

English estates - what is “resealing”?

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If an individual domiciled in South Africa passes away, leaving assets registered in England, it is regularly the case that the letters of executorship issued by the Master of the High Court will not be recognised by the English asset holder, for example a bank or portfolio manager.

Resealing is a fast and efficient way to obtain recognition of the letters of executorship by the English court, which will then enable the executor or their attorney to gain access to the assets registered in England.

For example, if an individual, domiciled in South Africa, passes away leaving a bank account and a house registered in England, the South African letters of executorship may not be recognised by the bank and will not be recognised by the English Land Registry. It follows that resealing would be an efficient way for the South African executor to obtain English court authority to deal with the English assets.

When can I reseal?

The English court is permitted to reseal probate documents issued by the courts of specified current and former Commonwealth countries and territories, which include letters of executorship issued by the Master of the High Court in South Africa. Letters of Authority cannot be resealed.

Who can apply to reseal?

Broadly speaking, letters of executorship may be resealed by the person appointed by the Master as the executor of the estate or their attorney.

What documents are required to reseal?

1. The letters of executorship and the Will

The original letters of executorship or a court sealed and certified copy can be submitted. As the original Will (and any codicil) is normally retained by the Master, a court sealed and certified copy of the Will is required. If the deceased passed away without a Will, only the letters of executorship will be required.

2. Letter of Authority or Power of Attorney

If an English solicitor is instructed to apply for the reseal on behalf of a South African executor, the solicitor will prepare a letter of authority. Alternatively, where a solicitor is also instructed to continue and administer the assets in England, the solicitor will prepare a power of attorney.

3. Inheritance Tax Return or Account

To comply with the requirements of the UK tax authority, H M Revenue and Customs, the English court requires an inheritance tax (IHT) return or account to be submitted – whether or not IHT is payable.

4. Court Fee

Where the value of the net estate exceeds £5,000, a fee of £155 is payable for resealing. No fee is payable where the net UK estate is less than £5,000. Official sealed copies are 50p each.

Professional assistance

Although resealing can first appear to be a straightforward exercise, the following reasons provide examples of why legal assistance is recommended:

A. If a foreign executor attempts to submit an English IHT return or account and it is completed incorrectly, they may be committing a criminal offence. If the estate is taxable in the UK, it is strongly recommended that a professional is instructed, so that all exemptions and reliefs (for example, double taxation relief) are claimed.

B. If a foreign executor obtains a reseal in England, they may then face difficulty when dealing with certain assets, which are registered in England, for example, transfers of land. Instructing a solicitor to deal with both the reseal application and the administration of the English assets can expedite the process. This can also serve to protect a foreign executor from maladministration in a jurisdiction in which they are not familiar.

C. If the Will is in a foreign language (a common example is Afrikaans), English translations will be required. The court has specific requirements for the format of the translations and who can provide them.

D. Although resealing is commonly associated with the UK or the British Isles, it is worth noting that resealing is only possible in England and Wales. It is not possible to reseal in Scotland, Northern Ireland, Republic of Ireland, Jersey, Guernsey or the Isle of Man. So it is important to consider in which jurisdiction the asset that you are attempting to administer is situated.

If you are in a position where you feel that resealing may be appropriate or you require advice on your alternative options, make sure you contact a service provider with the necessary international expertise.