How do I use a family trust for estate planning?

Two types of family trusts are most commonly used for estate planning, namely the inter vivos trust and the trust mortis causa or testamentary trust. The inter vivos trust is formed and registered whilst the donor is still alive as opposed to the testamentary trust that is created in terms of a will of the donor after he has passed away.

The following examples illustrate the advantages of using a trust for estate planning.

Example 1: Risk management:

Mr. Jones is a contractor for the gold mines in the Welkom area. He runs into financial problems and his company liquidated. He signed surety on behalf of the company in favour of all the creditors and is consequently also declared insolvent. He invested in a property with an office building in town some time ago for R4m.

Let’s compare the consequences of two possible scenarios:

1. If Mr. Jones held the property in the same company as his business or in his personal name he would lose it as well.

2. If he held the property in a separate company and the shares of such property company in his family trust the property would as a general rule be safe from attachment.

Example 2: Risk management:

A farmer had a guesthouse on his farm, which he ran as a second business together with his wife. One night some guests from England drove into the entrance of the dirt road leading to the guesthouse. One of the farmer’s workers forgot to close the gate of the cattle camp next to the dirt road. The cattle were grazing next to the road and crossing it from time to time. The guests did not see them in the dark and crashed into one of the bulls. The driver of the car was seriously injured by the accident and will be a paraplegic for the rest of his life. He was a medical doctor and had three children. The farmer is sued for R8

million.

He is married in community of property and all his and his wife's assets are held in their personal names. Their public liability insurance is limited to R1 million. He will therefore lose everything, including the farm.

If he had held his farm in a family trust it would at least have been saved!

Example 1: Estate Duty

Mr Jones owns an office building. He bought it for R5 million, which amount he had available to invest at that stage. When he passed away 20 years later it was worth R12 million. Let us compare two possibilities:

1. If he bought the office building in his personal name the R7 million growth of the value of the office building would be part of his deceased estate and would result in estate duty of R1.4 million being payable in respect thereof (20% X R7 million).

2. If he, however, borrowed the R5 million to his family trust and bought the office building in the name of the trust the R7 million growth would have taken place outside his estate, resulting in an estate duty saving of R1.4 million. Interest payable on his loan to the trust is ignored for purposes of the example.

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You can complete a will instruction sheet here: Testament Instruksievel / Will Instruction Sheet