

## STEP ONE:

The first steps which must be taken are as follows:

- The estate must be reported to the Office of the Master of the High Court in the area where the deceased resided, which is the government department that oversees the estate administration process.
- Certain documentation and information must be provided to us so that we may complete the required forms for submission to the Master. The contact person for the estate is given a checklist in this regard.
- An appointment must be made for us to consult with the contact person for the estate.
- Once all requirements are in our possession, these

are submitted to the Master who will, if everything is in order, issue a document called Letters of Executorship in favour of the person who is appointed to act as executor of the estate. Before the executor receives the Letters of Executorship, they have no legal authority to represent the estate. On average, it can take anything from 2 to 6 weeks, sometimes longer, for the Letters of Executorship to be issued.

- Beneficiaries will receive correspondence confirming the details of the Will and an indication of the anticipated bequest, and requesting that a beneficiary questionnaire be completed, and that certain documentation be given to us.

## STEP TWO:

Once the Letters of Executorship are received, the following is attended to:

- The advertisement required in terms of section 29 of the Administration of Estates Act calling upon any persons who are owed money by the deceased estate to lodge their claims with ourselves, must be placed in a newspaper which circulates in the area where the deceased resided and in the Government Gazette.
- All immovable property and movable assets, such as household furniture, jewellery, motor vehicles, among other movable assets, which are to be transferred to heirs, must be valued.
- If the heirs elect not to keep the assets, these must be marketed and sold to pay estate liabilities.
- Communication must be directed to all financial institutions where the deceased held assets to obtain valuations and to arrange to either realise the assets concerned or transfer these to the heirs. Information for income tax purposes (including capital gains tax) must be obtained. Taxes must be assessed and paid.
- Creditors' claims must be assessed, either accepted or rejected, and where appropriate, paid.
- The South African Revenue Services ('SARS') must be advised of the death of the taxpayer. Information

required to submit outstanding returns must be collated and passed on to the accountants attending to the pre- and post-death tax returns.

- A banking account must be opened in the name of the estate and all monies received by us on behalf of the estate are deposited into such account where it earns interest for the benefit of the estate.
- Each estate is different and any unique aspect thereof which requires attention and/or investigation must be attended to.

We hope to complete what needs to be done during this stage within a period of six months from the date on which the Letters of Executorship are issued. But whether or not this is possible will depend on many factors including, but not limited to, the time it takes to sell assets, turnaround times at financial institutions, and problems peculiar to the estate concerned. In some estates, it can take many months, even years, but if such a long period is anticipated, all interested parties will be made fully aware of the reason therefor.

Heirs and beneficiaries will be advised of progress at appropriate intervals.

## STEP THREE:

Once the groundwork referred to in step 2 above has been completed, a Liquidation and Distribution Account can be prepared. This is a financial statement in the format prescribed under section 35 of the Administration of Estates Act, which details the assets of the estate, its liabilities, including administration expenses, income tax, and estate duty, and reflects the awards to each of the beneficiaries and heirs.

Once this account has been completed, the following must be attended to:

- The account must be submitted to the Master together with all supporting documentation.
- If the estate is liable for payment of estate duty, then all necessary documentation must be submitted to SARS. SARS' queries must be answered, an assessment for estate duty must be issued by SARS, and the amount due must be paid.
- The Master will examine the account and issue a document known as a query sheet where they detail any further documentation and information

which may be required. Any queries which require immediate attention before further progress can be made will be attended to.

- Once the Master has confirmed that our responses on the relevant queries are acceptable, an advertisement will be placed in the Government Gazette and in a newspaper circulating in the area where the deceased resided to the effect that the Liquidation and Distribution Account will lie for a period of public inspection, both at the Master's Office and at the Magistrates' Court having jurisdiction in respect of the deceased's last place of residence, for a period of 21 days from the date of the advertisement. During this period, any person who has a legitimate grievance, e.g. a creditor whose claim has not been accepted as valid, can lodge an objection to the account with the Master and/or the Magistrate and the executor will have to deal with such objection in the manner prescribed in the Administration of Estates Act.

## STEP FOUR:

After the aforementioned 21-day period has expired, and no objections have been lodged (both the Master and the Magistrate must confirm this to be the case), alternatively once any objection to the Liquidation and Distribution Account has been resolved, the way forward is as follows:

- The executor can then distribute the estate to the heirs and the beneficiaries. In terms of the Administration of Estates Act, heirs/beneficiaries are only entitled to receive their respective inheritances at this stage, i.e. after the Liquidation and Distribution Account has lain for inspection free from objection.
- The transfer of an immovable property awarded to an heir/ beneficiary can be registered at the Deeds Office.
- The transfer of any investment awarded to an heir/ beneficiary can be finalised.
- Creditors of the estate must be paid.
- A final cash statement will be prepared showing any transactions not reflected in the Liquidation and Distribution Account, including all interest earned to date of closure of estate banking accounts. The final amounts due to each of the heirs/ beneficiaries will be detailed in this statement and payment thereof can be made. Beneficiaries receiving bequests of specific cash amounts will not be furnished with a copy of this statement but it will be given to each residuary heir.

However, the fact that the Liquidation and Distribution Account has lain for inspection free from objection and that a distribution to heirs/beneficiaries is theoretically possible, does not mean that a distribution can immediately take place. Various factors can delay this process. For example:

- Although a final income tax assessment for an estate may have been received and paid, the estate's tax affairs can only be considered to have been finalised once a final tax clearance has been issued by SARS. It is common for an audit to be done by SARS and the tax clearance will not be issued until the audit has been completed. SARS can sometimes take months before issuing a tax clearance and it is not uncommon for SARS to make further claims on the estate. This can delay a final distribution.
- An immovable property may have been sold but transfer has not yet taken place by the time the Liquidation and Distribution Account has lain for inspection.
- Any other issue which for whatever reason makes a distribution impossible at that time.
- Beneficiaries/heirs will be kept fully informed of the reasons for any delays.

**For assistance, contact us at:**

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