

Settling the affairs of a departed loved one

Key document list checklist



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.

Key document list checklist

The items in **BOLD** are essential for the first consultation meeting. Please provide to use beforehand or bring with. Other items will be needed but can be obtained later.

Personal information

- ☐ Identity document of deceased
- ☐ **Original death certificate**
- ☐ **Marriage certificate (if applicable)**
- ☐ Original antenuptial contract (if applicable)
- ☐ Divorce order (if applicable)
- ☐ **Copy of the identity document of the surviving spouse**

The following personal and biographical information:

- ☐ **Marital status at time of death**
- ☐ **If married, place where married**
- ☐ **Name(s) of predeceased spouse(s) and/or divorced spouse(s) (state opposite name of each whether predeceased or divorced)**
- ☐ **Date of death of predeceased spouse(s)**
- ☐ **Master's office(s) where pre-deceased's estate(s) is/are registered and number(s) of estate(s), if available**
- ☐ **Full names of children of deceased (state whether major or minor or predeceased and in the latter event, whether they left issue and, if that be the case, the full names of such issue)**
- ☐ **Names of parents of deceased (state whether parents are alive or deceased)**

All documentation regarding assets / investments

- ☐ Title Deed of fixed property
- ☐ Name and address of mortgagee and the account number (if applicable)
- ☐ Motor vehicle registration papers
- ☐ Copy of the firearms licenses
- ☐ Detail of short-term insurance
- ☐ Share certificates, proof of fixed deposits, cheque account numbers, savings accounts, unit trust certificates, policies payable to the estate, timeshare certificates
- ☐ Names of parents of deceased (state whether parents are alive or deceased)
- ☐ Other

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Other documents

- ☐ Medical Fund membership number
- ☐ Employer's name, address and employee's number
- ☐ Pension Fund's name, address and pension number
- ☐ Tax number and office of Receiver of Revenue
- ☐ Name, address and telephone number of professional who was responsible for the deceased's tax affairs and also, where business interests are concerned the accountant or auditor
- ☐ If our firm or the surviving spouse is not nominated as executor in the Will, an ID copy and proof of address of the executor to be appointed
- ☐ ID copies of all the heirs, as well as marital status of the heirs

Frequently asked questions

Does the executor process all policies in the estate?

The executor and PH Attorneys, as a general rule, only process those policies which pay out to the estate. "Non estate" policies (where someone other than the estate is nominated as beneficiary or policies where the deceased was not the owner), will not be processed by PH Attorneys.

The value of these policies however has to be included in the estate duty addendum. Usually the financial advisor who advised on these "non estate" policies will be responsible to process such policies. If requested, however, the beneficiaries or policy owners may approach PH Attorneys to deal with such "non estate" policies as an ordinary commercial transaction for which fees will be levied. If required, PH Attorneys will see to the signature of duly signed policy forms in respect of "non estate" policies. The completion and processing of such forms, however, do not form part of the executor's responsibilities.

Does the executor process retirement funds?

No, the executor and PH Attorneys, do not process retirement funds at all, except to sign duly completed forms where required to do so. Usually, the financial advisor who advised on these retirement funds will assist with the transfer of the benefits of retirement funds of which the deceased was a member. If requested, however, beneficiaries may approach PH Attorneys on a commercial basis to deal with these retirement funds.

Who will deal with policies (not paying to the estate) and retirement funds?

The relevant broker or insurance advisor will assist here. PH Attorneys is also willing to receive instructions in this respect as an ordinary commercial transaction for which fees are levied.

Should a bank account be closed as soon as possible after death of the deceased?

No. Usually PH Attorneys only instructs the bank to close the account once it has received confirmation that all debit orders from and payments to such bank account have ceased. It is the responsibility of the family or heirs to identify such debit orders and payments, and then to instruct the bank to change the details as the family or heirs usually have the necessary information at hand. PH Attorneys will assist where possible should problems arise.

Whose responsibility is it to transfer the fire arms and motor vehicles to the new owners (heirs)?

