



Republic of Namibia  
Annotated Statutes

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## Administration of Estates Act 66 of 1965 (RSA)

(RSA GG 1128)

brought into force in South Africa, with the exception of Chapter III, on 2 October 1967 by RSA Proc. R.242/1967 (RSA GG 1858); those portions of the Act in force in South Africa came into force in South West Africa on 1 April 1972 when the amendments made by Act 54 of 1970, including the insertion of section 108A, were brought into force by RSA Proc. R.68/1972 (RSA GG 3425)

**APPLICABILITY TO SOUTH WEST AFRICA:** Section 1, as amended by Act 54 of 1970, defines "Republic" to include "the territory", which is defined as "the territory of South West Africa". Section 108A, inserted by Act 54 of 1970, states "This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel, but shall, in the territory known as the 'Rehoboth Gebiet' and defined in the First Schedule to the agreement referred to in the Schedule to Proclamation No. 28 of 1923, of the territory, not apply to the estate of any person to whom Proclamation No. 36 of 1941, of the territory, applies". The Proclamation referred to was the Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 (OG 920), which was repealed by the Estates and Succession Amendment Act 15 of 2005 (GG 3566); Act 15 of 2005 provides that the administration of all estates in future falls under this Act.

**TRANSFER TO SOUTH WEST AFRICA:** The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. None of the amendments to the Act in South Africa after the date of transfer were applicable to South West Africa because none were made expressly so applicable.

Section 3(1)(o) of the Transfer Proclamation as originally enacted excluded sections 2, 88, 91, 92, 93, 97 and 103(1)(b) from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977. It also excluded all the references to the Republic in the Act from section 3(1) of this General Proclamation, meaning that Republic retained the meaning given to it in the definition section of the Act (South Africa and South West Africa). Section 3(1)(o) of the Transfer Proclamation, as amended by the Administration of Estates Amendment Act 2 of 1987, removed the exclusion of the specific sections, but continued to exclude all the references to the Republic in the Act from section 3(1) of the General Proclamation.

as amended by

**General Law Amendment Act 102 of 1967 (RSA) (RSA GG 1771)**

came into force on date of publication: 21 June 1967

**Establishment of the Northern Cape Division of the Supreme Court of South Africa Act 15 of 1969 (RSA) (RSA GG 2315)**

brought into force on 1 May 1969 by RSA Proc. R.92/1969 (RSA GG 2356)

**Administration of Estates Amendment Act 54 of 1970 (RSA) (RSA GG 2827)**

brought into force on 1 April 1972 by RSA Proc. R.68/1972 (RSA GG 3425)

**Administration of Estates Amendment Act 79 of 1971 (RSA) (RSA GG 3196)**

came into force on date of publication: 14 July 1971

**General Law Amendment Act 57 of 1975 (RSA) (RSA GG 4760)**

came into force in relevant part on date of publication: 20 June 1975

**Administration of Estates Amendment Act 15 of 1978 (RSA) (RSA GG 5919)**

came into force on date of publication: 15 March 1978

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- Divorce Act 70 of 1979 (RSA)** (RSA GG 6506)  
 came into force on 1 July 1979 (section 19 of Act 70 of 1979)
- Native Laws Amendment Proclamation, AG 3 of 1979** (OG 3898)  
 deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)
- Administration of Estates Amendment Act 17 of 1981** (OG 4568)  
 came into force on date of publication: 17 December 1981
- Administration of Estates Amendment Act 6 of 1986** (OG 5196)  
 came into force on date of publication: 14 April 1986
- Administration of Estates Amendment Act 2 of 1987** (OG 5338)  
 came into force on 1 April 1987 (section 11 of Act 2 of 1987)
- Married Persons Equality Act 1 of 1996** (GG 1316)  
 brought into force on 15 July 1996 by GN 154/1996 (GG 1340)
- Administration of Estates Amendment Act 15 of 2001** (GG 2672)  
 brought into force on 1 July 2002 by GN 107/2002 (GG 2760)
- Estates and Succession Amendment Act 15 of 2005** (GG 3566)  
 came into force on date of publication: 29 December 2005
- Magistrates Amendment Act 5 of 2009** (GG 4307)  
 came into force on date of publication: 29 July 2009
- Administration of Estates Amendment Act 22 of 2018** (GG 6813)  
 came into force on date of publication: 31 December 2018
- Child Care and Protection Act 3 of 2015** (GG 5744)  
 brought into force on 30 January 2019 by GN 4/2019 (GG 6829)

**ACT**

To consolidate and amend the law relating to the liquidation and distribution of the estates of deceased persons, the administration of trust property given under the control of any person by a deceased person, and of the property of minors and persons under curatorship, and of derelict estates; to regulate the rights of beneficiaries under mutual wills made by any two or more persons; to amend the Mental Disorders Act, 1916; and to provide for incidental matters.

*[The Government Gazette does not state the date of assent or which language version was signed.]*

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LAWS REPEALED

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

**[The Act as amended is inconsistent in its use of "sub-section" and "subsection" (with and without a hyphen).]**

## PRELIMINARY

**Definitions**

1. (1) In this Act, unless the context otherwise indicates -

**[introductory phrase substituted with amendment markings by Act 22 of 2018]**

“absentee” means any person of whom the Master, after enquiry, believes that his whereabouts are unknown and that he has no legal representative in the Republic;

“accountant” means a person registered as an accountant and auditor under the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

“act of insolvency” means an act of insolvency in terms of section *eight* of the Insolvency Act, 1936 (Act No. 24 of 1936);

“administrator” means any person who is authorized to act under letters of administratorship granted or signed and sealed by a Master, or under an endorsement made under section *fifty-nine*;

“appraiser” means an appraiser appointed or deemed to have been appointed under section *six*;

“banking institution” means a banking institution as defined in section 1 and registered or provisionally registered or deemed to be registered or to be provisionally registered as a banking institution in terms of section 4 of the Banks Act, 1965 (Act No. 23 of 1965), but does not include a provisionally registered banking institution which is so registered provisionally after the coming into operation of the Administration of Estates Amendment Act, 1971;

**[The definition of “banking institution” is inserted by Act 79 of 1971. The Banks Act 23 of 1965 has been replaced by the Banking Institutions Act 2 of 1998. The Administration of Estates Amendment Act is Act 79 of 1971.]**

“building society” means a building society as defined in section 1 and registered or provisionally registered or deemed to be registered or to be provisionally registered as a building society in terms of section 5 of the Building Societies Act, 1965 (Act No. 24 of 1965), but does not include a provisionally registered building society which is so registered provisionally after the coming into operation of the Administration of Estates Amendment Act, 1971;

**[The definition of “building society” is inserted by Act 79 of 1971. The Building Societies Act 24 of 1965 has been replaced by the Building Societies Act 2 of 1986.]**

**[The definition of “Cabinet” was inserted by Act 2 of 1987 and was obviously inappropriate to independent Namibia. It is deleted by Act 22 of 2018.]**

“Court” means the provincial division of the Supreme Court having jurisdiction, or any judge thereof, and includes, whenever a matter in relation to which this expression is used is within the jurisdiction of a local division of the Supreme Court, that local division or any judge thereof;

“curator” means any person who is authorized to act under letters of curatorship granted or signed and sealed by a Master, or under an endorsement made under section *seventy-two*;

“executor” means any person who is authorized to act under letters of executorship granted or signed and sealed by a Master, or under an endorsement made under section *fifteen*;

“heir” includes a legatee and a donee under a *donatio mortis causa*;

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“immovable property” means land and every real right in land or minerals (other than any right under a bond) which is registrable in any office in the Republic used for the registration of title to land or the right to mine;

“letters of administratorship” includes any document issued or a copy of any such document duly certified by any competent public authority in any State, from which it appears that any person named or designated therein has authority to administer for the benefit, in whole or in part, of any other person, any property given under the control of such first-mentioned person by a deceased person to be so administered;

“letters of curatorship” includes any document issued or a copy of any such document duly certified by any competent public authority in any State by which any person named or designated therein is authorized to act as curator of any property belonging to a minor or other person;

“letters of executorship” includes any document issued or a copy of any such document duly certified by any competent public authority in any State by which any person named or designated therein is authorized to act as the personal representative of any deceased person or as executor of the estate of any deceased person;

“letters of tutorship” includes any document issued or a copy of any such document duly certified by any competent public authority in any State by which any person named or designated therein is authorized to act as the tutor of a minor, or to administer any property belonging to a minor as tutor;

“magistrate” includes an additional magistrate and an assistant magistrate and, in relation to any particular act to be performed or power or right exercisable or duty to be carried out by the magistrate of a district, includes an additional magistrate or assistant magistrate permanently carrying out at any place other than the seat of magistracy of that district the functions of the magistrate of that district in respect of any portion of that district, whenever such act, power, right or duty has to be performed, exercised or carried out by virtue of any death occurring, thing being or deceased having resided or carried on business, as the case may be, in such portion of that district;

“Master”, in relation to any matter, property or estate, means the Master or Deputy Master of the Supreme Court appointed under section *two*, who has jurisdiction in respect of that matter, property or estate;

**[definition of “Master” amended by Act 2 of 1987]**

“Minister” means the Minister of Justice;

“person under curatorship” includes any person whose property has been placed under the care or administration of a curator;

“prescribed” means prescribed by regulation;

**[definition of “prescribed” inserted by Act 15 of 2001]**

“property” includes any contingent interest in property;

“regulation” means a regulation made under section 103;

**[definition of “regulation” inserted by Act 15 of 2001]**



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“Republic” includes the territory;

**[definition of “Republic” inserted by Act 54 of 1970]**

“State” means any state in respect of which a proclamation has been issued under section *twenty*;

“territory” means the territory of South-West Africa;

**[definition of “territory” inserted by Act 54 of 1970]**

“tutor” means any person who is authorized to act under letters of tutorship granted or signed and sealed by a Master, or under an endorsement made under section *seventy-two*.

