

GET YOUR AFFAIRS IN ORDER – REVIEW YOUR WILL

by Vanessa Schrum

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In the recent Budget Statement, the Minister of Finance confirmed that government's priority is to eliminate the deficit and that it has a three-year plan to achieve this goal.

That statement serves as a reminder that a regular review of one's own financial affairs and proper estate planning are crucial for the personal and financial stability of the family.

In particular, you should consider appropriate updates to your Will if any of the following events have occurred:

- Changes in legislation and government policy.

It will be important to keep abreast of tax changes in Bermuda and to review estate planning techniques such as lifetime gifts and reservation of benefit, to ensure that any planning achieves the desired end. Dual nationals should also consider changes in legislation and tax reform in the countries in which they hold citizenship. For example, in the United States, annual inflation adjustments are often made to estate, gift and generation skipping transfer taxes. The 2016 exemption amount applying to estates and gifts recently increased to \$5.45 million for US persons only, prompting consideration of lifetime gifts and review of Wills where a marital deduction provision or other similar strategy is used.

- Changes in family circumstances

The birth or adoption of children and the marriage or divorce of your heirs and descendants may all warrant changes to your Will, particularly if it is necessary to include (or exclude) any of these individuals from receiving any benefit from your estate. Marriage revokes a Will, so if you have married since signing your Will and there are no words to the contrary, it will be necessary for you to sign a new Will to ensure that your wishes are followed after your death. The situation is different where you have named your spouse in your Will and your marriage is later dissolved. Divorce does not revoke an entire Will, but only the provisions that relate to your divorced spouse. However, if you are only separated from your spouse and do not want your estranged spouse to benefit from your estate on your death you will need to sign a new Will.

■ Death and incapacity

If an executor or guardian named in your Will has died or lost mental capacity you should amend these appointments unless substitute provisions are already included in your Will. This is also an opportunity to ensure that the persons you have named to be your executors and guardians are still appropriate, legally qualified to act and willing to serve. Likewise if a spouse or named beneficiary has died or lost capacity, consider if any gifts in their favour need to be changed, or if it is sensible to include contingent gifts or default provisions in your Will.

■ Asset changes

The acquisition or disposal of assets, the increase or decrease in asset values and material changes in financial circumstances generally are all prompts to review a Will. Where specific gifts of property or personal assets are made in a Will, it is important to ensure that the gifts are still valid and the items are still owned by you. Where an item has been disposed of it may be necessary to include a replacement gift in your Will to avoid an aggrieved beneficiary.

■ Family business planning

Consider family business succession and who is most appropriate to receive and run the family business. In some cases it may be desirable to transfer the business to family members, and in other cases to consider an outside sale, always respecting the interests of business partners and key employees. In either case early planning is important in order to implement appropriate estate and tax mitigation strategies.

■ Changes in location

Acquiring a residence abroad and/or an additional nationality will be prompts to obtain suitable advice to ensure that obligations are met in these new jurisdictions and, if it is prudent, to have multiple Wills that work together and do not conflict.

■ Electronic data

Make arrangements for your digital data to ensure that it is properly handled following your death and that the appropriate people will have access at the right time.

■ Dependents

Be aware of persons you are legally bound to support. In Bermuda this may include a spouse, ex-spouse, child or grandchild that you are maintaining. Proper provision should be made for these persons in your Will.

■ New pets

Animals are included in the legal definition of personal chattels and may be left under your Will. Consider who you would want to receive your beloved pets following your death and if a monetary or other gift to help care for your pets is warranted.

Remember to coordinate any updates to your Will with changes to other dispositive instruments such as an Inter Vivos Trust, life insurance beneficiary designations and a spouse or partner's Will.

Writing a Will and keeping it up to date should be a financial planning priority for everyone, particularly those with dependents.

As with any specialised area of law advice should be taken from a lawyer specialising in drafting Wills and giving estate planning advice.

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This column should not be used as a substitute for professional legal advice. Before proceeding with any matters discussed here, persons are advised to consult with a lawyer.