



Republic of Namibia  
Annotated Statutes

---

## Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941

(OG 920)

came into force on date of publication: 15 October 1941;  
NO LONGER IN FORCE, BUT STILL RELEVANT

This Proclamation previously regulated the administration of estates in Rehoboth. The Estates and Succession Amendment Act 15 of 2005 (GG 3566) repeals the Proclamation, but provides (1) that *the rules of intestate succession* that applied by virtue of Schedule 2 of the Proclamation before the date of its repeal continue to be “of force” in respect of the persons to whom they applied prior to the repeal and (2) that the repeal of the Proclamation does not affect the validity of a will which would have been valid in terms of the Proclamation had it not been repealed:

**“Repeal of Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 (Proclamation No. 36 of 1941)**

2. (1) The Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 is repealed.

(2) Despite the repeal of the Proclamation referred to in subsection (1), the rules of intestate succession that applied by virtue of Schedule 2 of that Proclamation before the date of its repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said Proclamation not been repealed.

(3) The repeal of the Proclamation referred to in subsection (1) does not affect the validity of a will which but for such repeal would be valid.”

Therefore, Schedule 2 of the repealed Act continues to be of relevance. Selected sections of the repealed Proclamation are reproduced here where they could have a bearing on the interpretation or application of the rules of intestate inheritance contained in Schedule 2 or the validity of a will previously covered by the Proclamation.

Section 3 of the Estates and Succession Amendment Act 15 of 2005 (GG 3566) also provides the following transitional provision:

**“Application of Administration of Estates Act, 1965 and transitional provisions**

3. (1) Subject to subsection (2), the administration of the liquidation and distribution of all deceased estates, whether testate or intestate, of persons who died on or after the date of commencement of this Act, are governed by the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(2) The estate of a person who died before the date of commencement of this Act which was administered, immediately before that date, in terms of the Native Administration Proclamation, 1928 or the Administration of Estates (Rehoboth Gebiet) Proclamation, 1941, must be liquidated and distributed and any matter relating to the liquidation and distribution of such estate must be dealt with as if this Act had not been passed.

(3) Despite subsection (2), if, in the case of an estate referred to in that subsection the liquidation and distribution of which immediately before the commencement of this Act was being administered in terms of the Native Administration Proclamation, 1928 or the Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 and which has not been completed by the date of such commencement, any person having an interest in the estate in writing requests the Master of the High Court to administer the estate in question in terms of the Administration of Estates Act, 1965, the Master must –

**Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941**

- (a) in writing request the magistrate in charge of the supervision of the estate in question to transfer such estate to the Master's supervision and control; and
- (b) upon receipt of the relevant documents and information pertaining to the estate in question exercise jurisdiction in respect of the estate in terms of the Administration of Estates Act, 1965.
- (4) Upon receipt of a request of the Master in terms of subsection (3)(a), the magistrate concerned must forthwith provide the Master with all documents pertaining to the estate in question which have been lodged with the magistrate or which are under his or her control as well as a written report in relation to any matter concerning the estate of which the magistrate has knowledge and which is reasonably required for assisting the Master in the performance of any function under the Administration of Estates Act, 1965 in relation to the estate."

**as amended by**

**Administration of Estates Amendment Act (Rehoboth Gebiet) 4 of 1981**

**(Official Gazette 37 of Rehoboth, dated 23 December 1983)**

**came into force on date of publication: 23 December 1983**

Note that this Gazette appears to have been mis-numbered as *Official Gazette 38 of Rehoboth*; it bears a handwritten notation altering it to *Official Gazette 37 of Rehoboth*.

**PROCLAMATION**

BY HIS HONOUR DAVID GIDEON CONRADIE,  
ADMINISTRATEUR VAN SUIDWES-AFRIKA

[This Proclamation has no long title. The date of signature appears at the bottom of the Proclamation. The heading of the English text is written partly in Afrikaans in the *Official Gazette*, as reproduced above.]

**ARRANGEMENT OF SECTIONS**

[The provisions in this Proclamation have no headings.]