- (2) For the purpose of this Act -
- (a) any reference to the expression “Cabinet” must be construed as a reference to the “Minister”; and
  - (b) any reference to the expression “minor” or “minors” or the expression “majority” when used with reference to a “minor” must be construed as a reference to a person who has not attained the age of twenty one years.

**[subsection (2) inserted by Act 22 of 2018]**

## CHAPTER I

### ADMINISTRATIVE PROVISIONS

#### **Appointment of Masters and Deputy Masters**

**2.** (1) The Cabinet shall, subject to the provisions of subsection (2) and the Government Service Act, 1980 (Act 2 of 1980), appoint a Master of the Supreme Court and may, subject to the said provisions, appoint one or more Deputy Masters of the Supreme Court, who may, subject to the direction, control and supervision of the Master, do anything which may lawfully be done by the Master.

**[The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995.]**

(2) No person shall be appointed as Master or Deputy Master of the Supreme Court unless he has obtained the Diploma Iuris or any other qualification deemed by the Government Service Commission to be equivalent thereto.

(3) Whenever in the opinion of the Cabinet it becomes necessary that an acting Master or Deputy Master of the Supreme Court be appointed, the Cabinet may -

- (a) appoint any Deputy Master referred to in subsection (2) or any other competent officer in the government service contemplated in section 2 of the said Government Service Act, 1980, to act as Master of the Supreme Court for the period for which such appointment may be necessary;
- (b) appoint any competent officer in the government service contemplated in section 2 of the said Government Service Act, 1980, to act as Deputy Master of the Supreme Court for the period for which such appointment may be necessary.

(4) The Cabinet may delegate any power conferred on it by this section to the Secretary for Justice.



**Administration of Estates Act 66 of 1965 (RSA)****[Section 2 is amended by Act 79 of 1971 and substituted by Act 2 of 1987, which provides the following transitional provision in section 2(2):**

**"The person who immediately before the commencement of this Act held the office of Master of the Supreme Court by virtue of an appointment under section 2 of the principal Act, and the person who so held the office of Assistant Master of the Supreme Court, shall be deemed at such commencement to have been appointed under the said section 2, as amended by subsection (1) of this section, as the Master and Deputy Master of the Supreme Court, respectively."**]

**Master's office to be at seat of provincial division of Supreme Court**

3. (1) Each Master shall have his office at the seat of the provincial division of the Supreme Court in respect of whose area of jurisdiction he has been appointed.

(2) The Minister may direct that a Deputy Master shall have his office at any place specified by the Minister, there to perform, in respect of the area so specified, such functions as he may lawfully perform under this Act or any other law.

**[subsection (2) amended by Act 2 of 1987]**

(3)

**[subsection (3) deleted by Act 15 of 1969]**

**Jurisdiction of Masters**

4. (1) In respect of the estate of a deceased person, or of any portion thereof, or of any property given under the control of any person by a deceased person for the purpose mentioned in section *fifty-seven*, jurisdiction shall lie -

- (a) in the case of a deceased person who was, at the date of his death, ordinarily resident within the area of jurisdiction of a provincial division of the Supreme Court, with the Master appointed in respect of that area; and
- (b) in the case of a deceased person who was not at that date so resident, with the Master to whom application is made to grant letters of executorship or letters of administratorship, or to sign and seal any such letters already granted in respect of the estate or property concerned:

Provided that on written application by any person having an interest in a deceased estate, a Master who would otherwise have no jurisdiction in respect of that estate may, with the consent of the Master who has such jurisdiction, assume jurisdiction in respect of that estate.

(2) In respect of the property belonging to a minor, or to a person under curatorship or to be placed under curatorship, jurisdiction shall lie -

- (a) in the case of any such person who is ordinarily resident within the area of jurisdiction of a provincial division of the Supreme Court, with the Master appointed in respect of that area; and
- (b) in the case of any such person who is not so resident, with the Master appointed in respect of any such area in which is situate the greater or greatest portion of the property of that person:

Provided that -

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- (i) a Master who has exercised jurisdiction under paragraph (a) or (b) shall continue to have jurisdiction notwithstanding any change in the ordinary residence of the person concerned or in the situation of the greater or greatest portion of his property; and
- (ii) in the case of any mentally ill person who under the Mental Health Act, 1973 (Act 18 of 1973), has been received or is detained in any place, jurisdiction shall lie with the Master who, immediately prior to such reception or detention, had jurisdiction in respect of his property under paragraph (a) or (b).

**[paragraph (ii) amended by Act 6 of 1986]**

(3) No act performed by a Master in the *bona fide* belief that he has jurisdiction shall be invalid merely on the ground that it should have been performed by another Master.

(4) If more than one Master has in such belief exercised jurisdiction in respect of the same estate or property, that estate or property shall, without prejudice to the validity of any act already performed by or under the authority of any other Master, as soon as it becomes known to the Masters concerned, be liquidated, distributed or administered as the case may be, under the supervision of the Master who first exercised such jurisdiction, and any appointment made and any grant, signing and sealing or endorsement of letters of executorship, administratorship, tutorship or curatorship, by any other Master in respect of that estate or property, shall thereupon be cancelled by such other Master.

#### **Minister may assign functions of Master to magistrates**

**4A.** (1) The Minister, after consultation with the Master and the Chief Magistrate, may by notice in the *Gazette* -

- (a) determine that any powers or functions vested in or assigned to the Master by this Act, as are specified in the notice, be vested in and assigned also to a magistrate for the purpose of assisting in the performance of the Master's functions under the Act in relation to estates contemplated in section 18(3); and
- (b) determine conditions or restrictions in relation to the exercise of any powers or performance of any functions by magistrates referred to in paragraph (a) and prescribe procedures to be followed in connection therewith.

(2) A magistrate must -

- (a) exercise the powers and perform the functions referred to in subsection (1) subject to any conditions and restrictions and in accordance with any procedures as may be prescribed under that subsection and with due regard to any guidelines as the Master may issue; and
- (b) provide the Master with any information as the Master may require from the magistrate in relation to any estate the administration of which is being supervised by the magistrate.

(3) The Master is not divested of or discharged from any power or duty in terms of this Act in relation to an estate the administration of which is being supervised by a magistrate by virtue of this section and may at any time require from any magistrate to transfer any such estate to the Master's supervision and control.

(4) A magistrate must -

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- (a) comply with a request for information by the Master in terms of subsection (2)(b); and
- (b) upon receipt of a request from the Master to transfer any estate to the supervision and control of the Master, provide the Master with all documents pertaining to the estate which have been lodged with the magistrate or 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 this Act in relation to the estate.

[section 4A inserted by Act 15 of 2005 and amended by Act 5 of 2009]

**Records of Master's office, etc.**

5. (1) Each Master shall, subject to the provisions of regulations made under section 103, preserve of record in his office all original wills, copies of wills certified in terms of section 14(2), written instruments, death notices, inventories and accounts lodged at his office under the provisions of this Act or any prior law under which any such documents were lodged at the office of the Master, Orphan Master or registrar of deeds in the province concerned or in the territory, and such other documents lodged at his office as the Master may determine.

[subsection (1) substituted by Act 54 of 1970]

(2) Any person may at any time during office hours inspect any such document (except, during the lifetime of the person who executed it, a will lodged with the Master under section *fifteen* of the Administration of Estates Act, 1913 (Act No. 24 of 1913)), and make or obtain a copy thereof or an extract therefrom, on payment of the fees prescribed in respect thereof: Provided that -

- (a) any executor, administrator, tutor or curator, or his surety, may inspect any such document or cause it to be inspected without payment of any fee; and
- (b) in the case of a document lodged by an administrator in terms of section *sixty-five*, the right to inspect and to make or obtain a copy or extract shall be limited to the administrator, his surety and the beneficiaries concerned, or the representative of the administrator or of any such surety or beneficiary.

**Appraisers for the valuation of property**

6. (1) The Minister may from time to time appoint for any area specified by him such and so many persons as he thinks fit, to be appraisers for the valuation of property for the purposes of this Act, and may at any time revoke any appointment so made.

(2) Every person so appointed shall take an oath before a justice of the peace or commissioner of oaths that he will appraise all such properties as may be submitted to his valuation according to the true valuation thereof and to the best of his skill and knowledge.

(3) Any appraiser appointed under the corresponding provision of the Administration of Estates Act, 1913 (Act No. 24 of 1913), or of any law repealed by that Act, and holding office at the commencement of this Act, shall be deemed to have been appointed under this section, and it shall not be necessary for him, if he has already taken an oath, to take any further oath under this section.

(4) No appraiser shall act in connection with any property in which or in the valuation of which -

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- (a) he or his spouse or partner has any pecuniary interest other than his remuneration as appraiser; or
- (b) his principal or employer or any person related to him within the third degree has any pecuniary interest.

(5) Every appraiser shall, in respect of every appraisal made by him, be entitled to a reasonable remuneration which shall be assessed according to a prescribed tariff of fees, and shall in case of a dispute regarding the correctness thereof submit his account to the Master for taxation.

[subsection (5) amended by Act 6 of 1986]

## CHAPTER II

### DECEASED ESTATES

#### Death notices

7. (1) Whenever any person dies within the Republic leaving any property or any document being or purporting to be a will therein -

- (a) the surviving spouse of such person, or if there is no surviving spouse, his nearest relative or connection residing in the district in which the death has taken place, shall within fourteen days thereafter give a notice of death substantially in the prescribed form, or cause such a notice to be given to the Master; and
- (b) the person who at or immediately after the death has the control of the premises at which the death occurs shall, unless a notice under paragraph (a) has to his knowledge already been given, within fourteen days after the death, report the death or cause the death to be reported to the Master.

