



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



ESTATE PLANNING TRUSTS WILLS ESTATES BENEFICIARY FUNDS

Very few people realise the financial implications of dying. Many South Africans who die do not have enough cash in their estates to pay for costs and debts. This adds 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.

## What is an estate?

The assets owned, and liabilities (debts) owed, by a person comprise his/her estate. When a person dies, the estate must be reported to the Master of the High Court and a specific legal process must be followed in order for the estate to be administered. The executor who is tasked with the administration of the estate must firstly settle all liabilities. Thereafter he/she must ensure that specific items which may have been bequeathed (left) to certain people or organisations are dealt with. The balance of the estate that remains is called the "residue". This will then be transferred according to the deceased's wishes as expressed in a will or, where the deceased did not leave a will, according to the rules of intestate law.

It is important to note that there are two different processes: one for estates with a gross value below R250,000, referred to as "Section 18(3) Estates" and one for estates with a gross value above R250,000. 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 R250,000, the Administration of Estates Act sets many requirements which have to be met by the executor of the estate.

An executor is usually 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.

The Master of the High Court may require security for the full value of the estate assets as guarantee that the estate and heirs will not suffer damage in case the executor's actions lead to financial loss in the estate.

The cost of the security is payable from the assets of the estate and this will result in a further cost for the estate.

The executor has a highly responsible role to play as he/she literally "steps into the shoes of the deceased" and will have full power to deal with the assets as per the deceased's wishes. It is therefore extremely important to choose an executor or agent who knows the law, has experience in this specialised area and is able to assist you and your family to find solutions for specific needs.

The executor must account for all assets and liabilities of the estate in a document known as the Liquidation and Distribution account which needs to be lodged with the Master of the High Court. The liabilities include those amounts owing by the deceased at the time of death, as well as the administration costs resulting from the administration process. The following are examples of the type of costs that could be applicable and that are payable from the estate assets.

## ADMINISTRATION COSTS

### Advertising costs

During the administration process two sets of advertisements must be placed in a local newspaper and the Government Gazette:

- A notice to creditors to lodge their claims against the estate
- A notice to interested parties that the liquidation and distribution account is lying open for inspection.

The costs for these advertisements are payable by the estate. The rates for advertisements differ from newspaper to newspaper but are usually between R400 and R700 per notice (excluding VAT). The current rate of the *Government Gazette* is approximately R40 per insertion.



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### Master's fees

Master's fees are payable to SARS in all estates where an executor is appointed and where the estate has a gross value of R15 000 and more.

If the deceased was married in community of property, Master's fees are payable in respect of the joint estate, since the joint estate must be administered as a whole.

The tariff for the calculation of Master's fees is as follows:

- estates between R250 000 and R400 000 a fee of R600
- estates of R400 000 or more, for each complete R100 000 with which it exceeds R400 000, a further R200, subject to a maximum of R7000.

### Executor's remuneration

The executor is entitled to remuneration for the work involved in administering the estate. The will may stipulate the executor's remuneration. If it does not or if there is no will, the executor's remuneration is calculated according to a prescribed tariff which is currently 3,5% of the gross value of the assets, subject to a minimum remuneration of R350. VAT must be added if the executor is registered as a VAT vendor.

The executor is also entitled to a fee on all income earned after date of death – the current tariff is 6% (plus VAT where applicable).

### Costs of security

If the executor is not exempt from lodging security for the due administration of the estate, the premium payable on the bond of security is a charge against the estate. The cost is approximately 0.5% of the gross value of the estate plus VAT.

### Mortgage bond cancellation costs

If any property of the estate has been bonded, the bond has to be cancelled and there is a fee attached to this.

### Appraisement costs

The account rendered by an appraiser for a valuation of assets for estate and estate duty purposes is a charge against the estate.

### Costs of realisation

Any costs incurred in selling assets, e.g. estate agent's commission, brokerage, advertisements etc. are charged against the estate.

### Transfer costs of fixed property

Where an heir inherits fixed property from an estate, it must be transferred to him/her from the estate in terms of the provisions of the Deeds Registries Act and in accordance with Deeds Office practice and tariffs.

### Costs to transfer shares/timeshare

The share custodian usually charges an administration fee when shares or timeshare is transferred to an heir.

### Bank charges

Service fees debited by the bank to the bank account opened in the name of the estate are allowed as administration fees.

Some banks also charge a fee for providing the certificate of balance as at date of death.

### Postage and petties

The executor is entitled to claim an amount for postage and sundry costs as administration costs. Each Master's office determines the amount it will allow.

### Funeral expenses

These expenses are allowed as a claim against the estate and also fall under administration costs.

### Short-term insurance

The premium on insurance over estate assets is allowed as a charge against the estate.

### Maintenance of assets

The costs of maintaining and conserving assets are administration charges. Examples would be interest on mortgage bonds, employees' wages, etc.



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### Duplicate motor vehicle registration certificate

Where the original certificate is not available, the executor has to apply for a duplicate original. The cost of this is allowed as an administration charge.

### Tax fees

The fee charged by the person/institution completing any outstanding tax returns is an administration charge.

### Claims against the estate

#### Sundry creditors

Any amount owing to a creditor at date of death will be included as a liability (charged against the estate), e.g. medical bills, store accounts.

#### Rates and taxes

Rates and taxes which have accrued at date of death are a claim against the estate. Rates and taxes that accrue after death must first be set off against any income earned from the property from date of death to sale or transfer and the balance is payable out of the capital of the estate.

#### SARS

The South African fiscal year extends from 1 March to 28 February. If a person dies in the course of the fiscal year, SARS will have a claim against his estate for income tax due for the period 1 March to date of death. It is the executor's duty to give SARS a completed tax return *including capital gains made on the deemed disposal from the deceased to the deceased estate* for the relevant period.

#### Mortgage bonds on fixed property

Any outstanding amount on a mortgage bond is a liability against the estate.

#### Bank overdrafts/instalment sale agreements

Any amount owing to a bank on an overdraft or instalment sale agreement is a liability against the estate. This includes interest accumulated up to date of death.

### What it all means

The costs above will vary from estate to estate, but it is clear that every estate will have costs associated with it and those costs are payable from the estate assets.

It often happens that an estate is solvent (meaning that assets exceed liabilities), but there is insufficient cash to settle debts and administration expenses. This is referred to as a cash shortfall. In such an event, the executor will approach the heirs to the residue of the estate to see if they are in a position to pay the required cash into the estate in order to avoid a sale of the assets. If they are not able or willing to do so, the executor will have no choice but to sell estate assets to raise the necessary cash. This is far from ideal as the executor may be forced to sell a valuable asset, such as a vehicle or even a family home, to generate a small amount of cash. It is therefore important to ensure that you also address this aspect as part of your planning.