

## WHAT DOES A CLIENT HAVE TO LEARN FROM THE LAW OF SUCCESSION

Where on death, no valid Will exists, the law of Intestate Succession applies. The estate will then dissolve upon the surviving spouse and the children or grandchildren. Where there are no descendants, the parents and brothers and sisters will inherit.

Where the deceased has favoured an heir during his/her lifetime, the other heirs may insist that value of such benefit will be deducted from the beneficiary's inheritance. The testator can, of course, exclude such "collation" of his/her will.

## VALUE ADDED TAX

The administrator, beneficiaries or heirs should ascertain whether liability for payment of value added tax (VAT) exists. If the deceased was registered as a vendor the executor will also have to register for VAT purposes.

## WHEN IS ESTATE DUTY PAYABLE

According to the Estate Duty Act, as currently applicable, a rebate on the value of the deceased estate of R3,5 million is allowed. Should the net value of the estate exceed R3,5 million, the balance is taxable at a rate prescribed from time to time.

## DOES AN HEIR HAVE A CHOICE

Acceptance of a bequeathed benefit is known as adiation and the rejection thereof as repudiation. A beneficiary is faced with the choice of adiation or repudiation where the bequest is made subject to certain conditions, quite often this choice require by the beneficiary to abandon his/her property such as a surviving spouse who was married to the deceased in community of property or as a son/daughter who has to pay a bequest price. The consequence of repudiation is that the administrator divides or allocates the bequest or inheritance in accordance with the rules of the intestate succession.

## ARE THERE UNDER CERTAIN CIRCUMSTANCES

### PARTICULAR WAYS OF ADMINISTERING THE ESTATE

Sometimes the executor will have to realize fixed property or transfer some to a body corporate such as a close corporation in which the heirs have equal or fixed interests.



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Informational Pamphlet #9

# DECEASED ESTATES



## ADMINISTRATION

The following parties are involved in administering a deceased estate:

- creditors and debtors
- beneficiaries and heirs
- administrator or executor, and,
- the Master of the Supreme Court

## WHY THIS PAMPHLET

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

Clients who are aware of the content of this pamphlet will be able to assist the attorney and more easily understand when attorneys attend to the administration of a deceased estate on behalf of a client .

## MANY PEOPLE ARE CONCERNED AS TO WHAT WILL

### HAPPEN TO THEIR ESTATE UPON THEIR DEATH

The best way to ensure that your wishes regarding the distribution of your assets are met after your death, is to draw up a Will. This gives you the opportunity to appoint an administrator or executor to deal with your assets. In order to ensure that the Will is valid and the conditions are meaningful, it is wise to obtain legal advice.

## HOW DOES THE ADMINISTRATION OF AN ESTATE

### COMMENCE

When a person with an estate dies, somebody has to take the lead and report the estate. Usually it is a person who has been requested by the next-of-kin to act on their behalf or the person who has been appointed as executor in the deceased's Will.

The reporting of the estate takes place at the Master of the Supreme Court by lodging the following documents:

- a death notice (it is advisable to also submit the original death certificate)
- the Will, if any
- An inventory of the fixed property, movable assets and claims including policies in the estate (the administrator should also, as soon as possible, obtain information regarding all debts in the estate which will appear from accounts or other documents or certificates).

- acceptance of trust as executor.

After the estate has been reported, the Master appoints of executor by issuing a Letter of Executorship.

## DOES THE ADMINISTRATION OF "SMALL" AND

### INSOLVENT ESTATES DIFFER FROM OTHER ESTATES

Yes - if the assets in a deceased estate are less than R 125 000, the Master directs a summary liquidation. This is a simple and quick way of administering the estate where the Master appoints a person who accepts responsibility for the liquidation and distribution of the assets.

Should it appear, after the prescribed advertisement period that an estate is insolvent, the executor divides the assets amongst the creditors.

## WHAT IS THE EXECUTOR'S ROLE

After death, the control of the deceased's estate is the responsibility of the executor. Administration takes place under the supervision of the Master in accordance with the provisions of the Estates Act. It is the executor's responsibility to pay all debts, to recover any claims favoured for the estate, to maintain or realize assets and to divide the estate amongst the beneficiaries or heirs. Fixed property will be transferred by the Deeds Office.

The account of the executor's administration of the estate is given in the liquidation and distribution account.

The executor lodges the account with the Master of the Supreme Court within six months after his/her appointment. The meaning and purpose of this account is reflected in the headings of the different sections, namely:

- heading
- money column
- liquidation account
- recapitulation statement (cash position)
- distribution account
- Income and expenditure account
- account of fiduciary assets (being assets which the deceased obtained on condition that upon his/her death they should devolve upon another person)
- estate duty return
- executor's certificate

Section 38 of the Estates Act provides for the "purchase" or take-over estate assets, for instance a house by the surviving

spouse at a price determined by a valuator for payment to heirs. This option is often used where minors are involved and take-over ensures the preservation of the family home.

Sometimes it is difficult, even impossible, to divide the estate assets in accordance with the provisions of the Will or Intestate Law of Succession amongst the heirs. In such event they may enter into a redistribution agreement with the executor and even introduce goods or deposit money into the estate to effect (more or less) an even distribution.

Where a minor's interest in a fixed property which forms the object of the agreement is greater than ten thousand rand (R10 000), the Supreme Court has to approve the redistribution agreement.

## WHAT SHOULD A PERSON KNOW FURTHER TO CREATE

### GREATER CONFIDENCE IN THE PROCESS OF ESTATE

#### ADMINISTRATION

The ghost of "freezing" of assets after the death of the deceased should not prevent the distribution of payment of monies which are already available. When the surviving spouse is the only heir, it could be possible to make prior payments to him/her.

The administrator who cares, will keep in touch.

## 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 all assets in the estate. The executor has to publish advertisements at least twice:

- To creditors and debtors at the beginning of the administration to ensure a full record of all assets and liabilities and;
- To all interested parties after the Master of the Supreme Court has consented to the liquidation and distribution account lying for inspection at the office of the Magistrate and the Master of the Supreme Court for information and possible objections.

If the executor is in possession of funds of one hundred rand (R100) or more, he/she has to open an estate banking account. The executor pays the liabilities of the estate in the event of there not being any cash deficiency in the estate or the estate not being insolvent.

Apart from settlement, payment or transfer of claims, be-quests and inheritances, the executor also pays the costs, levies and taxes such as the Master's fees and Estate Duty.