

Cash crunch of winding up estate could cost heirs their home

By **CHARLENE STEENKAMP**

● As many as one in four deceased estates in South Africa are estimated to have insufficient cash to pay all the costs involved in winding them up, leading to heirs who, barring other means of raising cash, may face having their family home sold.

Louis van Vuren, CEO of the Fiduciary Institute of Southern Africa, says even where an estate has more assets than liabilities there may still be a shortfall of actual cash to settle debts such as outstanding home loans, taxes and other administration expenses.

“There is nothing that delays the finalisation of an estate more than a cash shortfall,” he says.

Even if a surviving spouse has sufficient cash for the estate administration and other expenses, in practice the money is often invested.

The forced sale of assets can add to the woes of the beneficiaries because it may

create additional tax liabilities depending on the tax status of the asset.

Capital gains tax

For instance, capital gains tax may become payable if an investment property is sold rather than the family home.

By way of example, if an investment flat is left to a spouse in a will, capital gains tax will only become payable on the flat on the death of such surviving spouse (the capital gain will roll over).

However, if the flat is sold either by the estate or by the spouse after it has been transferred to him or her, capital gains tax will become due immediately.

According to Wouter Fourie, CEO of Ascor Independent Wealth Managers, a forced sale of a property will in most cases deliver less than the market value of the property, leaving the beneficiaries compounding the problems caused by the tax.

After the liquidation and distribution

account of the estate is approved by the Master of the High Court, the executor must first pay creditors, costs and taxes, then he must pay out or transfer any specific legacies, for instance, a property left to a spouse or a vehicle left to a grandchild. What remains is the residue. Whoever inherits the residue in terms of a will in effect carries all the costs, says Van Vuren.

The executor has an obligation under the Administration of Estates Act to finalise the estate within six months of the liquidation and distribution account being approved by the Master of the High Court.

If there is a cash shortfall in the estate, this may leave the executor with no choice but to ask the heirs to the residue in an estate to pay cash into the estate by a certain date, he says.

If the heirs are unable or unwilling to do so, the executor has to sell an asset, which may include the family home where the surviving spouse and possibly their children

may still be living.

There is no rule of thumb to estimate the costs of winding up an estate. It is entirely dependent on the value of the assets in the estate, the provisions in the will and the relationship between the testator (the person drafting the will) and the heirs.

Life insurance

The costs include the executor’s fee. This fee is negotiable when you appoint an executor, says Fourie, and is capped at 3.5% plus VAT of the assets in the estate before the deduction of any liabilities such as home loans.

Another cost is the fee charged by the Master of the High Court, to whom a liquidation and distribution account must be submitted by the executor. This account has to be approved by the Master prior to any payouts to heirs.

Estates with a value up to R250 000 will not be liable for a Master’s fee. Between R250 000 and R400 000, the fee is R600,

and from there onwards a further R200 will be levied for every R100 000 of estate value up to a maximum fee of R7 000, which will be reached at an estate value of R3.6-million, he says.

All other costs in an estate are fixed in legislation and the South African Revenue Service is not willing to negotiate taxes that fall due.

Van Vuren says estate duty tax is another expense, and is charged at 20% of assets worth more than R3.5-million that go to heirs other than the surviving spouse.

To avoid problems occurring in your estate after your death, Fourie suggests that a comprehensive plan be drawn up by an experienced and suitably qualified financial planner.

This plan should include the estate plan and an estate liquidity plan. The estate plan will provide you with insight into how the estate will settle the expenses, he says.

Van Vuren says the most cost-effective

method to take care of any cash shortfall in your estate is to take out a life assurance policy, but he warns that you should avoid the common mistake of bequeathing the policy to an heir or nominating a beneficiary to receive the proceeds on this policy.

While you may avoid executor’s fees on the proceeds of the policy if you nominate a beneficiary, your heirs may well invest or even spend the money and it will then not be available to take care of the shortfall in the estate.

Fourie says life insurance policies do allow you to nominate a beneficiary to receive a portion of the life cover and specify that the remainder be paid into your estate.

Similarly, if you happen to have sufficient cash for the anticipated costs in your estate, you should not bequeath all your cash to your heirs in your will. Instead, ensure that you leave sufficient cash to the residue of your estate to cover the costs, Van Vuren says.