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FREQUENTLY ASKED QUESTIONS ESTATE ADMINISTRATION



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FREQUENTLY ASKED QUESTIONS

WHAT RESPONSIBILITIES DOES YOUR EXECUTOR HAVE?

The administration of an estate is often complicated and confusing. The executor plays a vital role in ensuring that all processes are handled with empathy, efficiency and professionalism.

Our main duties include:

- Managing, protecting and transferring the deceased's assets in keeping with the will
- Identifying the beneficiaries in the estate
- Taking care of all the legislative requirements
- Paying all debts and administration expenses
- Drafting and submitting final income tax returns
- Distribution of the final balances in the estate
- Insuring all assets

The entire administration process is overseen and validated by the Master of the High Court, who also deals with any objections lodged against the Liquidation and Distribution Account or Last Will and Testament of the deceased.

HOW DOES MY MARRIAGE REGIME AFFECT THE ADMINISTRATION PROCESS?

Marriage regimes have an influence on how certain assets are dealt with in the deceased estate administration process:

- In community of property (no contract between spouses) – is seen as a system of universal community of property. Consequently, at the time of marriage all assets and liabilities of the spouses merge into one joint estate of which the husband and the wife each become owner of an undivided half-share.

An executor in the estate of a deceased person married in community of property must deal with the assets of the deceased as well as the surviving spouse and not merely the half-share of the deceased spouse. All the assets of the joint estate will be reflected in the account.

- Out of community of property (there will be an antenuptial contract between spouses) – when we deal with a "traditional" marriage out of community of property (no accrual/profit and loss between spouses) – we only deal with the deceased's share of assets in the account. Where a person is married out of community of property subject to the accrual system/profit and loss between spouses, each separate estate consists of the assets brought into the marriage, which are retained by the spouse, plus everything that spouse obtained during the marriage. On death, the accrual growth of each person is determined separately and the difference between the two accruals is divided into equal parts. The spouse with the smaller/ no accrual then obtains the right to claim half of the difference from the other spouse. The executor will deal with the deceased's separate share in assets and will have a claim against/in favour of the estate. The accrual must be calculated, should the accrual system be relevant.

* It is also important to note that different countries have different marital regimes.



THE EXECUTOR PLAYS A VITAL ROLE IN ENSURING THAT ALL PROCESSES ARE HANDLED WITH EMPATHY, EFFICIENCY AND PROFESSIONALISM.



HOW IS A TESTAMENTARY TRUST CREATED?

Trustees may only act after they are appointed by the Master of the High Court. The provisions of the will strictly guide the trustees when they make income payments and investments. When performing both these functions, trustees must consider the interests of both the income and the capital beneficiaries.

Unless the will states differently, the trustees must as far as possible keep a balance between producing income and protecting the value of the capital.

A trust can possibly terminate on the following events/occurrences:

- When minor beneficiaries reach a specific age; or
- On completion of a set educational goal; or
- On achieving a specified matrimonial status; or
- On the death of the income beneficiary.

If you would like more details, contact your Financial Planner or we will give you more information on the occurrence of the event.

HOW WILL YOUR EXECUTOR DEAL WITH THE VARIOUS ESTATE ASSETS?

When a person passes away no assets can remain in the name of the deceased person and ownership needs to be transferred to the beneficiaries of the estate. Due to capital gains tax implications we do not sell assets unless the estate doesn't have sufficient funds.

The executor requires market-related valuations to calculate the value of the deceased's assets. The following valuations are acceptable:

- Estate agent valuations for fixed properties (no municipal values)
- Car dealer valuations for all motor vehicles.

*When the estate is dutiable (over the value of R3.5 million, see annexure B on page 13) or if a minor child is the beneficiary, the executor will have to obtain a valuation for all the assets from a sworn appraiser

IMMOVABLE PROPERTY

FIXED PROPERTIES

The transfer process from the deceased's name into the name of their spouse or beneficiary is based on the same regulation as buying a property in your own capacity.

A conveyancing attorney will be appointed by the executor to attend to the conveyancing formalities and affects the transfer. A property cannot be sold unless the will directs us to do so or if the estate does not have sufficient funds.

