

Procedure when death occurs

Acquire a Death Notice / Notification of Death (cause of death) also known as the BI-1663 Medical Certificate. The death notice referred to here is **not** the 'Death Certificate' from Home Affairs.

The funeral director will usually take care of the Death Notice (BI-1663 Medical Certificate)

- **If a person dies in hospital of natural causes**, the doctor will issue a death notice. Many private hospitals don't have mortuary facilities, in those cases a funeral director needs to be contacted immediately to collect the deceased. State Hospitals generally have mortuary facilities, the body must remain there until a death notice is issued.
- **If a person dies in hospital of unnatural causes**, the body will need to be transferred to a state mortuary for a compulsory post-mortem (autopsy). The state mortuary will then issue a death notice.
- **If a person dies at home of natural causes**, one should contact the doctor first. Provided the doctor is willing to issue a death notice one can contact a funeral director to transport the deceased to a mortuary. A death notice can be obtained from the deceased's doctor if the doctor had seen the deceased within 24 hours of their death or within a reasonable time whereby the doctor is assured of the cause of death. If the doctor is unwilling to sign the death notice a funeral service will arrange for a private autopsy to be performed to ascertain the cause of death. The death notice will then be issued by the pathologist at the mortuary where the autopsy was performed.

Obtaining a Death Certificate

Obtaining a death certificate is vital in order to administer a deceased estate. The Births and Deaths Registration Act requires every death to be reported to the Department of Home Affairs. The death notice obtained from the doctor / pathologist needs to be handed in at Home Affairs. Home Affairs will then issue a Death Certificate. This detail will usually be handled for you by your funeral director.

The Executor needs to have several certified and stamped copies of the Death Certificate. Every instruction given and transaction done on behalf of the deceased, e.g. closing accounts, etc., will need to be accompanied by a certified copy of the death certificate.

Registering a death

The Births and Deaths Registration Act requires that a person's death be reported to any one of the following people:

- Specific officers at the Department of Home Affairs
- South African Police Service members, especially in areas where the Department of Home Affairs has no offices
- South African mission, embassy or consulate, if the death occurred abroad
- Funeral undertakers who are appointed and recognised by the law

Form BI-1663 (Notification of death/still-birth) must be completed when reporting a death. The following people have to complete different sections of this form:

- The person reporting the death
- A medical practitioner (where a medical practitioner is not available to complete this form, in rural areas for example, a traditional leader may complete the form)

- A Home Affairs official (where an official from the Department of Home Affairs is not available then a member of the SA Police Services may be approached to complete the form)
- A Death Report (Form BI-1680) will be issued after a death has been registered. This report can be issued only by someone whom the Department of Home Affairs has authorised to do so (this includes traditional leaders, members of the SA Police Services and authorised undertakers).
- These designated people may also issue burial orders. No burial may take place unless authorised by way of a burial order (Form BI-14).

Reporting a death that occurred outside South Africa

Deaths of South African citizens and South African permanent residence permit holders that occur outside South Africa must be reported to the nearest South African embassy or mission abroad. The country in which the death occurs must issue a death certificate and a certified copy of the death certificate must be submitted to the South African embassy or mission when reporting a death.

If the deceased is to be buried in South Africa, the embassy or mission will assist with the paperwork and arrangements with regards to transportation of the body to South Africa.

Issuing of death certificates

The Department of Home Affairs will issue a Death Certificate on receipt of the notification of death (Form BI-1663) and the Death Report (Form BI-1680).

Applications for a Death Certificate must be lodged at any office of the Department of Home Affairs or at any South African embassy, mission or consulate if the death occurs abroad.

An abridged death certificate will be issued free of charge on the same day of registration of death. An unabridged death certificate can be obtained by completing Form BI-132 and paying the required fee.

Erroneously/ Fraudulently registered deaths

If a person has been erroneously or fraudulently recorded as dead in the National Population Register (i.e. they are still alive) this must be reported as soon as possible to the nearest Department of Home Affairs office for urgent investigation and corrective action.

Establish Who the Executor of the Estate is

If the deceased had a will, they may have nominated an individual or a financial institution to perform the function of the executor of the estate.

If no executor is nominated or the nominated executor is unable or refuses to accept the task, or if the person dies intestate, the Master of the High Court will appoint an executor to the estate, this is called an Executor Dative. Those who want to take on the role of the executor should apply to, and must convince the Master of the High Court why they should be appointed.

If you have been nominated as the executor of an estate and you feel intimidated by all the legal processes you are advised to approach a professional, such as a trusted financial advisor, an attorney or an accountant to assist you in administering the estate.

Executor fees are 3.5% excluding VAT of the gross value of the assets in the estate and 6% commission on interest which accrues after the date of the death. If you are the nominated executor it is possible to negotiate this fee with accountants and attorneys. All legal fees, executor fees, Master's fees, etc. will be paid out of the estate.

Basic Estate Admin / Duties of an Executor

The tasks outlined in the summary below fall under the duties of the executor who may be a family member, a trusted friend or a financial institution. Please note: this is a basic guide for straightforward cases. Possible complications and unique situations are not covered here. If your situation is unusual in any way, taking legal advice is recommended.

