

Issues experienced with Master's Offices and how to adjust your financial planning



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



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- Issues in Master's Offices
 - Backlogs with issuing letters of executorship (LE's) and letters of authority (LA's)
 - Bandwidth
 - Department of Home Affairs
 - Inconsistencies between different offices
 - Trusts in Pretoria and Cape Town
 - Suspensions of senior staff
- Strategies to adjust your financial planning
 - Retirement funds
 - Insurance products
 - Trusts
 - Moving assets offshore
 - Donations
 - Buy-and-sell agreements



- The turnaround standard is supposed to be 15 working days for LE's and LA's (s 18(3) estates)
- Some Master's Offices have severe backlogs due to problems matching the electronic record to the original will
- Sometimes it takes several hours to load a new estate on the electronic "Deceased Estates Registration System" (DERS)
- The trust "beneficial ownership" register also sometimes extremely slow
- Huge backlogs with trust registrations and authorisation of new trustees in some offices
- Due to fraud fears some banks refuse to accept unstamped LE's despite QR code

- All new estate registrations are verified against Home Affairs records
 - Confirmation that death certificate was issued
 - Essential to prevent fraud
- Home Affairs systems regularly down
- Link to Home Affairs from DERS sometimes extremely slow or down
 - Bandwidth?
- Home Affairs records w.r.t. deaths, marriages and divorces not up to date
 - Deceased could be divorced, but still show as married
 - ✓ Divorce court registrar did not notify Home Affairs; or
 - ✓ Home Affairs did not update despite being notified
- Executor must have correct status and have it reflected at Home Affairs before L&D can be lodged
 - Fortunately Masters no longer require this before issuing LE's

- Requirements of and processes in different offices differ widely
 - Some offices accept electronic documents for trustee appointments, some don't
 - One issues deregistration certificates for trusts, the others don't
- Different groups in some offices have different requirements in deceased estates
- Some offices started requiring Rev 250 as preliminary requirement on query sheet
- Trusts in Pretoria – wait more than a year for authority for new trustees
 - Trustees are appointed i.t.o. trust instrument, but
 - Cannot act as such until authorised by Master under s 6(1) of the TPCA
 - Huge problem for trusts with less than minimum trustees in office (Landbank v Parker [2004] ZASCA 56)
 - ✓ Cannot act, all actions taken are void
 - ✓ Beneficiaries are prejudiced
- Suspension of several Masters, no indication when issue will be resolved
 - Ironically the good performing Masters



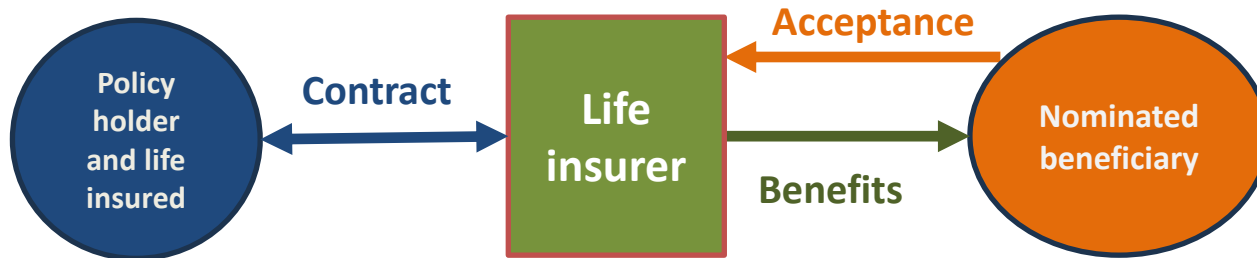
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- Proceeds from retirement funds at death of member not part of estate
 - S 37C(1) of the Pension Funds Act, 24 of 1956
 - Proceeds will go to dependants first before nominated beneficiaries
- Payout not dependent on LE or approval of L&D account
- Also free from estate duty (ED), except accumulated undeductible contributions (s 3(3)(e) of the Estate Duty Act, 45 of 1955 (EDA))
- However, some implications to keep in mind
 - Tax payable on any lump sum as if deceased member retired immediately prior to death
 - Annuity income taxable in the hands of the dependant/beneficiary
 - Recipients of benefits cannot be chosen freely like testator can choose legatees and heirs
- Strategy
 - Consider maximum lump sum contributions to RA within deductible limits
 - Ensure this does not undo desired balance in benefits to spouse, children, family



- Life insurance can have beneficiary nomination (*stipulatio alteri*)
 - Beneficiary for proceeds
 - Beneficiary for ownership



