

What are the Executor's duties, when it comes to dealing with fixed property, in a deceased Estate

1. Taking control of assets

Section 26 of the Administration of Estates Act states that it is the executor's duty to take control of the estate assets, naturally, taking physical control of all the estates assets is not possible. Therefore, the conventional practice is to leave the assets in the hands of a spouse, relative or responsible person who is known to the executor or family. In the case of fixed property one could argue that because it is immovable and, transfer of ownership is not possible without the executor consent that, the executor doesn't need to take control. Sadly, that couldn't be further from reality. In the event of a problem arising the court will want to know that the executor took all reasonable steps possible to take control of the property.

2. Insurance

The executor needs to preserve the estate assets until delivering same to the rightful heir. Whilst there is no legal obligation, imposed by statute, on the executor to insure the fixed property a prudent executor will insure the estate assets. BEXs, takes cognisance of the lack of legal obligation but finds it irresponsible not to insure the estate assets.

Insurance Value versus Market Value

This prickly subject has been the bane of many people's lives. Below is an extract that may prove helpful.

"The term **replacement cost** or **replacement value** refers to the amount that an entity would have to pay to replace an asset at the present time, according to its current worth.

In the [insurance](#) industry, "replacement cost" or "replacement cost value" is one of several method of determining the value of an insured item. Replacement cost is the actual cost to replace an item or structure at its pre-loss condition.

This may not be the "market value" of the item, and is typically distinguished from the "actual cash value" payment which includes a deduction for depreciation. For [insurance policies](#) for [property insurance](#), a contractual stipulation that the lost asset must be actually repaired or replaced before the replacement cost can be paid is common. This prevents overinsurance, which contributes to [arson](#) and [insurance fraud](#).^[1] Replacement cost policies emerged in the mid-20th century; prior to that concern about overinsurance restricted their availability.^[1] https://en.wikipedia.org/wiki/Replacement_value"

3. Property Maintenance

Does preservation of estate assets extend to maintenance of estate assets? This question needs to be considered in light of the time it will take to administer the estate. BEXs's view is that before any maintenance is carried out a proper inspection of the property needs to be carried out. If the maintenance issue poses the following threats:-

- Endangering the life of the occupants
- The value of the property will be diminished should, the property not be maintained

BEXs after consultation with all stakeholders will consider the proposed maintenance.

4. Valuing the property

Given that the executor's fee is based on the gross value of estate assets, BEXs, where possible in terms of the Master of the High Court's directive, prefers to utilise estate agent or municipal valuations. In certain circumstances, for example and not limited to where the heirs to the property are minors, when the estate is dutiable or where there is a dispute or a potential dispute a more formal sworn appraisal of the property will be required.

5. Co-owned property

Co-owned properties do not normally present a problem in that the executor will deal with the portion belonging to the deceased. The entire property will be valued for estate purposes with the executor only reflecting that portion belonging to the estate.

6. Utility expenses

Rates and taxes payable on the property will be paid by the estate as an ongoing expense until it is transferred to the rightful heir. However, utility expenses such as electricity and water should ideally be paid by the party consuming the utilities. In the normal course of business and before transfer of the property is effected an executor will be required to obtain a rates clearance certificate from the municipality. It needs to be remembered that rates and taxes are due annually, but one is allowed to pay monthly. It is usual for three months rates and any arrear rates to be settled. The issue of arrear rates is important as this has the potential to severely impact the liquidity of the estate should there be a substantial arrears.

7. Vacant property or land

As a first call the executor needs to be mindful of the possibility of land invasions and should take all reasonable steps to ensure the property is occupied by a stakeholder or a reliable party. Secondly the executor will need to advise the insurance company that the property is vacant, as failure to do so timeously could very well see any claim rejected. Experience has taught us that vacant property could also be the target of thieves wanting to steal contents and strip the house of valuable resaleable commodities such as copper water pipes, window frames, doors and, electrical fittings. BEXs will, on the issue of vacant property, meet with all stakeholders to discuss the options available.

Whether there is a need to employ 24 hour security, have a family member occupy the property etc.

8. Bonded properties

It is imperative for the executor to advise the bondholder of the death and ensure that bond payments are kept up to date. Failure to do so could see the bondholder proceeding to issue summons against the estate for payment of the arrears and ultimately petition the court to allow for the property to be sold in execution.

9. Properties subject to a lease agreement

The executor, in terms of common law, does not have the authority to enter into lease agreements and failing this power being conferred upon the executor in the will the entering of a lease agreement after death will need to be sanctioned by court. Having said this, if there is a lease agreement in place as at the date of death then this will continue to run its course with the executor ensuring that the obligations in terms of the agreement are adhered to.

10. Investment properties - not subject to a lease agreement

Should the investment property not be subject to a valid lease agreement as at the date of death the executor could permit the beneficiary to whom the property will devolve to enter into a lease agreement. This can happen even though the property has not yet been formally transferred. Should the beneficiary elect to follow this route, he/she must be aware that should the tenant default for whatever reason, the legal costs will be for their sole account.

Should a beneficiary be unwilling or unable to conclude a lease agreement in his/her personal capacity the Executor will need to approach the courts for guidance.

Although there may be circumstances in which the Executor may be justified in entering into a lease agreement of estate property, for example, where there is a delay in the administration process of the estate or, for some an acceptable reason the property cannot be transferred to the heirs and leasing of the property would benefit the estate and heirs, it would be prudent for the Executor to approach the court for permission to enter into such contract. Naturally the economic benefits versus court costs would need to be considered.