Plan Your Estate to Protect Your Family – Two End-of-Year Questions to Ask Yourself

by O'Hagan Attorneys | Dec 1, 2023 | Wills and Estate Planning | 0 comments

"It's the most wonderful time of the year!" (Songwriters Pola & Wyle)

As the end of another year approaches, with its family celebrations and holidays, take the time to check that your estate plan really does ensure that your loved ones will be looked after when you are no longer here for them.
Here are two questions to ask yourself right now –

1. **"Is it time to review my will?"**

   The heart of any estate plan is of course your will ("Last Will and Testament") and it is essential to review it regularly. Check for the following –

   a. **Changes in your financial or personal circumstances**. If you have changed your circumstances in any way – perhaps you have a new spouse or life partner, perhaps you have divorced or had another child, perhaps your assets and liabilities are different now – whatever it is, you may well want to change the relevant provisions in your will.

   b. **Changes in your family's circumstances.** Similarly, changes in a family member's personal or financial circumstances could trigger a need for change.

c. **Changes in tax or other laws that might affect your estate.** As in everything else in life, constant change is a feature of our legal and tax landscape – your estate plan may need to adapt accordingly.

To update your will, ask your lawyer whether a "codicil" to your will is enough, or whether it would be better to execute a brand-new will.

2. **"Is there enough "ready cash" in my estate?"**

Something easily overlooked in the estate planning process is the need to provide your loved ones and your executor with "liquid" funds – readily-available cash or other accessible funds.

Without that, your family is at risk in two respects –

a. **They may struggle to make ends meet while your estate is being wound up.**

Winding up a deceased estate is a specialised process which can take a long time. Your family needs something to live on in the interim, and although your executor has the power to advance monies to heirs in certain circumstances, first prize will always be to leave your loved ones a source of income outside of that whole process. Remember that your bank accounts and the like will be frozen as soon as the banks learn of your death.

b. **Your family could even face homelessness.**

That's not an exaggeration – it's exactly the prospect confronting a widow after a recent High Court order authorised an executor to sell the deceased's family home. The problem was that the executor needed to have sufficient funds to pay creditors, the administration costs of the estate, the advertising, the Master's fees and the executor's fees – in that case, just over R206,000.

The only way he could raise enough cash was to sell the house in the estate, because the sole heir (the deceased's widow) had declined to make the necessary cash contribution to the estate to avoid that. The Court ordered the Master of the High Court to set the manner and conditions for the sale accordingly – the widow will have to move.

In many estates there will be assets other than the family home that the executor can sell to raise cash, but it will always be best to avoid that – it could be your business for example, or a valuable heirloom.

So how do you prevent that unhappy scenario?

The answer is simple – find another way to leave your family access to ready cash outside of your estate. Commonly recommended strategies include separate bank accounts controlled by family members, family trusts, life policies and living annuities with family members nominated as beneficiaries, really anything accessible directly to your family members outside the estate. **Professional advice specific to your circumstances is a no-brainer here.**

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