



FISA CONSUMER EDUCATION

The cost of death

More than 30% of people who die, do not have enough cash in their estates to pay for costs and debts, according to Angelique Visser, Chairperson of the Fiduciary Institute of Southern Africa (FISA). In fact, very few people realise what the financial implications are at death. As a result they fail to provide for post-death expenses, adding to the family's trauma at an extremely difficult and emotional time. This document from FISA sets out an overview of the possible costs to help family providers to plan accordingly.

It is important to note that there are two different processes; one for estates below the value of R125,000 (gross value), referred to as "Section 18(3) Estates" and one for estates above the value of R125,000 (gross value). In the first instance there are not many formalities to be met and most family members can attend to the process themselves. When the value of the estate is above R125,000, the Administration of Estates Act sets many requirements which have to be met by the executor of the estate.

Choice of executor

An executor is normally nominated in your Will. Anyone may be nominated as an executor of an estate, but it is important to note that the Master of the High Court will not appoint an executor unless the executor is qualified to comply with all the relevant laws or is assisted by an agent who meets all these requirements. Security for the full value of the estate assets may further be required by the Master of the High Court and this will result in a further cost for the estate. Ideally the executor would be regulated by a professional body such as FISA, which requires members to adhere to a code of ethics.

The executor has a highly responsible role to play as they literally "step into the shoes of the deceased" and will have full power to deal with the assets as they wish. It is therefore extremely important to choose an executor or agent who knows the laws, has experience in this specialised area and is able to assist you and your family, after death, to find solutions for specific needs.



Costs of the administration process

In terms of the administration process the executor will have to pay for the following from the estate funds:

1) Advertising costs

Two advertisements have to be placed in a local newspaper and the Government Gazette. The costs can vary between R1,000 and R1,500 depending on the publication selected.

2) Conveyancing fees

Fortunately there is no transfer duty (tax) payable when a property is transferred from an estate into the name of the beneficiary, but the conveyancer has to be paid for the transfer of the property. This fee depends on the value of the property and is determined in terms of a sliding scale. An average property with a value of R1,000,000 will cost approximately R16,000.

3) Rates and taxes

One of the requirements to transfer a property is to obtain a Clearance Certificate from the city council or municipality. The latter will only be issued if the rates and taxes are paid in advance. The period that has to be paid varies from area to area, but is normally about six months. Very few people have cash to pay rates and taxes on a property for six months in advance as this could be another few thousand rand. Again, this needs to be planned in advance.

4) Masters fees

This is the fee payable to the Masters Office of the High Court, which is the authority that handles deceased estates. There is a formula to calculate this fee, but the maximum amount payable is R600.



5) Executor's fees

Executor's fees always seem to be a contentious issue. FISA believes that it is important for people to understand what fees can be charged, how they are calculated and what an executor's responsibilities are in order to receive this fee. In terms of current regulations the fee is 3.99% (VAT inclusive) of the gross value of the estate assets as on date of death and 6.84% (VAT inclusive) on income earned by the estate after date of death. Pension funds and proceeds of policies payable to third parties are excluded from an estate and are not subject to this fee. If you decide to nominate third parties on a life policy in order to save on executor's fees, be careful that you do not fall into the trap of other situations that could be worse. For example, if a minor is nominated as a beneficiary, the insurance company can pay the funds to the guardian (possibly a previous spouse) and this may not be the person you would have elected to receive the funds. It may be worth allowing the life policy to pay into the estate and ensure that the funds are protected and managed properly. Everyone's circumstances are different however and you should seek expert advice if you are unclear what would be best in your situation.

Although executor's fees are regulated, you may negotiate the fee with your nominated executor at the time of drafting your Will. The following factors will most likely be taken into account in negotiating the fee:

- Complexity of the estate (the type of assets that will be dealt with, maintenance and/or accrual claims, death taxes to be calculated etc.)
- Risks involved (are there business entities, offshore assets, possible litigation etc.)
- Liquidity of the estate (if there is not sufficient cash in the estate to pay all liabilities, taxes and administration costs, assets will have to be realised and the administration process may be delayed)

- Value and type of assets to be dealt with (a large estate with one cash investment of R100million, although larger may be less complex to administer than a R2 million estate with many assets of a low value, for instance household furniture and firearms).

6) Taxes

Not only will all outstanding taxes have to be paid from the estate before an estate may be finalised, but the executor will have to determine whether Capital Gains Tax is payable as death is a deemed event for CGT purposes. An estate may therefore be below the threshold for estate duty, which currently is R3.5 million, but still incur a CGT liability.

7) Other debts: homeloan, overdraft, credit card, retail accounts etc.

In most instances there is still an outstanding amount due on the bond at death which has to be settled before the executor may distribute the assets. Often the surviving spouse does not qualify to 'take over the bond' which results in the family home having to be sold. People also sometimes think that they have a policy that will pay out and cover the outstanding balance on the bond at death, but find out that it was only short term cover and not life cover when it is too late. Unfortunately one is not required to take out life cover when a bond is applied for; this would have saved many tears at death.

Remember that interest on outstanding debt does not stop when one dies. Therefore interest-bearing accounts should be settled as soon as possible.

8) Medical costs

In most instances when a person dies there are medical bills to be paid as medical aids do not always cover all the medical costs. It is difficult to determine what these costs could amount to, but it could be substantial.

9) Maintenance and accrual claims

Maintenance obligations usually do not fall away at death and the executor normally has to pay a lump sum to the claimant. If provision was not made for these claims, assets will have to be sold in order to meet this obligation which could result in a surviving spouse having to sell the family home.

The effect of an accrual claim is often not understood and could have severe financial implications for a surviving spouse or dependants from a previous marriage. For example if the deceased was married out of community of property with the accrual system, the executor will have to claim from the surviving spouse if he/she has the bigger estate and is not the deceased's sole heir.

10) Funeral

Lastly, funeral costs should not be underestimated. The cost can vary anything from R10,000 to a few hundred thousand rand.

In summary, FISA urges members of the public to ascertain what costs will be payable in the event of death and to provide accordingly. If there is sufficient cash, the executor, regardless of who it is, will be put in a better position to administer the estate as quickly as possible. It also gives the beneficiaries choices as there will be no need for forced sales. Finalising an estate does not only help to give financial peace of mind but also helps the family to get closure.

About FISA

The Fiduciary Institute of Southern Africa (FISA) is a non-profit organisation that represents fiduciary practitioners and sets high minimum standards for the industry to protect the public's interests. FISA is the only professional body focusing solely on fiduciary practitioners in Southern Africa. Membership is drawn from trust companies and banks, as well as the legal, accounting and financial planning professions.

FISA has over 700 individual members, who collectively manage in excess of R250 billion. They draft several thousand wills each year and administer around 50 percent of deceased estates reported to the Master's Office.

Activities of FISA members include but are not restricted to the drafting of wills, administration of trusts and estates, beneficiary funds, tax and financial advice and the management of client funds.

FISA helps to make processes smoother for members and the public, particularly through its good working relationship with the Master's Office and SARS.

FISA also has a Code of Ethics and Disciplinary Code that emphasise the conduct, competency, knowledge, professionalism, integrity, objectivity and responsibility of each person accepted as a member. The public can be assured that the Disciplinary Committee is not afraid of acting against members who do not adhere to FISA's Code of Ethics. Memberships have been terminated, details of which can be found on FISA's website.

Whilst enhancing the professional image, reputation and credibility of the trust industry, FISA also plays an important role in educating the public through educational articles and discussions in the media.

Please note fees and figures may change from time of writing. Please consult a FISA practitioner for updated fees.