# Introduction

TO WINDING UP YOUR LOVED ONE’S ESTATE

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# Intro

In order to minimise additional anxiety and stress at this traumatic time of change this document serves to introduce the process of administering a deceased estate. It will introduce the roles and responsibilities of the different parties in the process, outline the process flow and address some frequently asked questions.

# Roles and Responsibilities

There are three main parties involved in the winding up of a deceased estate: The surviving family of the deceased, the Executor, and the Master of the High Court

## The Family

Responsible for appointing the executor, if one was not designated in the will, and for providing relevant information and documentation required in the administration of the estate.

## The Master of the High Court

Statutory body which regulates, amongst other things, the administration of deceased estates. The Master's office does not directly administer the estate but oversees the executor to ensure legal procedure is followed and the financial interests of the heirs are protected.

## The Executor

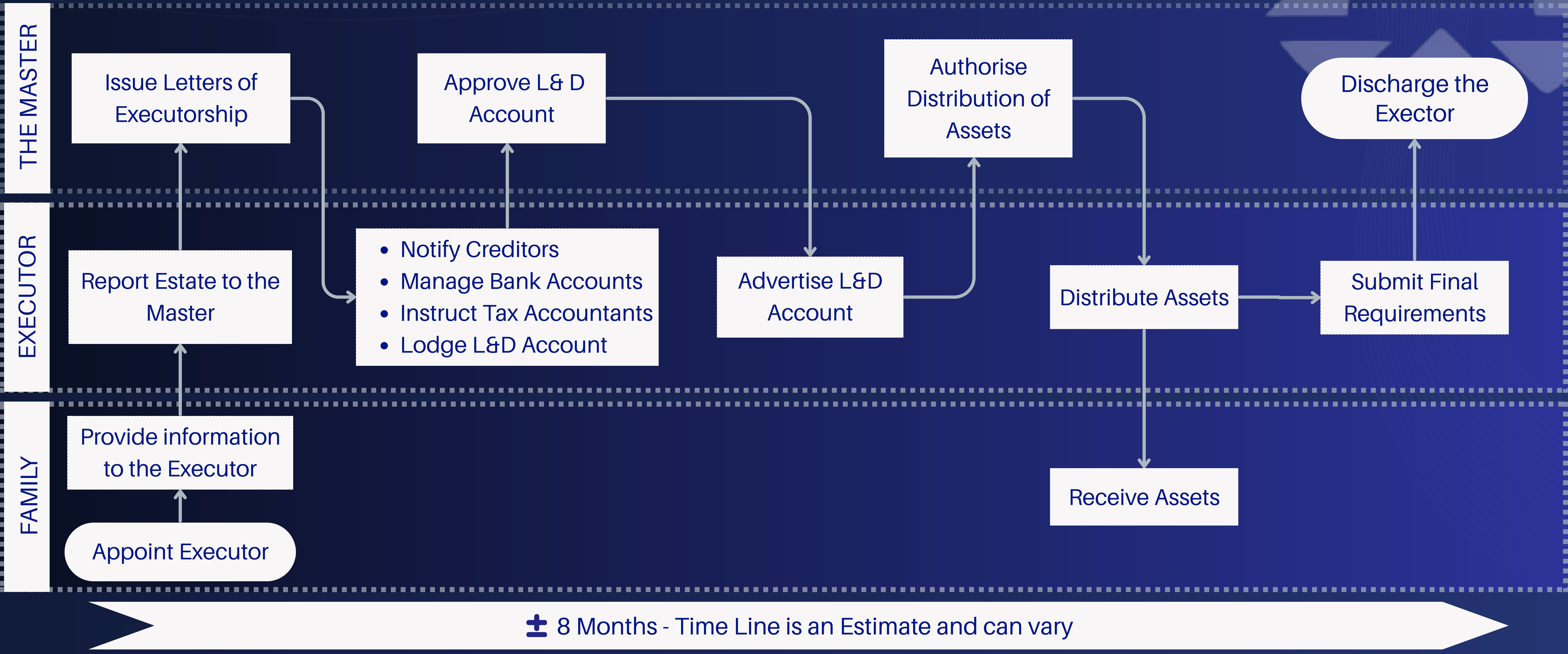
Directly responsible for the administering of the estate in accordance with the will, and for ensuring that the estate is wound up in accordance with the law. While the administration of a deceased estate entails many legal details a broad outline of the executor's process is provided on the next page

