

THE PROCESS OF WINDING UP AN ESTATE IN SOUTH AFRICA WHERE A DECEASED RESIDED IN AUSTRALIA & WHO LEFT ASSETS IN SOUTH AFRICA

A deceased who dies outside of the Republic of South Africa and who was resident in Australia, but who leaves property and/or any document that is a Will or is intended as a Will in the Republic of South Africa; the estate must be reported to the Master of the High Court in the Republic of South Africa. It is advisable that any person who resides in Australia and who has property or assets in South Africa and Australia to have a separate South African Will for the South African property or assets.

STEPS TO FOLLOW:

1. DOCUMENTS TO OBTAIN FROM AUSTRALIA:

- Notarised copy of the certificate of death from the country of issue
- Notarised copy of the Will & Codicil of the deceased (if applicable);
- Notarial certificate from a solicitor in the country where the Will was executed confirming that the Will complies with the laws of that country;
- Notarised copy of the grant of probate granted in Australia (if issued), to be submitted in duplicate or the Letters of Executorship (Letters of Appointment)
- Notarised copy of the Inventory (if issued);
- Notarised identity document/ passport of deceased
- Notarised passport/ identity document of Australian Executor
- Notarised passport/Identity document of Heir's if resided in Australia
- Notarised copy of the Power Attorney of an agent who is residing in South Africa who will be taking up the appointment to wind up the estate on behalf of the Executor; this is to be signed by the Australian Executor

2. PROPERTY VALUATION OR AGREEMENT OF SALE:

- If the deceased owned immovable property in the Republic of South Africa which is being transferred to a heir/s; a property valuation indicating the Rand value of the

immovable asset is required to be lodged with the Master of the High Court, which coincides with the Australian Value of the asset in the Inventory (if issued);

- If the immovable property is to be sold to a third- party; a certified copy of the Sale Agreement is required to be lodged with the Master of the High Court.

3. DOCUMENTS TO BE COMPLETED IN SOUTH AFRICA BY AGENT:

- J294 form (Death Notice);
- Affidavit in terms of section 22 (2) (c) of the Administration of Estates Act which is a declaration under oath that the Letters of Executorship have not already been granted or signed or sealed by any other Office of the Master of the High Court in South Africa;
- J243 form (Inventory) reflecting the South African assets;
- Certified copy of appointed agent's identity document;
- J155 form (Undertaking & Acceptance of Masters Directions) (in duplicate) should the value of the total assets in the estate be less than R250, 000.00 in respect of deaths after 24 November 2014 or R125, 000.00 in respect of deaths before 24 November 2014, 000.00 by the nominated agent as per the power of attorney; or
- J190 form (Acceptance of Trust as Executor) attached herewith, (in duplicate) should the value of the total assets in the estate be over R250, 000.00 R125, 000.00 in respect of deaths before 24 November 2014 by the nominated agent as per the power of attorney;
- J262 form (Bond of Security) attached herewith in respect of the total value of the total assets in the estate; and
- REV267 form (Return of Information Required in terms of Estate Duty Act) attached herewith, this is if estate duty is payable.
- Certified copy of Identity document of Heir's if resided in South Africa
- Declaration of subsisting marriages

4. REPORT THE ESTATE- LETTERS OF EXECUTORSHIP/ AUTHORITY:

- Lodge the documents obtained in Steps 1-3 with the Master of the High court of South Africa in the jurisdiction in which the agent is appointed in, requesting that the master issue the Letters of Executorship or Letters of Authority.

5. ADVERTISEMENT IN TERMS OF S29:

- Once the Letters of Executorship is issued; the estate is to be advertised for 30 days in a local Newspaper in the district in which the estate was reported and a notice to creditors is to be published the Government *Gazette* in terms of Section 29 of the administration of estates act 66 of 1965.

** note: if a letter of authority is issued there is no need to advertise the estate as the estate will then be wound up in terms of Section 18 (3) of the administration of estates act*

6. LIQUIDATION AND DISTRIBUTION ACCOUNT:

- *A Liquidation and distribution account is to be lodged with the master of the High Court of South Africa upon the lapsing of the S29 Advertisement.*
- *The account is to reflect all assets and liabilities acquired by the deceased as well the distribution of assets to the heir/s and their respective shares.*
- *The account is signed by the appointed South African Agent.*

7. SOUTH AFRICAN REVENUE OF SERVICES (SARS):

- The estate is to be reported to SARS after the approval of the Liquidation account in order confirm that the deceased has no outstanding funds due and payable to SARS.
- The Executor of the Estate is to submit the approved Liquidation and Distribution Account and all documents listed in Step 1 above along with a letter requesting that SARS provide a Letter confirming that the deceased has not outstanding funds due and payable.
- The Turnaround time for this process is 21-60 days.

8. ADVERTISEMENT IN TERMS OF S35:

- Once the Liquidation & Distribution account is approved; the account is to be advertised to lie open for inspection for 21 days in a local Newspaper in the district in which the estate

was reported and a notice is to be published in the Government *Gazette* in terms of Section 35 of the administration of estates act 66 of 1965.

- Simultaneously with the advert and publication; the Master is to be notified of the date from which the Liquidation and Distribution account will lie open for inspection for 21 days.

** note: if a letters of authority is issued there is no need to advertise the estate as the estate will then be wound up in terms of Section 18 (3) of the administration of estates act.*

9. REQUEST FOR CERTIFICATE IN TERMS OF S35:

- after the Liquidation and Distribution account has lain open for inspection for 21 days; Request that the Master issue a certificate confirming that no objections were raised in the period of 21 days in accordance with the provision of S35 of the administration of estates act 66 of 1965.

10. DISTRIBUTION CERTIFICATE:

The following documents are to be lodged requesting the Master to issue his certificate of distribution:

- Proof of publication of S35 Advertisement in the Local Newspaper and Government Gazette;
- Proof of payment of Master's fees;
- Certificate from the Master confirming that the Liquidation and Distribution Account has lain open for inspection
- Letter from Sars Confirming the deceased has not outstanding funds due and payable

11. DISTRIBUTION:

- The estate is to be distributed to the heir/s in accordance with the Liquidation and Distribution account upon receipt of the Master's distribution certificate.

- Proof of banking details to be obtained by the heir/s and issued to the appointed agent. It is advisable the heir/s provide details of a local transacting bank account.
**Alternatively, consult the agent regarding the process of transferring funds to an Australian Bank Account.*
- It is advisable to have the beneficiaries and/or heir/s sign an instruction to transfer funds in respect of the estate furnished by the appointed agent for security purposes.

12. DISCHARGE:

- Lastly, issue the Master with a signed Affidavit in terms of Section 35 (12) of the administration of estates act 66 of 1965 by the agent; requesting the Master to issue his Final Discharge Certificate.

For more information contact Phillip Silver for a consultation at one of our offices in Sydney or Johannesburg

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