* When transferring a property from an estate it is exempt from transfer duty.

MOVABLE PROPERTY

MOTOR VEHICLES

PPS Fiduciary Services will give the beneficiary the transfer documents for submission to the licensing office within 21 days.

* For all cases where it is not a surviving spouse taking over the motor vehicle, a roadworthy certificate needs to be obtained at the beneficiary's own expense.

FIREARMS

The regulation of firearms in South Africa has become more stringent since the introduction of the Firearms Control Act 60 of 2000. This Act sets out strict requirements, which an executor of an estate or any other person in possession of a firearm registered as belonging to an estate needs to adhere to.

On notification of death it is imperative to tell the executor of any firearms registered in the deceased's name for further instructions. Failure to do so could result in imprisonment.

The executor can only give an heir permission to store a firearm if they have a valid firearm licence and safe. The necessary permission will have to be taken to a South African Police Station where it needs to be signed, stamped and dated. Once the safe custody date has expired this permission will have to be renewed until the firearm/s has been transferred.

The firearm/s can also be held in custody by Legally Armed who will dealer stock the firearm (remove it from the deceased's name and register it on its inventory). The cost will be covered by the estate for the first six months, thereafter the beneficiary will be liable for safe custody fees.

The firearm/s can also be held in custody by another dealer, but only if the dealer is willing to dealer stock the firearm/s. The estate will only be liable for transport costs. The beneficiary will be liable for the safe custody fees.

The firearm/s may not be held by a third party.

If the beneficiary does not want to take transfer of the firearm, it will be destroyed or, with the executor's permission, sold.

SHARES/UNIT TRUSTS

Shares/unit trusts will be transferred into the name of the beneficiary unless we are required to sell them due to there being insufficient funds in the estate.

* The potential sale of these assets will also attract capital gains tax.

COMPANIES/CCs

PPS Fiduciary Services does not get directly involved in the daily operation of the company. We will ask the registered auditor/accountant for the value of the shares/member's interest, the latest financial statements for

submission to the Revenue Inspector as well as the required transfer documents.

The auditor/accountant must lodge all the required documents with CIPC to transfer the member's interest/share into the name of the beneficiary.

TRUST (FAMILY TRUST, INTER VIVOS TRUST/TESTAMENTARY TRUST)

If the deceased had an interest at date of death in a trust, as PPS we will ask the trustees (person(s) responsible for the administration of the trust) for the value of the loan account at date of death. Should the deceased have been a trustee in the trust, it is the responsibility of the firm or the remaining trustees to lodge the necessary changes with the Master of the High Court.

CASH ASSETS

Bank accounts in the name of the deceased.

As bank accounts are a non-transferable asset, we will close the accounts as soon as we receive the Letters of Executorship.

Foreign bank accounts

A will drafted by us can cover worldwide assets. If the will does cover the worldwide assets of the deceased, and depending on the value of the assets and in terms of the legal requirements of the country in which the assets are held, we will appoint a solicitor (outside executor) in the said country to help with the closing or transferring of such assets.

POLICIES

Payable to the estate

If a policy is payable to the estate we will ask for and submit all the necessary documents to finalise the claim.

PAYABLE TO A THIRD PARTY

All policies payable to a third party will not be dealt with by the executor. It is the nominated beneficiary's duty to ask for the necessary documents and to lodge a claim with the relevant institute.

* Should the estate be dutiable, the beneficiary will be liable for paying a proportionate amount of estate duty on their policy proceeds.

WHAT IS ESTATE DUTY AND WHO PAYS IT?

Estate duty is an inheritance tax (also known as estate tax or death duty). It is a tax that arises on the death of

an individual. It is a tax on the estate, or total value of the money and property, of a person who has died.