(2) Whenever any person dies outside the Republic leaving any property or any document being or purporting to be a will therein, any person within the Republic having possession or control of any such property or document, shall, within fourteen days after the death has come to his knowledge, report the death to the Master who shall take such steps as may be necessary and practicable to obtain a correct death notice.

(3) The Master may by written notice require any person who may, in his opinion, be able to furnish the information required -

- (a) if no death notice has been given or obtained, to submit to him within a period specified in the notice, a death notice substantially in the prescribed form; and
- (b) if a death notice has been given or obtained or has been submitted under paragraph (a) and the Master desires any further information, to answer in writing to the best of his knowledge, within a period so specified, such questions as may be set forth in the notice.

(4) If the person signing any death notice was not present at the death, or did not identify the deceased after death, such person shall furnish the Master with proof of the death.

[subsection (4) amended by Act 6 of 1986]

### Transmission or delivery of wills to Master and registration thereof

8. (1) Any person who has any document being or purporting to be a will in his possession at the time of or at any time after the death of any person who executed such document, shall, as soon as the death comes to his knowledge, transmit or deliver such document to the Master.

(2) Every person shall, at the expense of the estate and when required by the Master to do so, transmit the original minute of any notarial will passed before him or in his possession, to the Master, and shall at the same time file a certified copy thereof in his protocol and endorse thereon that the original has been transmitted to the Master.

(3) Any such document which has been received by the Master, shall be registered by him in a register of estates, and he shall cause any such document which is closed to be opened for the purpose of such registration.

(4) If it appears to the Master that any such document, being or purporting to be a will, is for any reason invalid, he may, notwithstanding registration thereof in terms of sub-section (3), refuse to accept it for the purposes of this Act until the validity thereof has been determined by the Court.

(5) If the Master is satisfied that the person who executed any will transmitted or delivered to him in terms of sub-section (1), has not left any property in the Republic, he may release such will to any person lawfully requiring it for the purpose of liquidating and distributing the estate of the deceased person outside the Republic.

### Inventories

9. (1) If any person dies within the Republic or if any person ordinarily resident in the Republic at the time of his death dies outside the Republic leaving any property therein, the surviving spouse of such person, or if there is no surviving spouse, his nearest relative or connection residing in the district in which such person was ordinarily resident at the time of his death shall, within fourteen days after the death or within such further period as the Master may allow -

- (a) make an inventory in the prescribed form, in the presence of such persons having an interest in the estate as heirs as may attend, of all property known by him to have belonged, at the time of the death -
  - (i) to the deceased; or
  - (ii) in the case of the death of one of two spouses married in community of property, to the joint estate of the deceased and such surviving spouse; or
  - (iii) in the case of the death of one of two or more persons referred to in section *thirty-seven*, to the massed estate concerned;
- (b) subscribe such inventory in his own hand and endorse thereon the names and addresses of the persons in whose presence it was made; and
- (c) deliver or transmit such inventory to the Master.

(2) The Master may at any time, notwithstanding the provisions of sub-section (1), by written notice -

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- (a) require any person to make, in the presence of such persons referred to in paragraph (a) of the said sub-section as may attend, to subscribe and endorse as provided in paragraph (b) of the said sub-section and to deliver or transmit to him, within the period specified in the notice, an inventory in the prescribed form of all property known by such person to have belonged at the time of the death -
- (i) to the deceased; or
- (ii) in the case of the death of one of two spouses married in community of property, to the joint estate of the deceased and the surviving spouse; or
- (iii) in the case of the death of one of two or more persons referred to in section *thirty-seven*, to the massed estate concerned;
- (b) require any person who at or immediately after the death had control of the premises where the death occurred or of any premises where the deceased was living or staying or carrying on any business at the time of his death, to make, in the presence of the said persons, to subscribe and endorse as provided in paragraph (b) of the said sub-section, and to deliver or transmit to him, within the period specified in the notice, an inventory in the prescribed form of all the property known by him to have been in the possession of the deceased upon the said premises at the time of his death.
- (3) Any person required by sub-section (1) or under paragraph (a) of sub-section (2) to make an inventory shall include therein a list specifying -
- (a) all immovable property registered in the name of the deceased or in which he knows that the deceased had any interest at the date of his death; and
- (b) all particulars known to such person, concerning any such property or interest.

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**10.**

[section 10 deleted by Act 6 of 1986]

**Temporary custody of property in deceased estates**

- 11.** (1) Any person who at or immediately after the death of any person has the possession or custody of any property, book or document, which belonged to or was in the possession or custody of such deceased person at the time of his death -
- (a) shall, immediately after the death, report the particulars of such property, book or document to the Master and may open any such document which is closed for the purpose of ascertaining whether it is or purports to be a will;
- (b) shall, unless the Court or the Master otherwise directs, retain the possession or custody of such property, book or document, other than a document being or purporting to be a will, until an interim curator or an executor of the estate has been appointed or the Master has directed any person to liquidate and distribute the estate: Provided that the provisions of this paragraph shall not prevent the disposal of any such property for the *bona fide* purpose of providing a suitable funeral for the deceased or of providing for the subsistence of his family or household or the safe custody or preservation of any part of such property;

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(c) shall, upon written demand by the interim curator, executor or person directed to liquidate and distribute the estate, surrender any such property, book or document in his possession or custody when the demand is made, into the custody or control of such executor, curator or person: Provided that the provisions of this paragraph shall not affect the right of any person to remain in possession of any such property, book or document under any contract, right or retention or attachment.

(2) Any person who fails to comply with the provisions of paragraph (b) of sub-section (1) shall, apart from any penalty or other liability he may incur thereby, be liable for any estate duties payable in respect of the property concerned.

**Appointment of interim curator**

12. (1) The Master may appoint an interim curator to take any estate into his custody until letters of executorship have been granted or signed and sealed, or a person has been directed to liquidate and distribute the estate.

(2) Every person to be so appointed shall, before a certificate of appointment is issued to him, find security to the satisfaction of the Master in an amount determined by the Master for the proper performance of his functions.

(3) An interim curator may, if specially authorized thereto by the Master, collect any debt and sell or dispose of any movable property in the estate, wherever situate within the Republic, and subject to any law which may be applicable, carry on any business or undertaking of the deceased.

(4) If any interim curator is authorized under sub-section (3) to carry on any business or undertaking he shall not, without the special authority of the Master, purchase any goods which he may require for that business or undertaking otherwise than for cash and out of the takings of that business or undertaking.

(5) The reference in section 47(1) of the Liquor Act, 1928 (Act No. 30 of 1928), and in section 156(1) of the Liquor Ordinance, 1969 (Ordinance No. 2 of 1969), of the territory, to a curator, shall include a reference to an interim curator appointed under subsection (1), who has under subsection (3) been authorized to carry on the business of the licensee or person referred to in the said sections.

**[Subsection (5) is substituted by Act 54 of 1970. The Liquor Ordinance 2 of 1969 has been replaced by the Liquor Act 6 of 1998.]**

(6) An interim curator shall account for the property in respect of which he has been appointed, in such manner as the Master may direct.

(7) The provisions of sub-sections (3), (4) and (5) of section *twenty-three*, sections *twenty-six*, *twenty-eight*, *thirty-six*, *forty-six*, and sub-paragraph (ii) of paragraph (b) of sub-section (1) of section *fifty-four* shall *mutatis mutandis* apply with reference to interim curators.

**Deceased estates not to be liquidated or distributed without letters of executorship or direction by Master**

13. (1) No person shall liquidate or distribute the estate of any deceased person, except under letters of executorship granted or signed and sealed under this Act, or under an endorsement made under section *fifteen*, or in pursuance of a direction by a Master.



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(2) No letters of executorship shall be granted or signed and sealed and no endorsement under section *fifteen* shall be made to or at the instance or in favour of any person who is by any law prohibited from liquidating or distributing the estate of any deceased person.

(3) The provisions of sub-section (2) shall not apply to any person nominated as executor by the will of a person who dies before the first day of July, 1966.

**Letters of executorship to executors testamentary**

14. (1) The Master shall, subject to the provisions of subsection (2) and sections *sixteen*, *seventeen* and *twenty-two*, on the written application of any person who -

- (a) has been nominated as executor by any deceased person by a will which has been registered and accepted in the office of the Master; and
- (b) is not incapacitated from being an executor of the estate of the deceased and has complied with the provisions of this Act, grant letters of executorship to such person.

(2) For the purposes of paragraph (a) of sub-section (1), the Master may -

- (a) if the will of any deceased person is not in the Republic, register and accept a copy thereof certified by a competent public authority in the country or territory in which such will is; or
- (b) if the will is also the will of any other deceased person and has been registered and accepted by any other Master, register and accept a copy thereof certified by such Master.

**Endorsement of appointment of assumed executors on letters of executorship**

15. (1) The Master shall, subject to the provisions of sub-section (2) and sections *sixteen*, *seventeen* and *twenty-two* -

- (a) on the written application of any person who has been duly nominated as an assumed executor, is not incapacitated from being an executor of the estate of the deceased and has complied with the provisions of this Act; and
- (b) on production of the deed of assumption duly signed by the person so nominated and the executor who has so nominated him,

endorse the appointment of such person as assumed executor on the letters of executorship granted to the executor testamentary.

(2) No endorsement under sub-section (1) shall be made after the executor vested with the power of assumption, or if there are two or more executors jointly vested with the said power, after every such executor has for any reason ceased to be executor.

(3) The appointment of any person in terms of sub-section (1) shall not be affected by the subsequent incapacity or death of the executor by whom he was assumed.

