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ESTATE ADMINISTRATION AND THE ROLE OF YOUR PROFESSIONAL EXECUTOR

ESTATE ADMINISTRATION

The administration of an estate is often complicated and confusing. The executor plays an important role in ensuring that the estate administration process is undertaken in line with the Administration of Estates Act, 66 of 1965 (as amended) and that it is handled with empathy, efficiency and professionalism.

A deceased estate comes into existence when a person dies leaving property or a will (or document which purports to be a will).

PPS Fiduciary Services renders estate administration services to any person who has nominated PPS Fiduciary Services as executor in their will. PPS Fiduciary Services can act on behalf of the deceased if they did not leave a valid will (died intestate) and can also act as Agent in the case of a non-professional executor having been appointed.

EXECUTOR

Who is an executor?

An executor is a professional person appointed by the Master of the High Court to attend to the legal and accounting functionality of winding up the estate of a deceased person.

Why is an executor needed?

Some estates are made up of a complicated mixture of assets. For these estates, you need the help of a professional executor with years of experience in the administration process. Coupled with the fact that the legal ramification of not paying creditors or heirs correctly has dire financial consequences.

What is the role of the executor?

The role of an executor has legal, accounting and facilitation facets to it and the success of the relationship between the beneficiaries and the executor is underpinned by our association with the PPS Group and our network of financial and estate planners.

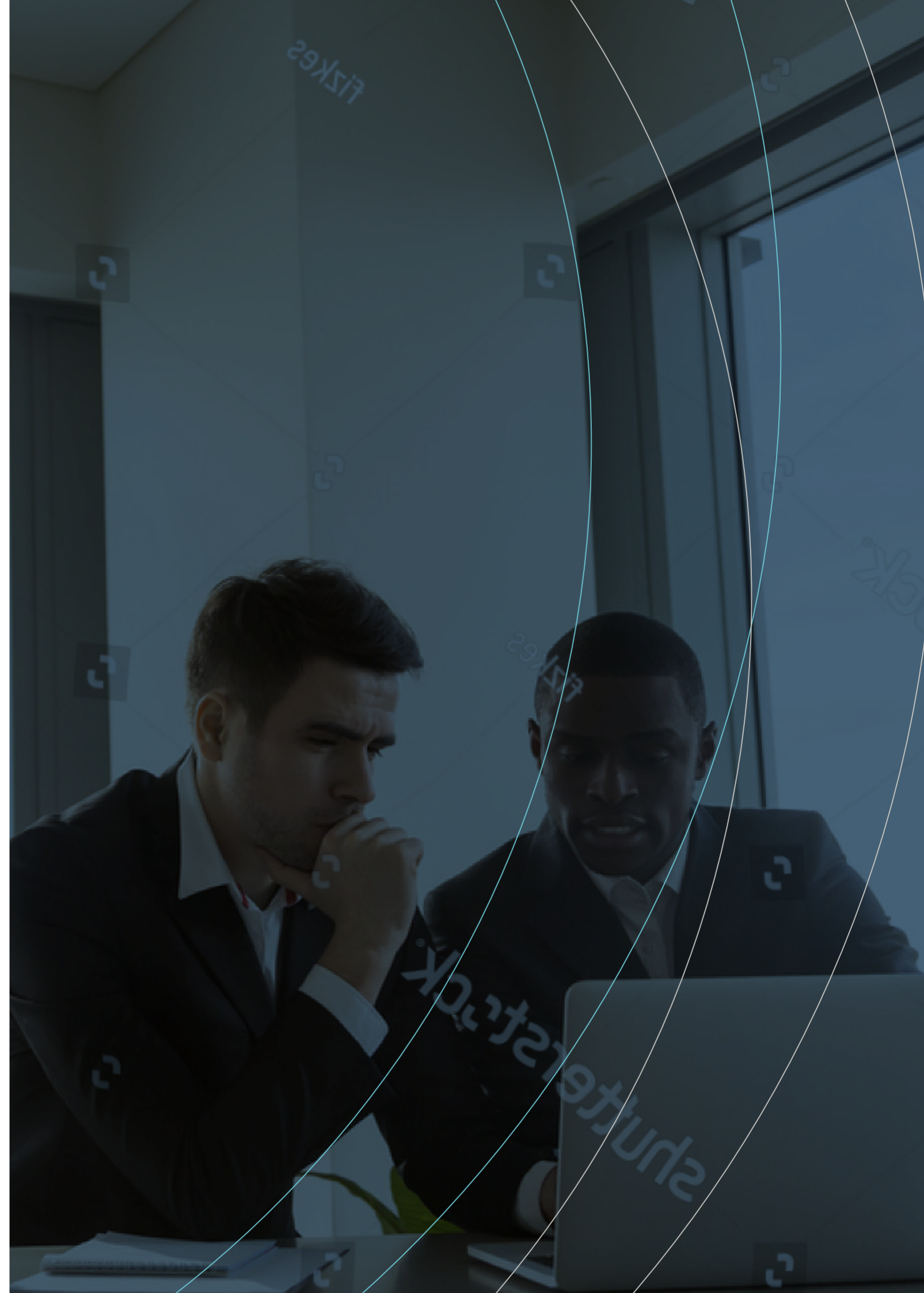
The executor's position is one which carries many risks. It is these risks that he/she carries which needs to be weighed up when agreeing to levy a fee. The standard executor's fee is governed by Regulation 8 of the Regulations under the Administration of Estates Act.

