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# The Executor: dealing with disqualified heirs

## Fiduciary Matters

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An executor has many duties. He must deal with the assets of the deceased, consider and settle claims against the estate, and take steps to transfer the estate assets to the heirs or, where required, sell the assets. Unless the Will instructs him to sell the assets in a particular manner and/or prescribes the conditions of the sale, he may only act on the instruction of the heirs.

The executor must within six months of his appointment frame a liquidation and distribution account that reflects all the assets and liabilities of the estate and how he will deal with them.

He therefore has to determine at the outset of the estate who the beneficiaries are so that he can consult with them and get their instructions relating to the assets in the estate, in order to ultimately frame a liquidation and distribution account.

The fact that a person is mentioned as heir in a Will or

qualifies to inherit in terms of the rules of intestacy (where there is no valid Will) does not however automatically mean that he will inherit.

**The general principle in succession law is that all persons have the capacity to benefit in terms of a Will or on intestacy** (although the latter is subject to certain rules regarding the order of inheritance).

**There are however exceptions to this principle. For the sake of brevity, this article will deal only with two such exceptions:**

- A person who caused the death of the deceased, whether intentionally

or negligently (the so-called “bloedige hand” or “bloody hand”) is regarded as unworthy to inherit from the deceased. In order to apply this principle, a criminal case must be instituted and the person found guilty of murder or culpable homicide. Criminal cases are usually lengthy.

- A person (or his spouse at the time of execution of the Will) who signs a Will as witness, or writes out the Will or any part thereof in his own handwriting is disqualified from receiving any benefit from the deceased’s Will. The court may however

declare him competent to inherit if satisfied that he did not defraud or unduly influence the testator in the execution of the Will. This involves a civil case which usually does not take as long as a criminal case, but the entire process could still take at least six months.

It should be evident from the examples below that the executor will be placed in a difficult position if faced with a situation where an heir is potentially disqualified from inheriting.

He is effectively forced to wait until judgment is given before being able to determine whether or not the heir is competent to inherit so that he can take instructions from him and draft the liquidation and distribution account.

### Duties of the executor include:

- Deal with assets of estate
- Consider and settle claims
- Determine who beneficiaries are
- Transfer assets to heirs or sell assets
- Frame a liquidation and distribution account

*This article was written by Ronel Williams, a Council member of FISA and fiduciary specialist at Nedbank Private Wealth.*

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### The following select examples illustrate the practical impact of a court case:

- Mrs D was found guilty of conspiracy to assault and do grievous bodily harm and assault with the intention to do grievous bodily harm after hiring two men to “hurt her husband”. As neither of these actions made her a “bloody hand”, the executor had to approach the court for an order declaring her unworthy to inherit. The entire process took 27 months.
- Mr L approached the court to declare him competent to inherit in terms of the Will of his late wife, which was written out by him. The court process took nine months.
- The wife of the heir in the Will signed the Will as witness. The court found that he was competent to inherit as there was no undue influence. The process took eight months.
- The husband of the deceased was arrested in 2008 for hiring people to kill her. He confessed but later alleged that the police forced him to confess. The case has not yet been heard.

