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“Discipline is the bridge between goals and accomplishment.” Jim Rohn

## **LAW OF SUCCESSION: DO WE REALLY HAVE FREEDOM OF TESTATION?**

In terms of the South African Law of Succession, a testator may bequeath his assets to whomever he or she chooses in his or her last will. What some testators do not know is that this is however, not an absolute freedom as the following factors will influence the testator's freedom:

1. Whether the bequests are against the principles and provisions of the Constitution of South Africa;
2. How the testator is married; and
3. Whether the testator has any maintenance or other obligations.

In 2006, the Constitutional Court held that a provision in a will that a testamentary trust would only benefit males of European descent who were not Jewish, were unconstitutional and could not be upheld.

The marital status of the deceased will also have an impact on his freedom of testation. If the deceased was married in community of property, the surviving spouse will, due to the marital regime, already be automatically entitled to 50% of the joint estate. On the other hand, if the deceased was married out of community of property with the accrual system for example, the surviving spouse might be entitled to an accrual claim against the estate. This claim might seriously impact on the balance available for distribution in terms of the will.

Thirdly, should a maintenance claim against the estate by a surviving spouse or children be successful, the balance for distribution will also be affected and the testator's wishes impacted upon. There might even be no balance available for distribution, which would have the effect that none of the testamentary heirs (those that were meant to inherit in terms of the will) will receive any benefit under the will.

It is clear from the above that the testators' freedom is not absolute and legislation like the Constitution, Matrimonial Property Act and Maintenance of Surviving Spouses Act as well as the testators' obligations will influence this freedom.

*Law & Laughter*

Question: “Where does a vampire learn how to suck blood?”  
Answer: “During his first year of Law School.”

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# PRIVACY: YOUR PERSONAL INFORMATION IS NOW PROTECTED IN NEW LEGISLATION

The Protection of Personal Information Bill (POPI) was signed into law during November 2013.

As a result, companies handling personal information of customers, employees, suppliers and the like must now comply with the general principles of POPI. This has to be done to eliminate the risk of, for example, identity theft. Although it will mean more work for some companies, it will simultaneously ensure good business practice. Even more reason for companies to be compliant is that POPI is strictly drafted and provides for substantial penalties, civil claims and criminal charges.

Companies have already raised issue on the costs of the implementation of POPI, but the costs may be limited by taking quick and clever steps.

Companies may take the following quick and easy steps ensure compliance with POPI:

- Companies must only collect and retain information of clients, customers etc. that is truly needed;
- It may be required to consider information security awareness training for staff / employees;
- Companies must only use personal information for the purpose it was collected;
- Internal policies regarding which information is stored, how it is stored, for what period of time it is to be stored and the manner in which it is destroyed, must be implemented (failing to address these issues carries risks for both the company retaining the information as well the person whose information is being kept);
- Companies must also refrain, for as long as it is not required, from sharing personal information with third parties;
- Ensure that internal security measures are up to date – regarding the premises, electronic devices, programs used and so forth; and
- Given the potential for huge financial losses, further insurance may even be required.

POPI has not yet become effective, but companies are advised to start taking early steps to avoid increased costs at a later stage.

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