



ESTATE PLANNING: DEATH AND MARRIAGE GO TOGETHER LIKE A HORSE AND CARRIAGE

For most people the words “death” and “marriage” do not belong together in the same conversation. The last thing on people’s minds when they get married and enter into an ante-nuptial contract is death – the focus is usually around possible divorce. Likewise, when planning the affairs around our demise, very few of us would be thinking about marriage.

However, according to David Knott, a fiduciary specialist at Private Client Trust, a division of Private Client Holdings, estate planning always needs to take into consideration the regime under which you are married, for example in community of property, out of community of property, Ante-nuptial Contract with or without accrual and even the laws of the country in which you are married.

Knott explains that if you are married in community of property, you cannot leave your assets to anyone as you only own a half share of these – the other half is owned by your spouse. “Your spouse is unlikely to be happy sharing the house or car with another for example.”

Likewise, Knott advises that if you are married in terms of the Matrimonial Property Act with accrual, upon your death a calculation must be made by law as to the growth of both estates and the partner whose estate has grown least has a claim against the other’s estate. If the claim is against the deceased spouse’s estate, this will impact the distribution of assets in terms of the Will.

Knott offers an example of how things can go wrong with estate planning if you do not factor in the terms of your marriage contract.

“A man dies and in terms of his Will he bestowed one quarter of his estate to his wife and the residue in equal shares to his three children from his previous marriages.”

“However, when this man was drafting his Will he forgot that he had entered into an ante-nuptial contract with accrual, which gave rise to a claim against his estate by his surviving current spouse. The end result is that his wife inherits five eighths and each of his children inherit one eighth - far from what he had intended in his Will.”

There are a myriad of issues that can change the way your estate is distributed – despite your clear last wishes. “The preparation of a valid, workable Will requires a skilled Estate Planning expert who is fully aware of all the problems that may arise should you not take your marriage contract into account. In this way you can ensure that your estate devolves upon the intended heirs without undue problems and strife,” concludes Knott.

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