Estate duty rates:

- Persons deceased before 1 October 2001 – 25%
- Persons deceased on or after 1 October 2001 – 20%
- Persons deceased on or after 1 March 2018:
20% on the first R30 million dutiable estate; and
25% on the dutiable estate above R30 million

Exemptions from estate duty include:

- Persons deceased before 1 March 2006, the first R1.5 million
- Persons deceased on or after 1 March 2006, the first R2.5 million
- Persons deceased on or after 1 March 2007, the first R3.5 million
- Any bequest to a surviving spouse or a public benefit organisation
- From 1 January 2010, the unused portion of the exemption of the first deceased spouse may be carried forward to the estate of the surviving spouse

Should an estate be liable to pay estate duty, we may only lodge the said account with the Master of the High Court who will then assess the account and give us an estate duty assessment.

On receipt of the assessment we will be in a position to advertise the said account.

WHAT HAPPENS IF I DIE WITHOUT A WILL?

Your estate will be administered in terms of the Intestate Succession Act 81 of 1987 and your beneficiaries will be determined according to your next of kin (family tree).

WHAT IS THE PROCESS WHEN AN ESTATE IS FINALISED AND AN ADDITIONAL ASSET IS FOUND?

Once the asset is reported, the executor will deal with the asset according to the last will and testament.





DO I STOP PAYING MY INTEREST-BEARING ACCOUNTS SUCH AS CREDIT CARDS, HOME LOAN?

On death, interest will not stop accruing on these accounts, so it is best to keep payments up to date and, if possible, until settlement can be made either by the estate or by credit life if available.

IF I HAVE A JOINT WILL WITH MY SPOUSE AND THEY PASS AWAY, DO I HAVE TO REDO MY WILL?

If a will contains a further provision that should you die without leaving a further valid will it is not necessary, but it is advisable to have a new will drafted as circumstances do change and it will avoid complications during the administration of your estate.

WHEN WILL CASH BE MADE AVAILABLE FOR LIVING EXPENSES?

The law makes provision for an advance to be made to a spouse for maintenance during the administration of the estate. This will be possible almost immediately upon the estate being reported to PPS Fiduciary Services if the deceased has cash investments with Standard Bank (SBSA) Group. If the deceased had no cash investments with SBSA an advance will only be possible upon receipt of the letter of executorship from the Master of the High Court and once we can close the investments at the institutions where the investments were placed.

WHAT WILL HAPPEN TO THE DOMESTIC/GARDENER?

The executor is obliged to pay the domestic/gardener any outstanding salary leave pay and salary in lieu of notice.

CAN MY HEIRS LIVING ABROAD RECEIVE THEIR INHERITANCE?

If your heirs have formally emigrated the process is quite simple. However if a formal emigration process has not been done any payment due will be delayed until this aspect has been processed.

WHAT EXPENSES ARE PAID BY THE ESTATE?

Funeral expenses are paid for by the estate. In many instances the funeral parlour will ask the executor to "guarantee" payment of the funeral account. This can be arranged through PPS Fiduciary Services. Other expenses paid by the estate include all debts due, executor's fees, Master of the High Court fees, outstanding taxes, administration costs, and bond and conveyancing costs.

WILL THE EXECUTOR SELL EVERYTHING?

The executor will only sell assets if the will directs this or if he/she needs to generate sufficient cash to meet debts. This can be avoided through proper estate planning or if the beneficiaries choose to introduce cash into the estate themselves.

HOW DOES THE GUARDIAN'S FUND WORK?

The inheritance of a minor beneficiary may be required to be paid into the Guardians Fund. This can be avoided through proper estate planning and the nomination of the PPS Beneficiaries Trust as the benefactor and on behalf of the minor beneficiaries of the estate.

WHAT TAXES WILL BE PAYABLE?

The executor is called upon to submit all outstanding tax returns including CGT and VAT. Once assessed the executor will have to pay any outstanding amounts or collect any refunds due to the estate.

WILL I HAVE TO PAY ESTATE DUTY?

Estate duty is a tax payable on an estate with a net value of over R3.5 million. If a spouse inherits the estate there will be no estate duty payable at the death of the first dying. However this is a complicated form of taxation and at the death of the spouse estate duty may be payable.

IF I DECIDE TO DISTRIBUTE MY ASSETS THROUGH DONATIONS, WILL THE ESTATE BE TAXED?

