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FINANCIAL PLANNING IS NOT ONLY FOR THE LIVING

By Malissa Conlin, Admitted Attorney FPSA® | General Manager, Brenthurst Wills & Estates, Legal Advisor & Compliance (B COM, LLB)

The goal for many investors, and in fact, anyone who has assets to leave behind, is to ensure that a legacy is left for their loved ones.

Fortunately, many are able to do so, but only after a considerable amount of time has been spent factoring in the costs for administering an estate, which includes everything from executor's fees to courier costs. This means that, in order for you to leave a legacy, you will need to account for these estate costs in your financial plan.

As the age-old saying goes, the two greatest inevitables in life are death and taxes. And when someone close to you passes away, it can be exceptionally daunting if you don't know what to expect. This is especially true for the surviving spouse, who could be left with large bills and no liquid assets to cover these costs.

There are many ways of structuring your estate to somewhat ease this path, but that's a discussion you should have with a fiduciary specialist, such as myself, who is able to help you optimise your affairs for tax and cost efficiency. Therefore, to help you prepare for the inevitable, I am going to give you a quick overview of the costs usually associated with winding up a deceased estate.

WHAT IS A DECEASED ESTATE?

A deceased estate refers to all the assets and liabilities that a person leaves behind after they die. This usually includes property, money, investments, cars and household effects, as well as debts such as credit card balances, loans and medical bills. Settling a deceased estate involves distributing the assets to beneficiaries as per your Last Will and Testament, paying off any outstanding debts and taxes, and finalising any legal matters.

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This process is typically undertaken by an executor, either as nominated in accordance with your will, or should you die intestate, nominated by your intestate heirs or appointed by the Master of the High Court, which can be a lengthy and frustrating process.

Whilst you may decide to nominate a family member, I believe it imperative that a qualified executor be nominated instead – someone who understands the legal process with respect to winding up estates in detail, and has the experience and skills to conclude matters as quickly as possible.

In the event that an estate is valued at R250 000 or less, a Section 18(3) estate will apply, which is a much simpler and more straightforward process. This estate would be easier for a direct family member to navigate, as paperwork needs to be concluded to obtain a Master's directive, whereafter distributions can be made. However, professional assistance can be given in this regard as well.

THIS IS WHAT IT COSTS TO DIE

Herewith a comprehensive list of costs, with estimates, that may be charged against an estate:

- **Funeral expenses:** This can cost anywhere between R15 000 and R30 000 or more, depending on the requirements. It makes sense, therefore, to nominate a beneficiary on your funeral policy (if you have such a policy in place) so that they can receive the payment quickly to cover the cost of your funeral. The proceeds from a funeral policy is paid into your estate if you don't nominate a beneficiary.
- **Executor's fees and remuneration:** Estates valued at more than R250 000 require the formal appointment of an executor, who is entitled to charge 3.5% plus VAT on the total value of the assets in your estate, which is the maximum fee prescribed by the Master. It is possible for you to negotiate a lower fee with the executor, which can be discussed and recorded at the time of having a valid will drafted, and where a professional executor is formally nominated. If you're married in community of property, the executor's fee is calculated on the entire (joint) estate, not only that deemed to belong to the deceased. Additionally, where there are assets in the deceased estate which generate an income after death – this includes rental income, interest, dividends, trading or farming income – an executor is entitled to a prescribed maximum executor's remuneration of 6% plus VAT earned on those assets until such time as your estate is wound up.
- **Estate duty:** A Section 4A rebate applies to all deceased estates, which means your estate will be exempt from estate duty if the estate's value is less than R3.5 million. Where the deceased was married, it is possible for this rebate to roll over to the surviving spouse, allowing for a R7 million rebate against estate duty on the death of the surviving spouse. However, estates exceeding R3.5 million trigger an estate duty which is levied at 20% on the first R30 million. Thereafter, an estate duty of 25% is levied on the portion of the estate that exceeds R30 million.
- **Capital gains tax:** This tax is payable on the gains made on assets that have to be sold or transferred to beneficiaries, and is calculated according to the deceased's personal tax rate. At death, the first R300 000 of gains are exempt from tax, whereafter only 40% of the balance is used to calculate the capital gains tax which is payable. There are additional capital gains tax exemptions which apply, for example, the primary residence rebate of R2 million.
- **Income tax:** Any income tax owed to SARS must be paid from your estate. SARS will conduct an audit to ensure all your taxes are up to date and will issue a tax compliance certificate, also known as a DEC certificate, once the process has been completed. This certificate allows the executor to finalise your estate.

