

## THE SALE AND TRANSFER OF IMMOVABLE PROPERTY DIRECTLY FROM A DECEASED ESTATE TO A PURCHASER

You have found your dream home and wish to submit an Offer to Purchase when the estate agent informs you that the property is registered in the name of a deceased person. What are the implications?

In such cases the property can either be sold by the heir in the estate who has inherited the property or by the Executor directly from the estate of the deceased. This article deals with the latter situation.

It is generally known that in South Africa the Alienation of Land Act No. 68 of 1981 provides that all sales of immovable property must be recorded in writing and signed by the Seller and Purchaser or their duly authorised representatives acting with written authority.

The only person who may deal with the assets of a deceased person is the Executor whose authority to do so commences from the date on which the Master of the High Court issues the Letters of Executorship.

It therefore follows that only the duly appointed Executor of the estate of a deceased person can sign an Offer to Purchase for the sale of immovable property registered in the name of such deceased.

The estate agent will thus submit the Offer to Purchase signed by the purchaser to the Executor for signature. It is imperative that the Letters of Executorship must have been issued before the date on which the Executor signs the Offer to Purchase. It is also important that the estate agent includes a condition in the Offer to Purchase stipulating that the sale is subject to the consent of the Master of the High Court i.e., that the Master has no objection to the transfer of the property.

Once signed, the Offer to Purchase will be forwarded to the transferring attorneys/Conveyancers who will be required to obtain the consent of the Master of the High Court to the sale for the matter to proceed.

Such consent is dealt with by Section 42(2) of the Administration of Estates Act No. 66 of 1965. In order for the Master to consent to such application the following supporting documents will need to be submitted to the Master, namely: -

- 1) A certified copy of the Offer to Purchase
- 2) The original Power of Attorney to Pass Transfer signed by the Executor
- 3) Written confirmation by the heir(s) to the sale.



**miltons**  
**matsemela**

*The Conveyancers*

Provided all the documents are in order, and the Master is satisfied that the requirements have been met, consent to the sale will be granted by the Master by way of an endorsement on the Power of Attorney to Pass Transfer.

The Power of Attorney to pass Transfer will then be lodged at the Deeds Office together with the other documents required to effect transfer of the property to the purchaser i.e., the transfer duty receipt, rates clearance certificate, the deceased's title deed and the new deed in favour of the purchaser which will have been prepared by the Conveyancer.

In the event that an Offer to Purchase is concluded and the seller then dies before registration of transfer of the property into the purchaser's name has been effected at the Deeds Office, the sale may still proceed to registration. However, as the Power of Attorney to Pass Transfer signed by the seller will have lapsed on his/her death and no longer be valid, the duly appointed Executor will be required to sign a fresh Power of Attorney to Pass Transfer and the Master's consent to the sale, as discussed above, will need to be obtained.