

Administration of Deceased Estates



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



Do you know what should happen after your family member had passed on?

The surviving spouse, children, parents and heirs are directly impacted by the death of the deceased. Do you want to finalise the estate as quickly as possible?

The following information will assist you to:

1. Understand the parties involved and
2. The process to report a death and an estate.

Q - WHO ARE THE PARTIES INVOLVED?

The following parties are generally involved in the administration of a deceased estate.

1. The Master of the High Court (the Master)
2. The Executor / agent
3. The Conveyancer
4. The Registrar of Deeds
5. The South African Revenue Service
6. The family, surviving spouse, heirs and legatees

The Master

The administration of an estate takes place under supervision of the Master who has the jurisdiction depending on the address where the deceased resided for the last 12 months.

There are Masters' Offices in: Bloemfontein, Cape Town, Grahamstown, Kimberley, Mmabatho/Mafikeng, Nelspruit, Pietermaritzburg, Pretoria, Mthatha, Bisho, Thohoyandou, Johannesburg, Polokwane, Durban, and Gqeberha.

The Executor

- The executor is the person who is appointed by the Master to administer the deceased estate.
- The deceased nominates an executor in his or her will and the Master appoints such executor subject to certain requirements.
- If the deceased did not nominate an executor, the beneficiaries may nominate an executor for the Master to appoint.
- If the estate is administered under section 18(3) of the Administration of Estates Act (which means the gross value of the estate is less than R250 000) the Master appoints an executor that is referred to as the Master's representative (Also referred to as a section 18(3) appointment).
- The executor is solely responsible for the administration of the estate.

- The nominated executor may appoint an agent to act on his or her behalf but the executor remains legally responsible and liable for the estate.
- If an agent is appointed, a power of attorney must be in place.

The Conveyancer

- A Conveyancer is an attorney who has specialised in the preparation of deeds and documents which by Law or custom are registerable in a deeds registry.
- The Conveyancer liaises with the Registrar of Deeds to take care of the transfer of title deeds where the deceased owned immovable property that must be transferred to heirs or sold and transferred to a third party.

The Registrar of Deeds

The Registrar of Deeds is the office where the title deeds are registered.

The South African Revenue Service

The mandate of the South African Revenue Service (SARS) is to collect all revenues due and in the case of a death ensuring that all taxes are paid.

- The deceased person's Income Tax number (and other applicable tax numbers) **must be coded** as a deceased estate with SARS.
- All income tax (all taxes the deceased was registered for e.g. VAT, PAYE) returns and liabilities must be settled and an estate duty return must be submitted in respect of a dutiable estate.

NB The executor must ensure that these obligations are fulfilled.

Q - WHAT ARE THE FIRST STEPS AFTER DEATH TO FOLLOW:

Step 1: Obtain a Notification of Death

A Notification of Death (DHA1663) must be obtained from a doctor/pathologist in order to report the death to the Department of Home Affairs.

Step 2: Report the death to Home Affairs and obtain a death certificate

Once the death notice is received, it must be submitted to the Department of Home Affairs together with the required forms (DHA1663) and DHA132 (application for death

certificate) that must be completed to report the death and to obtain a death certificate. The forms are available on the South African Department of Home Affairs website (<https://www.dha.gov.za>).

An abridged death certificate is issued free of charge on the same day the death is registered, however, an unabridged certificate can be obtained by completing the DHA132 form together with the payment of the required fee.

Step 3: Establish who the executor is

If the deceased had a will and nominated an executor to be appointed by the Master, such executor is known as an executor testamentary.

If the will made no provision for an executor or the deceased died without a will, the Master will appoint an executor referred to as an executor dative.

An executor may appoint an agent if the executor does not feel equipped to deal with an estate, provided the necessary power of attorney is in place.

Step 4: Report the estate to the Master within 14 days of the date of death

Who must report the estate?

The estate must be reported by the surviving spouse or nearest relative or connection residing in the district where the death occurred or by the person who has control of the premises where the death occurred.

The death notice form must be completed (available on the DOJ's website <https://www.justice.gov.za/master/deceased-how.html>). A certified copy of the death certificate needs to be lodged with the Master.

Q-What documentation must be provided?

