ESTATE ADMINISTRATION AND THE ROLE OF YOUR PROFESSIONAL EXECUTOR

A) ESTATE ADMINISTRATION

- It is often complicated and confusing.

- The Executor plays an important role in ensuring that the administration process is undertaken in line with the Act and that it is handled professionally.

- A deceased estate comes into existence when a person dies and leaves property of any nature behind, e.g., Vehicles, Fixed Property, Investments, etc.

B) WHO IS AN EXECUTOR?

- An Executor is a professional person appointed by the Master of the High Court to attend to the legal and accounting functionality of winding up the Estate.

- **PLEASE NOTE! TAKE CARE WHEN NOMINATING YOUR SPOUSE, CHILD OR A FAMILY MEMBER TO ACT AS THE EXECUTOR, AS THE MASTER OF THE HIGH COURT WILL NOT ACCEPT THEIR NOMINATION WITHOUT THE ASSISTANCE OF A PROFESSIONAL EXECUTOR.**

C) WHY IS AN EXECUTOR NEEDED?

- Some Estates are comprised of a complicated mixture of Assets and Liabilities, requiring the expertise of an experienced professional Executor to finalise the winding-up process.

- Coupled with the complexity of an Estate, there are also legal ramifications if creditors or heirs are not paid correctly.

D) WHAT IS THE ROLE OF THE EXECUTOR?

- To ensure the timeous and effective winding up of the Estate, in accordance with the Will.

- The Executor's position is one which carries many risks, and he is closely monitored by the Master of the High Court.

E) THE EXECUTOR

- Acts in a representative capacity on behalf of the Estate;

- Acts on his own responsibility;
- The position is of a fiduciary nature, and he must act legally and in good faith;
- He is legally vested with the administration of the Estate and is not an agent for the heirs or creditors;
- He can be sued by the heirs and creditors if he has not acted with the due care required;
- He has certain rights and duties to perform with the administration of the Estate as can be found in the Common Law and in terms of the Administration of Estates Act.

1) TYPICAL PROCESS TO BE FOLLOWED BY THE EXECUTOR

- Inform the Master of the Estate and request permission to be appointed as Executor;
- Take custody of Estate property;
- Place a Section 29 Advertisement in a Local Newspaper, as well as in the Government Gazette calling for Debtors and Creditors to lodge their claims within 30 days after the advertisement;
- Determine the solvency of the Estate and report to the Creditors if the Estate is not solvent;
- Proceed with the opening of an Estate Late Bank Account;
- Follow-up phase to determine the nature and value of the assets and liabilities. This is a time-consuming process and may require the services of a specialist should the Estate be dutiable, have minor beneficiaries or if there is a dispute between the heirs;
- Examination of claims lodged against the Estate. All claims need to be considered and accepted or rejected after investigation. If rejected / disputed, there is a special process to be followed;
- **Income Tax**. The deceased’s final pre-death Tax Return, plus any other outstanding Returns must be completed and submitted. Capital Gains Tax (CGT) needs to be calculated as it is perceived as if the deceased has liquidated all his assets just prior to death. The collection of historical information for the calculation of the CGT can be a nightmare;

- The Estate must be registered with SARS as a Taxpayer and all Tax Returns related to the Estate must be completed and filed with SARS;

- After completion of all of the above, the First and Final L&D Account has to be drafted and submitted to the Master for approval;

- On approval of the L&D Account, a Section 35 Advertisement must be placed in both a Local Newspaper, as well as in the Government Gazette. The L&D Account will lay open for inspection at the Master, as well as at the local Magistrate's Court for 30 days, for inspection by the public / interested parties;

- If no objections were received, the Executor can commence payment of Creditors and the heirs.

2) TYPICAL ITEMS THAT CAN COMPLICATE THE SMOOTH RUNNING OF THE ABOVE PROCESS

- The Will directing the sale of certain assets;

- Divorce and / or maintenance claims;

- Accrual calculations;

- Disputed claims;

- Maintenance claims- either in terms of the Maintenance of Surviving Spouses Act, or children born out of wedlock;

- Summons received as a result of bond arrears – this often necessitates the need to instruct attorneys to enter a notice to defend;

- Illiquid Estates – need to agree on how the liquidity required to finalise the administration process will be obtained. This is particularly difficult when the only asset is a fixed property which is the primary residence of the family – this could lead to lengthy negotiations and potential eviction orders being sought;

- Redistribution agreements;

- Non-resident heirs who have not formally emigrated;

- Requests to enter into lease agreements post date of death – these require court sanction in certain circumstances.

F) ADMINISTRATION CHARGES

- The Executor's Fees are laid down in terms of the Act and are currently as follows:

  - 3.5% plus VAT on the gross value of the Estate;
  - 6.0% plus VAT on income accrued and collected after death;

- Cost of advertising in the Newspapers and Government Gazette (x 2);

- Conveyancing Fees to transfer the fixed property;

- Master's Fees;

- Postage and Petties;

- Estate Bank Charges;

- Sworn Valuation fees;

- Rates and Taxes clearance certificate costs;

- Professional fees for the completion and submission of arrear pre-death Tax Returns and Estate Tax Returns.