



DAVEY'S
Locker



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Life policies now protected from creditors

But still dutiable

by Tony Davey

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Protection from creditors

In *Pieterse v Shrosbree and Others*, *Shrosbree v Love and Others* (146/02, 435/03) [2004] ZASCA 129; [2006] 3 All SA 343 (SCA) (23 September 2004), the SCA held that a life policy (which, courtesy of the Long Term Insurance Act, includes an endowment investment policy) with a beneficiary nomination, does not fall into a deceased estate. Thus the policy proceeds cannot be attached by creditors.

This rationale emanates from the Roman concept of a *stipulatio alteri*, being a contractual duty resting upon on the insurer to pay the proceeds to a third party, namely, the beneficiary (should the beneficiary accept).

In 2014 s 63 of the act was amended so as to provide protection

for all life policies, including those with no beneficiary nominations. Although the proceeds of such policies are paid directly to the deceased estate of the insured, they are protected from attachment by creditors. There are qualifying criteria to be satisfied, the main one being that the policy must have been in existence for at least three years.

Estate duty myths

Myth 1: Since the policy proceeds do not form part of the estate for attachment, they are free from estate duty.

Section 3(3)(a) of the Estate Duty Act is not so generous, in that it includes as 'deemed property' a policy on the life of the deceased, whether or not there is a beneficiary nomination. (If a surviving spouse is the beneficiary, the s 4(q) deduction

will effectively exempt the proceeds.)

Myth 2: If ownership of the policy (and hence entitlement to the proceeds) is held by a third party (such as a trust) instead of by the deceased, the policy escapes estate duty.

Not so, because the test under s 3(3)(a) is not ownership but the life assured. Hence the proceeds are deemed property upon the death of the life assured.

Conclusion

You need not render the policy proceeds unto creditors but must still render them unto Caesar.