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A Family Affair

Wealth is often a family thing. One pioneering family member breaks out of poverty and not only sets up the following generations financially but also, hopefully, teaches them the skills to grow and retain the family fortune for generations to come. Doing so isn't easy. This is how.

In order for a family to plan successfully for generational wealth is dependent on honest and transparent communication across generations. However, at the same time they must ensure that family relations are protected, respected, and nurtured.

Modern Family

There is the saying, "From riches to rags in three generations". It is sometimes true however wealth is seldom isolated to a single generation, and most who have amassed wealth have the desire to ensure that their assets are transferred to the next generation smoothly, efficiently and as equitably as possible. The increase in the number of blended, more complex family structures, together with the fact that many families are fractured around the globe, has added a layer of complexity when it comes to estate planning and developing a financial legacy for the next generation. More complex family structures also create the potential for greater family dynamics and idiosyncrasies that require sensitivity and a carefully considered approach to estate planning.

As a result there has been a marked increase in generational wealth planning, with more and more families choosing to include their adult children in the estate planning process. Not only does this help in ensuring the effective transference of wealth from one generation to the other, but it also provides the next generation with deeper insight into how the wealth was created, the sacrifices that were made in the process, the intentions behind building the wealth, and the purpose for which the estate planner would like to see the wealth being used.

Ensuring that the next generation understands the manner in which the legacy has been structured is as important as ensuring that the next generation is equipped to receive the wealth and protect it into the future.

Family nest egg

Family communication can sometimes be challenging, particularly where family members have flown the coop and are separated around the world. Having members of the same family living in various parts of the world can give rise to jurisdictional issues which, if not attended to by an expert in the field, can give rise to delays in winding up an estate, unintentional tax consequences, and unforeseen costs.

Many civil law jurisdictions, such as France, Italy, Holland, Portugal, Spain, as

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Quarter 3 2021

Financial Informer

well as Mauritius, have mandatory succession rights, or 'forced heirship', laws in place which place restrictions on how your assets can be bequeathed. If your estate is not appropriately structured taking into account the laws of the jurisdiction in which your assets are located, your estate planning intentions may be inadvertently subverted.

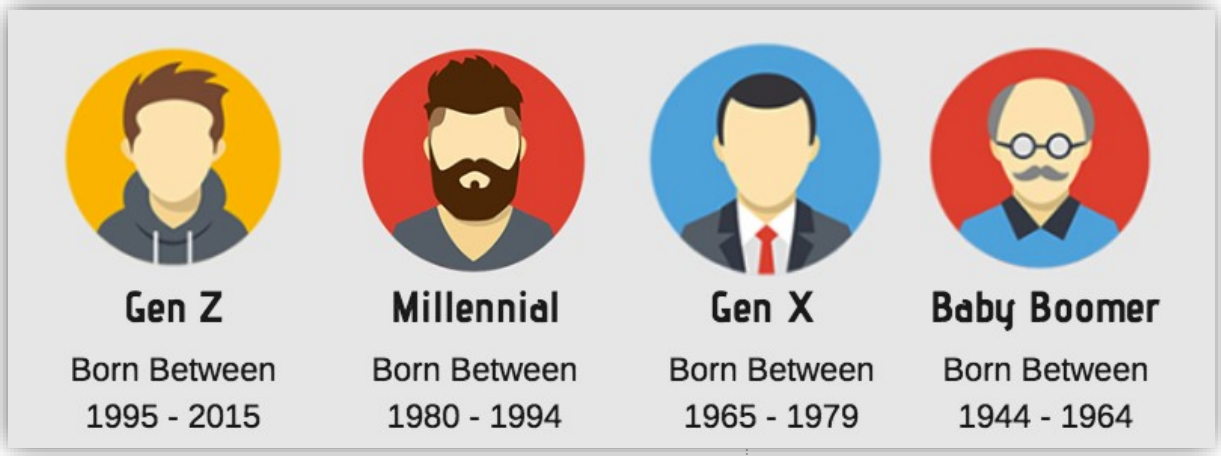
Naturally, a valid and well-drafted will is key to your intended legacy, although this is often more complicated than it seems. Complex family dynamics and multiple heirs can make it difficult to structure a financial legacy that is deemed equitable for everyone involved. Furthermore, the existence of foreign assets may not only necessitate the drafting of an offshore will but may also add an additional layer of costs in respect of seeking expert legal and fiduciary advice in the country where your assets are housed.

