

PRESENTATION SUCCESSION AND ESTATE PLANNING

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Nairobi Baptist Church

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Presentation In Brief

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Part I - Law of Succession

General Definitions

- “Testator” refers to the maker of a will. “Testate Succession” is succession where there is a Will whilst “Intestate Succession” is where there is no Will. “Estate” refers to the property of the deceased.
- “Executor” refers to the person appointed by the Testator to oversee collection, management and distribution of his Estate. “Administrator” is used in cases of Intestate Succession.
- “Codicil” refers to a document supplemental to a Will and which either elaborates further or amends a Will.
- “Legacy” means a gift given under a Will. “Beneficiary” means a person entitled to assets from the Estate (including legacies).
- “Gift Inter vivos” means a gift given during the lifetime of an individual.
- “Donatio Mortis Causa” means a gift given in anticipation of death.

Testate Succession

- This arises where there the deceased person has left a Will. A Will can be oral (valid for three months) or written.
- Prior to being implemented, a Will needs to be presented in court together with an application for grant of letters of probate.
- The Letters of Probate allow for collection and management of the Estate. After a specific period (6 months) application can be made for confirmation of the grant which allows for distribution.
- Generally the drafting of a Will reduces the chances of dispute. Court may still vary terms of the Will to cater for beneficiaries



Part II - Estate Planning

Rationale

- There are limitations to the use of a Will as a tool for dealing with property of a deceased. An individual may wish for immediate (even if part) distribution.
- It allows for “process” based approach rather than an “event”. There is also greater flexibility for change.
- There is greater transparency where Estate Planning is ordered properly. This, in turn, enhances beneficiaries’ certainty.
- Estate planning reduces the amount of time spent in the succession process.

Interplay between laws

- Estate planning would typically involve a confluence of various laws.
- The key laws would be the Law of Succession, the Trustees Act, the Companies Act and Common Law.
- Other laws that may come into play include the Employment Act, the Insurance Act, the Retirement Benefits Act and the Income Tax Act.
- The laws to be used would depend on the model of Estate Planning that is to be adopted.

Models for Estate Planning

- There are two broad models that can be used for Estate Planning - direct transfer to beneficiaries (in the lifetime of owner) or use of a trust/quasi trust model.
- The direct transfer is straightforward as the owner transfers all or a majority of his/her assets to the beneficiaries.
- In the trust model, the owner transfers assets some or all assets to a trust which would then administer them accordingly.
- A Will would still be necessary to deal with (a) assets not transferred or not existing at the time of putting in place the estate plan; (b) recording of gifts inter vivos; and (c) outlining the working of the trust (if this model is adopted).



THE END