

# Property within a deceased estate: What you need to know

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A deceased estate comes into existence when a person dies and leaves property or a will. Such an estate must then be administered and distributed in terms of the deceased's will or, if there is no valid will, in terms of the Intestate Succession Act (Act 81 of 1987).



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The estate of a deceased person must be reported to the Master of the High Court within 14 days of the date of death. Anyone who oversees the deceased's property or is in possession of their will may report their death by submitting a completed death notice to the Master.

The Master of the High Court appoints an executor to manage the estate of the deceased when a person passes away. The only person who is lawfully authorised and empowered to manage the deceased's assets is the executor. The goal is to safeguard the heirs' financial interests and the orderly winding up of the deceased's financial affairs.

No one is authorised to represent the deceased's estate until an executor is named. This means, among other things, that no one may sign any documents relating to a transfer of an immovable property owned by the deceased, including a sale agreement.

In South Africa, when the registered owner of immovable property has died, the property needs to be transferred to someone else.

**Important:** All powers of attorney automatically expire upon death, preventing anyone from acting under any of them. A power of attorney to register a transfer of property would fall under this category.

## What happens when the owner of a sectional title unit dies?

When the owner of a property in a sectional title dies and is no longer available to fulfill his duties and responsibilities, ownership of the section remains with the deceased estate. The executor of a deceased estate, acting in the best interests of that estate, could attend general meetings, participate in discussions, and vote on matters as if he or she were the registered owner of the property.

The executor is responsible for fulfilling any outstanding duties that the deceased owner may have had as a scheme owner. These commitments might include finishing any physical improvements to the property, such as an addition to the section or a redesign of an exclusive use area.

Other responsibilities could include participation in body corporate decisions, particularly those that could have an impact on the unit's value, like voting in a resolution to approve an enhancement to the common property or a change to the scheme's regulations.

During this time, the executor would be liable for any debts that the owner could have accumulated, including paying any fines or special levies that might have been in effect as well as the monthly levy.

Under these circumstances, the payment of special levies is an interesting point.

The owner of the property in a sectional title at the time the trustees adopt a resolution imposing a special levy is liable for paying that special levy. Where normal levies become the responsibility of a new owner when the property is sold under normal circumstances, a special levy remains the responsibility of the original owner of a deceased estate. This means the executor is responsible for paying the balance of the special levy from the funds within the estate unless a written agreement is signed by the new owner to accept responsibility for payment of any contributions as from the date of transfer.

To better understand the roles and responsibilities of trustees, Fitzanne Estates highly recommends that all scheme executives undergo scheme executive training. Scheme executive training covers all areas of the Sectional Titles Schemes Management Act 8 of 2011, ensuring that trustees are up to date with all relevant legislation.

## **Purchasing a property from a deceased estate**

The property in a deceased estate frequently provides good value for the money. Buyers who are interested in purchasing a home from a deceased estate should be aware of what to anticipate as this procedure can occasionally be drawn-out and challenging.

As soon as the Master of the High Court issues the letters of executorship, the executor of the deceased estate is appointed to manage the estate. The transfer or sale of any property is one of the executor's administrative responsibilities.

A notice to debtors and creditors must be published in a local newspaper and the Government Gazette in certain types of deceased estates, requesting that they file their claims with the executor within 30 days of the advertisement's publication. To find out if there is any property in the estate and whether it will be sold, those who are interested in buying something from a deceased person's estate can get in touch with the executor. Most real estate sales agents are also aware of properties that form part of a deceased estate that will come onto the market.

In order to protect the interests of the heirs, the property must be sold for its fair market value, irrespective of whether a real estate sales agent is involved or not. The main drawback of buying property from a deceased estate is that the buyer must be aware of the formalities that could cause prolonged delays. One of these procedural delays is obtaining the Master's consent, which is required for the sale of any property from a deceased estate.

Because no one has the legal authority to act on behalf of the estate prior to the Master issuing letters of executorship, the sale of immovable property in a deceased estate is handled by the executor only after those letters are issued. A real estate sales agent or an auctioneer will be hired by the executor to market and sell the property. The executor can also sell the property on the open market.

After the property has been sold, the signed agreement of sale is given to a conveyancer who will handle the property transfer. The conveyancer shall obtain the consent of all the heirs in the estate and deliver the same to the Master of the High Court with other documents in support thereof.

The Master will review the paperwork before making a decision regarding the sale. Unfortunately, the Master's office does not have a set turnaround time for issuing the consent, which aggravates buyers and sellers. Therefore, we want to make sure you are aware of this aspect of buying property from a decedent's estate. Additionally, it should be noted that once the Master's approval is finally granted, the transfer process will proceed normally.