Trust is earned

Appointing an executor who has sufficient expertise to give full effect to your wishes while at the same time being sensitive to family dynamics and relationships is of the utmost importance, and in our experience, it is advisable to appoint an independent fiduciary expert to fulfil this role. Similarly, if you have made provision for a testamentary trust in your will, you will need to give careful thought to the appointment of your trustees and setting out their duties and obligations. Once you have died, not only will the trustees be the conduit through which your beneficiaries will liaise with regard to their inheritance, but they will also be responsible for ensuring that the trust assets are managed in your beneficiaries' best interest.

Planning for Life

Putting plans in place – and communicating them to the next generation – for the management of your financial affairs in the event of incapacity is an essential part of estate planning. As you age, the possibility that you could become mentally or physically incapacitated will naturally play heavily on your adult children's minds, and providing them with comfort that effective mechanisms have been put in place to deal with such an eventuality is



How are generations defined?

Currently, five generations make up our society. Each of those five generations has an active role in the marketplace. Depending on the specific workplace, the workforce includes four to five generations. Here are the birth years for each generation:

Gen Z, iGen, or Centennials:
Born 1996 – 2015

Millennials or Gen Y:
Born 1977 – 1995

Generation X:
Born 1965 – 1976

Baby Boomers:
Born 1946 – 1964

Traditionalists or Silent Generation:
Born 1945 and before



Quarter 3 2021

Financial Informer

imperative.

In the event of a physical disability, a general power of attorney is an effective way of ensuring that your adult children can take over the management of your financial affairs, although keep in mind that such a mandate will fall away in the event that you were to become mentally incapacitated. This is something to carefully consider and plan for where diseases like Alzheimer's are a consideration.

Inter vivos trusts are very effective estate planning tools to ensure that your assets can be managed and protected in the event of mental incapacitation, but using such a vehicle would entail careful forward planning and structuring to ensure that your goals are met. Once again, the appointment of trustees to manage the assets in the trust is something that will require careful consideration and an enormous amount of trust. A living will can prove to be very useful in the event of a medical crisis or emergency It is an excellent way of providing your loved ones with guidance as to how you would like to be cared for at the end of your life and can prove particularly useful in the face of a terminal diagnosis.

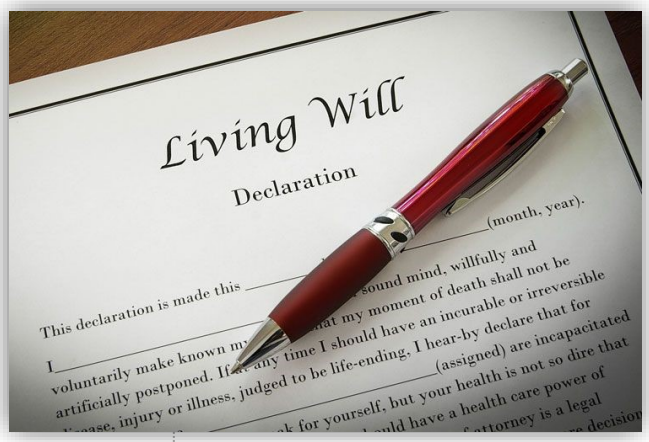
Peace of Mind

Another key component of generational wealth planning is providing the next generation with the assurance that your retirement funding is adequate and that you will not become a financial burden on your adult children later in life. Not having insight into the retirement funding position of aged parents is a source of anxiety for many adult children, and effective generational planning should take steps to provide the next generation with comfort that sufficient and effective retirement funding is in place, including the costs of future medical care, assisted living and frail care, if required.

