

Proactive estate planning will help manage delays at master's office

- Consider what precautionary measures you can take as service delivery is under strain

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Problematic delays: In some cases, it can take months and sometimes close to a year to issue letters of executorship. /123RF/Fabio Balbi

Most of us will not have any dealings with the master of the high court until the passing away of a loved one. Unfortunately, as with many government departments and institutions in SA, the master's office is experiencing severe service delivery issues.

The master of the high court falls under the department of justice & constitutional development. It is responsible for the administration of deceased estates, liquidations, administration of the guardian's fund, protecting the interests of minors and the registration and supervision of trusts.

There is a master's office for each of the 15 divisions of the high court in SA. The master's offices under the most strain seem to be those in the large business centres, namely Pretoria, Johannesburg, Cape Town and Pietermaritzburg. A recent technical glitch at the government printing works, which publishes the government gazette, has aggravated matters.

When someone dies, this must be reported at the master's office, which then issues letters of executorship in terms of the will, in which the executor is authorised to administer or wind up the estate. Without the letters of executorship, one does not have the authority to contact banks to close bank accounts, correspond with investment companies to collect the proceeds of investments, or cancel expenses such as insurances or medical aid.

It has been reported that in certain cases, it can take months and sometimes close to a year to issue letters of executorship. These delays can leave family and loved ones without access to much-needed cash in a traumatic time.

It is crucial to consider what measures one can take while still alive to make sure your family and loved ones have access to cash in the event of your demise.

Sufficient liquid investments (such as unit trusts) and separate bank accounts should be opened in the name of each spouse. The surviving spouse then has access to cash while letters of executorship are being issued. Bearing in mind the length of time it takes to issue letters of executorship, it may be prudent to have up to one year's worth of monthly expenses in investments or bank accounts.

People married in community of property face an additional hurdle. On the death of a person in such circumstances, the joint estate is dissolved. From a strictly legal point of view, bank accounts in the name of the surviving spouse should also be frozen (though bank accounts are usually only frozen once the bank receives the death certificate). Practically, it may be possible for your executor to apply to the master's office to release funds provided the joint estate is solvent (but with the administrative delays being experienced, this may prove problematic). In this interim period, it may become

necessary to seek financial assistance from relatives.

Trusts can introduce additional complexity and expense, but are a useful estate planning tool when used in the appropriate circumstances.

One of the benefits of trusts is that they provide for continuity in that their existence is not attached to the life of a particular person. If you already have a trust, it would be sensible to have cash and liquid investments in the name of the trust to tide over the family.

- Nominate beneficiaries on your life policies, endowment contracts and certain tax-free savings accounts. This will ensure the proceeds are paid to your beneficiaries directly and not into your estate.

It is important to note that the proceeds are still subject to estate duty (but do not attract any executor fees).

- Nominate beneficiaries on your living annuity contracts. Nominated beneficiaries have two options. They can cash out the living annuity as a lump sum. The amount will then be subject to tax based on retirement fund lump sums taken by the deceased.

Alternatively, they can elect to keep the living annuity, in which case a minimum of 2.5% and a maximum of 17.5% of the living annuity must be drawn as income and will form part of their taxable income. If the family needs cash, it may be useful to ask for the income to be paid in advance.

Certain administrators now allow the appointment of secondary beneficiaries if the primary beneficiary dies with or before you.

- Nominate beneficiaries on your retirement funds (retirement annuities, pension, provident and preservation fund contracts). Section 37C of the Pension Funds Act requires that the trustees of your retirement fund distribute your retirement savings fairly to anyone who has a claim as a dependant, regardless of who you nominated as a beneficiary. In most instances, the nominated beneficiary and dependant are the same person, but this is not always the case.

Meet your financial planner to review your will and conduct an estate planning exercise to ensure you have taken steps to ensure your family and loved ones are not at the mercy of the master's office.

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