IMPAHLA YABANTU ABASWELEKILEYO

OKO UMELE UKWAZI

LAW SOCIETY OF SOUTH AFRICA

BLA

CAPE LAW SOCIETY

National Association of Democratic Lawyers

Equality and Justice

THE LAW SOCIETY OF THE NORTHERN PROVINCES

IGQWETHA LAKHO – UMCEBISI WAKHO ONOKUMTHEMBA

Le ncwadana iza kukwazisa ngezona zinto zibalaseleyo ngokwabiwa kwemipahla yabantu abaswelekileyo kuquka nezinto ezingokwasemthethweni ezibandakanyekileyo.

Kucetyiswa ukuba uye egqwetheni xa ubhala ngendlela elifanele labiwe ngayo ilifa ibe kunconyelwa nokuba igqwetha lakho linyulwe kubhalwe igama lalo kwilifa lakho lize libe nembopheleleko yempahla yakho.

Igqwetha lakho

- liya kukucebisa nakweyiphi na ingxaki esenokuvela;
- liya kuqubisana nazo naziphi na izinto ezingokwasemthethweni ezisenokuvela;
- linolwazi olufunekayo nobuchule ukuqinisekisa ukuba ilifa lakho ulibhala ngendlela ofuna ngayo, yaye
- liya kuqinisekisa ukuba ilifa lakho lisayiniwe laza lagximfizwa, lisemthethweni yaye livumelana namazwi akwiWills Act.

Kuza kwenzeka ntoni kwimpahla nakwizinto endinazo emva kokuba ndiswelekile?

Eyona ndlela yokuqiniseka ukuba emva kokuba uswelekile izinto onazo zabiwa kakuhle ngokuvumelana neminqweno yakho nangokwendlela oyalele ngayo, kukubhala phantsi ukuba zifanele zinikwe bani. Oku kukunika ithuba lokuba ukhethe Umntu oza kubhalisa igama lakhe phantsi oza kwaba izinto onazo. Ukuba usweleka ungakhange ubhale phantsi indlela ilifa elifanele labiwe ngayo, intsapho yakho iza kuba sengxakini yaye kuza kuba nzima kuyo.

Xa umntu esweleka engakhange abhale phantsi indlela elifanele labiwe ngayo ilifa, impahla iya kudluliselwa ngokwendlela efuna ngayo i-Intestate Succession Act.

Kwimeko ezinjalo, impahla iya kudluliselwa kwiqabane lomtshato eliseleyo okanye kwiqabane lomtshato nakubantwana balowo uswelekileyo nakubazukulwana (xa kuqale kwasweleka umntwana, abantwana abasaphilayo bomntu oswelekileyo). Ukuba akukho bantwana, uya kuwela kubazali yaye emva kokuba bona beswelekile, liya kufunyanwa ngabantakwabo nodadewabo.

Iqale yabiwe njani impahla yomntu oswelekileyo?

Xa umntu esweleka eshiya izinto anazo okanye ebhale phantsi indlela elimele labiwe ngayo ilifa, iqabane lomtshato eliseleyo – okanye ukuba akukho qabane lisalayo isalamane esikufutshane esihlala kwisithili ekuswelekwe kuso – lifanele zingaphelanga iintsuku ezili-14 ukususela kusuku ekuswelekwe ngalo adlulise ingxelo ngaloo mpahla ngendlela emiselweyo kuMlawuli Wenkundla Ephakamileyo.

Emva kokuba kudluliselwe ingxelo ngempahla, uMlawuli unyula Umntu ekubhalwe igama lakhe phantsi noza kwaba ilifa ngokubhala Ileta Yokwabiwa Kwezinto (ukuba izinto zomntu oswelekileyo zixabisa ngaphezu kwee-R250 000) okanye iLeta Egunyazisayo (ukuba izinto zomntu oswelekileyo zixabisa ngaphantsi kwee-R250 000).

Igqwetha lakho linobuchule lokukunceda ulungiselele amaxwebhu engxelo efunekayo kwanokukho xa kusabiwa impahla.

Ngubani onokunyulwa aze abhalwe phantsi njengonokwaba ilifa?

Kucetyiswa ukuba kufanele kunyulwe igqwetha lakho Njengomntu oza kubhalwa phantsi ukuze abe ilifa kuba lona

- liqhelene nemiyalelo ekwilifa lakho,
- liyazazi izinto onazo ukuba ziphi,
- linezinto elizaziyo ngemicimbi yentsapho yakho,
- linelungelo lokudlulisela nayiphi na impahla ngendlela ekulindeleke ngayo, ibe
- linolwazi olukhethekileyo olungokwasemthethweni ngendlela ezinokwabiwa ngayo izinto.