In terms of distributing one's retirement fund assets, it is important that your estate plan takes into account the nature of each investment and the legislation that governs how the assets may be distributed. Remember, if your funds are housed in an approved retirement fund, the distribution of the funds will be at the discretion of the fund trustees based on their determination of who qualifies as a financial dependent. This could therefore be a determining factor in when you choose to retire from the fund bearing in mind that a living annuity structure allows you to nominate your beneficiaries as you choose.

Indigo children

If you have a special needs child, ensuring that those assets intended for them are protected and managed in their best interests even after your death is a critical part of generational wealth planning. Special trusts, whether testamentary or inter vivos, are both effective and tax-efficient when it comes to protecting the financial future of a special needs child. If you have other adult children, you may want to con-



What is Living Will?

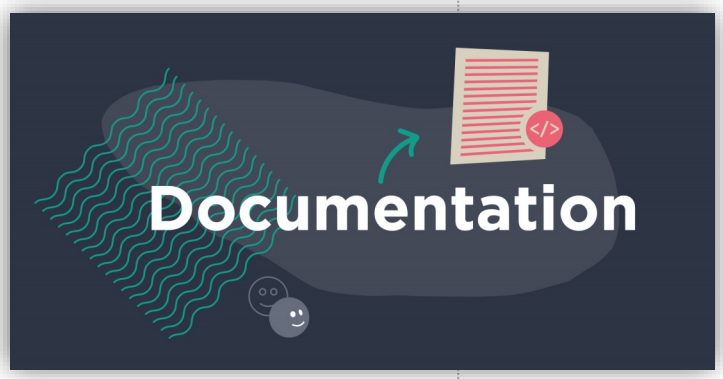
A living will is a legal document that specifies the type of medical care that an individual does or does not want in the event they are unable to communicate their wishes.

In the case of an unconscious person who suffers from a terminal illness or a life-threatening injury, doctors and hospitals consult the living will to determine whether or not the patient wants life-sustaining treatment, such as assisted breathing or tube feeding. In the absence of a living will, decisions about medical care become the responsibility of the spouse, family members, or other third parties. These individuals may be unaware of the patient's desires, or they may not wish to follow the patient's unwritten, verbal directives.



Quarter 3 2021

Financial Informer



A critical factor to the efficiency in which your estate is administered is the access and availability of key estate planning documentation. In this regard, it is normally recommended that you provide your adult children with copies of all relevant documentation

sider appointing them as trustees to the special trust, together with an independent trustee, to ensure that special needs are optimally managed.

Some parents want to transfer some of their wealth to their adult children and/or grandchildren during their lifetime, and this is something that a generational wealth planner can assist with – while ensuring that all tax and retirement funding implications of doing so are considered. Choosing to give money to an adult child or assist them financially with the purchase of their first property should form part of the generational wealth planning process, not only because of the donations tax implications but because it may impact on the allotment in your will to the extent that it impacts on the financial legacy of your other heirs.

Busy, busy, busy

If you have business interests, your estate plan should also include a workable succession plan in respect of your business shares with due regard to the shareholders' agreement and business assurance plan. Having sufficient **buy and sell assurance** in place is not only an excellent way of ensuring that the surviving shareholders can purchase your shares in the event of your death, but also serves to secure the value of your business interests for your loved ones.

Well documented

Another critical factor to the efficiency in which your estate is administered is the access and availability of key estate planning documentation, and in this regard, it is normally recommended that you provide your adult children with copies of all relevant documentation, including a copy of your will, title deeds, birth certificate, ID, passport, marriage certificate, antenuptial contract, trust deeds, bank account details, divorce orders, benefit statements, gun licences and other important documentation.

