfare of your child until he/she turns 18. You can nominate a guardian in your Will.

Why should you appoint a guardian?
The reason for appointing a guardian for your child is to avoid family dispute over who will be their legal guardian until they attain age of 18. The nominated guardian need not be a family member, it can also be a friend although whoever you nominate, it is advisable that it be someone trusted and of good character and someone the child is familiar with.

What are the powers and responsibilities of a Guardian?
The nominated guardian, should he/she accept will be responsible for the daily and long term care and welfare of your child. He/she will also be responsible for making important life decisions for your child until the age of 18. Before nominating a guardian for your child, it is advisable to have a discussion with such person to ascertain whether the person is prepared for such responsibility and understands your views and will respect your wishes for your child.

A guardian however does not have control over the assets of your estate or the trust fund established for your children. Your appointed trustees will have power and responsibility. For the sake of the child, it is important the trustee and the guardian are able to communicate and work together.

How does a guardian access funds for the child's welfare?
This is usually taken care of by your instructions in the Will vesting in the trustee the power to transfer money from the child's trust fund for his/her upkeep, education and needs. Usually, when the child attains a certain age, the trustee can decide to pay funds directly to the child. Also in your Will, you may choose to make provisions for the guardian so as to be able to accommodate the responsibility of raising your child without any inconveniences. This can be done in form of pecuniary gifts or specific gifts in tour Will.

How can you provide for your children's education in your Will?
This can be done by creating an education fund through a testamentary trust in your Will.

What is a Testamentary trust?
A trust has an ownership structure whereby the assets of the trust are held by an individual or corporation known as a Trustee for the benefit of a third party called the beneficiary.

A testamentary trust is created within and by your Will but does not take effect until after your death. A testamentary trust may be created using specific assets, a portion of your estate or the remaining part of your estate after you might have shared assets to your chosen beneficiaries.

What is education fund?
An education fund is a type of specific trust that will focus only on a child's education. In other words, an education fund for your child ensures that assets placed in the trust will be used for your child's education only. This prevents mismanagement by family members and even the beneficiary also as the management of the trust will be vested in a trustee who will ensure that income and capital for the trust is used solely for your child's education. It ensures that the beneficiary will not be able to inherit the trust until he/she attains a certain level of education or satisfies other conditions as specified by you in the Will. By creating the education trust, you have also restricted the purpose for which the nominated guardian can use money from the trust for.

How does education fund operate?
The framework of an education fund is summarised as follows:

- As per your instructions, the trustee will have the power to apply the income and capital of the trust solely for the education of your child.
- A portion of your estate is used for the trust until your child attains a particular level of education or fulfils a condition set by you in your Will.
- When your child attains a level of education or fulfils a condition set by you in your Will, the remaining balance in the trust may be inherited by your child or treated in any such way as instructed in your Will.

An education fund is usually a mandatory trust imposed on the beneficiary to ensure that they attain a certain level of education before inheriting the remainder of the trust.

How can you protect a beneficiary with special needs?
Generally, when an asset is transferred to a beneficiary in a Will, it becomes the property of the beneficiary and can therefore exercise control over such property. The judicious use of such inherited asset is dependent on how sensible the beneficiary is. However, there are some beneficiaries who may not be able to judiciously manage such inheritance, such people are referred to as beneficiaries of special needs. Special needs in this context may be in the form of mental incapacity, physical incapacity, advanced age, drug/alcohol addiction, gambling addiction or a minor. Leaving inheritance for beneficiaries who fall in this category may lead to loss or misuse of their inheritance. The solution to this is creation of a protective trust in your Will to ensure that the inheritance bequeathed to the beneficiary with special needs is properly managed.

What is a protective trust?
A trust has an ownership structure whereby the assets of the trust are held by an individual or corporation known as a Trustee for the benefit of a third party called the beneficiary.

A testamentary trust is created within and by your Will but does not take effect until after your death. A testamentary trust may be created using specific assets, a portion of your estate or the remaining part of your estate after you might have shared assets to your chosen beneficiaries.