- Completed Death Notice form - J294
- Original or certified copy of the Death Certificate
- Certified copy of the Deceased ID
- Original or certified copy of Marriage Certificate (if applicable) or acceptable proof of marriage, as requested by the Master
- A declaration of marriage by the surviving spouse/family member indicating how the deceased was married
- All original wills and codicils or documents purporting to be such (if any)

- Completed Next-of-Kin Affidavit - J192
- Completed Inventory form - J243, showing all the assets of the deceased (Proof of the value of the assets must be provided)
- List of creditors of deceased (if applicable)
- Nominations by the heirs for the appointment of an executor in the case of an intestate estate, or where no executor has been nominated in the will, or the nominated executor has died or declines the appointment
- Declaration confirming that the estate was not previously reported at any other Master's
- Completed Acceptance of Trust as Executor forms in duplicate by the person(s) nominated as executor(s) (form J190) plus a certified copy of the photo page of the executor's ID (not applicable to section 18(3) estate)
- Undertaking and bond of security - J262 (unless the nominated executor has been exempted from providing security in the will, or is the parent, spouse or child of the deceased). (Not applicable to section 18(3) estate)
- Acceptance of Master's Directions - J155, completed and signed by the person as nominated by the beneficiaries (specifically applicable to a section 18(3) estate)
- Certified copy of the ID of the person to be appointed as Master's representative (specifically applicable to a section 18(3) estate).

Step 5: Obtain letters of executorship / Letter of Authority from the Master

Once the estate has been reported and the required documentation has been submitted to the satisfaction of the Master, the Master will issue the letter of executorship/authority. **For more information, please visit the Master's website:**

<https://www.justice.gov.za/master/deceased-how.html>).

Step 6: Steps to follow at the South African Revenue Service

Q - When should a deceased estate be registered?

- SARS should be notified of a taxpayer's death in all instances.
- A deceased estate should be registered when income and expenditure arise after the date of death or any capital gains that may arise subsequent to the date of death in the hands of the deceased estate.

Q - How to Notify SARS of a Deceased Estate

- An executor must notify SARS of the death by –
 - o ebooking appointments with a SARS branch (Bookings can be made via www.sars.gov.za <Book an Appointment; or via www.sarsefiling.co.za and SARS Mobiapp); or
 - o by sending it through to the new **SARS Online Query System** (<https://www.sars.gov.za/contact-us/send-us-a-query/>); or
 - o sending an email using one of the following:
For Tax Practitioners: pcc@sars.gov.za.
For Taxpayers: contactus@sars.gov.za.

Q-What is the process flow to finalise a deceased estate?

After the letter of executorship is issued by the Master, the following must be done at SARS:

1. The executor must inform any SARS office.
2. The documents required for the coding process include:
 - Copy of the death notice of the deceased (J294) issued by the Master's Office or the death certificate
 - Copy of Acceptance of trust as Executor (Form J190) or Copy of the Letter of Executorship (J238)
 - Certified ID Copy of the deceased person and executor.
 - Copy of the undertaking and acceptance of the Master's directions (Form J155) or Copy of the Letter of Authority (J170) (in cases where the estate is less than R250 000)
 - Copy of the Inventory (Form J243)
 - Copy of the last will and testament
 - The name, physical address, email address and telephone number of the executor and his or her agent
 - In the case of an agent, a Power of attorney and certified ID copy of the appointed person
 - Copy of the signed final Liquidation and Distribution (L&D) accounts when they become available (if applicable)
 - The Estate Duty Return (REV267 form).
3. Once the deceased person has been coded, all outstanding tax returns should be submitted up to the date of death. This applies to all tax types: Income Tax, VAT, PAYE, SDL, UIF and estate duty.
4. This process could be done via SARS Online Services or via the SARS digital channels available on the SARS website-www.sars.gov.za.

5. As soon as the Executor has finalised the L&D account, it should be submitted to SARS, together with the REV267 (estate duty return). SARS will perform an audit for all the taxes pre- and post death.
6. As soon as all the tax liabilities have been paid in full, the Deceased Estate Compliance (DEC) letter is issued for all tax types, including estate duty. The DEC letter must be submitted to the Master's Office for the executor to be discharged by the Master.

Please visit the estate duty page on the SARS website for more information on deceased estates:

<https://www.sars.gov.za/types-of-tax/estate-duty/>.

Disclaimer: This brochure is for information purposes and relevant legislation still prevail in the case of inconsistency.

For more information, please visit the SARS website and the SARS TV on YouTube for educational videos.

*Remember, to visit your nearest SARS branch, you need to book first.

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