**Letters of executorship and endorsements to or in favour of corporations**

16. If any person referred to in sub-section (1) of section *fourteen* or in sub-section (1) of section *fifteen* is a corporation, the relevant letters of executorship or endorsement, as the case may be, shall be granted or made -

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- (a) to or in favour of any person who is an officer or director of the corporation and has been nominated by the testator or, if the testator has not nominated any person, by the corporation; and
- (b) in the event of the death, resignation or dismissal of such person, or of his vacating for any reason the office with reference to which he has been so nominated, to or in favour of his successor in office so nominated,

for whose acts and omissions as executor the corporation accepts liability.

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17.

[section 17 deleted by Act 1 of 1996]

**Proceedings on failure of nomination of executors or on death, incapacity or refusal to act, etc.**

18. (1) The Master shall, subject to the provisions of subsections (3), (5) and (6) -

[introductory phrase of subsection (1) amended by Act 6 of 1986]

- (a) if any person has died without having by will nominated any person to be his executor; or
- (b) if the whereabouts of any person so nominated to be sole executor or of all the persons so nominated to be executors are unknown, or if such person or all such persons are dead or refuse or are incapacitated to act as executors or when called upon by the Master by notice in writing to take out letters of executorship within a period specified in the notice, fail to take out such letters within that period or within such further period as the Master may allow; or
- (c) if, in the case of two or more persons being so nominated to be executors, the whereabouts of one or some of them are unknown, or one or some of them are dead or refuse or are incapacitated to act as executors or when so called upon by the Master fail so to take out letters of executorship, and in the interests of the estate, one or more executors should be joined with the remaining executor or executors; or
- (d) if the executors in any estate are at any time less than the number required by the will of the testator to form a quorum; or
- (e) if any person who is the sole executor or all the persons who are executors of any estate, cease for any reason to be executors thereof; or
- (f) if, in the case of two or more persons who are the executors of any estate, one or some of them cease to be executors thereof, and in the interests of the estate, one or more executors should be joined with the remaining executor or executors,

appoint and grant letters of executorship to such person or persons whom he may deem fit and proper to be executor or executors of the estate of the deceased, or, if he deems it necessary or expedient, by notice published in the *Official Gazette* and in such other manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the surviving spouse (if any), the heirs of the deceased and all persons having claims against the estate, to attend

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before him or, if more expedient, before any other Master or any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as executor or executors, a person or a specified number of persons.

**[concluding words of subsection (1) amended by Act 6 of 1986]**

(2) If the Master has published a notice under subsection (1) he shall, on receipt of the recommendation in question or when it appears that the persons concerned have failed to make any recommendation, subject to the provisions of subsection (3) and sections 19, 22 and 23, unless it appears to him to be necessary or expedient to postpone the appointment and to publish another notice under sub-section (1), appoint and grant letters of executorship to such person or persons as he deems fit and proper to be executor or executors of the estate of the deceased.

**[subsection (2) amended by Act 6 of 1986; not all of the changes are indicated by amendment markings]**

(3) If the value of any estate does not exceed the amount prescribed, the Master may dispense with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated and distributed.

**[subsection (3) amended by Act 15 of 1978, substituted by Act 17 of 1981, and amended by Act 6 of 1986 and by Act 15 of 2001; not all of the changes made by Act 6 of 1986 are indicated by amendment markings]**

(4)

**[subsection (4) amended by Act 15 of 1978, substituted by Act 17 of 1981, and deleted by Act 6 of 1986]**

(5) The Master may at any time -

**[introductory phrase of subsection (5) amended by Act 6 of 1986; not all of the changes are indicated by amendment markings]**

(a) if, in the case of two or more persons -

- (i) who have been nominated by will to be executors, the whereabouts of one or some of them are unknown, or one or some of them are dead or refuse or are incapacitated to act as executors, or when called upon by the Master by notice in writing to take out letters of executorship within a period specified in the notice, fail to take out such letters within that period or within such further period as the Master may allow; or
- (ii) who are the executors in any estate, one or some of them cease to be executors thereof,

grant letters of executorship to the remaining executor or executors, or authorize the remaining executor or executors to liquidate and distribute the estate, as the case may be; or

(b) if after the discharge of any executor it appears that there is property in the estate which has not been distributed by such executor, appoint and grant letters of executorship to such person as he deems fit and proper to liquidate and distribute such property.

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(6) Nothing in this section contained shall authorize the Master to grant letters of executorship to any person who is legally incapacitated to act as executor of the estate of the deceased.

(7) The provisions of section *sixteen* shall *mutatis mutandis* apply with reference to the grant of letters of executorship under this section.

**Competition for office of executor**

**19.** If more than one person is nominated for recommendation to the Master, the Master shall, in making any appointment, give preference to -

[introductory phrase of section 19 amended by Act 6 of 1986]

- (a) the surviving spouse or his nominee; or
- (b) if no surviving spouse is so nominated or the surviving spouse has not nominated any person, an heir or his nominee; or
- (c) if no heir is so nominated or no heir has nominated any person, a creditor or his nominee; or
- (d) the tutor or curator of any heir or creditor so nominated who is a minor or a person under curatorship, in the place of such heir or creditor:

Provided that the Master may -

- (i) join any of the said persons as executor with any other of them; or
- (ii) if there is any good reason therefor, pass by any or all of the said persons.

**Application of section 21 to foreign letters of executorship**

**20.** (1) The State President may by proclamation in the *Gazette* declare that the provisions of section *twenty-one* shall, as from the date fixed by such proclamation or during a period specified in such proclamation, apply to letters of executorship granted in any State so specified, and may by like proclamation withdraw or amend any such proclamation.

(2) The provisions of the said section applying to letters of executorship granted in any State, shall apply also to letters of executorship granted by any consular court of that State.

(3) Any proclamation issued under section *forty* of the Administration of Estates Act, 1913 (Act No. 24 of 1913), shall be deemed to have been issued under sub-section (1).

**Sealing and signing of letters granted in a State**

**21.** Whenever letters of executorship granted in any State and authenticated as provided in the rules made under section *forty-three* of the Supreme Court Act, 1959 (Act No. 59 of 1959), are produced to or lodged with the Master by the person in whose favour those letters have been granted or his duly authorized agent, those letters may, subject to the provisions of sections *twenty-two* and *twenty-three*, be signed by the Master and sealed with his seal of office, and such person shall thereupon with respect to the whole estate of the deceased situate in the Republic, for the purposes of this Act be deemed to be an executor to whom letters of executorship have been granted by the Master: Provided that before any such letters are signed and sealed a duly

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certified and authenticated copy of the will (if any) of the deceased and an inventory of all property known to belong to him within the Republic shall be lodged with the Master.

**[The Supreme Court Act 59 of 1959 has been replaced by the Supreme Court Act 15 of 1990.]**

**The Master may refuse to grant, endorse or sign and seal letters of executorship in certain cases**

**22.** (1) If it appears to the Master or if any person having an interest in the estate lodges with the Master in writing an objection that the nomination of any person as executor testamentary or assumed executor is or should be declared invalid, letters of executorship or an endorsement, as the case may be, may be refused by the Master until -

- (a) the validity of such nomination has been determined by the Court; or
- (b) the objection has been withdrawn; or
- (c) the person objecting has had a period of fourteen days after such refusal or such further period as the Court may allow, to apply to the Court for an order restraining the grant of letters of executorship, or the making of the endorsement, as the case may be.

(2) The Master may -

- (a) if any person to whom letters of executorship are to be granted or in whose favour an endorsement is to be made under section *fifteen*, or at whose instance letters of executorship are to be signed and sealed under section *twenty-one*, resides or is outside the Republic and has not chosen *domicilium citandi et executandi* in the Republic; or
- (b) if any such person could, if he is appointed as executor, be removed from his office under sub-paragraph (ii), (iii) or (iv) of paragraph (a) of sub-section (1) of section *fifty-four* or sub-paragraph (iii) of paragraph (b) of that sub-section; or
- (c) if any such person fails to satisfy the Master by a declaration under oath that letters of executorship have not already been granted or signed and sealed by any other Master in the Republic,

refuse to grant letters of executorship or to make the endorsement or to sign and seal the letters of executorship, as the case may be.

**Security for liquidation and distribution**

**23.** (1) Subject to the provisions of section *twenty-five*, every person who has not been nominated by will to be an executor shall, before letters of executorship are granted, or signed and sealed, and thereafter as the Master may require, find security to the satisfaction of the Master in an amount determined by the Master for the proper performance of his functions: Provided that if such person is a parent, spouse or child of the deceased, he shall not be required to furnish security unless the Master specially directs that he shall do so.

(2) Subject to the provisions of section *twenty-five*, every person nominated by will to be an executor and every person to be appointed assumed executor shall be under the like obligation of finding security unless -

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- (a) he is the parent, child or surviving spouse of the testator or has been assumed by such parent, child or spouse; or
- (b) he has been nominated by will executed before the first day of October, 1913, or assumed by the person so nominated, and has not been directed by the will to find security; or
- (c) he has been nominated by will executed after the first day of October, 1913, or assumed by the person so nominated, and the Master has in such will been directed to dispense with such security; or
- (d) the Court shall otherwise direct:

Provided that if the estate of any such person has been sequestrated or if he has committed an act of insolvency or is or resides or is about to reside outside the Republic, or if there is any good reason therefor, the Master may, notwithstanding the provisions of paragraph (a), (b) or (c), refuse to grant or to sign and seal letters of executorship or to make any endorsement under section *fifteen* until he finds such security.

(3) The Master may by notice in writing require any executor (including any executor who would not otherwise be under any obligation of finding security) whose estate or whose surety's estate has been sequestrated, or who or whose surety has committed an act of insolvency, or who is about to go or has gone to reside outside the Republic, to find, within a period specified in the notice, security or additional security, as the case may be, to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his functions.

(4) The Master shall allow the reasonable costs of finding security to be paid out of the estate.

(5) If any default is made by any executor in the proper performance of his functions, the Master may enforce the security and recover from such executor or his sureties the loss to the estate.

