

QUESTIONS YOUR

WHO GETS THE INTEREST ON AN ESTATE ACCOUNT?

I have been named as the executor of my late sibling's will and have appointed a firm of attorneys to assist me to finalise the estate. Various monies are due to be paid to the estate and so the attorneys assisting me have opened an estate account at their local bank (the account identification is in the name of my deceased sibling).

When I approached the bank as the executor to find out what had been paid into the account, I was told that, as the estate account was the attorneys' bank account, they were prohibited from divulging any information pertaining to balances, despite the fact that the letter of executorship is in my name.

As there is surely interest accruing on the balance being held in the estate account, who gets the interest? Does it go to the attorneys who are assisting me or does it get paid to the deceased estate for the benefit of the beneficiaries?

If the interest accruing is paid to the attorneys, then surely it is in their interests to delay the winding up of the estate for as long as possible.

Name withheld

Dr Eben Nel, the National Chairman of the Fiduciary Institute of Southern Africa (Fisa), replies:

The reader is advised to approach the attorney to determine the true nature of the estate account opened by the attorney. It appears the reader was appointed as executor, but it is not clear whether she only asked the attorney to assist with the administration of the estate, or whether she has actually appointed the attorney as agent. The consequences are as follows:

- If the account referred to was opened in the name of the deceased estate with the attorney acting as agent of the executor in terms of a power of attorney, the interest will accrue to the estate, and ultimately to the beneficiaries. The executor may take a 6-percent fee on the interest earned on the account. This is governed by regulations in terms of the Administration of Estates Act. Depending on the agreement between the executor and the agent, the latter would usually receive the fee.
- If the attorney has not been appointed as

agent of the executor, he would charge the client a professional fee for services delivered and the executor would be allowed to take the six-percent fee on the interest which has accrued to the estate. In some instances, the attorney may open a sub-account of his practice's trust account, in which case the interest will be paid to the Fidelity Fund, as prescribed by the Law Society. The Fidelity Fund is the insurance held by the attorney in case of fraud or theft. Such interest will therefore not accrue to the estate.

In conclusion, it's not possible to determine with any certainty the correct allocation of the interest earned on the deceased estate account without knowing the role of the attorney and the circumstances under which the particular account was opened. The attorney should, however, be able to clarify it. If the reader is not satisfied with the way the interest is dealt with, she should consult with office of the applicable Master of the High Court.

A PIECE OF LAND FOR MY DAUGHTER

I read that in order to avoid donations tax, it's possible to supply an interest-free loan to a prospective heir which will simply be deducted from his or her inheritance.

I want to give my daughter a plot worth R1 million which is in my name to help her start in the property market. She wants to build her own house on it and would therefore have to own it.

In your opinion, would it be legal to give my daughter a R1-million interest-free loan and then sell the plot to her for R1 million, and then pay transfer and registration costs?

I would add this loan to my will and it will be deducted from her inheritance – thereby avoiding donations tax.

Dave

Willie Fourie, the head of estate and trust services at PSG Wealth, replies:

Yes, it is legal to do as you suggest. Note that the first R900 000 in value will be exempt from transfer duty, but transfer duty will apply to the balance of the value above that threshold. You'd also have to pay the conveyancing attorney's fees to affect the transfer in the Deeds Office. This transaction may also attract capital gains tax – depending on the base cost of the plot – which would be the original purchase price.