Due to the complex nature of purchasing a property in a deceased estate, it's highly recommended that purchasers make use of both a real estate sales agent and a conveyancer. Having a trustworthy and reliable team on your side makes all the difference.





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## Deceased estate transfers

When an immovable property's registered owner passes away, the property must be transferred to another person, usually a family member. The property must usually be transferred to an heir or beneficiary named in the decedent's will, but it may also be done in accordance with the Intestate Succession Act in some cases.

Immovable property transfers from the decedent's estate to the heirs or to a third-party buyer are complicated processes that are best handled by conveyancing attorneys with experience in such matters.

### Transfer of immovable property to a beneficiary in a deceased estate

The appointed executor of a deceased estate is the only person who is lawfully permitted by the Master of the High Court to handle the assets of the deceased. The executor is required to process the transfer of the immovable property in terms of the last will and testament of the deceased. When there is no will, the provisions of the Intestate Succession Act 81 of 1987, as amended, will determine to whom the immovable property must be transferred.

Under these circumstances, no transfer duty is payable. However, the deceased estate will bear the conveyancing costs including costs such as the Deeds Office fee. The deceased estate will also bear the cost of obtaining rates and levy clearance certificates, valid until after the anticipated date of registration. The transfer cannot be completed before the liquidation and distribution accounts have laid for inspection by the general public.

The conveyancer handling the transfer will need to certify in terms of Section 42 (1) of the Administration of Estates Act 66 of 1965, as amended (hereinafter referred to as the Administration of Estates Act), that the transfer is in terms of the liquidation and distribution account. The liquidation and distribution account must first be approved by the Master of the High Court and have laid for inspection.

### Sale by the executor to a third-party purchaser

If the beneficiaries agree, the executor of the deceased estate may sell immovable property to a third-party purchaser directly. The Offer to Purchase/Sale Agreement must be signed by the executor on behalf of the deceased estate, and the executor must also sign the transfer documents in due course.

According to Section 13(1) of the Administration of Estates Act, a person who has not received Letters of executorship is not permitted to sign an agreement. Before the executor signs any Offer to Purchase/Sale Agreement, the executor must first be appointed in writing in order to comply with Section 2(1) of the Alienation of Land Act 68 of 1981, as amended.

To confirm that the Master has no objections to the said transfer, the conveyancer must obtain a Section 42 (2) Administration of Estates Act Certificate from the High Court where the estate was reported.

The purchaser would typically be responsible for paying the transfer costs, including transfer duty. The costs of obtaining rates and levy clearance certificates that are valid up until registration and of canceling any bonds that have been registered over the property would be borne by the estate.



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## What happens to the tenant when a landlord dies?

Tenants are usually not required to move out upon the death of the landlord because lease agreements typically continue after his or her passing.

After paying out the legatees, the executor of the landlord's estate will take over estate administration and transfer the "residue" to the heirs. The lease's rights and obligations will also be transferred to the heirs through this process.

Although it is uncommon, it is possible for the lease agreement to state expressly that the lease expires upon the death of the landlord. If this is the case, the tenant will, at the very least, need to be given a reasonable amount of time to vacate the property.

At best, if the property has also passed to the heirs, they should let the lease run its course. If they decide to end the lease agreement with the tenant, it should be done with reasonable time to vacate as well as possible provisions made for damages, in other words, the tenants may have a claim against the heirs for early termination of the lease agreement.

Most commonly, however, the heirs will simply "inherit" the lease as it is and become the legal successors to the deceased landlord, meaning that there will be no immediate change for the tenant.

And even if the heirs decide to sell the property, the new owners will usually have to let the existing lease run its course before they can ask the tenant to leave or negotiate new terms.

While the estate is still being wrapped up, the monthly rental fees should be paid to the executor of the estate.

## Conclusion

As seen above, the executor in a deceased estate is the only person authorised by law to transfer immovable property of behalf of a deceased estate.

The executor also bears the responsibility to ensure that his/her duties and responsibilities are complied with. It is always advisable that an attorney be instructed to assist with the administration of the deceased estate and that a conveyancer be instructed timeously to assist with any transfer of immovable property.

The Master of the High Court has offices in all major cities in South Africa. Master of the High Court helpline: +27(0)123151207 or email [chiefmaster@justice.gov.za](mailto:chiefmaster@justice.gov.za).

## ABOUT THE AUTHOR

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