A protective trust is a structure that provides protection for the inheritance of a beneficiary by managing the trust asset for the benefit of the beneficiary and cater for the beneficiary's specific needs which will be considered as part of the administration of the trust. A protective trust ensures that the trust asset is not left in the hands of a beneficiary who most likely will mismanage the inheritance. A protective trust will be a mandatory trust imposed on the beneficiary due to their vulnerability. A protective trust can be done while you are alive or becomes effective when you pass away.

How does a protective trust operate?

- A portion of your estate is held in trust during the lifetime of the beneficiary with special needs or until they attain a certain age.
- The trustee will have the right to use the capital and income of the trust for the benefit of the beneficiary.
- Upon death of beneficiary with special needs, the remaining capital of the protective trust is transferred to other beneficiaries or treated as directed in your Will.

Top 10 Wills questions

1. How do I make a Will?
   It is very important that your Will be written by drafted by someone with the know-how as there are requirements that must be met fair it to be valid, failure of which may put your estate in chaos after your demise. It is important to seek legal advice from lawyers or trust corporations on how to go about making a valid Will. This is to ensure that all your assets go to the right beneficiaries in a very tax effective way and to also avoid family controversy in the sharing of your estate.

   Some of the things to consider include:

   - Assets you want to give away;
   - People you want to be the beneficiaries of such assets;
   - What assets would you like to give to which beneficiary;
   - Who would you like to appoint as your executor and/or trustee of your estate;
   - Who would you like to nominate as the guardian of your minor children.

2. How do I make sure my Will is valid and legally binding?
   The best way to ensure that your Will is valid, legally binding and expressing your dying wishes is to employ the services of a probate lawyer or trust corporation. They will ensure that your Will is drafted to meet the requirements of prevailing laws that govern probate and make sure it is executed properly.

3. What assets can I leave in my Will?
   You can only gift away assets that you have absolute legal ownership. These assets are called estate assets and they include:
   - Financial assets (cash, monies in personal accounts and RSA, shares, investments);
   - Personal effects and household furniture (wrist watches, artworks, jewellery)
   - Landed properties;
   - Motor vehicles and other chattels.

4. When should I update my Will?
   Wills are usually amended by making another document known as Codicil. A Codicil amends specific portion of a Will while still maintaining the original contents of the Will. It is advisable to review your Will whenever there are changes in your beneficiaries or assets (new marriage, birth of a child or grandchild, acquisition or sale of properties or chattel).

5. How will I update my Will?
   You should contact a knowledgeable probate lawyer. It does not necessarily have to be the person that drafted the original Will. We have probate lawyers that are more than capable in updating your Will for you.

6. What happens if I die without a Will?
   When a person dies without a Will, the person is said to have died 'intestate'. Where such happens to you, only your next of kin has the right to apply for Letter of Administration from which the court appointed administrators derive their authority to administer your estate. While the appointed administrators might intend to distribute your estate equally and fairly, it may not be exactly what you would have wished for if you had a Will. The best bet is to have a valid Will, to contain your wishes.

7. How do I draft a Will?
   If this is the question on your mind, look no further as you have come to the right place. We have a team of knowledgeable probate lawyers who are more than capable in drafting your Will to meet the required legal standard.

8. Who can challenge my Will?
   Drafting a Will is not enough as it could still be contested if not properly drafted to meet necessary legal requirements. If not properly drafted, your Will can be challenged by anyone who would be personally and financially affected by the Will's terms if probate were to be granted. Our probate lawyers will ensure that your Will meets all necessary requirements and give you advice on who can potentially challenge your Will and make sure it is properly addressed.

9. How do I appoint an Executor for my Will?
   The Executor of your choice is usually appointed by nominating such person in your Will as the Executor of your Estate. Your Executor can be friends, family or a Trust Corporation such as ours. The important factor is such person nominated must be someone you trust.

10. How do I remove an executor from my Will?
    Ordinarily, you can remove an executor by drafting a Codicil to that effect and changing the name of your nominated Executor in the Codicil or drafting a whole new Will entirely and appointing a new Executor. An executor can also be removed after your death if an interested party with a stake in your Will applies to Court for such Executor to be removed.

Why should I have a Durable Power of Attorney?

A power of attorney is a legal document where one (donor) appoints another (done) to act and manage his affairs on his behalf.

How does a durable power of attorney differ from a general power of attorney?