- Pays or gets transferred outside the estate – not dependent on Master
- Bear in mind
 - Proceeds subject to estate duty, except policies under exclusions (s 3(3)(a) of EDA)
 - Make sure enough cash in estate before nominating beneficiaries on all policies
 - ✓ Liquidity calculation as part of estate planning essential
 - ✓ Liquidity shortfalls disastrous in deceased estates



- An existing *inter vivos* trust does not “die” with the founder of the trust
 - The trust deed will determine the duration of the trust
 - Proper planning can ensure management of assets over generations
- Benefits
 - No involvement of Master at death of founder or any beneficiary
 - No estate duty upon death of founder
 - ✓ Outstanding loan account will be claim in favour of or against estate
- But, bear in mind
 - Authorisation of trustees. Always ensure more than minimum trustees in office
 - Transfer of assets to trust comes at a cost
 - ✓ S 7C of Income Tax Act, 58 of 1962 (ITA) – interest free loan account could lead to donations tax
 - Trusts are taxed at flat rate of 45% on income and 36% on capital gains
 - Anti-avoidance provisions in s 7(2) to 7(7) of ITA

- Moving assets (wealth) offshore can place it outside the SA estate administration
 - In practical terms mostly cash
 - Acquire shares in offshore companies, held in offshore structures
 - SA residents can effectively move R11m p.a. out of SA
 - Several jurisdictions have joint bank accounts where survivor automatically takes over
- Be aware of:
 - A separate will necessary for anything not in a joint bank account
 - ✓ Careful wording of revocation clauses essential
 - **All** property of SA resident subject to estate duty in SA (few exceptions)
 - ✓ Property acquired before becoming SA resident; and
 - ✓ Offshore property inherited or received as donation from non-resident
 - Some jurisdictions have forced heirship rules
 - ✓ Structures may be essential
 - ✓ In Europe you can elect the law applicable to your will and estate

- Master not involved with donations
 - Donation an agreement in which donor donates and donee accepts
 - No requirement to register anywhere
 - Should, like any contract, be in writing and properly drafted and signed with witnesses
- Donation to spouse free from donations tax, but see s 7(2) of ITA
- Effective rate of donations tax lower than effective estate duty rate
 - If dutiable estate is R1m, estate duty is R200,000 and R800,000 left
 - Use the same R1m for a donation -
 - ✓ Make donation of R833,333 to someone other than spouse
 - ✓ Pay donations tax of R166,667
- However
 - Only appropriate if client has sufficient cash and/or limited life expectancy
 - Donation of anything other than cash – potential CGT
 - Remember s 3(3)(b) of EDA

- A buy-and-sell agreement between partners or co-shareholders
 - Binds the executor of the deceased estate
 - Can be given effect to immediately after the executor received LE
 - No reason for Master to question if properly done
 - Places cash in hands of executor - can be paid to heir(s) / legatee(s) in appropriate cases
- However:
 - Make sure the agreement is properly drafted and signed
 - Make sure the valuation and funding is done properly
 - ✓ Better to review regularly than to “fix” a value in the agreement
 - ✓ Rules in s 3(3)(a)(iA) of the Estate Duty Act
 - Be aware that SARS has to sign off on business valuations for estate duty purposes
 - ✓ See s 5(1)(f)*bis* of the Estate Duty Act
 - ✓ Ensure that enough cash is retained by the executor to pay the estate duty



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ESTATE PLANNING TRUSTS WILLS ESTATES BENEFICIARY FUNDS



37C. Disposition of pension benefits upon death of member.—(1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19 (5) (b) (i) and subject to the provisions of sections 37A (3) and 37D, not form part of the assets in the estate of such a member, ...



“dependant”, in relation to a member, means—

- (a) a person in respect of whom the member is legally liable for maintenance;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person—
 - (i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
 - (ii) is the spouse of the member;
 - (iii) is a child of the member, including a posthumous child, an adopted child and a child born out of wedlock.
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died; ...



If you have R1m available that would have been subject to estate duty (i.e. the dutiable estate after all deductions, incl. s 4(q), and the after the s 4A standard deduction), it can be donated pre-death:

Donations tax is payable on the amount of the donation, not the amount including the tax on the donation, therefore:

Available amount x $(100 \div (100 + \text{donations tax \%}))$ = possible donation

$1,000,000 \times (100 \div 120) = 833,333$

Donation x donations tax rate (%) = donations tax payable

$833,333 \times 20\% = 166,667$

Check: $833,333 + 166,667 = 1,000,000$

Tax saving through donation: $200,000 - 166,667 = 33,333$

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