A natural person may make donations of up to R100 000 per annum before any donations tax is payable. Donations exceeding this amount will be taxed at 20% on the portion which exceeds R100 000.

As from 1 March 2018, any donations exceeding R30 million per tax year will be taxed at 25% on the portion which exceeds this amount.

WHAT HAPPENS TO MY PENSION FUND AND LIFE ASSURANCE?

- Pension funds and annuities are governed by the trustees of the fund of which you are a member. The amount and the benefits payable and to whom they are payable are dictated by the pension fund trustees and do not form part of the estate.
- Where a beneficiary has been appointed on a life assurance policy, the benefit under that policy will be paid directly to the beneficiary and will not form part of the estate. However, and very importantly, any amount payable to that beneficiary must be added to the value of your estate for the calculation of estate duty.

- Policies that have no beneficiaries will be paid to your estate.

WHEN DO I RECEIVE MY INHERITANCE?

Once the Liquidation and Distribution Account has been approved by the Master of the High Court and if no objections are raised during the inspection period we will pay all creditor claims and heirs their cash inheritance.

INSURANCE OF ASSETS?

All assets whilst in our custody are required to be insured. We have an umbrella insurance policy covering most assets with premiums at a substantial discount to current short-term insurance premiums.

WHAT ABOUT FIREARMS IN THE ESTATE?

The handling and storage of firearms is very stringently controlled by SAPS in terms of the Firearms Control Act. To comply we have secured the services of a professional external service provider to assist the family with their needs.

WHO WILL RUN THE BUSINESS UNTIL IT'S SOLD OR TRANSFERRED?

A family member or someone with knowledge of the business will have to continue running the business. This person should liaise with the executor as regards the running of the business.

HOW WILL WE DEAL WITH FIXED PROPERTIES?

- We use market-related valuations as required by law and also to safeguard the spouse from incurring CGT at the time of their death.
- We are required to obtain an electrical compliance certificate when the property is transferred.
- Our conveyancer has to obtain a rates clearance from the local authority.
- Rates and taxes are prepaid and the executor has to pay these taxes in advance before the local authority will issue the rates clearance.
- At times the heirs may be called upon to either clear or assist in clearing the fixed property of all contents.
- In instances where the will does not dictate that the fixed property must be sold the executor may in special circumstances agree to sell the property out of the estate. It is worth noting that some fixed property sales will require the executor to account for a CGT event.

WHAT WILL THE ADMINISTRATION

PROCESS COST ME?

The fee laid down by legislation is 3.5% of the gross value of the estate. Where spouses are married in community of property the assets registered in both spouses' names fall to be accounted for as a joint estate.

WHAT IS A WILL TRUST AND WHAT HAPPENS IF ONE HAS BEEN CREATED IN THE WILL?

Typically a Will Trust is used to protect the share due to a minor beneficiary and entails the executor paying the amount due to the minor to the trustees of the trust that was created in the will. This is a good way of preventing a minor's dues being paid into the Guardians Fund of the Master of the High Court and is worth considering to preserve and grow a minor's inheritance.

HOW DOES A PREVIOUS DIVORCE AND MAINTENANCE OBLIGATIONS AFFECT THE ESTATE?

Any amount due to a child or ex-spouse emanating from a divorce order becomes a claim against the estate and must be dealt with by the executor.

WHAT IS THE MAINTENANCE OF SURVIVING SPOUSE'S ACT?

In certain instances a surviving spouse may be able to claim maintenance from his/her spouse's estate. How long will this process take?

Depending on the state of the deceased's personal affairs this process in most instances can be finalised in 12-18 months.

WHAT IS A LIQUIDATION AND DISTRIBUTION ACCOUNT?

This is a comprehensive list of the deceased's assets and liabilities, reflecting their value as at the date of death, set out in the format prescribed by the Administration of Estate Act and which must be approved by the Master of the High Court. The names and entitlement of each beneficiary are also set out therein. This account will lie for inspection at the Master's and local magistrate's office for inspection by interested parties who, if aggrieved, may lodge an objection thereto.

