

Settling the affairs of a departed loved one

Everything you need to know



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Disclaimer:

The information contained in this guide is meant for use by clients of PH Attorneys only and is only intended to be used as a general guide and should therefore not be relied on as legal advice. As a guide it is also not intended to be comprehensive or cover all possible situations relating to the administration of a deceased estate. If in doubt, contact your attorney at PH Attorneys to confirm any position before any legal action is taken on the basis of this guide.

Your key contacts

Our fiduciary and estate administration specialists will be your key contacts throughout the process of the administration of the deceased estate. Feel free to contact them should you have a query.



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Introduction

The passing of a loved one is never easy and the process of administering their estate can feel intimidating, overwhelming and even frustrating at times. We understand this and wish to provide you with the reassurance that our Administration of Deceased Estates Team is the best in the business and will do their utmost to assist you to wind up your loved one's estate correctly, professionally and compassionately.

To help improve the process, we have compiled this easy to read and use guide which explains the information and documents we will need from you, a step-by-step guide as well as some useful Frequently Asked Questions that you can reference for some of the more regularly asked questions we encounter.

Please read through this guide carefully and feel free to let us know if you are unsure about anything.

Very important:

Please make sure you complete the First Consultation Checklist and return that to us before or at our first consultation with you. We also ask that you get to work on the Key Document List so that you can provide us with as much of these documents as possible at our first consultation with you. Your assistance will help us get a good start with the administration and is vital to reporting the estate to the Master of the High Court.

We look forward to working with you.

The winding up process

In this Guide we refer to the process of 'winding up of a deceased estate.' This refers to the work our Administration of Estates Team will be doing, provided that PH Attorneys is the appointed executor, or the agent for an appointed executor. In short, our team at PHAttorneys is now responsible for the administration and winding up of the deceased estate.

This process can seem complicated and involves a large amount of administrative work. We will at regular intervals inform you of progress and/or where action is required by you. The extent and complexity of the winding up process is affected by the different circumstances surrounding the finality of death as well as the complexity of the estate.

It is therefore important that there are clear lines of communication between yourself and our team and realistic expectations are set within which we can deliver our best service to you. Estates can be wound up in less than a year if no complications arise, but one should be prepared for unforeseen circumstances. We ask for your patience at times as we have to work with third parties or encounter issues that despite our best efforts are beyond our control to manage or expedite. We will keep you informed of any delays encountered and will do our best to overcome such obstacles expeditiously.

Key steps

Step

The first consultation

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Step

Issuing of the Letters of Executorship

02

Step

Estate Notice Publication

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Collect monies and Asset Valuations

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SARS Income Tax Return

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Preparation of the Estate Account

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Payment of Debts

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Account Available for Inspection

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Payment of Monies and Transfer of Assets

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Key steps explained

01 Step 1: The first consultation

on receiving notice of the deceased's death, immediately contact us so we can set up a first consultation with you and any other family members you feel appropriate. For purposes of this first consultation you will need to:

- (1) Complete the First Consultation Checklist document
- (2) Collect as many of the documents on the Key Document List as possible

From our side, we can then draw the Will of the deceased if kept at our offices and where necessary, conduct appropriate deeds searches. This first consultation with you is vitally important to enable us to obtain the correct information and also have required documents completed and signed by the heirs.

We will also again, discuss the process of winding up of the estate and highlight any issues or complexities relating to the specific estate that we may be aware of at that stage.

02 Step 2: Issuing of the Letters of Executorship

The earlier we receive the original signed documents, the quicker we can report the estate to the Master of the Supreme Court, who needs to issue the Letters of Executorship.

Without the Letters of Executorship, we cannot proceed, as this is the first critical milestone to be reached, with your assistance.

03 Step 3: Estate Notice Publication

We publish a notice in a local newspaper and the Government Gazette in which debtors are requested to pay their debts and creditors to submit their claims against the estate to us within 30 days after the date of publication of the notice.

