

You are entitled to negotiate the executor's fee

You are fully entitled to negotiate how much will be paid to the executor of your estate after you have died, says the Fiduciary Institute of South Africa (Fisa).

Graham McPherson, a Fisa member and managing member of Zenzele Executor and Trust Solutions, speaking on behalf of the institute, says maximum fees are regulated by the Administration of Estates Act. He says: "The extent of the fee should not glibly be reflected as full fees simply as the matter is in community of property or simply to only recover fees on the assets in the deceased's name."

Fisa suggests that you discuss remuneration with your executor to ensure certainty on this aspect.

A thorough discussion about all aspects of your will and estate, not limited to costs, with your nominated executor can remove many uncertainties, McPherson says.

Problems of fees are not necessarily limited to estates where the spouses are married in community of property.

"A similar set of circumstances will arise in a marriage by ante-nuptial contract with accrual if the post-marital growth assets are registered mainly in one spouse's name.

"Should there be an accrual claim by the estate against the survivor, who may have the larger accrual, such a claim forms an asset in the first-dying's estate," he says.

The administration of estates can be difficult, he says.

McPherson says it does not automatically follow that in an in-community estate the surviving spouse will be the sole heir. Others may inherit the deceased's half share, and the deceased may have incurred debts against the joint estate that may be unknown to the surviving spouse.

"The executor is always responsible to investigate the joint estate fully, take charge of all assets, settle all debts and thereafter distribute property to the correct heirs, which may include the spouse.

"The nature of a marriage in community of property is often not understood by the general public. For example, executors often come across situations where a spouse will state that the asset is his (because it is registered in his name), whereas he only has ownership of an undivided share of the asset. This is why, when a spouse inherits the residue of the estate from their deceased spouse, the estate account has to reflect their inheritance as to one half share by virtue of the marriage in community of property and the remaining half share in terms of the will.

"The same effect is seen in the endorsement of a fixed property by the

Deeds Office, post death, even if the fixed property is registered in the husband's name and he inherits it."

The Administration of Estates Act states that the assets of both parties must be included in the community estate from an accounting perspective, McPherson says.

The executor's remuneration, as set out in the Act, does not distinguish between any marital regime.

MacPherson says there are many issues to be considered in setting the fees, including:

- ◆ To what extent are the assets registered in the surviving spouse's name;
- ◆ How much work will be involved in dealing with the assets that must be collected, uplifted and awarded; and
- ◆ What is the value and risk associated with the administration of the estate? For example, are there businesses and offshore assets?