# The Executor

Broad outline of the executor’s process

1. Meet with the family and collect information, required documentation and details of assets and liabilities.
2. Report the estate to Master of the High Court where the deceased lived.
3. Notify creditors through publishing notices in a local newspaper and the Government Gazette, allowing 30 days–3 months for claims.
4. Manage bank accounts – Close the deceased’s accounts and open an estate late account for all estate funds.
5. Act as the representative taxpayer of the deceased and the deceased estate through managing the calculation and payment of the tax liabilities of the estate. These include: Estate Duty, Capital Gains Tax, and Income Tax pre and post death.
6. Determine the estates solvency by checking if the assets cover the debts, and selling assets if needed.
7. Prepare and lodge the Liquidation & Distribution Account (L&D) with the Master and advertise it for pubic inspection.
8. Settle debts & distribute assets to heirs after approval of the L&D by the Master.

# The Process and Roles



# Frequently Asked Questions

This section attempts to address the most common questions and concerns that families and loved ones have when facing the administration of a deceased estate. For ease of reference the questions are broken into three broad categories.

## Deceased Estate Basics and Common Terms

This section deals with the big picture and introduces the frequently used terms that you will encounter over the administration process.

## Practical Considerations

This section addresses questions around the maintenance of everyday household administration and payments, that the deceased was previously responsible for, which now need to be maintained for the family and dependents.

## Taxes

This section addresses the basic questions around tax requirements and obligations that arise in the administration of a deceased estate

# Deceased Estate Basics and Common Terms

1) **What is a Deceased Estate?**

A deceased estate is the term given to the property, obligations, and intentions (as recorded in a will) that remain when a person has passed away. These must be administered and distributed in accordance with the law.

2) **How long does an estate take to administer?**

The administration or winding up of a deceased estate can take from 7 months to several years. There are many factors that can impact the timeframe and these largely depend on the complexity of the estate, the co-operation of family and heirs, and the efficiency of various government and financial institutions that contribute to the administration of the estate.

3) **How is the value of an estate determined?**

The value of a deceased estate is based on the sum of the person's assets and claims, less outstanding liabilities and expenses at the date of death.

4) **How is an estate distributed if the deceased did not leave a will?**

The estate will devolve intestate and will be administered according to the rules of the Intestate Succession Act 81 of 1987.

5) **When do heirs receive their inheritance?**

Once the Liquidation and Distribution Account has been approved by the Master and lain free from objection the Master will give the executor permission to distribute inheritance. It must be noted that the executor is obliged to make adequate provision for any SARS claims that may arise, resulting in a portion of cash being held back until the last tax assessment has been received.

This is unlikely to happen before eight months after the executor has been appointed and could take longer depending on the issues raised in Question 2, above.

6) **What are 'Letters of Executorship'?**

This document is issued by the Master of the High Court, and this officially authorises the person(s) who is(are) nominated as executor, to proceed with the administration of the estate.

# Deceased Estate Basics and Common Terms

**7) How can I be sure the executor is administering the deceased estate properly?**

The Master of the High Court oversees the executor's work and functions to protect the rights and interests of the beneficiaries.

**8) What fees are charged by an executor?**

The Administration of Estates Act, 1965 (Act No. 66 of 1965) governs the fees that executors can charge for administering a deceased estate. An executor is entitled to charge the statutory tariff of 3.5% of the gross value of the estate. If the executor is a VAT vendor, VAT will also be charged on the 3.5%. Further to the fee, the Act also entitles the executor to a 6% collection commission for any income received by the estate after date of death of the deceased.

**9) What is a Deceased Estate Paralegal/Administrator**

The Deceased Estate Paralegal, or Administrator, is the person who attends to the day to day administration of the estate under direction of the executor.

**10) What is a Liquidation and Distribution Account in a deceased estate?**

A Liquidation and Distribution Account (L&D) is prepared by the executor, and it is a key milestone document in the administration process. It lists the assets and liabilities of the deceased as at date of death, the Estate Duty calculation, the income and expenditure after date of death, and the inheritance to be distributed to the heirs. This document must be drafted and lodged with the Master of the High Court within 6 months of the executor being appointed. The L&D must be approved by the Master's Office before any creditors are paid, or any assets distributed to heirs.

