



NR NAGEL

ATTORNEY | CONVEYANCER | NOTARY

ADMINISTRATION OF DECEASED ESTATES

The administration of a deceased estates is a process designed to give dignity to the financial affairs of a deceased person.

The aim of this guide, is to provide a general understanding on how a deceased estate should be administered, to reach a successful, orderly and practical conclusion. It is important to understand who is a suitable person to take control of the estate of the deceased, pay all the creditors and administration costs and finally transfer the balance of the estate to the rightful heirs of the deceased. This is known as the administration process of the deceased estate. The entire administration process takes place under the supervision of the Master of the High Court.

The administration of an estate is a complicated process and it is advisable to appoint an Attorney as the Executor in your Last Will and Testament. You are welcome to contact our office for any further advice or assistance in this regard.

It is important to note that there can be factors beyond the control of the appointed Executor that can delay the administration, including, but not limited to the sale of assets.

ROLE AND FUNCTION OF THE MASTER OF THE HIGH COURT

The office of the Master of the High Court execute the following functions during the administration of deceased estates in accordance with the applicable laws:

- 1** The protection of the interests of minors and legally incapacitated minors;
- 2** The safeguarding of all documentary material received by the Master in respect of estates;
- 3** The processing of enquiries by executors, attorneys, beneficiaries and other interested parties; and
- 4** The appointment of impartial and capable persons as executors.

THE DECEASED ESTATE

A deceased estate comes into existence when a person passes away with assets, or when the deceased left a Last Will and Testament to be administered. Such estate (all of the assets and liabilities of the deceased) must then be administered and distributed, in terms of the deceased's Last Will and Testament, or failing a valid Last Will and Testament, in terms of the Intestate Succession Act, 81 of 1987.

APPOINTMENT OR NOMINATION OF AN EXECUTOR/REPRESENTATIVE

A Will (or Testament) is a specialised document, which should preferably be drawn up by an expert. Any person above the age of 16 years, is free to make a Last Will and Testament in order to determine how his/her estate should devolve upon his/her death.

The Last Will and Testament sets out your final wishes and instructions on how your assets should be distributed and passed on to loved ones/heirs. If the deceased leaves a valid Will and Testament, the Testator (or Testatrix) can appoint a specified person to administer his/her estate and that person is known as an Executor (or Executrix). However, if no Executor was nominated in terms of the Will and Testament, or in the event that the appointed Executor is unable to perform his/her task, the Master of the High Court will appoint a suitable Executor (or Executrix). This shall also be the position if the deceased died without a valid Last Will and Testament.

The appointment of an Executor in an intestate estate is done as follows:

- 1 Those who wish to be considered as Executor, need to advise the Master of the High Court of their intention and they will need to convince the Master as to why they are suitable to be appointed;
- 2 The Master will generally appoint someone who stands to inherit from the estate and usually the closest beneficiary will be considered;
- 3 Once nominations are submitted, all the beneficiaries must sign a form consenting to the appointment of the Executor;
- 4 If you have been appointed as an Executor and you are uncertain of your duties and responsibilities, you can approach a professional, such as our firm, to assist you in the administration of the deceased estate;

If the estate of the deceased is less than R250 000.00, it is not necessary to appoint an Executor, and the Master will appoint a Representative, otherwise known as an Administrator of the estate.

DUTIES AND RESPONSIBILITIES OF THE EXECUTOR/REPRESENTATIVE

The administration of an estate can be straightforward or somewhat complicated. We will now discuss the basic duties of the Executor, bearing in mind that the following process will usually only apply to straightforward and very basic estates. The administration of certain estates can get complicated and each estate presents its own unique circumstances. Where you are faced with such an estate, it is best to seek legal advice and guidance from any of the qualified Legal Practitioners at NR Nagel Attorneys. The following is a basic guide as to what the duties of an Executor are:

- 1 **Find a Will**
The Executor needs to immediately determine if the deceased left a valid Last Will and Testament. It is important to note that the original Will and Testament will be lodged at the relevant Master of the High Court's Offices.