**Reduction of security given by executors**

**24.** If any executor who has given security to the Master for the proper performance of his functions, has accounted to the satisfaction of the Master for any property, the value of which was taken into consideration when the amount of such security was assessed, the Master may reduce the amount of the security to an amount which would, in his opinion, be sufficient to cover the value of the property which such executor has been appointed to liquidate and distribute, and which has not been so accounted for.

**Estates of persons who upon their death are not resident in the Republic and do not own any property other than movable property in the Republic**

**25.** (1) Upon the death of any person who is neither ordinarily resident within the Republic nor the owner of any property therein other than movable property, the Master may, subject to the provisions of sub-section (2) -

- (a) without observing the usual procedure or requiring security -
  - (i) sign and seal letters of executorship produced to or lodged with him under section 21; or

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- (ii) if no such letters are produced or lodged, appoint an executor to liquidate and distribute the estate, or direct the manner in which the estate shall be liquidated and distributed; and
- (b) by writing under his hand and subject to such conditions as he may determine, exempt the executor from compliance with the provisions of section 35.
- (2) The Master shall not exercise his powers under subsection (1) unless -
  - (a) an affidavit made by such person and containing such particulars as may be prescribed has been lodged with him in the place of the documents required in terms of the proviso to section 21;
  - (b) the estate duty payable in respect of the said movable property has been paid or the payment thereof has been secured to the satisfaction of the proper authority; and
  - (c) he is satisfied that no person in the Republic will be prejudiced.

[section 25 amended by Act 6 of 1986; not all of the changes are indicated by amendment markings, including changes to the heading of the section]

**Executor charged with custody and control of property in estate**

26. (1) Immediately after letters of executorship have been granted to him an executor shall take into his custody or under his control all the property, books and documents in the estate and not in the possession of any person who claims to be entitled to retain it under any contract, right of retention or attachment.

(2) If the executor has reason to believe that any such property, book or document is concealed or otherwise unlawfully withheld from him, he may apply to the magistrate having jurisdiction for a search warrant mentioned in sub-section (3).

(3) If it appears to a magistrate to whom such application is made, from a statement made upon oath, that there are reasonable grounds for suspecting that any property, book or document in any deceased estate is concealed upon any person or at any place or upon or in any vehicle or vessel or receptacle of any nature, or is otherwise unlawfully withheld from the executor concerned, within the area of the magistrate's jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.

(4) Such a warrant shall be executed in like manner as a warrant to search for stolen property, and the person executing the warrant shall deliver any article seized thereunder to the executor concerned.

**Inventories by executors and valuation at instance of Master**

27. (1) An executor who is ordered thereto by the Master or who in terms of section 23 has been required to find security, shall -

- (a) within 30 days after letters of executorship have been granted to him, or within such further period or periods as the Master may allow, lodge with the Master an inventory in the prescribed form signed by him in person showing the estimated value of all property in the estate; and
- (b) thereafter, whenever he comes to know of any such property which is not mentioned in any inventory lodged by him with the Master, within 14 days after he has come to



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know of such property, or within such further period as the Master may allow, lodge with the Master an additional inventory so signed by him showing the estimated value thereof.

**[subsection (1) amended by Act 6 of 1986;  
not all changes are indicated by amendment markings]**

(2) If in any inventory lodged with the Master in terms of section 9 or subsection (1) of this section, any estimate has been made of the value of any property which the Master has reason to believe is not a reasonably correct estimate thereof, the Master may, at the expense of the estate, order that property to be appraised by an appraiser or any other person approved by the Master.

**[subsection (2) amended by Act 6 of 1986]**

(3)

**[subsection (3) deleted by Act 6 of 1986]**

**Banking accounts**

**28.** (1) An executor -

(a) shall, unless the Master otherwise directs, as soon as he or she has in hand moneys in the estate in excess of the amount prescribed, open a cheque account in the name of the estate with a banking institution in Namibia and shall deposit therein the moneys which he or she has in hand and such other moneys as he or she may from time to time receive for the estate;

**[paragraph (a) amended by Act 15 of 2001]**

(b) may open a savings account in the name of the estate with a banking institution or a building society and may transfer thereto so much of the moneys deposited in the account referred to in paragraph (a) as is not immediately required for the payment of any claim against the estate;

(c) may place so much of the moneys deposited in the account referred to in paragraph (a) as is not immediately required for the payment of any claim against the estate on interestbearing deposit with a banking institution or a building society.

**[Subsection (1) is amended by Act 6 of 1986. Not all of the changes of punctuation are indicated by amendment markings. The term "interest-bearing" is erroneously changed to "interestbearing". ]**

(2) Every executor shall whenever required by the Master to do so, notify the Master in writing of the banking institution or building society and the office or branch thereof with which he has opened an account referred to in subsection (1); and furnish the Master with a bank statement or other sufficient evidence of the position of the account.

(3) No executor who in compliance with a request of the Master under subsection (2), has notified the Master of the office or branch of the banking institution or building society with which he has opened an account referred to in subsection (1) shall transfer any such account from any such office or branch to any other such office or branch, except after written notice to the Master.

**[subsection (3) amended by Act 6 of 1986]**

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(4) All cheques or orders drawn upon any such account shall contain the name of the payee and the cause of payment and shall be drawn to order and be signed by every executor or his duly authorized agent.

(5) The Master and any surety of the executor shall have the same right to information in regard to any such account as the executor himself possesses, and may examine all vouchers in relation thereto, whether in the hands of the banking institution or building society or of the executor.

(6) The Master may in writing direct the manager of any office or branch with which an account has been opened under subsection (1), to refuse, except with the consent of the Master, any further withdrawals of money from that account or to pay over into the guardian's fund all moneys standing to the credit of the account at the time of the receipt, by the said manager, of that direction, and all moneys which may thereafter be paid into that account, and shall notify the executor of any such direction.

[section 28 substituted by Act 79 of 1971]

**Notice by executors to lodge claims**

29. (1) Every executor shall, as soon as may be after letters of executorship have been granted to him, cause a notice to be published in the *Gazette* and in one or more newspapers circulating in the district in which the deceased ordinarily resided at the time of his death and, if at any time within the period of twelve months immediately preceding the date of his death he so resided in any other district, also in one or more newspapers circulating in that other district, or if he was not ordinarily so resident in any district in the Republic, in one or more newspapers circulating in a district where the deceased owned property, calling upon all persons having claims against his estate to lodge such claims with the executor within such period (not being less than thirty days or more than three months) from the date of the latest publication of the notice as may be specified therein.

[The proviso to subsection (1) is amended by Act 15 of 1978, substituted by Act 17 of 1981, and deleted by Act 6 of 1986.

The colon preceding the deleted proviso has also been deleted accordingly.]

(2) All claims which would be capable of proof in case of the insolvency of the estate may be lodged under sub-section (1).

**Restriction on sale in execution of property in deceased estates**

30. No person charged with the execution of any writ or other process shall -

- (a) before the expiry of the period specified in the notice referred to in section *twenty-nine*; or
- (b) thereafter, unless, in the case of property of a value not exceeding the amount prescribed, the Master, or in the case of any other property, the Court otherwise directs,

[paragraph (b) amended by Act 15 of 1978, Act 6 of 1986 and Act 15 of 2001; punctuation change made by Act 15 of 2001 not indicated by amendment marking]

sell any property in the estate of any deceased person which has been attached whether before or after his death under such writ or process: Provided that the foregoing provisions of this section shall not apply if such first-mentioned person could not have known of the death of the deceased person.

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**Late claims**

**31.** If any person fails to lodge his claim against any deceased estate before the expiry of the period specified in respect of that estate under sub-section (1) of section *twenty-nine*, he shall -

- (a) if he lodges his claim thereafter and does not satisfy the Master that he has a reasonable excuse for the delay, be liable for any costs payable out of the estate, in connection with the reframing of any account or otherwise, as a result of the delay; and
- (b) whether or not he lodges his claim thereafter, not be entitled in respect of his claim to demand restitution from any other claimant of any moneys paid to such other claimant at any time or before he lodged his claim, as the case may be, in pursuance of a valid claim against the estate.

**Disputed claims**

**32.** (1) If an executor disputes any claim against the estate, he may, by notice in writing -

- (a) require the claimant to lodge, in support of his claim, within a period specified in the notice, an affidavit setting forth such details of the claim as the executor may indicate in the notice; and
- (b) with the consent of the Master, require the claimant or any other person who may in the opinion of the Master be able to give material information in connection with the claim, to appear before the Master or any magistrate or Master nominated by the Master, at a place and time stated in the notice, to be examined under oath in connection with the claim.

(2) At an examination under paragraph (b) of sub-section (1), the person concerned may be questioned by the magistrate or Master before whom the examination takes place, and by the executor and any heir or the attorney or advocate acting on behalf of the executor or any heir.

(3) If any claimant fails without reasonable excuse to comply with any notice under sub-section (1), or having appeared in answer to any such notice, refuses to take the oath or to submit to examination or to answer fully and satisfactorily any lawful question put to him, his claim may be rejected by the executor.

(4) Any magistrate or Master before whom any such examination takes place shall take or cause to be taken a record thereof and shall, at the request of the executor or of the claimant and at the expense of the estate, or of the claimant, as the case may be, furnish the executor or claimant with a copy of such record.

**Rejected claims**

**33.** (1) If any executor rejects any claim against the estate, he shall forthwith notify the claimant in writing by registered post and shall state in the notice his reasons for rejecting the claim.

(2) Any Court by which any claim against a deceased estate is adjudged in favour of a claimant may decline to grant the claimant his costs against the estate if the Court is satisfied that

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the information given by the claimant to the executor was insufficient or that the executor was justified in rejecting the claim under sub-section (3) of section *thirty-two*.