WHEREAS by paragraph *four* of the Agreement concluded between the Administrator of South West Africa and the Kapitein of the Rehoboth Community and the members of the Raad of the said Community, which said Agreement was ratified and confirmed by Proclamation of the Administrator dated the twenty-eighth day of September, 1923 (Proclamation No. 28 of 1923), it was agreed, *inter alia*, that the Administrator, after consultation with the Raad of the aforesaid Rehoboth Community, should possess the power to legislate for the Territory referred to in the Agreement as the *Gebiet*, if he considered such legislation expedient or desirable in the interests of the Territory of South West Africa or the *Gebiet*;

AND WHEREAS by section *one* of the Rehoboth Affairs Proclamation, 1924 (Proclamation No. 31 of 1924), it was provided that, from and after the taking effect thereof, the Raad should cease to function within the *Gebiet* and that all and several the powers, functions and duties vested by law in the Raad should vest in the Magistrate of the District of Rehoboth;

AND WHEREAS after consultation with the Magistrate of Rehoboth, the Administrator considers it expedient and desirable in the interests of the *Gebiet* to clarify the law in force in the *Gebiet* in regard to the administration of the estates of deceased persons, who were members of the Rehoboth Bastard Community;

**Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941**

---

NOW THEREFORE, under and by virtue of the powers in me vested, I do hereby proclaim, declare and make known as follows:

1. (1) This Proclamation shall apply only to the estates of such persons as are members of the Rehoboth Bastard Community, and shall not affect in any manner the provisions of section *three* of the Rehoboth Gebiet (Extension of Laws) Proclamation, 1930 (Proclamation No. 12 of 1930).

(2) If the estate of any deceased person who was a member of the Rehoboth Bastard Community. consists solely of moveable assets the value whereof in the opinion of the Magistrate does not exceed the amount of one thousand rand, and the Magistrate is satisfied that there are no sound reasons for administering such estate under this Proclamation, he may, having regard to the provisions of the will of the deceased or, in the absence of a valid will, of the rules contained in the Second Schedule, direct that the said estate shall, notwithstanding any provisions to the contrary in this Proclamation or any other law contained, be administered in accordance with the directions of the Magistrate, whereupon the last mentioned provisions shall not apply in respect of the administration of the said estate.

[subsection (2) inserted by Act 4 of 1981]

\*\*\*

10. Subject to the provisions of sections *eight*, *nine* and *eleven* the assets of any estate shall be distributed in accordance with the provisions of the will of the deceased, or if there be no valid will, in accordance with the rules of intestate succession set out in the second schedule to this Proclamation.

\*\*\*

19. Every member of the Rehoboth Bastard Community shall have the right to dispose by will of all or any of his property, whether fixed or movable, in any manner whatsoever, provided only that any disposition which is contrary to any provision of the existing laws and regulations of the said Community shall be void and of no effect and any property so disposed of shall devolve instead according to the rules of intestate succession set out in the second schedule to this Proclamation.

20. Every will shall be in writing and shall be signed or marked on every sheet thereof by the person executing the same in the presence of at least two persons of full age who have no interest therein. No person signing a will in the capacity of witness shall be entitled to take any benefit thereunder.

Every will shall show the date of its execution.

\*\*\*

23. In all matters touching the administration of any estate the executor shall be subject to the directions of the Magistrate, who in giving such directions shall follow the provisions of this Proclamation in so far as the subject matter of such directions is covered thereby.

Should any point arise which is not covered by the provisions of this Proclamation the Magistrate may give such directions thereon as may seem to him proper, and any disobedience to any such direction shall be deemed to be a contravention of this Proclamation punishable in the manner provided by section *twenty-seven*.

**Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941**

---

Provided that if any question in regard to the right of succession is involved, which is not covered by the rules set out in the second schedule to this Proclamation, the Magistrate shall give no direction thereon until he has ascertained the views of the Advisory Council upon the point at issue.

\*\*\*

25. (1) An appeal shall lie against any decision of the Magistrate given in terms of section *twenty-four* to the Court of the Magistrate for the District of Rehoboth exercising the jurisdiction conferred upon it by section *two* of the Rehoboth Affairs Proclamation, 1924 (Proclamation No. 31 of 1924).

Provided that no person who took part in or was present at the discussion of the matter before the Advisory Council shall be entitled to be a member, either as presiding judicial officer or assessor, of the Court which hears the appeal. Provided further that the presiding judicial officer at such appeal shall be a Magistrate equal to or senior in grade to the Magistrate.

(2) Any appeal in terms of this section shall be in writing and shall be lodged within fourteen days of the date upon which the decision appealed from is given.

(3) The subsistence and travelling expenses of any officer of the Administration who may have to be appointed Acting Magistrate for the District of Rehoboth for the purpose of hearing an appeal under this section shall be paid either out of the estate or by such of the parties to the action as the appeal Court may direct.

26. A further appeal from the decision of the Court referred to in section *twenty-five* shall lie to the High Court of South West Africa and shall be lodged within such time and in accordance with such rules and regulations as the judge of the High Court may determine.