04 Step 4: Collect monies and Asset Valuations

We collect all outstanding amounts in favour of the estate. Where necessary, we appoint appraisers to obtain the value of immovable property, movable property and shares. We obtain certificates to confirm the value of all investments and acquire confirmation of all bank accounts.

Unless the Will states otherwise, estate assets may only be sold to pay estate debts, or with consent of the heirs and (in certain cases) of the Master. Bank accounts are closed by us at the correct time, for example only after all debit orders have been identified and addressed.

Key steps explained

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Step 5: SARS Income Tax Return

The final income tax return (which also deals with capital gains tax) has to be completed and lodged with SARS, to obtain the final tax assessment for the estate. Typically the existing accountant of the deceased will be responsible for this and we will liaise with the accountant to finalise the tax submission.

However, if there is no such accountant we can assist with this submission through PH Fiduciary Services. Any services rendered in this regard by PH Fiduciary Services will not be covered by the executor's fee and will be separately invoiced against the estate, just as the accountant's fee would be.

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Step 6: Preparation of the Estate Account

Next we draft the estate account. All assets, and all claims, including income tax claims from SARS, have to be reflected in this estate account. Critical to preparing the estate account is the fact that we must have all information. If anything is outstanding, the estate account cannot be finalised and we cannot proceed.

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Step 7: Payment of Debts

If the estate is solvent, the estate debts are paid by us, or alternative arrangements are made, like the taking over of debts by heirs. Here we will alert you if it becomes necessary to consider different options available to the heirs. This will include identifying solutions to problems encountered such as a possible cash shortfall, a need for redistribution of assets, planning needs of heirs, or complexities with property transfers etc.

It is appropriate to only consider these matters once the process has advanced to a place where a proper understanding of the asset composition of the estate and values thereof is possible.

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Step 8: Submission to Master

Usually around six months after the appointment of an executor, we should be in a position to prepare a complete estate account and submit such to the Master. This estate account contains a full report of all the assets and liabilities, including claims and administration costs, as on date of death.

It will also reflect the distribution of the net surplus among the heirs, with such distribution following the directions in the will or, if applicable, any agreed re-distribution agreement. Where the deceased died without a will, the distribution will be done according to the law of intestate succession.

Key steps explained

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Step 9: Account Available for Inspection

Once the Master has examined the account, we proceed to place an advertisement in a local newspaper and the Government Gazette stating that the estate account is available for inspection for 21 days, during which time any interested person may object to the account.

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Step 10: Payment of Monies and Transfer of Assets

After the estate account has lain free from any objection, the heirs are legally entitled to claim transfer of their inheritances. Fixed properties, such as houses, are transferred formally via the Deeds Office. Other assets like fire arms, motor vehicles, investments, shares, interests in timeshare, cash, etc. are each transferred formally according to the correct and appropriate manner for such transfer. Where possible we will assist or instruct transferring attorneys to proceed with the relevant property transfers

The transfer of motor vehicles and firearms must however be finalised by the relevant heirs, and we will assist with the necessary documents and forms to enable such transfers. For the payment of monies, bank accounts will need to be provided and verified by each heir.

If an heir does not have a bank account, the heir will be responsible for the opening of such an account and must provide us with the necessary bank confirmation before any payment can be made.

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Step 11: Obtain filing slip.

After all the assets have been handed over or been transferred to the heirs and all debts of the estate are paid, we will apply to the Master for the filing slip. Once filing slip is obtained, the estate will then be finalised.

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Step 12: Executor's Fees

Executor's fees are calculated according to predetermined percentages prescribed by law. It should be noted though that conveyancing, legal, accounting, tax and other professional fees charged during the winding up of the estate, do not form part of the executor's fees and will be separately billed against the estate.

Generally, such fees follow prescribed tariffs and full disclosure of all such fees and costs are made in the estate account.

Setting the standard

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