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SLOWER THAN A GLACIER

Why do deceased estates take so long to finalise in SA?

The process to administer a deceased estate and wind up the affairs of the deceased person is a well-regulated process in SA.

For estates worth more than R250,000 the process that must be followed is prescribed in detail by the Administration of Estates Act.

In recent years, however, it has become an impossibly lengthy process with mounting frustration for the family of the deceased and fiduciary practitioners alike. There are several reasons for the delays.

For a start, the executor is dependent on the co-operation of financial institutions, employer(s) of the deceased, the SA Revenue Service (Sars), the department of home affairs, the courts, the government printing works and the master.

For the past few years, several of these have at times not been able to deliver what they had to, or as smoothly as they had to.

For one, financial institutions are forever changing their processes and requirements. Employers do not always comply with their duties to issue tax certificates after the death of an employee.

The government printing works has had systems failures in recent years, delaying the advertising of liquidation and distribution (L&D) accounts in the Government Gazette. And though Sars is improving, there are still systems issues when it comes to deceased estates.

The courts do not notify home affairs of divorce court orders granted, leading to disputes between the master and the executor about the marital status of the deceased. And, finally, service levels in master's offices vary widely.

This is crucial as an executor cannot do anything until the master has issued letters of executorship, which in some cases takes more than six months. No financial institution will deal with the executor without it.

Once an executor has lodged an L&D account – a document showing all the assets and liabilities of an estate – with the master, they may then request proof of claims and payments made by the executor before they can advertise the

estate account, which they're obliged to by law. This could result in further delays for no apparent reason other than backlogs in the master's office – sometimes delays of six months and more again.

After the advertisement period (21 days) has expired, the master has to confirm whether objections to the account were received or not before the executor can distribute the estate. Again, delays are not uncommon.

Complaints to the Fiduciary Institute of Southern Africa (Fisa) about service failures in master's offices have increased exponentially since 2018.

The main reasons for the delays are staff shortages, a lack of skills and proper training, a lack of managerial capacity, an inability or unwillingness to practise sound consequence management, and nonexistent or unreliable IT.

But a bigger issue is whether our present regulatory approach to deceased estates is appropriate. All estates are treated the same by the regulator, regardless of size, risk or complexity.

Some estates carry very low risk: where there are no minors who stand to benefit from an estate; where there are no complex legal structures in the estate; and where a surviving spouse is the main or only beneficiary. This is especially true where the main beneficiaries are adults with a fair level of education. A so-called fast track has been applied sporadically and with different levels of success in various master's offices – but we need a more permanent solution.

In other jurisdictions there is a system where the executor is appointed and given proof of appointment (called a grant of probate in the UK), and carries on with the process without further intervention by a regulator until the final proof of distribution in accordance with the will is lodged.

It is high time that SA considered this as an option in cases where a professional executor is appointed. Risks can be addressed by demanding proof of sufficient professional indemnity insurance for all professional fiduciary practitioners who are not legal practitioners with fidelity fund cover.

This will alleviate the pressure on the master and allow proper control over estates with more vulnerable beneficiaries, while removing the delays in those cases where a professional is appointed with sufficient safeguards against fraud and professional negligence. ✘

Van Vuren is CEO of Fisa