

FIDUCIARY CHALLENGES FOR MUSLIM COMMUNITIES



South Africa is a diverse country with many different cultures and religions, each with its unique characteristics.

Often these unique cultures and belief systems define the lives of the people who want to uphold their culture and religion, and they find themselves living in a world where culture and modernity create compromise. One religion that has very specific governing principles when it comes to financial aspects is Islam.

Islamic religious law

Shari'ah is an Islamic religious law that governs not only religious rituals, but also the aspects of day-to-day life in Islam. Up until now, there have been very few feasible financial services solutions for South African Muslims who want to honour their Islamic faith in this regard.

When it comes to banking, investing and estate planning, modern day Muslims in South Africa have very real challenges to make sure they are financially responsible, as well as religiously correct.

Even drafting their Last Will and Testament can present challenges and can have serious consequences for their dependants and children.

Insurance is considered impermissible

Islamic law of inheritance differs considerably from South African law of intestate

succession. This means that an estate administered under South African law will not be administered, according to the principles set out in the Quran.

Conventional insurance is considered as impermissible, because it incorporates elements of gharar (uncertainty), maysir (gambling) and riba (interest), all of which are prohibited in the Quran. As a result of this, many Muslim families remain at risk, or are forced to take out insurance that goes against their religious beliefs, to protect their family when the main breadwinner passes away.

There are more than a million people of Islamic faith in South Africa, and our research shows that as few as 11% have adequate life cover in place. This is almost entirely due to the lack of feasible solutions available to Muslim clients.

Another scary statistic in South Africa is that nearly 75% of people pass away without a valid Last Will and Testament in place. This can cause devastating consequences for their dependants and children, not least of which is that it can cause massive delays in inheritances being distributed. This crisis is compounded in the Muslim communities who often do not know who to turn to for help with drafting a Shari'ah-compliant Will.

Drafting a Shari'ah-compliant will

Muslims must draw up a will because Shari'ah Law is, at present, not recognised in South Africa. Any will that is drafted to observe Islam, needs to adhere to Islamic

principles, as our country's law of intestate succession does not recognise these principles. Any estate administration that is done on behalf of a Muslim client, is best done when it recognises the client's religious beliefs and testamentary wishes.

A Shari'ah compliant will or Islamic will differs from other wills in that the beneficiaries are determined on the death of the Testator, rather than being specially identified under the terms of the will drafted during a testator's lifetime. It is the duty of every Muslim to ensure that Qur'anic Law is applied to their estate.

If a Muslim does not have an Islamic will, Shari'ah law will not apply, and their Islamic Heirs will be at a disadvantage in terms of the inheritance they ought to have received. The Laws of South Africa will apply to govern the distribution process, which is not in line with the Shari'ah law.

Another aspect of Qur'anic Law to be aware of is that non-Muslim relatives cannot inherit from a Muslim, but they can be given a bequest (a gift to a non-Heir) and the sum of all bequests cannot exceed one third of the estate.



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