



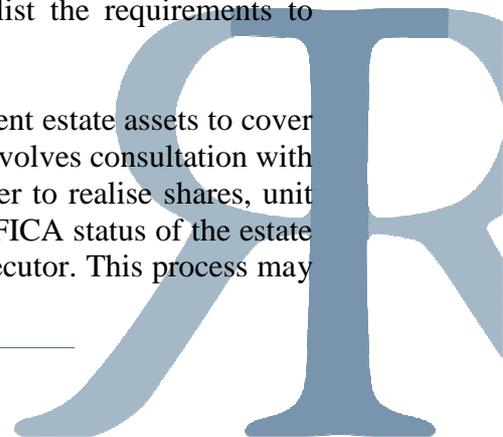
ESTATE FORMALITIES – WINDING UP A DECEASED ESTATE

The administration of a deceased estate generally comes at a time when most people are trying to come to terms with the death of someone close to them. Often their emotional needs are high and they are grappling with the grieving process and thus an attorney should not only have the legal skills required to complete the administration process as efficiently as possible but compassion and empathy too.

Rhiannon Thomas aims to assist those involved in this process by providing a service that provides all the necessary legal information combined with an understanding that people are going through a grieving process.

Outlined below are the main formalities that an Executor has to observe. Any reference to time periods should be regarded merely as a guideline.

1. At the time the death is reported, a Death Notice and Inventory of the deceased's assets are completed and these documents, together with the original Will and Death Certificate, are lodged with the Master of the High Court.
2. If the person nominated as Executor in the Will is prepared to accept the appointment, he or she must do so by completing a prescribed form. This form usually accompanies the reporting documents. Where there is either no Will or the nominated Executor declines to act for any reason, the Master will appoint an Executor.
3. Approximately six to eight weeks after application is made by the Executor – the Master will issue the Letters of Executorship. The Executor will then have the necessary authority to proceed with the liquidation formalities and to take custody of the estate property and records.
4. As soon as possible after the appointment, an Executor must advertise (in the Government Gazette and in one or more local newspapers) a notice calling upon creditors to lodge their claims within a stipulated period, being not less than 30 days. After the expiry of the advertisement period, the Executor will determine the solvency, or otherwise, of the estate.
5. After the issue of Letters of Executorship, an Executor must take steps to determine the true value of all the property in the estate. It often takes some time to gather this information. This process involves corresponding with the various institutions such as the life assurance companies, banking institutions etc. where the deceased had interests, requesting them to issue certificates of balance, certificates for estate purposes, tax certificates etc. At this stage they will also list the requirements to transfer or liquidate the investments, unit trusts, etc.
6. The Executor will then, if necessary, proceed to realise sufficient estate assets to cover the debts, administration expenses and any estate duty. This involves consultation with the beneficiaries and correspondence with the Master. In order to realise shares, unit trusts and other like investments it is necessary to update the FICA status of the estate by lodging the required FICA documents in respect of the Executor. This process may take several weeks to finalise.



7. The Executor is responsible for the lodging of the final income tax return to date of death (as well as any other returns that may be outstanding), including the capital gains tax return for the period 01 October 2001 to date of death (assumed disposal of all assets) and the capital gains tax return for the period from date of death until date of sale of any assets sold during the administration of the estate. The process to obtain these income and capital gains tax certificates is very time consuming and usually takes a couple of months, depending on the complexity of the deceased's tax affairs.
8. The next step is the preparation of the Executor's Liquidation and Distribution Account and the Estate Duty Tax Return.
9. Once the Executor has prepared the Liquidation and Distribution Account, it has to be lodged with the Master of the High Court for examination. It could take some weeks before approval of the account is obtained from the Master. The Executor must satisfy the Master concerning any queries he might have before the account may be advertised. The advertisement will appear in the Government Gazette and one or more local newspapers. During the advertisement period (not less than 21 days) interested persons may inspect the account and lodge any objections they might have with the Master.
10. Once the Liquidation and Distribution Account has passed the inspection period free from objections, the Executor is in a position to pay the creditors and distribute the available assets amongst the heirs. If there is fixed property involved, the necessary conveyancing process will take some time to complete. The Title Deeds for the new owner will usually only be available 3-4 months after transfer. The transfer of shares, unit trusts and other like investments to the beneficiaries requires the completion of various transfer documents and lodging of the required FICA documents in respect of the beneficiaries.

Because of the formalities required, few estates can be finalised in less than 9-12 months from date of death. Where the deceased's affairs are more complex or information is difficult to obtain, the estate administration process will take longer.

The key to ensuring that the liquidation process proceeds smoothly is open and clear communication. Therefore, should you at any stage have any questions or queries, please contact us!

