19 November 2023

SALE OF PROPERTY FROM A DECEASED ESTATE: FREQUENTLY ASKED QUESTIONS

When property forming part of a deceased estate is sold, we are often asked the following:

1. Who signs the agreement of sale? The executor must sign the sale agreement, but he/she can only sign the sale agreement once the Letter of Executorship is issued by the Master of the High Court. Agreements signed by the executor prior to the issue of the Letters of Executorship are invalid.

2. Can one of the beneficiaries not sign the agreement in the interim?

No, the beneficiary has no authority to sign the sale agreement on behalf of the deceased estate.

If the beneficiary (the person who is entitled to receive ownership of the property in terms of the deceased's will) signs the agreement of sale, the transfer to the beneficiary must first take place and thereafter the transfer to the purchaser. This is a timeous process, as the deceased estate must first be finalised, and the Liquidation and Distribution Account has to lay open for inspection without any objections.

3. Will the transfer register in the same timeframe as a regular transfer of property?

No, it will take longer. In our experience you can add at least 2 months to the regular turnaround time. The reason for this is that the Master of the High Court must endorse the power of attorney to pass transfer after it has been signed by the executor (section 42(2) endorsement). The endorsement process will cause a delay in the registration of the property as the wheels in the Master's office turn slowly.