

## **Challenges at the Master of the High Court in respect of deceased estates**

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A straightforward deceased estate should take between six and eight months to wind up from the time of reporting with the Master of the High Court, but this turnaround time is currently highly unlikely.

The situation needs to be corrected urgently as this will assist the beneficiaries with financial security more speedily and have a substantial positive impact by releasing funds and assets back into the active economy.

There are Master's Offices in all nine provinces of South Africa, with some provinces having more than one. It is inevitable that service levels at each office will differ to an extent, depending on the staff complement, workload and internal operations. The challenges below represent what FISA members may experience on the whole, with specific reference to some offices. (Discussed here are estates with a gross value of over R250,000.)

### **Appointing an executor**

The Master must appoint an executor in all these deceased estates and until this appointment is made, the estate cannot be administered. The reporting of estates at the various Master's offices should be fairly straightforward, but can be extremely challenging. For example, the Master has various requirements for the reporting of an estate but there is no uniformity on the information/documents required at the various offices.

This is exacerbated by requirements such as copies of divorce agreements, predeceased spouse's death certificates and, in cases where the marital status is incorrect on the death certificate, the request for an amended death certificate from the Department of Home Affairs. Many second (or later) spouses and/or children do not have access to these divorce orders and/or death certificates and they can take weeks, if not months, to obtain. To have to visit Home Affairs for amendments can be very time consuming and traumatic. Proper estate planning and planning for death can avoid these delays.

If you are able to provide all of the documentation required by the Master in the format required by the Master, the issue of Letters of Executorship can be expedited. This document then confirms the identity of the appointed executor.

### **Interaction between the executor and Master's Office**

The executor has various interactions with the Master during the estate administration process and a functional Master's Office is imperative for estates to be administered within a reasonable time.

The Master is involved in the following steps:

1. Reporting a deceased estate. The Master then has to determine which is the deceased's last valid will, if any, and issue the Letters of Executorship.
2. Consent to the sale of any fixed property from a deceased estate
3. Approval of the Liquidation & Distribution Account (L&D account) once submitted to the Master
4. Confirmation that the L&D Account is free from objection, once the executor has complied with any queries
5. Issuing of Letters of Authority in cases where testamentary trusts were created in the Will
6. Issuing of a Filing Notice, once the estate is finalised
7. Acceptance of funds for the Guardians Fund, if applicable.

Some of the systemic challenges FISA practitioners experience are:

1. Loadshedding, particularly in Johannesburg, one of the biggest and busiest Master's Offices. This office does not have a generator and also no back up in place.
2. Long queues of people waiting to be assisted. Sometimes members of the public and practitioners have travelled long distances, only to be turned away because of the queues.
3. Staff shortages - Cape Town currently has a 35% vacancy rate on estate controllers
4. Systems being down – the Master's Case Management System (ICMS) networking and the Department of Home Affairs are linked to the Master's Offices, and printing and scanning facilities are often offline.
5. Lack of sufficient bandwidth in Master's Offices, resulting in the scanning of new estates taking hours in some cases.
6. Some offices have hardware issues, e.g. copiers and scanners are often not in working condition, or there are only two or three printers per office
7. Once a query was raised by the Master on the reporting of a new estate, it can take 6 to 10 weeks to have the Letters of Executorship issued, after the query was addressed. This is mainly due to excessive workloads at the Master and sometimes poor filing systems.
8. Lost or misplaced estate files and documents at the Master's Offices. Once a file is lost, the Master requests duplicate files, which need to be supplied by the executor, creating a burden on an already strained system. In some cases we have seen the Master requesting more than three "dummy files" as the duplicate files are also lost or misplaced.
9. If an immovable property falls within a deceased estate, the Master has to consent to this, before registration may take place.
10. For the transfer of a fixed property, a Master's certified copy of the last valid will is required. The same applies to redistribution agreements entered into by the beneficiaries.

Not all the delays in winding up a deceased estate can be attributed to the Master's Offices.

1. Banks. The banks can cause delays due to their FICA processes, fraud checking and slow turnaround times in attending to the deceased's bank accounts. Some of the banks' personnel still work from home and it is difficult to follow up or expedite matters through call centres. Some banks take several months to close bank accounts, while others close accounts within a few weeks.
2. SARS. Some delays are sometimes caused by SARS, although their e-filing system has made things much easier for practitioners. However, there are some issues with the deceased's last tax return, the deceased estate's tax return and estate duty assessments.
3. Post Office. The Post Office is currently not functional, so all post to and from the Master, banks, insurance companies etc. has to be done by courier or hand delivery. Some Master's Offices still reply to correspondence via the postal service and that can take months.

The process of the administration of a deceased estate is a sound one designed to protect the rights of the deceased, heirs, beneficiaries, creditors and the fiscus. It can run smoothly if all role players do their best. The executor cannot do this alone and has to rely on all the other parties to contribute to the process in an efficient way.