The major difference between a durable power of attorney and a general power of attorney is that a general power of attorney ceases to be valid once you become incapacitated. A durable power of attorney will still be valid even if you become incapacitated.

Why make a durable power of attorney?

It is important to make a durable power of attorney because due to it maintaining its validity even after you become incapacitated, you would have chosen who you want to manage your affairs while you are incapacitated. If you become incapacitated without having a durable power of attorney in place, the implication is that there would be no one with legal authority to manage your affairs while you are incapacitated.

Who can make a durable power of attorney?

An adult can make a durable power of attorney. Such adult however must as at the time of executing the power of attorney, show that they are capable of understanding the nature and effect of the power of attorney and the range of decisions which the done is authorised to make on his behalf.

Who should you appoint as your attorney?

A done of a power of attorney does not necessarily have to be a lawyer. It could be a friend or a family member whom you trust to handle your affairs in a responsible manner. You can also appoint a trust company like ours as your attorney.

How many attorneys can you appoint?

You can have more than one attorney. However, when this is the case, you should appoint people that can work together to manage your affairs without any conflict. They must be people who have your best interest at heart.

You can appoint your attorneys to act:

- Jointly;
- Severally; or
- Jointly and severally.

If you appoint your attorneys to act separately, the power of attorney will still be valid even when one of the attorneys can no longer act. Whereas, if you appoint the attorneys to act jointly, if one of the attorney dies or is incapable of continuing as your attorney, it may put an end to your power of attorney.
You should also make provision for a substitute attorney in case of unforeseen circumstances that may render your appointed attorney incapable of carrying out his duties.

When does a durable power of attorney commence?
You have the discretion to determine when a durable power of attorney should commence. It can either commence immediately upon execution by the donee or at so me future date, maybe when you become incapacitated. You generally indicate on the power of attorney instrument when it is to commence.

What powers can you give an attorney under a durable power of attorney?
You can give an appointed attorney the power to make decisions on your behalf which could have made yourself. You can also put limitations to the power of the attorney in order to check their powers. You should seek expert advice on how to go about limiting the powers contained in your durable power of attorney.

What are the duties and responsibilities of an attorney?
The attorney is usually in a position of trust. The attorney has a fiduciary duty to always act in your best interest. The attorneys must:

- Follow instructions given in the power of attorney instrument while you are incapacitated.
- Avoid doing anything that will make their personal interest conflict with yours.
- Act according to the limit and conditions placed on their authority.
- Keep records of dealings with your properties and finances.
- Keep their finances and assets separate from yours

Do you need to register a durable power of attorney?
Where you vest in your attorney the authority to deal with landed properties on your behalf, the durable power of attorney must be registered under the relevant Land Instrument Registration Laws. The benefit of registering your power of attorney is that it will be admitted into evidence in court showing that your attorney has the authority to act on your behalf should the need arise.

How do you revoke a durable power of attorney?
You can revoke a durable power of attorney anytime provided you have the mental capacity to understand the effect of your revocation. a power of attorney made by a deed should be revoked by a deed and executed by the donee also.

When does a durable power of attorney end?
A durable power of attorney ends when:

- You revoke it
- You die
- Your appointed attorney dies, is unable or unwilling to continue as your attorney and there is no replacement
- You appoint your attorneys to act jointly and one of them is unable or unwilling to continue as your attorney.

Information for donees in a Durable Power of Attorney?

What is a Durable Power of Attorney?
A durable power of attorney is a legal document that allows a person (donor) to appoint you (done) as his/her attorney with authority to act on his/her behalf regarding the management of his/her affairs where you have been deemed incapable of managing your affairs yourself. The major difference between a durable power of attorney and a general power of attorney is that a durable power of attorney will still be valid even after you become incapacitated unlike a general power of attorney which becomes invalid.
It is usually effective from the day you lose mental capacity or as agreed upon in the power of attorney instrument.

What does 'jointly' and/or 'jointly and severally' mean?
Where you appoint more than one attorney to act on your behalf, 'jointly' means that they must all act together and agree on the decisions made. 'jointly and severally' means the attorneys can act together or can make decisions individually.

