



## **A DISTINCTION WITH A DIFFERENCE**

### **Deceased Estates and their Unique Conveyancing Requirements**

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There are some unique aspects to the conveyancing requirements for deceased estates. There are two primary types of transactions in deceased estates: inheritance transfers and sales transfers. For both, the transferor is the executor of the deceased's estate. The executor can only act once granted authority by the Master of the High Court. Unfortunately, due to closures as a result of the COVID -19 pandemic, the Master has experienced delays in the appointment of executors which can impede the transfer process right from inception. However, the Masters Offices around South Africa will soon be back to fully functioning status and granting the appointment of executors will not be such an arduous issue.

Once the executor has been authorised, the sale agreement or the transfer documents for the inheritance can be signed. For sales we again need the Master's consent and we lodge a 42 (2) application for approval of the agreement of sale with the consent of the heirs of the deceased's estate. For inheritances, the Master only needs to approve the will of the deceased and the liquidation and distribution account before we can proceed with the transfer process. These additional approvals from the Master are only required for deceased estates and are meant to provide protection for the heirs to ensure that the executor is acting in accordance with the intention of the deceased, as expressed in his or her will.

While we are waiting for the requisite approval from the Master, we attend to the usual transfer documents such as: rates clearance certificates, transfer duty certificates from SARS and the signature of all transfer documents by the executor and the purchaser or heirs, as the case may be. The transfer duty certificate entails the tax

which is payable to SARS as a result of the transfer. There is no transfer duty tax imposed on a transfer in terms of an inheritance from the deceased's estate to the heirs, as per the will. For sales, the normal transfer duty tax is payable to SARS by the purchaser, in accordance with the designated tariffs.

Once we have all of the requisite transfer documents and the Master's approval, we can lodge and register the transfer at the relevant Deeds Office. Usually, it takes approximately 10 days to register a transfer. However, with delays due to COVID-19 related closures, the turnaround time for the Deeds Offices is around 20 days on average. Here in Cape Town, we are experiencing a 6-week delayed turnaround time from lodgement to registration. When the transfer has registered in the Deeds Office, we confirm the registration to the executor who submits such confirmation to the Masters Office so that the file for the deceased's estate can be closed.

The usual timeframe for deceased estate transfers is approximately 4 – 5 months from the date of sale or the date of instruction (for inheritances) to transfer, whereas normal transfers may take 2 – 3 months. The additional delays are as a result of specific approvals required from the Masters Office which are only particular to transfers from deceased estates.

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