

### **The Roll of the Liquidator or Receiver after divorce:**

In many divorce matters, the only unresolved matter delaying settlement is in respect of determining the value of the assets of the parties and how to divide these assets.

This issue would often arise if the parties are married in community of property or out of community of property with the accrual system.

In the above circumstances the parties are regarded as having a joint estate and at the time of divorce the assets within the joint estate must be divided.

In terms of the Divorce Act No. 70 of 1979, parties are encouraged to divide their estate by agreement insofar as possible to enable the court to make the settlement agreement an order of court when the divorce order is granted.

In the event that parties are unable to reach settlement on the asset division only, a judge would make a ruling in respect of the division of the assets upon granting the final divorce order. Either party can also approach the court and request permission to have a Liquidator or Receiver appointed.

The Liquidator or Receiver appointed is usually an independent person, such as an attorney, chartered accountant or an actuary.

In the event that the parties cannot reach an agreement on such an appointment, the Court has the discretion to decide on the appointment, which is usually an attorney who has acted as a Liquidator or Receiver previously.

This brings us to the roll of the Liquidator or Receiver to be appointed after a divorce.

When parties are amidst divorce proceedings there are many issues that they have to deal with and resolve. Besides the emotional issues relating to minor children, such as maintenance and the care and contact, another critical aspect is the division of the assets between the divorcing parties.

The Liquidator or Receiver has several functions, which include:

- To demand that both parties provide the Receiver or Liquidator with an accurate and proper account of their assets;

- The right to interrogate the parties regarding the assets and liabilities of the estate, where necessary;
- To value all relevant movable and immovable assets of the parties;
- Determining the liabilities of the estate;
- To be allowed access to any premises related to the estate to evaluate the assets.

The Liquidator or Receiver, in terms of the court order, has sufficient powers to enable them to attend to the functions as described above.

These powers allow the Liquidator or Receiver to:

- (1) Evaluate the estate;
- (2) Calculate the accrual, if applicable;
- (3) Approach any financial institutions and obtain bank statements; and
- (4) Realise and sell any immovable property

in order to settle the division of the estate.

The cost and related expenses of the Liquidator or Receiver will be paid by the joint estate, i.e. both parties in equal shares.

Contact us to schedule a consultation to discuss this process, the risks and benefits and costs involved before making this decision.