How is legal capacity assessed?
A medical report from a state approved medical institution will be required as proof to determine whether or not you no longer have the mental capacity to manage your affairs yourself.

What are your responsibilities?
Once you are appointed as an attorney, you are required to act in the best interest of the person who appointed you. Your general duties include:

- Protecting and preserving his/her assets and interests
- Investing his/her assets prudently
- Keeping accurate records
- Not abusing or benefitting from your role of attorney

Can these appointments be revoked?
The person that appoints you as his/her attorney has the right to revoke your appointment in writing.

Do these documents need to be registered?
In most cases a durable power of attorney does not need to be registered. However, if the power of attorney gives authority to buy or sell land, then it must be registered under the relevant Land Instrument Registration Laws.

How long will do these appointments last?
Generally, appointments last until the person that appointed you dies. The exceptions are:

- If it is revoked by the person that appointed, you
- A specific termination date has been agreed between you and the person that appointed you
- You die, resign, are removed or are unable and unwilling to carry out your duties as an attorney.

Choosing an Executor.

An executor is an individual appointed under a valid Will with the responsibility of making sure your wishes under the Will are carried out. There can be more than one executor. The executors of a Will are responsible for applying for probate, they make sure that any debts and creditors that you owe are paid off, and that any remaining money or property is distributed according to your wishes. They deal with necessary third parties and beneficiaries to ensure your estate is administered in line with your wishes as contained in the Will.
The executors are expected to fulfil their duties with the utmost honest and diligence and is under what is known as a *fiduciary duty* which is a duty to act in good faith. There is no required qualification to be an executor although time and willingness to undertake this role is important. It is also advisable to choose a trusted individual whether family, non-family or both as your executors to ensure effective management and execution of your Will.
If the affairs are complicated, it is more prudent to name a lawyer or someone with legal and financial expertise as an executor.

Estate administration process

i. Discovery and marking of the Will - The search for your Will begins after the burial ceremonies are over. Usually the original copy of your Will is kept at the probate registry. If the Will is in the possession/custody any other person, such person is to send it to the probate registry within three (3) months of the knowledge of your death.

ii. Reading - If the Will is found at the probate registry, it will be read at a designated time or day as may be determined by the Probate Registrar. The Will must be read in the Probate Registry or any place the Probate Registrar determines and he shall be the supervising officer.

iii. Application for probate - After the reading of the Will, the appointed executors in the Will must make a formal application for probate before it can be granted.

iv. Proving of the Will - The executor is expected to prove the Will. In proving a Will, its due and proper execution must be ascertained.

v. Grant of probate: When the probate Registrar is satisfied that the Will was duly executed and that the testator made the Will with knowledge of its contents, the Registrar would grant the probate.

Your Executor – An important appointment

The Executor you appoint will be responsible for the administration of your Estate. His duties range from collecting all your assets, to paying your debts and protection of your assets till the administration of your estate is complete. You have the sole choice of choosing an executor for your estate, you can choose one or more individual, either family and friends or you can choose a trust corporation such as ours.

The role of an Executor

The primary role of an executor is to carry out the wishes in your Will to the latter and ensure the proper administration of your estate without being influenced by other parties. Hence, it is very important that your executor must be trustworthy and beyond reproach. Your appointed executor deals with all necessary third parties to ensure the proper management of your affairs in line with your wishes. His duties include:

- Applying and obtaining probate
- Confirming the beneficiaries of your estate
- Verifying your assets and liabilities
- Collecting and managing your assets
- Protect your assets pending distribution
- Arranging sales of assets where instructed
- Establishing testamentary trust (if any)
- Making interim and final distributions to beneficiaries
- Keeping proper accounts

It is important to add that any executor you add must understand his role and must be willing to see to the end of the administration of your estate.

Why would you need a professional executor?

Choosing a professional trust corporation over individuals as executors of your estate has its perks. It helps t balance the interest of your beneficiaries, it also ensures that all necessary functions required to administer your estate are undertaken in a professional manner and the way you intended. Other factors that may make you consider a professional trust corporation like ours include:

- You have complex family requirements that require an independent and unbiased executor.
- You have complex assets that need to be administered efficiently
- you have a complex Will with ongoing trusts and distributions that will require ongoing involvement from a trustee
- you do not have a family member or friend you can trust and rely on to look after the administration of your estate
- you do not wish to burden your family members or friends with such an onerous task
- you have beneficiaries with special needs you wish to cater for separately.

