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CAN AN EXECUTOR SELL PROPERTY ON BEHALF OF A DECEASED MEMBER OF A CLOSE CORPORATION?

When a member of a close corporation passes away, and his interest in a Close Corporation (CC) devolves to one or more of his heirs in terms of his/her will, the transfer of the member's interest is only effected in the office of the CIPC and no formal transfer in the Deeds Office is necessary.

If the CC owns immovable property as defined in the Deeds Registries Act, the CC can sell said property, and the executor of the deceased member acts as the representative of the deceased member.

Accordingly, in the case of a sole member, the executor would also be entitled to cause the Close Corporation to do any act which the deceased could have done had the deceased been alive and that would include the power to cause the Close Corporation to sell its immovable property.

In Boerboonfontein BK v La Grange NO and Another 2011 (1) SA 58 (WCC), the court held that the executor is a "representative" as per the Close Corporations Act. This means that from the date of appointment, the executor can represent the deceased member as if he were the member himself, including acting in the affairs of the corporation.

Therefore, the Master need not consent to the sale of immovable property.