When winding up your affairs, the Master will insist on certified copies of your heirs' identity documents which means that, if any of your heirs reside overseas, obtaining these copies can result in unnecessary delays and we advise that you keep copies on hand. Important documentation which should also be readily available includes your living will, organ donation card and medical aid details.

Generational wealth planning has proved to be a very effective way of opening up communication across generations, and to ensure that the estate planner's transfer of wealth is respected, understood, appreciated and given effect to.



POPIA goes the Weasel

You are likely to have been bombarded by emails from businesses you deal with, telling you how they are complying with something called "POPIA". South Africa's Protection of Personal Information Act (POPIA), drafted way back in 2003, was promulgated in 2020 and went into enforcement on 1 July 2021, triggering a slew of communications from company's holding information about you.

POPIA applies to companies, organisations and other legal entities who are located inside South Africa and who process personal information.

POPIA Defined

POPIA has a very broad definition of personal information, basically any kind of information relating to an identifiable, living natural person, company or similar legal entity, including but not limited to –

- names, addresses, telephone numbers, email addresses,
- information about age, race, gender, appearance, characteristics, sexual orientation, political convictions, religious beliefs, language,
- health data such as physical or mental health, well-being, disabilities,
- online identifiers such email addresses, IP addresses, cookies, unique IDs, search and browser history, location data.

POPIA creates a whole new set of rights for its citizens that they can exercise to protect their data and privacy, gain insight into what data is collected about them, request it be corrected and deleted.

POPIA Rights

POPIA creates the following rights for South African citizens (data subjects) –

- Right to be notified about collection and processing of personal information
- Right to access personal information
- Right to request correction of personal information
- Right to request deletion of personal information
- Right to object to the processing of personal information
- Right not to have personal information processed for the purpose of direct marketing by means of unsolicited electronic communications
- Right to not be subject to a decision which results in legal circumstances based solely on the basis of the automated processing
- Right to complain to the Information Regulator
- Right to effect judicial remedy



POPIA applies to companies, organisations and other legal entities who are located inside South Africa and who process personal information.



Quarter 3 2021

Financial Informer



Failure to comply with certain provisions of POPIA may result in the Information Regulator (IR) imposing an administrative penalty of up to R10 million as of 1 July 2021

In other words, South African citizens will be able to know when their personal information is likely to be collected, and have the right to consent to it before it happens; will have the ability to request that a website gives them access to see what personal information it has collected about them, as well as have that information either corrected or deleted altogether, among others.

POPIA establishes eight conditions for lawful processing of data in South Africa –

- Accountability (processing is lawful and done in a non-privacy infringing way)
- Processing limitation (processing only for the given purpose)
- Purpose specification (specific purpose must be explicitly defined)
- Further processing limitation (additional processing must still be in accordance with the original purpose that the end-user gave their consent to)
- Information quality (make sure that the data is complete, accurate and updated)
- Openness (documentation of all processing operations)
- Security safeguards (must ensure protection and confidentiality of personal information)
- Data subject participation (ensure that end-users can exercise their rights to access, correct and delete their data)

The main supervisory and enforcing body under POPIA is the Information Regulator (SAIR) that is established by the law itself and endowed with the responsibilities of –

- providing education and training around the data protection law and compliance,
- monitoring and enforcing compliance on companies and organizations who process personal information in South Africa,
- handling complaints from data subjects,
- creating guidelines, regulations and industry codes of conduct for practical compliance with POPIA,
- facilitating foreign cooperation for the enforcement of compliance with POPIA outside of South Africa.

POPIA Penalties

Failure to comply with certain provisions of POPIA may result in the Information Regulator (IR) imposing an administrative penalty of up to R10 million as of 1 July 2021 or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

POPIA is expected to have a far-reaching practical impact on our lives. "South Africans will now have the right to privacy afforded to them by the constitution," says Ahmore Burger-Smidt of Werksmans Attorneys. "We now need to deal far more diligently with the information we collect. Companies can only collect what is necessary and have a legitimate reason to collect that information."