Benefits of appointing us as your professional Executors
Engaging the services of a professional trustee company as your executors will give you peace of mind. Our team of probate and trust attorneys will make sure your wishes are manged effectively and efficiently. Administering an Estate may not be straight forward sometimes and we as professionals understand this fact and are quick to identify unique circumstances such as yours and we can provide either holistic services or a tailored services where we continue to work with your advisers in the administration of your estate.

- Experience: We have been in the business of administering estates for more than 7 years. We have an experienced team who specialise in law, tax, accounting and business who will ensure that your estate is administered effectively and efficiently. You need not worry on how complex your estate is, our team is more than capable of demystifying the complexities and make sure your wishes are carried out to the latter.

- Independence: We pride ourselves in being objective and impartial whenever appointed as executors of an Estate. We will administer your Estate according to your wishes to the benefit of your beneficiaries without fear or favour.

- Confidentiality: Our staff are required by law and as a matter of company policy to keep all official information confidential. You need not worry about the details of your Estate.

Why should you consider a testamentary discretionary trust?
What is a Testamentary trust?
A trust has an ownership structure whereby the assets of the trust are held by an individual or corporation known as a Trustee for the benefit of a third party called the beneficiary.

A testamentary trust is created within and by your Will but does not take effect until after your death. A testamentary trust may be created using specific assets, a portion of your estate or the remaining part of your estate after you might have shared assets to your chosen beneficiaries.

What is a testamentary discretionary trust?
A testamentary discretionary trust is that which becomes effective upon your death and gives the trustee the discretionary power to manage and distribute the capital and income of the trust to the named beneficiaries in your Will. In order words, the trustee is given a free hand to appropriate trust assets to named beneficiaries in your Will.

What are the advantages of a testamentary discretionary trust?
Flexibility for beneficiaries – This type of testamentary trust allows the trustee to have a free hand in distributing the capital and income to your named beneficiary at any time and in any proportion.

Protection of assets – This type of trust protects the trust assets from legal proceedings that may arise against beneficiaries as they are not the legal owners of the trust asset. In other words, such trust assets will not be subject to satisfy whatever obligation is owed by the beneficiary to a third party. A testamentary trust separates inherited assets from personal assets of the beneficiaries.

Why should you consider testamentary life interest trust?

What is a testamentary trust?

A trust has an ownership structure whereby the assets of the trust are held by an individual or corporation known as a Trustee for the benefit of a third party called the beneficiary.

A testamentary trust is created within and by your Will but does not take effect until after your death. A testamentary trust may be created using specific assets, a portion of your estate or the remaining part of your estate after you might have shared assets to your chosen beneficiaries.

What is testamentary interest trust

A testamentary life interest trust is created to ensure that a beneficiary of your choosing receives support from your estate until the death of such beneficiary after which the asset will be distributed according to your instructions in the Will. This implies that the trustee will oversee the trust asset on behalf of the beneficiary during his/her lifetime and will be catered for from the proceeds of the trust asset as per the instructions in your Will. This type of trust allows you to support a particular beneficiary after your death for a given period, usually during the lifetime of such beneficiary. This can be used for example for the benefit of your spouse during his/her lifetime after which the asset will pass unto your children after your spouse's death.

How do you transfer control of your family company?

One of the main features of a company is the perpetuity of its existence, that is a company can still be in business even if one of its members dies. For a family company, it can continue to operate even after your death. The company is a separate legal entity, therefore its assets are not part of your estate and cannot be governed by your Will.

A separate legal entity?

A family company is usually operated through a private company structure where shares are issued to family members and the office holders are family members. A family company has a separate legal entity from the shareholders and although the shares of the company are issued to shareholders, the assets of the company belongs to the shareholders and not the company. Therefore, if you are a shareholder in the company, the company's assets do not form part of your estate and so cannot be stated in your Will. However, you are free state in your Will how your shares in the company should be transferred to your chosen beneficiary subject to the Memorandum and Article of Association of the company.