### Insolvent deceased estates

**34.** (1) On the expiry of the period specified in the notice referred to in section *twenty-nine* the executor shall satisfy himself as to the solvency of the estate and, if the estate is insolvent, forthwith report its position to the Master.

(2) If the Master is satisfied that the value of the assets in the insolvent estate does not exceed the amount prescribed, the estate shall, subject to the rights of creditors, be liquidated and distributed in such manner as he or she may direct.

[subsection (2) amended by Act 15 of 1978, substituted by  
Act 17 of 1981, and amended by Act 15 of 2001]

(3) If the Master is not so satisfied, he shall in writing notify the executor accordingly.

(4) On the receipt of the notification under sub-section (3), the executor shall, without delay, by notice in writing (a copy of which he shall lodge with the Master) report the position of the estate to the creditors, informing them that unless a majority in number and value of all the creditors instruct him in writing, within a period (not being less than fourteen days) specified in the notice, to surrender the estate under the Insolvency Act, 1936 (Act No. 24 of 1936), he will proceed to realize the assets in the estate and distribute the proceeds in accordance with the provisions of sub-section (5): Provided that -

(a) no creditor whose claim amounts to less than the amount prescribed shall be reckoned in number;

[paragraph (a) amended by Act 15 of 2001]

(b) any creditor holding any security which a trustee would under section *eighty-three* of the said Act have been authorized to take over if the estate had been sequestrated, shall, if called upon to do so in writing by the executor, place a value thereon within the period specified by the executor, and shall be reckoned in respect of the balance of his claim which is, according to such valuation, unsecured; and

(c) if any creditor fails to place a value on any such security within the said period, he shall not be reckoned as a creditor for the purpose of this sub-section.

(5) If after the expiry of the period specified in the notice under sub-section (4) the executor has not in accordance with such notice been instructed to surrender the estate, he shall -

(a) realize the assets in the estate, on such conditions as the Master may approve, by public auction or public tender or in such other manner as the Master may approve;

(b) frame a distribution account providing for the distribution of the proceeds in the order of preference prescribed under the said Insolvency Act, 1936, in the case of a sequestrated estate; and

(c) subject to the provisions of sub-section (8), distribute the proceeds in accordance with such account.

(6) In so far as a date of sequestration is relevant for the purposes of the distribution of an estate under sub-section (5), such date shall be deemed to be the date immediately following

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the date on which the period specified in the notice given in respect of the estate in question under sub-section (4), has expired.

(7) If any creditor has under paragraph (b) of the proviso to sub-section (4) placed a value on any security, the executor may at any time within six weeks thereafter deal therewith *mutatis mutandis* in the manner provided in section *eighty-three* of the said Insolvency Act, 1936.

(8) The account of an executor liquidating or realizing and distributing an estate under this section shall be advertised by the executor and confirmed by the Master in like manner and with like effect as an account framed by a trustee in an insolvent estate is advertised and confirmed.

(9) The provisions of this section shall not prevent the sequestration of any estate under the said Insolvency Act, 1936.

**Liquidation and distribution accounts**

**35.** (1) An executor shall, as soon as may be after the last day of the period specified in the notice referred to in sub-section (1) of section 29, but within -

- (a) six months after letters of executorship have been granted to him; or
- (b) such further period as the Master may in any case allow,

submit to the Master an account in the prescribed form of the liquidation and distribution of the estate.

[subsection (1) amended by Act 15 of 1978 and by Act 6 of 1986; not all of the changes made by Act 6 of 1986 are indicated by amendment markings]

(1A) If at any time after the account contemplated in subsection (1) was submitted to the Master, additional assets are found in the estate and the account is not amended in terms of this section so as to provide for the application or distribution of the proceeds of those assets, the executor shall in respect of those assets submit to the Master a supplementary account in the prescribed form.

[subsection (1A) inserted by Act 6 of 1986]

(2) The Master may at any time in any case in which he has exercised his powers under paragraph (b) of subsection (1) or in which an executor has funds in hand which ought, in the opinion of the Master, to be distributed or applied towards the payment of debts, direct the executor in writing to submit to him an interim account in the prescribed form within a period specified.

[subsection (2) amended by Act 6 of 1986; not all of the changes are indicated by amendment markings]

(2A) The Master may in respect of an account contemplated in subsection (1), (1A) or (2) direct the executor to submit to him within a period determined by the Master such voucher or vouchers in support of the account or any entry therein as he may require for the purposes of performing his functions in connection with the examination or amendment of the account.

[subsection (2A) inserted by Act 6 of 1986]

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(3) The executor shall set forth in any interim account all debts due to the estate and still outstanding and all property still unrealized, and the reasons why such debts or property, as the case may be, have not been collected or realized.

(4) Every executor's account shall, after the Master has examined it, lie open at the office of the Master, and if the deceased was ordinarily resident in any district other than that in which the office of the Master is situate, a duplicate thereof shall lie open at the office of the magistrate of such other district for not less than twenty-one days, for inspection by any person interested in the estate.

(5) (a) The executor shall give notice that the account will be so open for inspection by advertisement in the *Gazette* and in one or more newspapers circulating in the district in which the deceased was ordinarily resident at the time of his death and, if at any time within the period of twelve months immediately preceding the date of his death he was so resident in any other district, also in one or more newspapers circulating in that other district, and shall state in the notice the period during which and the place at which the account will lie open for inspection.

(b) If, in the case of a supplementary account contemplated in subsection (1A), the value of the assets concerned is in the opinion of the Master too small to justify the cost of publication of the notices contemplated in paragraph (a) of this subsection, that paragraph shall not apply in respect of such supplementary account and the Master may, if he finds it necessary, direct the executor to give notice, in such manner and to such persons as the Master may determine, of the place at which and the period during which the account will lie open for inspection in terms of subsection (4).

[subsection (5) amended by Act 6 of 1986 to insert paragraph (b)]

(6) The magistrate shall cause to be affixed in some public place in or about his office, a list of all such accounts lodged in his office, showing the date on which each such account will be transmitted to the Master, and, upon the expiry of the period allowed for inspection, shall endorse on each account his certificate that the account has lain open in his office for inspection in accordance with this section and transmit the account to the Master.

(7) Any person interested in the estate may at any time before the expiry of the period allowed for inspection lodge with the Master in duplicate any objection, with the reasons therefor, to any such account and the Master shall deliver or transmit by registered post to the executor a copy of any such objection together with copies of any documents which such person may have submitted to the Master in support thereof.

(8) The executor shall, within fourteen days after receipt by him of the copy of the objection, transmit two copies of his comments thereon to the Master.

(9) If, after consideration of such objection, the comments of the executor and such further particulars as the Master may require, the Master is of opinion that such objection is well-founded or if, apart from any objection, he is of opinion that the account is in any respect incorrect and should be amended, he may direct the executor to amend the account or may give such other direction in connection therewith as he may think fit.

(10) Any person aggrieved by any such direction of the Master or by a refusal of the Master to sustain an objection so lodged, may apply by motion to the Court within thirty days after the date of such direction or refusal or within such further period as the Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit.

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(11) If any such direction affects the interests of a person who has not lodged an objection and the account is amended, the account as so amended shall, unless the said person consents in writing to the account being acted upon, again lie open for inspection in the manner and with the notice and subject to the remedies hereinbefore provided.

(12) When an account has lain open for inspection as hereinbefore provided and -

- (a) no objection has been lodged; or
- (b) an objection has been lodged and the account has been amended in accordance with the Master's direction and has again lain open for inspection, if necessary, as provided in sub-section (11), and no application has been made to the Court within the period referred to in sub-section (10) to set aside the Master's decision; or
- (c) an objection has been lodged but withdrawn, or has not been sustained and no such application has been made to the Court within the said period,

the executor shall forthwith pay the creditors and distribute the estate among the heirs in accordance with the account, lodge with the Master the receipts and acquittances of such creditors and heirs and produce to the Master the deeds of registration relating to such distribution, or lodge with the Master a certificate by the registration officer or a conveyancer specifying the registrations which have been effected by the executor: Provided that -

- (i) a cheque purporting to be drawn payable to a creditor or heir in respect of any claim or share due to him and paid by the banker on whom it is drawn; or
- (ii) an affidavit by the executor in which he declares that a creditor was paid or that an heir received his share in accordance with the account,

may be accepted by the Master in lieu of any such receipt or acquittance.

**[proviso to subsection (12) amended by Act 6 of 1986]**

(13) The executor shall not later than two months after the estate has become distributable in terms of sub-section (12), pay to the Master for deposit in the guardian's fund on behalf of the persons entitled thereto, all moneys which he has for any reason been unable to distribute in accordance with the account.

### **Failure by executor to lodge account or to perform duties**

**36.** (1) If any executor fails to lodge any account with the Master as and when required by this Act, or to lodge any voucher or vouchers in support of such account or any entry therein in accordance with a provision of or a requirement imposed under this Act or to perform any other duty imposed upon him by this Act or to comply with any reasonable demand of the Master for information or proof required by him in connection with the liquidation or distribution of the estate, the Master or any person having an interest in the liquidation and distribution of the estate may, after giving the executor not less than one month's notice, apply to the Court for an order directing the executor to lodge such account or voucher or vouchers in support thereof or of any entry therein or to perform such duty or to comply with such demand.

**[subsection (1) amended by Act 6 of 1986]**

(2) The costs adjudged to the Master or to such person shall, unless otherwise ordered by the Court, be payable by the executor, *de bonis propriis*.



## Massed estates

37. If any two or more persons have by their mutual will massed the whole or any specific portion of their joint estate and disposed of the massed estate or of any portion thereof after the death of the survivor or survivors or the happening of any other event after the death of the first-dying, conferring upon the survivor or survivors any limited interest in respect of any property in the massed estate, then upon the death after the commencement of this Act of the first-dying, adiation by the survivor or survivors shall have the effect of conferring upon the persons in whose favour such disposition was made, such rights in respect of any property forming part of the share of the survivor or survivors of the massed estate as they would by law have possessed under the will if that property had belonged to the first-dying; and the executor shall frame his distribution account accordingly.