- **Master's fees:** For estates valued at less than R400 000, the fee is currently R600, thereafter increasing according to a sliding scale up to a maximum of R7 000, based on the value of your estate.
- **Claims against the estate:** This includes expenses such as outstanding debts, which include but are not limited to hospital accounts, bond and vehicle repayments, loan accounts, outstanding credit card balances, clothing accounts, and so on.
- **Accrual claims and maintenance costs:** If you are married out of community of property, subject to the inclusion of the accrual system, you retain your separate estates during your marriage, whereafter, the value at which your respective estates have grown during the subsistence of the marriage is calculated on the demise of the first-dying spouse. In the event that the deceased's estate is valued higher than the surviving spouse, the result would be that the surviving spouse then has a claim against the estate in respect to accrual. If you are divorced at the time of your death, your obligations in terms of a maintenance claim as per the divorce order will need to be upheld.
- **Donations tax:** Your estate will be liable for donations tax of 20% on donations exceeding R100 000 a year, if you haven't paid donations tax at the time of death. Donations to spouses are exempt from this tax, and some donations made in the event of death are excluded.
- **Professional fees:** This is for professionals helping the executor with specific requirements, such as an accountant, conveyancer or tax consultant.
- **Maintenance of estate assets:** Any costs for maintaining assets while the estate is being wound up.
- **Estate agent's commission:** This will apply if your property is sold and is usually around 7.5%, but can be negotiated.
- **Transfer costs:** This will be due if your property is transferred to a testate or intestate beneficiary and is paid to the conveyancing attorney managing property transfers on a deceased estate. This fee is also determined in accordance with a sliding scale. Property transfers to beneficiaries are exempt from paying a transfer duty.
- **Bond cancellation costs:** This is paid to bond cancellation attorneys (usually appointed by the banking institution where your bond is held) if a mortgage account has to be closed and cancelled at the Deeds Office.
- **Valuation and appraisal costs:** If a sworn valuation by an appraiser is required by the Master.
- **Rates and taxes:** It is common to have to pay five months' rates and taxes in advance to get clearance figures from the municipality.
- **Advertising costs:** Part of the process of winding up an estate is publishing two advertisements in a local newspaper and the government gazette. A Section 29 advert is required to notify creditors of your death and allow them to lodge claims against the estate, and the second Section 35 advert is required to inform any interested parties that the liquidation and distribution account is available for inspection. Costs vary, but could be as much as R1 000 per advertisement.
- **Bank charges:** These fees are for the estate bank account that the executor is required to open whilst settling your estate.

- **Postage and petties:** The executor is allowed to charge postage and petties of R260 plus VAT. This excludes courier charges, which will be charged to the estate as an additional cost.

This is an exhaustive list of all the various costs and taxes your loved ones will have to contend with once you're gone. As suggested in the headline, this means that you need to prepare for these expenses while you can, so that your family is not left holding the can. It is crucial that these costs are considered well before the time so that strategies can be put in place, for example, maximising the estate deductions in order to lower estate duty liability. Liquidity in your estate is imperative, considering that all liabilities will need to be covered before your beneficiaries receive any financial benefit from your estate. If matters of liquidity are an issue, the simplest way to resolve this is to have a life policy in place to cover immediate costs and also potentially leave money to your dependents. Speaking to a qualified financial advisor who can guide you through the various options is always best.

So, it goes without saying that effective estate planning will aid in ensuring you structure your estate in such a way that you are able to reduce the costs in your estate as well as having a will in place to ensure your wishes are correctly carried out.

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GENERAL MANAGER | WILLS & ESTATES | LEGAL ADVISOR & COMPLIANCE (B COM, LLB)



Malissa is the General Manager of Brenthurst Wealth, is the head of our Fiduciary Services Department in the Western Cape and acts as Brenthurst's internal legal advisor and compliance officer.

MALISSA joined the Brenthurst Team in July 2014. She is responsible for general oversight and management functions for Brenthurst, will consultation and drafting, estate planning, deceased estate administration, and all matters of a legal, compliance and human resource nature. She is a qualified attorney, admitted as such in the High Court of South Africa (Western Cape High Court), having obtained a B.Com Law degree from the University of Johannesburg, an LLB degree from the University of South Africa (UNISA), and a further certificate in estate planning from Milpark.

Malissa also successfully passed her FISA examination in 2017 which awarded and assigned her with the professional designation - Fiduciary Practitioner of South Africa® and has also, since 2018 and been an accredited member of the Fiduciary Institute of South Africa (FISA).

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