Noko ke, ilungu lentsapho negqwetha lakho banokonyulwa aze amagama abo abhalwe phantsi Njengabaza kwaba ilifa.

Yintoni imbopheleleko yoMntu ekubhalwe phantsi igama lakhe njengoza kwaba ilifa?

Loo mntu kufuneka

- aqokelele izinto anazo umntu oswelekileyo,
- ahlawule amatyala akhe,
- ahlawule izinto ezisalayo, aze
- adlulisele imali esalayo kwiindalifa ngokuvumelana neminqweno yomntu oswelekileyo okanye ngokuvumelana namalungiselelo elntestate Succession Act xa umntu oswelekileyo esweleke engayibhalanga phantsi indlela elifanele labiwe ngayo ilifa.

IAdministration of Estates Act, kwiimeko ezithile ezikhethekileyo ivumela iqabane eliseleyo ukuba liyithathe impahla yomntu oswelekileyo okanye inxalenye yempahla ukuba liza kuyigcina kakuhle. Iindlalifa zinelungelo lokungena Kwisivumelwano Esitsha Sokudluliselwa Kwezinto yaye eso sivumelwano simele sidluliselwe kuMlawuli oza kwamkela eso sivumelwano. Kudla ngokufuneka icebo elikhethekileyo legqwetha kwiimeko ezinjalo.

Yintoni enye into umntu afanele ayazi ukuze abe nentembelo kakhulu kwindlela owabiwa ngayo impahla?

Umntu obhalwe phantsi ukuze abe ilifa, mhlawumbi ngaphambi kokuba le ngxelo ihlolwe ngemvume yoMlawuli unokukhupha imali eyaneleyo nempahla ethile njengombono yaloo mntu ubhalwe phantsi njengomabi ukuze intsapho yomntu oswelekileyo ilale ityile.

Ukongezelela, apho ilifa liyimali eyaneleyo yokuhlawula amatyala Umntu obhalwe phantsi ukuze abe ilifa unokuqhubeka namalungiselelo aye kwiindlalifa bathethe ngelifa nangezinto zomntu oswelekileyo. Le yimeko ekhethekileyo apho umntu eziwela kuye izinto zomntu oswelekileyo iba liqabane lomtshato eliseleyo okanye apho kusenokubakho ukulibaziseka kwezinto.

Yintoni eyenzekayo kwiingxelo zempahla?

Ngokukhawuleza nje emva kokuba kunikelwe ingxelo ngempahla, umntu obhalwe phantsi ukuze abe ilifa ubala ixabiso lezinto nelamatyala ukususela ngemini umntu asweleka ngayo.

Emva kokuba kufunyenwe Ileta Yokwabiwa Kwezinto Umntu obhalwe phantsi ukuze abe ilifa umele apapashe isaziso kwiGovernment Gazette nakwamanye amaphephandaba akwisithili lo uswelekileyo ebehlala kuso kubizwa bonke abantu abayibangayo impahla baze bakudlulisele oko Kumntu obhalwe phantsi ukuze abe ilifa kungaphelanga ixesha elithile elimisiweyo, ngokuqhelekileyo elidla ngokuba ziintsuku ezingama-30 ukususela kusuku lokugqibela ekupapashwe ngalo.

Emva koko, kodwa zingaphelanga iinyanga ezi-6 emva kokuba Ileta Yokwabiwa Kwezinto ifunyenwe, okanye ngelinye ixesha njengokuba uMlawuli esenokuvuma, Umntu obhalwe phantsi ukuze abe ilifa unembopheleleko yokudlulisela kuMlawuli ingxelo yokuba kubhangiswe oko nokwabiwa kwempahla.

UMlawuli uya kuyihlolisisa le ngxelo aze ukuba ifanelekile, anike igunya Umntu obhalwe phantsi ukuze abe ilifa abhengeze le ngxelo ukuze ihlolwe. Le ngxelo yoMntu obhalwe phantsi ukuze abe ilifa imele ihlale ivuliwe kwiOfisi yoMlawuli – ibe ukuba lo mntu uswelekileyo ibingumntu owaziwayo kuso nasiphi na isithili, ikopi yale ngxelo ifanele ihlale ivuliwe kwiofisi kaMantyi – kungekhona ngaphantsi kweentsuku ezingama-21, ukuze ihlolwe ngomnye umntu onomdla kule mpahla. Umntu obhalwe phantsi ukuze abe ilifa umele apapashe isaziso kwiGovernment Gazette nakwamanye amaphephandaba akwisithili aziwa kuso lo mntu uswelekileyo, esi saziso sichaze ixesha nendawo eza kuhlolwa kuyo le ngxelo.