According to Francis Cronje, an information governance specialist the basic intention of POPIA, is "not to impede the free flow of information. It means that if you collect my personal information, you don't lose it, and



you treat it with respect". "Say I buy a watch and the shop asks for my name and surname," says Cronje. "Now they're not allowed to share that information with anyone else, or send me marketing without my consent. They can't share it with people I'm not aware of, or that I haven't authorised."

As from 1 July 2021, you should receive fewer spam voice messages on your phone (known as robocalls), and fewer spam SMSes. It doesn't mean they're going away, says Elizabeth de Stadler, co-author of "A Guide to the Protection of Personal Information Act". "But it will be much harder to do, and you will have more control over when you get them."

POPIA Spam

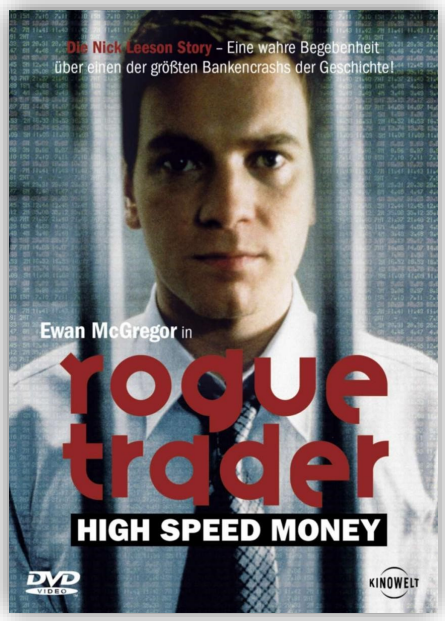
You shouldn't receive unsolicited robocalls and spam texts – and that "unsolicited" is a crucial distinction. Companies need to ask your permission to send you marketing material. If you've given that permission, they can contact you until you ask them to stop. The buying and selling of information will be much, much harder. Companies have built up huge databases of contact details, including your phone number and email address, and these get bought and sold on the open market. That's not allowed anymore – a company is not allowed to pass on your details to another party. And if they do, you can lay a complaint with the Information Regulator.

While companies can't send you unsolicited SMSs or robocalls, they can still cold call you. That's because, according to the new laws, telephone calls don't fall under electronic communication, says De Stadler. However, voicemails are covered. So robocalls get blocked, but an actual human phoning you up to sell you something is still allowed. If you want them to stop contacting you, you can formally ask them to stop, which they have to do in terms of the Consumer Protection Act.

POPIA doesn't apply only to electronic documents – it applies to hard copies too. Businesses need to make sure that information is kept safely, and disposed of safely. They need to take reasonable steps to make sure they don't get hacked and, if they do, they'll need to tell you as soon as possible.

POPIA Scams

The rush to comply with POPIA has also led to a spate of scams and misinformation. You may also have received messages that WhatsApp group administrators are required to comply with POPIA. This is generally untrue as the processing of personal information in the course of a purely personal or household activity is excluded from the Act. Where a WhatsApp group is created to facilitate family related or personal matters, as in between family, friends or acquaintances, then POPIA will not apply. However, the situation may be different where the WhatsApp group is operated by a business for the purposes of marketing its products and/or services. In such a context, if the person is not a customer of the business, the business will be required to obtain consent before adding the relevant person to the WhatsApp group.



Rogue Trader (1999)

This movie tells the story of Nick Leeson, a trader who single-handedly caused the insolvency of Barings Bank, the world's second-oldest merchant bank. A rising star on the Singapore trading floor, Leeson blew up as quickly as he rose, hiding enormous losses from his superiors in carefully hidden accounts, eventually leading to the mother of all failed trades on a short straddle position on the Nikkei, which ends up experiencing a large sigma move.

While the movie itself is decently entertaining, Leeson's story makes for a great lesson in risk management and financial oversight.