

Your financial obligations are never over until they're over

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Never simply assume that a financial or legal matter, such as winding up an estate, settling a debt or finalising an insurance claim, is behind you, and that whoever is responsible for settling the matter has, in fact, done his or her job. Always follow up and always obtain written proof that the matter has been settled. Debt, in particular, must not be left unattended. Interest and other finance charges will mount until the debt may be out of all proportion to what was originally owed.

This is the harsh lesson a widow, Mrs A, learnt in a case that came before the Ombudsman for Long-term Insurance, Judge Ron McLaren, even though he ruled in her favour.

According to the ombudsman's determination, Mrs A's husband took out credit life assurance on a vehicle loan when he bought a new car in March 2008. Credit life assurance covers you for outstanding debt if you die before the debt has been paid off.

Seven months later, in October 2008, Mrs A's husband died. The following month, Mrs A went to the

car dealership and lodged a claim under the credit life policy for the settlement of the vehicle loan.

In March 2009, the assessor for the assurance company, Bidvest Life, asked the dealership to obtain and submit further documents. It appears not to have done so. In April 2009, because the documents had not been submitted, the claim was set aside by the assurer. There was no further contact with Mrs A.

Mrs A, who later told the ombudsman that the dealership had indicated to her that the claim had been processed, was shocked, some five years later, in October 2014, to be served by the sheriff of the court with a warrant to repossess the car. The repossession order had been granted by the court in 2010.

Mrs A then claimed directly with Bidvest Life for the benefit, but her claim was rejected on the grounds that Mrs A's husband had a pre-existing condition (he was HIV-positive) when he took out the policy, which he had not disclosed. It had requested further documentation when the initial claim was made, which it never received. She then complained to the ombudsman.

The ombudsman's office found

Debt settlement in a deceased estate

Louis van Vuren, the chief executive of the Fiduciary Institute of South Africa (FISA), says section 29 of the Administration of Estates Act requires the executor to place an advertisement in the Government Gazette and in a newspaper in circulation in the district where the deceased resided, calling on creditors of the deceased (and therefore the estate) to lodge their claims against the estate with the executor within a stipulated time period. This period must be at least 30 days and not more than three months from the date of publication of the advertisement.

The executor must then evaluate each claim and accept or reject it. Accepted claims must be paid at the latest before legacies and inheritances are distributed to heirs,

that Mrs A's husband may have had a pre-existing condition, but there was no evidence that he had received treatment or advice at any

except if arrangements are made with the creditor for an heir to take over the debt.

If a creditor with a valid claim does not lodge the claim within the period specified in the Act, he or she does not lose the right to claim, Ronel Williams, FISA's chairman, says. The creditor can still lodge a claim during the administration process before the executor distributes the estate assets.

Once the assets have been distributed, the creditor can no longer claim from the estate, but can still claim from the heirs of the estate on the basis that they received more than they were entitled to. There are certain time frames attached to this right, and each case should be decided on its own merits, Williams says.

time during the 18 months before taking out the cover, as required by the policy. In fact, the doctor who attended Mr A was of the view that

he had become aware of his HIV status only days before his death.

The ombudsman ruled in favour of Mrs A and, at his request, Bidvest Life agreed to pay into Mrs A's husband's estate the capital amount he owed at the time of his death, which was R102 462.

This was far short of the final amount owing, however. After the five years, the debt had ballooned: Mrs A's lawyers had sought relief of R321 243, although it is unclear how this amount had been calculated.

WHO WAS RESPONSIBLE?

So was Mrs A at fault for not following up on whether or not the debt had been settled? Or was the responsibility that of the executor of her husband's estate?

Louis van Vuren, the chief executive of the Fiduciary Institute of South Africa, says this depends on whether or not Mrs A herself was nominated as executor in the will. If Mrs A was not the executor, her only duty would have been to inform the executor about the debt and the insurance policy. If Mrs A was the executor, and she appointed an agent to wind up her husband's estate on her behalf, she

When does a debt prescribe?

Under the Prescription of Debt Act, a debt prescribes (falls away) after three years in most instances if the creditor has made no attempt in that time to communicate with or retrieve the debt from the debtor. However, if you are a debtor, don't assume that, simply because the creditor has not communicated with you for three years, your debt has prescribed. You may have changed your address or other contact details and not informed the creditor, or the creditor may have resorted to other means such as obtaining a judgment against you to retrieve the debt.

had a duty to ensure that the claim was accepted or rejected, and, if accepted, that it was paid – either by the insurer or her agent. “The executor cannot abdicate responsibility,” Van Vuren says.