\*\*\*

29. In this Proclamation, unless inconsistent with the context,

“Advisory Council” shall mean the advisory council constituted by section *two* of the Rehoboth *Gebiet* Affairs Proclamation, 1928 (Proclamation No. 9 of 1928);

“*Gebiet*” shall mean the territory known as the Rehoboth Bastard *Gebiet*, the limits and boundaries of which are defined in the first schedule to the agreement set out in the schedule to Proclamation of the Administrator dated the 28th day of September, 1923 (Proclamation No. 28 of 1923), as amended by section *fourteen* of the Rehoboth *Gebiet* Affairs Proclamation, 1928 (Proclamation No. 9 of 1928); and the Rehoboth *Gebiet* Boundaries Amendment Proclamation, 1941 (Proclamation No. 22 of 1941);

“The Magistrate” shall mean the Magistrate for the District of Rehoboth or any person lawfully acting in that capacity;

“Member of the Rehoboth Bastard Community” shall mean and include any person who, by reason of his birth or parentage, possesses full burgher rights in the *Gebiet* under the laws and constitution of the Rehoboth Bastard Community, or any non-European person whose application to be accepted as a burgher of the *Gebiet* has been approved in accordance with the laws and constitution of the Rehoboth Bastard Community, or the wife of any born or accepted burgher, or any legitimate child of any parents both of whom are members of the Rehoboth Bastard Community as aforesaid, or any illegitimate child whose mother is a member of the Rehoboth Bastard Community as aforesaid;

Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941

**[Section 16(2) of the Children's Status Act 6 of 2006 states "Despite anything to the contrary contained in any statute, common law or customary law, a person born outside marriage must, for purposes of inheritance, either intestate or by testamentary disposition, be treated in the same manner as a person born inside marriage." That rule may affect the application of the Schedule to this Proclamation in terms of Act 15 of 2005.]**

"Will" shall include a codicil and every kind of testamentary writing.

\*\*\*

30. This Proclamation shall be called as the Administration of Estates (Rehoboth Gebiet) Proclamation, 1941.

GOD SAVE THE KING.

Given under my hand and seal at Windhoek this 22nd day of September, 1941.

D. O. CONRADIE,  
*Administrator.*

\*\*\*

SECOND SCHEDULE

RULES OF INTESTATE SUCCESSION APPLICABLE TO  
THE ESTATES OF MEMBERS OF THE REHOBOTH  
BASTARD COMMUNITY

When in any estate no valid will is left by the deceased the assets thereof shall be distributed among the heirs in the manner following:-

1. (a) Where the deceased is survived by a wife or husband and children.

Half of the estate shall devolve upon the surviving spouse, and the other half upon the surviving spouse and the children in equal shares. Children of pre-deceased children shall succeed to the shares of their deceased parent per stirpes.

- (b) Where the deceased is survived only by children.

The whole estate shall devolve upon the children in equal shares, the children of pre-deceased children succeeding to the shares of their deceased parent per stirpes.

- (c) Where the deceased leaves only a wife or husband.

Half of the estate shall devolve upon the surviving spouse, who shall also be entitled to one third of the remaining half. The remaining two-thirds of the remaining half shall devolve in equal shares upon the mother and father of the deceased, or if there be only a mother or a father surviving, such mother or father shall receive the whole of the remaining two-thirds of one half of the estate. Should both parents of the deceased have pre-deceased him, then the remaining two-thirds of one half of the estate shall devolve in equal shares upon the brothers and sisters of the deceased.

**Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941**

---

Provided that in any case the surviving spouse of the deceased shall be entitled to the full usufruct of all the assets in the estate until such as he or she dies or re-marries.

- (d) Where the deceased leaves no surviving spouse or children.

The entire estate shall devolve upon the family of the deceased in accordance with the rules set out in paragraph (c) hereof.

- (e) In cases not falling under paragraphs (a), (b), (c) or (d).

The matter shall be placed before the Magistrate and Advisory Council, who may give such directions in regard to the disposal of the assets as may seem to them proper.

Provided that an appeal against any such direction shall lie in the manner provided by sections *twenty-five* and *twenty-six* of the Proclamation.

2. Any illegitimate child shall possess the full right of succession to any estate left by its mother, but shall possess no right of succession to the estate of the father except by way of testamentary disposition.

**[Section 16(2) of the Children's Status Act 6 of 2006 states "Despite anything to the contrary contained in any statute, common law or customary law, a person born outside marriage must, for purposes of inheritance, either intestate or by testamentary disposition, be treated in the same manner as a person born inside marriage." That rule may affect the application of the Schedule to this Proclamation in terms of Act 15 of 2005.**

**See also *Frans v Paschke and Others* 2007 (2) NR 520 (HC), where the High Court held that the common law rule prohibiting 'illegitimate' children from inheriting intestate from their fathers was unfair discrimination based on "social status" and therefore unconstitutional.]**