The transfer of fire arms and motor vehicles must be processed by the relevant heirs. PH Attorneys will assist with the necessary documents and forms to do these transfers. These transfers can only be done after the account has lain free from objections and the necessary permission for the fire arms has been obtained from the SAPS by the relevant heir.

Frequently asked questions

What about overseas assets?

To deal with overseas assets in an estate is fairly complicated. To reduce all risk, PH Attorneys employs the commercial department of PH Attorneys to deal with overseas assets. These processes include appointment of a probate officer, transfer of assets, remittance to heirs, etc. Some of this work is part of PH Attorneys' ordinary responsibilities in the winding up process. Usually, if the assets are included in the estate account, no extra fees will be charged other than possible expenses relating to the transfer of these assets. However, there is also work which does not form part of PH Attorneys' responsibilities (like remittance to heirs, dealing with assets not in the estate account, complicated processes, complicated tax calculations, etc.). PH Attorneys will charge a commercial fee for such work.

When will investments, shares and timeshare interests be transferred and by whom?

Only after the account has lain free from objections at the Master. The transfer of the investments needs to be done in liaison with the investment advisor. Transfer of shares and timeshare interests will be done by PH Attorneys on written instruction by the heirs at no extra cost, although there may be expenses related to such transfer.

What happens where the deceased was a member of a medical fund?

The family or heirs of the deceased should contact the medical aid to have the membership changed and to reconcile the final medical bills. The family or heirs usually have the necessary information (medical and claims history, details of new members, etcetera) available. PH Attorneys will assist should problems be encountered in this respect.

What happens when there is a cash shortage in an estate?

It often happens that an estate is solvent, but that there is not sufficient cash available for payment of claims and cash legacies. In this instance, the heirs, in consultation with their investment advisors, should instruct the executor to realise some of the liquid assets (investments, etc.), and if no such assets are available, then immovable property has to be sold. It may also happen that the heirs are in a position to pay in the cash shortage, in which case assets need not be realised. This matter usually delays estates and consideration and planning of a smooth process in this respect should be done carefully.

What is the reason for the different options in terms of the will and to whose advantage is it?

To deal with overseas assets in an estate is fairly complicated. To reduce all risk, PH Attorneys employs the commercial department of PH Attorneys to deal with any overseas assets. These processes include appointment of a probate officer, transfer of assets, remittance to heirs, etc. Some of this work is part of PH Attorneys' ordinary responsibilities in the winding up process. Usually, if the assets are included in the estate account, no extra fees will be charged other than possible expenses relating to the transfer of these assets. However, there is also work which does not form part of PH Attorneys' responsibilities (like remittance to heirs, dealing with assets not in the estate account, complicated processes, complicated tax calculations, etc.). PH Attorneys will charge a commercial fee for such work.

Frequently asked questions

Who is responsible for the transfer of fixed property and when will this take place?

The transfer of fixed property from an estate has to be done by a conveyancer, but only after the estate account has lain free of objections. PH Attorneys works in conjunction with our property department to undertake this seamlessly on behalf of the estate. Any conveyancing costs charged will be an expense against the estate and is not included in the executor's fees. No transfer duty is payable when a transfer takes place to a beneficiary in terms of a will (or the law of intestate succession), or in terms of a redistribution agreement.

What does it all cost?

If PH Attorneys administers the estate, PH Attorneys is entitled to the executor's fee, except if agreed otherwise. The law allows the executor to charge a fee of 3,5% (plus VAT) on the gross estate for its services as executor. The gross estate includes the value of all the assets, without reference to any liabilities of the estate. For marriages in community of property, the law determines that the value of the total joint estate has to be taken into account.

Please take note of expenses not included in the executor's fees. Feel free to discuss with us any aspect regarding the fees that you require clarity on.

Should the surviving spouse and heirs delay the drafting of a new will until the estate is wound up?

No, as soon as possible after the death of a spouse, the surviving spouse should draft a new Will. Our estate planning division can assist you with this process as soon as possible.

Who is responsible for the opening of new accounts and contracts for the survivor and heirs?

A surviving spouse and heirs are responsible to enter into new contracts where appropriate, for instance with banks, cell phone companies, medical aid companies, municipalities etc. PH Attorneys will assist where possible.



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