Emva kokuba ixesha lokuhlola lidlulile, uMlawuli uya kwazisa Umntu obhalwe phantsi ukuze abe ilifa ukuba ingxelo ilindelwe ukuhlolwa kungekho kuxambulisana. Umntu obhalwe phantsi ukuze abe ilifa unokuhlawula abantu ababolekisa ngemali aze abe impahla kwiindlalifa ngokuvumelana nale ngxelo. Umntu obhalwe phantsi ukuze abe ilifa uya kudlulisela kuMlawuli iirisithi zabantu ababolekisa ngemali nakwiindlalifa.

Ukuba Umntu obhalwe phantsi ukuze abe ilifa unemali eziiR1 000 okanye ngaphezulu, uya kuvula iakhawunti yebhanki. Noko ke, oku kuvumeleka apho igqwetha liza kusebenzisa iakhawunti layo ukuze lifake iimali zalowo uswelekileyo.

IRhafu Yexabiso Elongeziweyo, iRhafu Yeenzuzo Zenkunzi neRhafu Yengeniso Umntu obhalwe phantsi ukuze abe, ilifa uya kuqiniseka enoba impahla unokuhlawula irhafu yengeniso (VAT).

Ukuba umntu oswelekileyo ubhaliswe njengomntu obethengisa Umntu obhalwe phantsi ukuze abe ilifa unokubhalisa impahla ukuze kutsalwe iVAT.

Kuza kutsalwa iVAT. Umntu obhalwe phantsi ukuze abe ilifa kusenokufuneka ahlawule irhafu yokukhutshwa kwzo zonke izinto zomntu oswelekileyo kwiSouth African Revenue Service. Umntu obhalwe phantsi ukuze abe ilifa usenokukwazi ukuthengisa ezi zinto komnye umntu othengisayo ohlawula kuze kungabikho nto kwiakhawunti.

I-Income Tax Act iyakwenza oko xa umntu esweleka, loo mntu zisenokuthathwa zonke izinto zakhe ngenxa yemali efunyenweyo xa bekuthengiswa ezo zinto okanye kongezeleleke ezinye izinto ezilingana nezo ngenxa yexabiso lezo zinto yaye impahla yalo mntu uswelekileyo isenokungaliboni ixabiso lezo zinto. Lo ngumthetho oqhelekileyo, kodwa izinto zenziwa ngendlela eyahlukileyo kwabanye abantu. Ngokomzekelo, izinto eziwele kwiqabane lomtshato eliseleyo emva kokuba kuqale kwafa elinye kuwo ziyafumaneka.

Kwimpahla ezininzi irhafu yengeniso iyahlawulwa. Oku kusenokuchaphazela kubungakanani bemali eza kufunyanwa ziindlalifa.

Umsebenzi wempahla uhlawulwa nini?

Lo msebenzi uhlawulwa imali esisigxina engangama-20 ekhulwini. Ubalwa ngokuthatyathwa kwezigidi ezizi-R3.5 'kwixabiso lemali esalayo'. Ixabiso lazo zonke izakhiwo liqukiwe kwimpahla yomntu oswelekileyo yaye liwela kwiqabane lomtshato eliseleyo, ngokuvumelana nelifa lomntu oswelekileyo okanye ngokuvumelana nomthetho lisenokutsalwa ukusa kwinqanaba lokuba liqukwe kwimpahla.

Ngaba indlalifa inokuzikhethela?

Nawuphi na umntu oza kufumana kweli lifa unelungelo lokulala nelifa.

Ukhetho lubakho xa amaqabane omtshato eye alinika abantu abaninzi impahla zabo yaye iqabane lomtshato eliseleyo alilifuni ilifa okanye lingasifuni isabelo salo linandiphe nje inzuzo zelifa. Olu khetho lwenziwa liqabane lomtshato eliseleyo kuthiwa 'yi-adiation'.

Xa umntu obefanele ukuba ufumana ilifa engalifuni, elo lifa liya kwabiwa ngokuvumelana nomnqweno womntu oswelekileyo okanye ngokuvumelana nendlela umthetho ofuna ngayo.

LAW SOCIETY OF SOUTH AFRICA

Tel: (+27) 12 366 8800
Fax: (+27) 12 362 0969
www.LSSA.org.za

P O Box 36626
Menlo Park 0102
Docex 82, Pretoria
304 Brooks Street
Menlo Park, Pretoria 0081

© Law Society of South Africa 2016. Picture source: © iStock
This brochure is for information only and cannot be construed as legal advice.