## Taking over by surviving spouse of estate or portion thereof

38. (1) The Master may, if -
- (a) one of two spouses, whether they were married in or out of community of property, has died; and
  - (b) the deceased has made no provision to the contrary in any will; and
  - (c) the major heirs and any claimants against the estate consent; and
  - (d) it appears to him that no person interested would be prejudiced thereby,

authorize the executor, subject to security being given *mutatis mutandis* as provided in sub-section (2) of section *forty-three* for the payment of any minor's share, and to such conditions as the Master may determine, to make over any property or all the property of the deceased, or the whole or any part of that portion of his property in respect of which he has made no testamentary provision to the contrary, to the surviving spouse at a valuation to be made by an appraiser or any other person approved by the Master, and to frame his distribution account on the basis of such valuation.

(2) Sub-sections (3), (4) and (5) of section *forty-three* shall *mutatis mutandis* apply in respect of any security given under sub-section (1).

## Registration of immovable property in deceased estate

39. (1) An executor shall, subject to the provisions of subsections (2) and (3), the Deeds Registries Act, 1937 (Act No. 47 of 1937), and the Deeds Registries Proclamation, 1939 (Proclamation No. 37 of 1939), of the territory, cause immovable property (including, in the case of a massed estate, any such property forming part of the share of the survivor or survivors of that estate) to which an heir is entitled according to a distribution account, to be registered in the name of the heir, subject to any rights and conditions affecting such property.

[Subsection (1) is substituted by Act 54 of 1970. The Deeds Registries Proclamation 37 of 1939 was repealed by the South African Deeds Registries Amendment Act 3 of 1972, which made the South African Deeds Registries Act 47 of 1937 applicable to South West Africa. The Deeds Registries Act 47 of 1937 has since been replaced by the Deeds Registries Act 14 of 2015.]

(2) If a usufructuary or other like limited interest in any immovable property has been bequeathed to any person with a direction that after the expiry of such interest the property shall devolve upon some person uncertain or that the proceeds of the property shall devolve upon any person, whether certain or uncertain, the executor shall, subject to the provisions of section 25 of the said Act and section 25 of the said Proclamation, cause the terms of the will or a reference

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thereto to be endorsed against the title deeds of the property, and lodge with the Master a certificate by the registration officer concerned or a conveyancer that the title deeds have been so endorsed.

**[subsection (2) substituted by Act 54 of 1970]**

(3) If any heir is unable or could not without hardship be required to pay the costs involved in having any immovable property to which he is entitled according to a distribution account, registered in his name, the Master may authorize the executor to cause a note that the property has been bequeathed or inherited, as the case may be, to be endorsed against the title deeds of the property.

**Endorsement of testamentary trusts against title deeds and bonds**

**40.** (1) If an administrator has been appointed to administer any property of a deceased person under his will (including in the case of a massed estate any property forming part of the share of the survivor or survivors of that estate which, according to a distribution account, is to be administered by such administrator), the executor shall -

- (a) deliver to the administrator such of the movable property as should, according to the distribution account, be delivered to him;
- (b) cause the terms of the will, or a reference thereto, in so far as they relate to the administration, to be endorsed against the title deeds of such of the property as is immovable, and against any mortgage or notarial bond forming part of the property, and deliver the title deeds and any such bond, subject to the provisions of sub-section (2) of section *forty-one*, to the administrator; and
- (c) lodge with the Master the administrator's acquittance for any such movable property, deeds or bond, and a certificate by the registration officer concerned or a conveyancer that such deeds or bond have been endorsed as aforesaid.

(2) The provisions of section 23 (2), (3), (4) and (5) shall apply *mutatis mutandis*, in the case of the territory, to an administrator appointed by will or written instrument operating *inter vivos* executed prior to the commencement of section 7 of the General Law Amendment Act, 1975, and, in the case of the Republic, excluding the territory, to an administrator appointed by will or written instrument operating *inter vivos* executed prior to the commencement of the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934).

**[subsection (2) substituted by Act 54 of 1970 and by Act 57 of 1975]**

(3) The provisions of sub-section (2) shall lapse on the date of commencement of Chapter III.

**Production of title deed or bond to executor**

**41.** (1) Any person who has the possession or custody of any title deed or bond required by an executor for the purposes of any registration or endorsement in terms of this Act, shall deliver such deed or bond to the executor within a period of fourteen days after written demand has been made therefor by the executor.

(2) If any such person notifies the executor in writing at the time of the delivery of such deed or bond, that he has a right of retention in respect thereof, the executor shall return such deed or bond to such person as soon as it is no longer required by him for the purposes of this Act.

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(3) Any person who fails to comply with the provisions of sub-section (1), shall be liable for the costs to which the executor may be put in obtaining an order of the Court for the production of such deed or bond.

**Documents to be lodged by executor with registration officer**

42. (1) Except as is otherwise provided in sub-section (2), an executor who desires to have any immovable property registered in the name of any heir or other person legally entitled to such property or to have any endorsement made under section 39 or 40 shall, in addition to any other deed or document which he may be by law required to lodge with the registration officer, lodge with the said officer a certificate by a conveyancer that the proposed transfer or endorsement, as the case may be, is in accordance with the liquidation and distribution account.

[subsection (1) amended by Act 6 of 1986]

(2) An executor who desires to effect transfer of any immovable property in pursuance of a sale shall lodge with the registration officer, in addition to any such other deed or document, a certificate by the Master that no objection to such transfer exists.

[section 42 substituted by Act 102 of 1967]

**Movable property to which minors and moneys to which absentees or persons under curatorship are entitled**

43. (1) The natural guardian of a minor shall, subject to the provisions of sub-sections (2) and (3) and to the terms of the will (if any) of the deceased, be entitled to receive from the executor for and on behalf of the minor, any movable property to which the minor is, according to any distribution account in any deceased estate, entitled as an heir.

(2) Subject to any express provision to the contrary in the will -

- (a) no sum of money shall be paid to any such guardian in terms of subsection (1); and
- (b) if the Master so directs, no other movable property shall be delivered to any such guardian under that subsection,

unless payment of such sum of money or payment, in default to delivery, of the value of such movable property according to a valuation by an appraiser or any other person approved by the Master, as the case may be, to the minor, at the time when he is to become entitled to the payment of such sum of money or delivery of such property, has been secured to the satisfaction of the Master.

[Subsection (2) is amended by Act 6 of 1986. Not all of the changes are indicated by amendment markings. The phrase "default of delivery" is erroneously changed to "default to delivery".]

(3) Any such guardian shall, if called upon to do so by the Master by notice in writing, lodge with the Master, within a period specified in the notice or within such further period as the Master may allow, a statement in writing, signed by him in person and verified by an affidavit made by him, giving such particulars in respect of any such property or sum of money as may be indicated in the notice.

(4) If the estate of any such guardian or of his surety is sequestered, or if such guardian or surety commits an act of insolvency, or is about to go or has gone to reside outside the Republic, or if in the opinion of the Master the security given under sub-section (2) has become inadequate, the Master may, by notice in writing, require such guardian to provide within the period stated in the notice, such additional security as the Master may specify, and if the guardian fails to comply

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with the notice within the said period or within such further period as the Master may allow, the amount in question shall, unless the notice has been withdrawn by the Master, forthwith become payable into the hands of the Master.

- (5) The Master may -
- (a) if any payment or delivery referred to in sub-section (2) has been made to any minor entitled thereto; or
  - (b) if any minor entitled to any such payment or delivery at any time after his majority, consents thereto in writing after he has attained majority,

reduce the amount of the security to an amount which would, in his opinion, be sufficient to secure any other such payment or delivery still to be made by the guardian.

(6) Subject to the provisions of sub-section (1) and to the terms of the will (if any) of the deceased, an executor shall pay into the hands of the Master any money to which any minor, absentee, unknown heir or person under curatorship is entitled according to any liquidation or distribution account in the estate of the deceased: Provided that the Court may, upon consideration of a report by the Master and of the terms of the will (if any) of the deceased, make such order exempting the executor from compliance with the provisions of this subsection as it may deem fit.

**Movable property to which minor or unborn heir is entitled subject to usufructuary or fiduciary rights or other like interests**

44. (1) If according to any distribution account a minor is, or an unborn heir will when born be, entitled to any movable property out of a deceased estate, subject to usufructuary or fiduciary rights or any other like interest in favour of any other person including the natural guardian, tutor or curator of the minor or unborn heir, then, subject to the provisions of sub-section (3) and any express provision to the contrary in the will -

- (a) the executor shall, in the case of a sum of money, pay such sum of money into the hands of the Master, and, in the case of any other movable property, deal with such property in such manner as the Master may direct; and
- (b) such sum of money and, unless the Master otherwise directs, such other movable property shall not, during the minority of the minor or before the birth and during the minority of the heir, as the case may be, be paid or delivered to such person unless such person has given security *mutatis mutandis* as provided in sub-section (2) of section *forty-three*, for the payment of such sum or the delivery of such property to the minor or heir at the time when the minor or heir is to become entitled to such payment or delivery.

(2) Sub-sections (3), (4) and (5) of section *forty-three* shall *mutatis mutandis* apply in respect of any security given under sub-section (1).

(3) The provisions of subsection (1) shall not apply in relation to any disposition in a will executed in the Republic, excluding the territory, prior to a date twelve months after the date of commencement of this Act or in the territory prior to a date twelve months after the date of commencement of the Administration of Estates Amendment Act, 1970.