**11) What are the Section 29 & 35 Advertisements?**

The Section 29 advertisement is a regulatory requirement which notifies creditors to lodge their claims against the estate. The Section 35 advertisement is also a regulatory requirement, which advertises the Liquidation and Distribution Account as lying open for inspection in the magisterial district where the deceased was ordinarily a resident.

# Practical Considerations

**1) How are living expenses covered while the estate is being administered?**

Bank accounts will be frozen by the banks when they are notified of the death. Any cash taken directly from the deceased accounts in between the time of death and the banks freezing the accounts will have to be recorded and accounted for in the administration of the estate. Only once an executor has been appointed by the Master will it be possible for cash to be advanced to an heir from the estate. But only if the executor is confident that the estate has sufficient funds to meet all obligations.

**2) How are debit orders on the deceased's bank account managed?**

Debit orders linked to critical services like electricity, water, insurance, etc. risk being suspended if they are unpaid. Other liabilities like bond repayments, vehicle instalments, and credit cards are not frozen on death and can continue to accumulate interest, and penalty interest if not paid. If possible, it is worthwhile to provide alternative bank accounts for collection of these debit orders, or speak to your executor ensure a plan is in place for payment from the estate.

**3) Should assets in the deceased estate be insured?**

Yes, it is crucial for all the assets in the estate to be insured and for existing insurance payments to be maintained. Failing this there will be no compensation in the event of theft, accident, etc.

**4) What happens if the deceased was running their own business?**

A suitably qualified person should be identified to liaise with the executor around the continued day-to-day running of the business. The contact details of the accountant, business partners, and key stakeholders in the business must be provided to the executor to ensure the business is administered appropriately while the estate is being wound up.

**5) Will the executor sell everything?**

The executor will only sell assets under the following conditions:

- If they are specifically instructed by the will to do so.
- If the beneficiaries agree to selling specific assets.
- If cash is required to meet the debts of the estate.
- If it is impractical to share the asset amongst more than one heir and cash would be more easily shared.

# Taxes

**1) Is there a distinction between a deceased person and the deceased estate for income tax purposes?**

Yes. The time of death is considered a tax event, at which the deceased person's liability for tax and year of assessment comes to an end, and a new taxpayer, namely, the deceased estate comes into existence. Although the deceased estate is treated as a natural person, it is regarded as a separate natural person to the deceased.

**2) Does an income tax return need to be submitted for the deceased person in the year of death?**

Yes. If the deceased person was registered for income tax and/or received taxable income up to the date of death a return must be submitted.

**3) What is Estate Duty, and what is the Duty rate?**

Estate duty is the duty levied under the Estate Duty Act, 1955 on the dutiable amount of an estate of a deceased person.

For estates with dutiable amounts equal to or below R30 Million the duty is levied at a rate of 20%. For dutiable amounts over R30 Million a duty is levied at a rate of 25% for the portion above R30 Million.

Estate duty is due within one year from the date of death.

**4) How is the dutiable amount of an estate determined?**

The dutiable amount of the estate is the net value of the estate less the first R3.5 Million which is exempt.

**5) What rate of tax applies to a deceased estate?**

A deceased estate is treated as a natural person for income tax purposes, except for the application of sections 6, 6A and 6B of the Income Tax Act.

**6) How is the year of assessment determined for a deceased estate?**

The first year of assessment for the deceased estate commences on the day after the date of death and ends on the last day of February. The executor must continue to submit income tax returns for every year of assessment until the L&D is approved

# Taxes

**7) Who is responsible for the tax liability that arises in respect of the income and expenditure the during winding up process, up to the approval of the L&D account?**

Liability for any tax applied to income earned by the deceased estate during the advertisement period up to the approval of the L&D falls to the deceased estate.

**8) Who is responsible for the tax liability that arises for the period after the Master approves the L&D account?**

Income that may be earned after approval of the L&D account accrues to the beneficiaries, as such the beneficiaries need to declare this income in their respective tax returns.

**9) What is a deceased estate compliance (DEC) letter?**

A DEC letter is a letter issued by the Commissioner in respect of all taxes (including estate duty). The letter provides confirmation that all tax liabilities are secured or paid.

## Get in touch with us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