

## DEALING WITH ESTATE ASSETS

### HOW WILL THE EXECUTOR DEAL WITH THE VARIOUS ESTATE ASSETS?

On death, all the deceased's assets have to be dealt with in terms of the Will – these can either be sold or transferred to the beneficiaries as set out in the Will.

- Due to Capital Gains issues, the Executor will only sell assets, **if**:
  - So directed in terms of the Will; or
  - Insufficient funds are available in the Estate, and cash needs to be generated in order to pay all the debts and other expenses, i.e. paying for Creditors, Attorneys, Executors' fees and Sworn Appraisal Fees.

The Executor will obtain market-related valuations to determine the value of the assets. The following valuations are accepted by SARS:

- Estate Agent valuations / sworn valuation for Fixed Properties (**NOT MUNICIPAL VALUATION**);
- Vehicle valuations done by accredited Car Dealers;
- Valuations done by an Auditor for Business assets;
- Market value at date of death for JSE listed shares;
- **If the Estate is dutiable, currently with a Nett value of more than R3,5M, or if a minor Child is a beneficiary, a valuation on all the assets has to be obtained from a Sworn Appraiser.**

#### A) IMMOVABLE PROPERTY

##### FIXED PROPERTIES

- The same rules apply as with the sale of a normal property and the asset has to be registered in the name of the spouse / beneficiary.
- A Conveyancing / Transfer Attorney will be appointed by the Executor to do the transfer – **THE ESTATE HAS TO BE LIQUID IN ORDER TO PAY THE ATTORNEYS – NO “HEREREGTE/TRANSFER DUTIES” ARE PAYABLE, ONLY TRANSFER COSTS.**
- The Executor may only sell a property, if stipulated in the Will, or if the Estate has insufficient funds available to cover all the expenses.

## **B) MOVABLE PROPERTY**

### **1) VEHICLES**

- Will be transferred or sold as per the Will.
- No roadworthy certificate is required if the vehicle is transferred to the surviving spouse, but is compulsory for any other Heirs.

### **2) FIREARMS**

- The Executor needs to adhere to the strict Firearms Control Act 60 of 2000.
- On notification of death, it is imperative that the Executor is immediately notified of any firearm(s) registered in the name of the deceased. No further action may be taken until instruction is received from the Executor. **FAILURE TO COMPLY CAN LEAD TO PROSECUTION AND IMPRISONMENT.**
- The Executor can only give permission to an heir to store a firearm, if the heir has a valid firearm license, and an accredited safe.
- This permission must be signed, stamped, and dated by the SAPS.
- On expiry, the permit will have to be renewed until the firearm(s) have been transferred.
- The firearm(s) may also be dealer-stocked by an approved dealer, at the Estate's cost, until the transfer process has been finalised.
- The firearm(s) may not be held by a third party.
- If the beneficiary does not want to take transfer of the firearm(s), these can either be destroyed by the SAPS, or may be sold, with the Executor's approval.

### **3) SHARES / UNIT TRUSTS**

- These will be transferred into the name of the heirs unless the Executor must sell them due to insufficient funds.
- The sale of the shares might be subject to further Capital Gains Tax (CGT).

### **4) COMPANIES / CC'S**

- The Auditor will do a valuation of the business / shares.
- The shares will then be sold or transferred as stipulated in the Will.

## **5) TRUST (FAMILY / INTERVIVOS)**

- The Executor will determine the value of the loan account / assets at date of death and deal with these accordingly.

## **6) CASH ASSETS**

### **➤ BANK ACCOUNTS IN THE NAME OF THE DECEASED**

- The accounts will be closed, and the available funds transferred to the new Estate Late Bank account.

### **➤ FOREIGN BANK ACCOUNTS**

- Your Will should cover any foreign assets and how these should be dealt with.
- The Executor will appoint a solicitor in the foreign country to assist with the closing of the Bank Account/s and the transfer of the assets.

## **7) POLICIES AND LIFE INSURANCE**

### **➤ PAYABLE TO THE ESTATE**

- The Executor will collect the proceeds from the Insurer.

### **➤ PAYABLE TO A THIRD PARTY**

- These policies will not be dealt with by the Executor.
- It is the duty of the nominated beneficiary/ies to lodge a claim with the insurer.
- Although not dealt with by the Executor, the proceeds of the policy/ies will form part of the Estate Duty calculation.
- Should the Estate be dutiable, the beneficiary/ies will be liable for paying a proportionate amount of the Estate duty based on the policy proceeds.