



LEGAL NEWSLETTER

NEWSLETTER
10/10/2011

USUFRUCT

WHAT IS A USUFRUCT?

Usufruct represents the right to utilize the use (fruit) of an asset which belongs to another person or legal person.

RIGHTS AND OBLIGATIONS OF A USUFRUCTUARY

- can utilize the property personally.
- can rent out the asset
- must maintain the asset
- must pay the water and electricity costs on fixed property.

RIGHTS AND OBLIGATIONS OF THE BARE DOMANIUM HOLDER

Can expect that the Usufructuary maintain the asset

Is responsible for short term insurance, but may arrange with the usufructuary to pay the insurance premiums.

HOW IS A USUFRUCT CALCULATED?

EXAMPLE

Man died and bequeathed his fixed property to his son (Aged 31 years) subject to the usufruct of his wife (Aged 54 years)

Calculation of value of usufruct at creation of usufruct:

Value of fixed property at creation of the usufruct	R 800 000.00
Age wife at next birthday	55 years
Factor (Female)	7.69355
Value of usufruct thus:	
$800\ 000.00 \times 12\% \times 7.69355$ (Section 4q rebate)	R 738 580.80

Value of bare dominium (Value of fixed property less value of usufruct)

R 800 000.00 - R738 580.80 = R61 419.20

WIFE DIED 9 YEARS LATER AT THE AGE OF 63 YEARS.

Son is now 40 years old.

Calculate the value of the usufruct which devolves upon the son for estate duty purposes:

The value of the property at present:	R 1 000 000.00
Age of son next birthday =	41 years
Factor (Male)	8.01067
Value of usufruct which passes over to son:	
1 000 000.00 × 12% × 8.01067= (Possible duitable amount)	<u>R 961 280.40</u>

Calculation of the value of the usufruct in terms of the second saving clause of Section 5(1)(b) of the Estate Duty Act:

Value of the property at termination of the usufruct, less value of bare dominium at creation of the usufruct, thus:

R 1 000 000.00 less R 61 419.00 = (Possible duitable amount) R 938 580.80

The lower value is accepted, namely

R 938 580.80

EXAMPLE: ESTATE DUTY ADDENDUM

Total assets as per Liquidation account	R 4 000 000.00
Less: Total liabilities	<u>R 160 000.00</u>
	R 3 840 000.00
Add: Value of usufruct as calculated above in terms of Section (Art 5(1)(b) of the Estate Duty Act	<u>R 938 580.80</u>
Net value of the estate	R 4 778 580.80
Less: Section 4A rebate	<u>R 3 500 000.00</u>
Net du-able estate	<u>R 1 278 580.80</u>
Estate Duty payable: R 1 278 580.80 × 20% =	<u>R 255 716.16</u>

ESTATE DUTY IS PAYABLE AS FOLLOWS:**The bare dominium holder:**

$$\frac{938\,580.80}{4\,778\,580.80} \times \frac{255\,716.16}{1} = \text{R } 50\,226.27$$

The estate:

$$\frac{3\,840\,000.00}{4\,778\,580.80} \times \frac{255\,716.16}{1} = \text{R } 205\,489.89$$

R 255 716-16**Important notice:**

On the 1st of August 2011 Jaco Burmeister and Nel-Marie Lubbe started an Attorneys practice known as Burmeister & Lubbe (Attorneys, Notaries and Conveyancers), Montana Forum, P O Box 906453, Magalieskruin 0150, Tel: 012 548 6188 Fax: 012 548 4130, specializing in the transfer of fixed properties, registration of bonds and contracts.

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For any questions regarding a subject in the fiduciary environment, please contact any of the aforementioned persons.

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