

Press Release

## **BEWARE THE BEQUEST**

When creating their Will and engaging in estate planning many people plan ahead and bequeath certain stated portions of their assets to specific family members. However – are you sure that when you die your estate will be able to afford these bequests and what happens if it can't?

Sarah Love of Private Client Trust, the fiduciary division of Private Client Holdings, offers a practical example of how awry bequests can go – to the serious detriment of some family members.

“Let me introduce you to an average family; Ben and his Wife Mary with their children Peter, Susan and James.

Ben owns his home (valued at R 2 million), a holiday house (valued at R 2 million), he runs his own business (valued at R 2 million) and has a share portfolio of R 2 million. Ben was worried about what will happen to his assets when he passes away, he wanted to benefit everyone equally, so he drew up the following Will:

- I bequeath my home to my wife Mary;
- I bequeath my holiday home to my daughter Susan;
- I bequeath my business to my son Peter; and
- I bequeath R 2 million to my son James.

Ben passes away five years later. However, prior to Ben's passing he had to sell the holiday home, he scaled back the business for his retirement and his share portfolio has grown to R 6 million. In addition to this, Ben and Mary were married out of community of property with accrual and accrual claims are triggered when the marriage ends – either through death or divorce.

When Ben and Mary got married neither had very much and they didn't declare starting values. Mary stayed at home to look after the children and never accumulated a personal estate. Ben's estate was worth R 11 million. Mary will have an accrual claim on half of the difference in growth between her and Ben's estate in this instance R 5.5 million.

### **How does this affect Ben's estate?**

Claims against the estate are settled before any legacies are paid. So from Ben's R 11 million estate we will first have to pay Mary R 5.5 million.

This leaves R 5.5 million for distribution, but legacies of R 7 million need to be met. In situations like this each of the legacies are reduced proportionally to cover the costs of the estate. The person receiving the benefit will have the option of contributing cash to the estate in order to retain the asset bequeathed.

Mary will be able to keep the house but will have to pay in R 857,000; Peter will also be able to keep the business but will have to pay in R 214,000.

### **Can Mary waive her accrual claim and avoid this problem?**

In short the answer is no. If Mary were to waive her debt it will be regarded as a donation. Whilst donations between spouses are exempt from tax – this accrual claim only comes into existence after the termination of a marriage, so the donation would not be between spouses.

### **Did Ben's wish to benefit everyone equally come true?**

- Mary will receive R 8.643 million
  - The home R 4 million
  - The Accrual claim R 5.5 million; and
  - Pay in R 857,000
- Susan's will not receive anything!
- Peter will receive R 886,000
  - the business R 1 million; and
  - Pay in R 214,000
- James will receive R 1.572 million cash.

As you can see this is definitely not the equal distribution that Ben had in mind.

### **So how does one guard against these issues?**

According to Love the first thing to do when considering making special bequests is to crunch the numbers and make sure that your estate can afford to make these bequests.

“Once you know the numbers, if there is a liquidity problem, speak to your financial adviser to arrange the best remedy for your situation.”

“And finally, if you want to benefit everyone equally leave your entire estate to them equally. At the appropriate time should one person wish to take full ownership of an asset your heirs can enter into a redistribution agreement to give effect to this, but they will all still receive the same benefit or be able to consent to receiving a smaller amount,” concludes Love.

For further advice or information contact Sarah Love on (021) 671 1220.

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### **About Private Client Holdings**

Private Client Holdings was founded as a corporate tax consultancy in Cape Town, South Africa in 1990. Since then the company has developed into a full spectrum Asset and Wealth Management Company and multi-Family Office with six specialist divisions; Wealth Management, Portfolio Management, Financial Services, Fiduciary Services, Cash Management and Risk Management.

Private Client Holdings (PCH) are taking the lead in Southern Africa when it comes to providing high net worth families with an all-inclusive wealth management solution and recently secured 2nd position overall in the TOP WEALTH MANAGER: BOUTIQUES in the INTELLIDEX TOP PRIVATE BANKS & WEALTH MANAGERS AWARDS 2019. They also placed 3rd in the Passive Lump-sum Investor award and 2nd in the Successful Entrepreneur award. The award they are most proud of is placing 2nd in the People's Choice Award - an award based purely on feedback from a confidential client survey.

Private Client Portfolios, the Portfolio Management arm of Private Client Holdings has been awarded the title of "Best Investment Advisory Team – South Africa 2019" in the Capital Finance International Award – this London based CFI.co awards programme identifies individuals and organisations worldwide that truly add value through best practice within their industry.



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