2 If there is no Will or the Will is not valid

The Executor will have to establish who the natural beneficiaries of the deceased is. The laws of intestate succession will have to be applied, in order to determine the heirs of the estate, as formalised in the Intestate Succession Act, 81 of 1987.

3 List the assets and liabilities of the deceased

- The Executor needs to gather all relevant documentation such as bank statements, title deeds, insurance policies, birth certificates, identity documents and any other documents relevant to the financial affairs of the deceased;
- If the deceased had beneficiaries nominated in a life insurance policy, then the proceeds of that policy can be paid directly to the beneficiaries.
- The Executor needs to list the assets and liabilities of the deceased. This will be recorded on an inventory form. This inventory must clearly indicate whether the estate's total assets are less or more than R250 000;
- If it is less than R250 000 the Executor can proceed straight away to wind up the estate in an informal manner, without the need to advertise the estate, or prepare a Liquidation and Distribution Account, as required by the Master of the High Court.

GETTING FORMALLY APPOINTED BY THE MASTER WHEN THERE IS A VALID LAST WILL AND TESTAMENT:

The Executor needs to apply to the Master of the High Court to be formally appointed to administer the estate of the deceased person, by lodging the following documents at the relevant Master's offices

- The original Will (it is advisable to get a receipt when you hand it over and keep a copy thereof at all times);
- The death notice;
- An inventory;
- A certified copy of the death certificate;
- An acceptance of trust form, in duplicate;
- An affidavit of a next of kin;
- An affidavit confirming that the estate has not been reported to any other Master's office (required by some);
- A list of creditors;
- The Master will issue Letters of Executorship (if the estate is greater than R250 000) or Letters of Authority (if the estate is less than R250 000) to the person authorised to deal with the administration and the winding up of the estate.

FOLLOWING IS A SUMMARISED EXPLANATION OF THE ADMINISTRATION PROCEDURE:

1 Registration of the Estate

Once the Executor / Agent to the Executor has received all the required registration documents, it will be submitted to the Master of the High Court. The Master will then issue a Letter of Executorship (or Letter of Authority if the gross value of the estate is less than R250,000).

2 Advertisement of the Notice to Creditors in the Government Gazette and local newspaper.

Once the Letter of Executorship has been received, a notice has to be placed in the Government Gazette and a local newspaper, local to the area where the deceased resided prior to death, in order to inform creditors of the deceased estate, so that they are put in a position to submit a claim against the estate.

3 Preparation and submission of the Liquidation and Distribution Account

Once the notice period expires, the Liquidation and Distribution Account will be prepared and submitted to the Master of the High Court. The Liquidation and Distribution account will show all the details of all the assets and liabilities in the estate, including the creditors and costs of administration. The Distribution account will show how the estate will be distributed amongst the heirs and legatees in terms of the Last Will and Testament.

4 Advertisement of the Liquidation and Distribution Account, lying for inspection in the Government Gazette and Local newspaper.

Upon the approval of the Liquidation and Distribution account, further advertisements must be placed. The Liquidation and Distribution account will lie for inspection at the Master's office and the Magistrate's office for a period of 21 days, during which time any creditors and interested parties may view the account and raise objections (if any).

5 Distribution of assets and residue.

Once the inspection period is over, the Executor / Agent will proceed to pay any creditors whose accounts are still outstanding, transfer any assets to beneficiaries, pay any costs still outstanding and due, and finally transfer the residue to the heirs in terms of the Last Will and Testament.

6 Submitting the final account and obtaining a filing notice from the Master.

Once all the Master's requirements have been met, a final account will be submitted with all the required proofs and vouchers and the Master will then issue a filing notice.

At NR Nagel Attorneys we offer customized services in drafting and executing your Last Will and Testament, to suit your specific needs and to give effect to particular estate planning strategies you would like to be implemented. It is crucial to ensure that your life's endeavors leave a lasting legacy to your loved ones. We also offer a specialist service in administrating deceased estates in the most beneficial and speedy manner.

CONTACT YOUR PARTNER DEDICATED TO EXCELLENCE

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