THE EXECUTOR:

- Acts in a representative capacity on behalf of the deceased
- Acts on his/her own responsibility. His/her position is of a fiduciary nature and he/she must act legally and in good faith
- Is legally vested with the administration of the estate and is not an agent for the heirs or creditors
- Does not succeed to the persona of the deceased

Where the executor has not acted with the duty of care required, the heirs to the estate have right of recourse against him/her personally. It is in return for this fiduciary risk, over and above the administrative work to be performed, that the executor's fee is levied.

The executor has certain rights and duties to perform with the administration of an estate, these can be found both in common law and in terms of statute (the Administration of Estates Act).



The process followed by the executor is summarised below. However, it is important to note that each estate is different and will carry its own nuances.

- Take custody of estate property.
- Place a Section 29 Advertisement calling for debtors and creditors to lodge their claims with the executor. This advert is placed once the executor has received the formal appointment from the Master of the High Court. The advert is placed in a local newspaper circulating in the area where the deceased resided as well as the Government Gazette. The advert appears once and runs for a period of 30 days.
- Determine the solvency of the estate - following the expiration of the Section 29 Advert the executor needs to determine the solvency of the estate. This is an important process as the creditors need to be given an option on how to proceed, if the estate is insolvent.
- Proceed to open an estate late banking account.
- Follow up phase - investigate and determine the nature and value of the estate assets and liabilities. This is a time-consuming process and may require the services of a specialist should the estate be dutiable, have minor beneficiaries or there be a dispute amongst heirs.
- Examination of claims - claims lodged against the estate need to be considered and approved or rejected by the executor. In matters where claims are disputed there is a separate process to be followed.
- Income tax - the executor is required to ensure that the deceased's final tax return (period return to date of death) plus any outstanding returns are completed and submitted for assessment. The tax area of the administration process has become more onerous with the introduction of Capital Gains Tax (CGT). The collection of CGT information is time consuming and the calculation

of the taxable amount is complex. As from 1 March 2016 the income earned during the estate administration process is no longer taxable in the hands of the heirs, but is taxable in the estate. As such there is a need for the executor to attend to a further tax return prior to being able to lodge the final liquidation account.

- Lodging of the Liquidation Account - upon receipt of the information around the estate assets and their values, investigation and acceptance of all claims lodged against the estate and receipt of the final income tax assessment the executor should be in a position to draft and lodge the liquidation account. This account is required to be lodged following a very specific format. The account will detail the assets, liabilities and how the assets are to devolve in terms of the will. The account will be lodged with the Master of the High Court for approval. Once the Master has confirmed that the account has been inspected and meets the required standards the executor will be instructed to proceed to advertise the account in terms of section 35 of the Estate Act.
- Section 35 advertisement - following confirmation from the Master, the executor will proceed to advertise the fact that the liquidation and distribution account is lying open for inspection. The advert calls for all interested parties to inspect the account and lodge objections thereto in need.
- The section 35 advert appears once and runs for a period of 21 days.
- Distribution of the estate - upon expiration of the section 35 advert and provided no objections to the account have been lodged, the executor, following approval from the Master of the High Court, may proceed to distribute the estate to the heirs as per the liquidation account drafted. This will include the instructing of a conveyancing attorney to attend to the transfer of the fixed property, transfer of shares, unit trusts, timeshare etc.

Whilst the above points may seem fairly straightforward there are a myriad of factors which may arise which will not only prolong the administration process (considerably) but will also complicate the process.

These include but are in no way limited to:

- The will directing the sale of certain assets
- Divorce and/or maintenance claims
- Accrual calculations
- Disputed claims
- Maintenance claims – either in terms of the Maintenance of Surviving Spouses Act or children born out of wedlock
- Summons received as a result of bond arrears – this often necessitates the need to instruct attorneys to enter a notice to defend
- Illiquid estates – need to agree on how the liquidity required to finalise the administration process will be obtained. This is particularly difficult when the only asset is a fixed property and which is the current primary residence of the family – this could lead to lengthy negotiations and potential eviction orders being sought
- Redistribution agreements
- Non-resident heirs who have not formally emigrated
- Requests to enter into lease agreements post date of death – these require court sanction in certain circumstances

CHARGES

The executor's fees are laid down in terms of the Administration of Estates Act 66 of 1965, and are assessed according to the current tariff:

- On the gross value of the assets in the estate:
3.5% plus 15% VAT
- On income accrued and collected after death:
6% plus 15% VAT

Further administration charges which are payable by the estate (if applicable) are the following:

- Costs for two advertisements (advertisement to be placed in a local newspaper and Government Gazette on receipt of the Letters of Executorship as well as lodgement of the Liquidation and Distribution account)
- Conveyancing fees to transfer the fixed property
- Master's fees (maximum of R600)
- Postage and petties
- Estate bank charges
- Astute, firearm and motor vehicle search fees
- Sworn valuation fee
- Rates and taxes clearance certificate costs