- The executor first needs to obtain the will and check on its validity, establish who the beneficiaries are and get a rough idea of the assets and liabilities of the estate. Gather items such as bank accounts, title deeds to properties, insurance policy documents and any other documents you can find that pertain to the financial affairs of the deceased.
- If a beneficiary is named in a life assurance policy, the proceeds can be paid directly to beneficiaries without having to go through the estate. This is an ideal vehicle for providing cash to dependents while the estate is being wound up.
- An inventory of assets and property is an official form that can be obtained from the office of the Master of the High Court or from legal stationers. The inventory should indicate whether total assets exceed R250 000. The surviving spouse or closest living blood relative residing in the district where the deceased lived must sign the inventory. If the assets total less than R250 000, the Master can shorten the procedure and allow the estate to be wound up in an informal, cost saving manner. The procedure in this instance is much simpler, in that the executor doesn't have to advertise for creditors and doesn't have to draw and submit a Liquidation and Distribution Account.
- An 'Acceptance of Trust' form is available at the Master's office and must be completed and signed in duplicate. The Master's office will forward a copy to the South African Revenue Service (SARS).

In most cases the will in question would probably have exempted the executor from lodging security. Security is generally not required in cases where the executor is a parent, child or surviving spouse of the deceased. Where the Master requires security to ensure the honesty of the executor it is usually a bond which can be obtained from an insurance company. The amount of security

required is at the discretion of the Master, who generally insists on security covering the value of the assets disclosed in the inventory.

- The executor needs to apply to the Master of the High Court to be formally appointed and granted the necessary powers to administer the estate. This can take up to six weeks, depending on which of the nine Masters' Offices in South Africa is involved. It is best to go in the morning, and take the following documents with you:
- The original will, (it is advisable to get a receipt when you hand it over).
- The death notice
- An inventory
- A certified copy of the death certificate
- An acceptance of trust form, in duplicate.
- A next of kin affidavit
- An affidavit that the estate has not been reported to another Master's office. (required by some)
- A list of creditors.

Different Masters Offices have slightly different requirements, so it is advisable to inquire as to exactly what they require. Aside from the will, all of the above documents are available from the Masters offices.

- The Master of the High Court will grant 'Letters of Executorship' to those persons who have been authorised to deal with the estate and who have agreed to accept the job of winding up the estate. Copies of the 'Letters of Executorship' will be needed by banks and insurance companies that may hold assets pertaining to the deceased as proof that the assets they hold will be passed on to the properly authorised representative of the deceased's estate.

What the Executor must do once Appointed

The following points outline what the executor of a will does once they are appointed by the Masters Offices:

- Immediately after letters of executorship have been granted, the executor shall take into his/her custody or under his/her control all the property, books and documents in the estate. These should not be in the possession of any other person who claims to be entitled to retain it under any contract, right of intention or attachment. s26(1)
- Advertise the estate so that any creditors can become aware of the need to register their claims against the estate. Advertisements must be placed in the Government Gazette and a local newspaper where the deceased resided in the 12 months preceding death. Creditors have 30 days from the date of publication of the advertisement to lodge any claims against the estate.
- Take a look at the deceased's bank account or post, in order to find what monthly payments are being made. You will need to pay up and close these accounts, e.g. credit cards, petrol card, telephone accounts, DSTV, gym membership, clothing accounts, etc.
- Close the deceased's bank accounts and open up a cheque/current account called "estate late" followed by the deceased's name as soon as more than R100 has been received. All investments will be paid into this account and all creditors and beneficiaries will be paid from this account.
- Assets like the deceased's house may be sold, depending on what the beneficiaries want. The proceeds from the sale will go into the 'Estate Account'. This will later be paid out to beneficiaries from the 'Estate Account'.

- Give notice on shares, investments, annuities, policies, etc., that moneys owing to the deceased are to be paid into the 'Estate Account'. If beneficiaries have been nominated in policies, they will bypass the estate and be transferred directly to the nominated beneficiary.
- The executor then needs to prepare the 'Liquidation and Distribution Account' (L&D account). This can take from six weeks to six months or even longer depending on the degree of difficulty of the estate. The L&D account includes all the assets and liabilities in the estate at the date of death. It also includes the income and expenditure incurred by the estate since the date of death. The net value of the estate is then the inheritance due to the beneficiaries. When a person dies it can trigger a capital gains tax event depending on the size of the estate, which requires expert tax knowledge to do the calculation. The executor then submits the L&D account together with supporting documents to the Master of the High Court. If the Master has queries, the executor is to respond within a certain time period. The executor submits the deceased's final tax return to SARS at the same time.
- Once the Master of the High Court has given his approval, the account must be advertised in the Government Gazette and in a local newspaper and made available for inspection for 21 days at the Master's Office and at the Magistrates office in the district where the deceased lived. The heirs should have the opportunity to review the account before it is finally submitted to the master. If no objections are lodged against the liquidation & distribution account, the Master will confirm that the executor may distribute the assets to the beneficiaries.
- Before distributing the estate the executor must obtain a release from SARS. This will only be granted by SARS once they are satisfied that all outstanding taxes have been paid.
- Creditors must be paid before the residue of the estate can be distributed among heirs.
- After the account has been advertised, the executor prepares a cash statement and distributes the assets to heirs. It takes an average of eight months to three years to finalise an estate. The executor will also arrange for transfer of fixed property, e.g. a house that was in the deceased's name into the name of the person who inherited it. There will be no transfer duty, but the estate will pay conveyancing costs regardless of who inherits the property.
- Once the executor has provided the Master of the High Court with proof that the creditors have been paid and that the assets have been distributed, the Master signs off the estate and the executor's task is complete.

Requirements to Open an Estate late Bank account

- Death Certificate
- ID of Deceased
- Letter of Executorship/Authority
- ID of executor
- Proof of Banking/EL late account
- Power of Attorney and ID of appointed individual where applicable