

# DECEASED ESTATES

WHAT YOU NEED TO KNOW



YOUR ATTORNEY - YOUR TRUSTED ADVISOR

A large, artistic photograph of a fountain pen writing on a white document. The pen is dark with a silver clip and a gold-colored nib. The document has some handwritten text and a signature.

This brochure will inform you of the main features of the administration of a deceased estate, as well as the legal aspects involved.

It is advisable to consult an attorney to draw up your will and it is recommended that your attorney be nominated as the Executor of your estate in your will.

Your attorney

- will advise you on any potential problem which may arise;
- will deal with any legal issues that might be encountered;
- has the necessary knowledge and expertise to ensure that your will is drawn in accordance with your instructions, and
- will ensure that your will it has been properly executed and is valid and binding in terms of the Wills Act.

**What will happen to my estate and assets after I die?**

The best way to ensure that after your death your assets are distributed according to your wishes and instructions is to draw up a will. This gives you the opportunity to appoint an Executor to deal with your assets. If you die without a valid will your family might suffer inconvenience and even severe hardship.

Where a person dies without leaving a valid will, the estate will devolve in accordance with the Intestate Succession Act. The estate will, in such circumstances, devolve upon the surviving spouse or the surviving spouse and children of the deceased and grandchildren (where a child has predeceased the deceased leaving children). Where there are no descendants, the parents will inherit, and in their absence the brothers and sisters will inherit.

**How does the administration of a deceased estate start?**

When a person dies leaving any assets or a will, the surviving spouse – or if there is no surviving spouse the nearest relative residing in the district in which the death has taken place – must within 14 days from the date of death, report the estate in the prescribed manner to the Master of the High Court.

After the estate has been reported, the Master appoints an Executor by issuing a Letter of Executorship (if the deceased's assets have a gross value of more than R250 000) or a Letter of Authority (if the deceased's assets have a gross value of less than R250 000)

Your attorney has the skill and expertise to assist you with the preparation of the necessary reporting documents and to attend to the proper administration of the estate.

## Who can be appointed as an Executor to deal with the administration of an estate?

It is advisable that your attorney should be appointed as Executor as he/she will

- be familiar with the directions contained in your will,
- know where your assets are,
- have general information of your family affairs,
- be in a position to wind up your estate and carry out transfer registrations of any fixed property expeditiously, and
- has specialised legal knowledge of the administration process.

However, a family member can also be appointed as Executor together with your attorney.

## What is the Executor's role?

The Executor is required to

- collect the deceased's assets,
- settle his/her liabilities,
- pay any legacies, and
- distribute the balance of the estate to the heirs in terms of the will of the deceased or in accordance with the provisions of the Intestate Succession Act where the deceased died without a will.

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The Administration of Estates Act does, in certain exceptional circumstances, allow a surviving spouse to take over the property of the deceased or a portion of the property, subject to adequate security being furnished by the surviving spouse to secure any minor's portions. The heirs in the estate are also entitled to enter into a Redistribution Agreement which will have to be submitted to the Master for approval and acceptance. Specialised advice by an attorney is usually required in such circumstances.

### What else should a person know to create greater confidence in the process of estate administration?

The Executor may, before the account has lain open for inspection, and with the consent of the Master, release an amount of money and any property out of the estate as in the Executor's opinion are sufficient to provide for the subsistence for the deceased's family or household.

Furthermore, where the estate is solvent and there are sufficient funds, the Executor can make advances to heirs or legatees on account of their inheritances and legacies. This is particularly the case where the beneficiary is the surviving spouse or where there is likely to be a delay in the lodging of the account.

### What takes place in relation to the estate account?

As soon as possible after the reporting of the estate, the Executor determines the value of the assets and liabilities in the estate as at the date of death.

After the Letters of Executorship have been issued, the Executor must publish a notice in the Government Gazette and in one or more newspapers circulating in the district in which the deceased was ordinarily resident, calling on all persons having claims against the estate to lodge the claims with the Executor within a specified period, which is usually 30 days from the date of the latest publication.

After that, but within a period of 6 months after Letters of Executorship have been granted or such further period as the Master

may allow, the Executor is obliged to submit to the Master an account of the liquidation and distribution of the estate.

The Master will examine this account and, if it is in order, authorise the Executor to advertise the account to lie for inspection. The Executor's account must lie open at the Office of the Master – and if the deceased was ordinarily resident in any other district, a duplicate of the account must lie open at the office of the Magistrate – for not less than 21 days, for inspection by any person interested in that estate. The Executor must publish a notice in the Government Gazette and in one or more newspapers circulating in the district in which the deceased was ordinarily resident stating the period during which and the place at which the account will lie for inspection.

Once the inspection period has passed, the Master will notify the Executor that the account has lain for inspection free from objections. The Executor can then pay the creditors and distribute the estate among the heirs in accordance with the account. The Executor will lodge with the Master the receipts and acquittances of the creditors and heirs.

If the Executor is in possession of funds of R1 000 or more, he/she has to open an estate banking account. However, this requirement has been dispensed with where a practising attorney uses his/her trust account to administer the deceased estate's funds.

### Value Added Tax, Capital Gains Tax and Income Tax

The Executor will ascertain whether the estate is liable for value added tax (VAT) and/or income tax.

If the deceased was registered as a vendor the Executor may have to register the estate for VAT purposes. There will be VAT implications. The Executor may have to pay output tax to the South African Revenue Service on all assets in the deceased's enterprise. It may be possible for the Executor to sell the enterprise as a going concern to another VAT vendor and have such transaction 'zero rated'.

The Income Tax Act provides that when a person dies, he/she is deemed to have disposed of all his/her assets to the deceased estate for an amount received or accrued equal to the market

value of those assets, and the deceased estate is deemed to have acquired the assets for this market value. This is the general principle, but there are exceptions. For example, the assets accruing to the surviving spouse upon the death of the first dying spouse are not deemed to have been disposed of on the death of the deceased.

In many estates income tax is payable. This could have an influence on the amount of the inheritance available to heirs.

### When is estate duty payable?

Estate duty is currently charged on the dutiable amount of the estate at a flat rate of 20%. The dutiable amount is calculated by deducting a R3.5 million primary abatement from the 'nett value of the estate'. The value of all property included in the deceased's estate which accrues to the surviving spouse, either in terms of the deceased's will or by intestate succession, can be deducted to the extent that it has been included in property.

### Does an heir have a choice?

Any beneficiary is entitled to repudiate or renounce a bequest or inheritance.

Election arises when spouses have massed their estates and the surviving spouse must elect whether to take his/her share and forego the benefits of the joint will, or allow his/her share to be disposed of and enjoy the benefits. This election by the surviving spouse is usually referred to as 'adiation'.

Where a beneficiary renounces an inheritance, that inheritance will devolve either in accordance with the deceased's will or in terms of the laws of intestate succession.

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