Issued Shares

A company has different classes of shares which determines the rights and obligations of a shareholder depending on the class of shares you own.

You may ordinarily leave your shares in a family company to your beneficiaries in your Will. However, you need to consider such beneficiary because transferring your shares to him may give him/her control of the company, either by becoming a majority shareholder or through the class of shares you own. Also, you should consider any of the governing rules of the company regarding transfer of shares so your transfer will not be void. Where there is conflict between the instructions in your Will and the constitution of the company, it is the constitution of the company that will prevail.

Company officers

The officers of the company are those that manage the affairs of a company. They are the directors and the secretary. Directors manage the day to day running of the company while a secretary has an advisory role and keeps relevant records and makes sure the company is in line with various company regulations.

The shareholders appoint company officers which means that any shareholder with majority of the votes control those that will be appointed as officers of the company. It is advisable for you to consider when choosing the beneficiary of your controlling stake in the company, the person must be a trusted individual and must be one that is capable of making appropriate appointments and decisions for the company.

How do you transfer control of your family discretionary trust?

When you establish a family trust, it can continue even after your demise depending on the terms of your Will. This however does not form part of your Estate but you can influence the future control through your Will.

A separate legal entity

A family discretionary trust is usually established to hold assets on behalf of beneficiaries who are family members. Where you are a beneficiary of a family trust, it does not form part of your estate as it is not owned by you but the trustee, so it is impossible for you to include such trust asset in your Will.

The trustee

The trustee is responsible for the day-to-day running of the trust. The trustee's powers are set out in the trust deed and their duties usually include the allocation of the income and capital of the trust, the administration of the trust's investments, the maintenance of financial records and the decision of when the trust is to be wound up where it is not contained in the trust instrument.

It is usually the trust deed that sets out how a trustee is replaced. If you are the sole trustee of your family trust, on your death, your executor may become the trustee. If the family trust has joint trustees who are individuals, on the death of one trustee the surviving trustees will usually continue as the trustees of the family trust. On the death of the last trustee, the executor of the estate of that trustee may become the trustee of the family trust.

The beneficiaries

The beneficiaries of a trust are the persons or entities who may receive distributions from a trust as specified in the trust instrument. Assets of a trust do not form part of the estate of a beneficiary, it is however important for you to consider who may receive the capital and income of the family trust.

Why should you consider a charitable trust in your Will?

What is testamentary charitable trust?

A testamentary charitable trust essentially allows you to maintain your philanthropic gesture even after your demise. This type of trust takes effect after your death using specific assets, a portion of your estate or the remaining balance of your estate after all must have been distributed to your chosen beneficiaries.

What are the benefits of a testamentary charitable trust?

This type of trust is advisable where you intend to make a more permanent and enduring contribution. Another benefit of this is that the trust will continue in perpetuity and will also state in you Will the specific charitable cause you want to benefit. It also gives the trustee a free hand in distributing the trust income and capital as this type of trust does not state specific individual beneficiaries.

How does a testamentary charitable trust operate?

You can include specific instructions in your Will regarding the operation of the trust. Some of the instructions include; the charities or specific causes you want to benefit, how the recipient institutions should apply the funds. The Will is generally the governing document of a testamentary charitable trust and the trustee will be bound to follow your instructions.

Upon your death, the executor of your estate will set aside the amount or assets you have designated to form the initial capital of the trust. The trustee will then be responsible for the ongoing administration of the trust and the management of the investment of the trust assets. The trustee is bound to distribute trust income to the charitable institutions you have nominated in your Will. You can choose to specify the institutions that will benefit from the trust and also include the frequency of the distributions to them or you can leave it to the discretion of the trustee.

Why would you choose a charitable trust over an outright bequest?

Giving an outright bequest simply means that you are giving the charity institution total discretion as to the application of your donation. you may wish to make a more substantial contribution in the form of distributions from a charitable trust, with precise conditions and guidelines over how those funds are to be used by the charity. But where you create a testamentary charitable trust, it allows you to ensure that you are making a lasting and valuable contribution which will continue to generate a continuous stream of income and benefit to your chosen causes after your death.

Another reason to create a charitable trust is that it can operate as a lasting memorial in your name or be used to honour the name of a respected person or family member.