**[Subsection (3) is substituted by Act 54 of 1970.  
The Administration of Estates Amendment Act referred to above is Act 54 of 1970.]**

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**Payment of moneys to minors or persons under curatorship domiciled outside the Republic**

45. (1) If according to any distribution account in any deceased estate, any minor or person under curatorship domiciled outside the Republic is entitled to any sum of money, the executor with the concurrence of the Master, or the Master, if the said sum has been paid into his hands, may remit the said sum to the government of the country in which such minor or person is domiciled or to the natural guardian, tutor or curator of such minor or person in that country.

(2) If the executor has remitted any sum under sub-section (1), he shall in due course produce proof to the satisfaction of the Master that he has done so.

(3) No action shall lie against the Master at the instance of any such minor or person under curatorship in respect of any sum remitted under sub-section (1).

**Failure to pay over moneys**

46. Any executor who fails to pay over any money to the Master or to any other person or to deposit it in any banking account under section *twenty-eight* when required by or under this Act to do so, or who uses or knowingly permits any co-executor to use any property in the estate except for the benefit of the estate, shall pay into the estate an amount equal to double the amount which he has so failed to pay over or to deposit or to double the value of the property so used: Provided that the Master may, on good cause shown, exempt any executor, in whole or in part, from any liability which he may have incurred under this section.

**Sales by executor**

47. Unless it is contrary to the will of the deceased, an executor shall sell property (other than property of a class ordinarily sold through a stockbroker or a bill of exchange or property sold in the ordinary course of any business or undertaking carried on by the executor) in the manner and subject to the conditions which their heirs who have an interest therein approve in writing:

Provided that -

- (a) in the case where an absentee, a minor or a person under curatorship is heir to the property; or
- (b) if the said heirs are unable to agree on the manner and conditions of the sale,

the executor shall sell the property in such manner and subject to such conditions as the Master may approve.

[section 47 substituted by Act 6 of 1986 (formatting as in *Official Gazette*)]

**Extension of time and compounding of debts**

48. An executor may accept from a debtor of the deceased estate who is unable to pay his debt in full, any reasonable part of the debt in discharge of the whole debt or grant any debtor of the deceased estate an extension of time for the payment of his debt in so far as this is compatible with the provisions of section *thirty-five*: Provided that if the debt exceeds two hundred rand, an executor shall, subject to the terms of the will (if any) of the deceased, not accept a part of the debt in discharge of the whole debt, unless he has been authorized to do so by the Master.

**Purchases by executor of property in estate, or mortgaged or pledged to the deceased**

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**49.** (1) If any executor or his spouse, parent, child, partner, employer, employee or agent purchases any property in the estate which he has been appointed to liquidate and distribute, the purchase shall, subject to the terms of the will (if any) of the deceased, and, in the case of an executor who is the surviving spouse of the deceased, to the provisions of section *thirty-eight*, be void, unless it has been consented to or is confirmed by the Master or by the Court.

(2) An executor may, in his capacity as such, and subject to the consent of or confirmation by the Master, buy in any property mortgaged or pledged to the deceased.

**Executor making wrong distribution**

**50.** Any executor who makes a distribution otherwise than in accordance with the provisions of section *thirty-four* or *thirty-five*, as the case may be, shall -

- (a) be personally liable to make good to any heir and to any claimant whose claim was lodged within the period specified in the notice referred to in section *twenty-nine*, any loss sustained by such heir in respect of the benefit to which he is entitled or by such claimant in respect of his claim, as a result of his failure to make a distribution in accordance with the said provisions; and
- (b) be entitled to recover from any person any amount paid or any property delivered or transferred to him in the course of the distribution which would not have been paid, delivered or transferred to him if a distribution in accordance with the said provisions had been made: Provided that no costs incurred under this paragraph shall be paid out of the estate.

**Remuneration of executors and interim curators**

**51.** (1) Every executor (including an executor liquidating and distributing an estate under sub-section (4) of section *thirty-four*) shall, subject to the provisions of sub-sections (3) and (4), be entitled to receive out of the assets of the estate -

- (a) such remuneration as may have been fixed by the deceased by will; or
- (b) if no such remuneration has been fixed, a remuneration which shall be assessed according to a prescribed tariff and shall be taxed by the Master.

(2) An interim curator appointed under section *twelve* shall, subject to the provisions of sub-section (3), be entitled to receive out of the assets of the estate a remuneration which shall be so assessed and taxed.

- (3) The Master may -
  - (a) if there are in any particular case special reasons for doing so, reduce or increase any such remuneration;
  - (b) disallow any such remuneration, either wholly or in part, if the executor or interim curator has failed to discharge his duties or has discharged them in an unsatisfactory manner; and
  - (c) if the deceased had a limited interest in any property which terminated at his death, direct that so much of such remuneration as the Master considers equitable, or the whole thereof if there are no other assets available for the payment of such

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remuneration, shall be paid in such proportion as he may determine by the persons who became entitled to the property at the death of the deceased.

(4) An executor shall not be entitled to receive any remuneration before the estate has been distributed as provided in subsection (4) of section *thirty-four* or sub-section (12) of section *thirty-five*, as the case may be, unless payment of such remuneration has been approved in writing by the Master.

**No substitution or surrogation**

52. It shall not be competent for any executor to substitute or surrogate any other person to act in his place.

**Absence of executor from Republic**

53. An executor shall not be absent from the Republic for a period exceeding 60 days unless -

- (a) the Master has before his departure from the Republic granted him permission in writing to be absent;
- (b) he complies with such conditions as the Master may think fit to impose; and
- (c) he has given such notice of his intention to be so absent as the Master may have directed.

[section 53 substituted by Act 6 of 1986]

**Removal from office of executor**

54. (1) An executor may at any time be removed from his office -

(a) by the Court -

(i)

[subparagraph (i) deleted by Act 6 of 1986]

- (ii) if he has at any time been a party to an agreement or arrangement whereby he has undertaken that he will, in his capacity as executor, grant or endeavour to grant to, or obtain or endeavour to obtain for any heir, debtor or creditor of the estate, any benefit to which he is not entitled; or
- (iii) if he has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to vote for his recommendation to the Master as executor or to effect or to assist in effecting such recommendation; or
- (iv) if he has accepted or expressed his willingness to accept from any person any benefit whatsoever in consideration of such person being engaged to perform any work on behalf of the estate; or
- (v) if for any other reason the Court is satisfied that it is undesirable that he should act as executor of the estate concerned; and



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- (b) by the Master -
- (i) if he has been nominated by will and that will has been declared to be void by the Court or has been revoked, either wholly or in so far as it relates to his nomination; or
  - (ii) if he fails to comply with a notice under subsection (3) of section 23 within the period specified in the notice or within such further period as the Master may allow; or
- [subparagraph (ii) amended by Act 6 of 1986]**
- (iii) if he is convicted, in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged instrument or perjury, and is sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding twenty rand; or
  - (iv) if at the time of his appointment he was incapacitated, or if he becomes incapacitated to act as executor of the estate of the deceased; or
  - (v) if he fails to perform satisfactorily any duty imposed upon him by or under this Act or to comply with any lawful request of the Master; or
  - (vi) if he applies in writing to the Master to be released from his office.

(2) Before removing an executor from his office under subparagraph (i), (ii), (iii), (iv) or (v) of paragraph (b) of subsection (1), the Master shall forward to him by registered post a notice setting forth the reasons for such removal, and informing him that he may apply to the Court within thirty days from the date of such notice for an order restraining the Master from removing him from his office.

(3) An executor who has not been nominated by will may at any time be removed from his office by the Master if it appears that there is a will by which any other person who is capable of acting and consents to act as executor has been nominated as executor to the estate which he has been appointed to liquidate and distribute: Provided that if the non-production or non-disclosure of the will prior to the appointment of such first-mentioned executor has been due to the fault or negligence of the person therein nominated executor, the person so nominated shall be personally liable, at the instance of the Master or any person interested, to make good all expenses which have been incurred in respect of the appointment of such first-mentioned executor.

(4) The Court removing any executor from his office may declare him incapable, during the period of his life or such other period as it may determine, of holding office as an executor.

(5) Any person who ceases to be an executor shall forthwith return his letters of executorship to the Master.

**Continuance of pending legal proceedings by remaining or new executor**

**55.** (1) No civil legal proceedings instituted by or against any executor shall lapse merely because he has ceased to be an executor.

(2) The Court in which any such proceedings are pending may, upon receiving notice that such executor has ceased to be an executor, allow the name of any remaining or new executor

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to be substituted for the former, and the proceedings shall thereupon be continued as if they had originally been instituted by or against such remaining or new executor.

**Discharge of executors, and proceedings against discharged executors**

**56.** (1) Upon the completion to the satisfaction of the Master of the liquidation and distribution of a deceased estate, the executor shall, subject to the provisions of section *seventeen* of the Estate Duty Act, 1955 (Act No. 45 of 1955), be entitled to obtain his discharge from the Master.

[The Estate Duty Act 45 of 1955 was not made applicable to South West Africa.]

(2) No person shall institute any legal proceedings against any person who has been discharged as executor under subsection (1), in respect of any claim against the deceased estate or any benefit out of that estate: Provided that the provisions of this sub-section shall not exempt any such person from liability in respect of any fraudulent dealing in connection with the estate or the liquidation or distribution thereof.

- (3) (a) After two years have elapsed as from the date upon which any person has been discharged as an executor, he may, with the consent in writing of the Master, destroy all books and documents in his possession relating to the estate of which he was the executor.
- (b) Paragraph (a) shall apply also in relation to any deceased estate liquidated and distributed prior to the date of commencement of this Act.

## CHAPTER III

## ADMINISTRATORS

[Chapter III, comprising sections 57-70, was not brought into force in South West Africa. It was repealed in South Africa by the *Trust Moneys Control Act 57 of 1988 (RSA GG 11357)*, which was enacted after the date of transfer and did not apply to South West Africa because it was not made expressly so applicable.]

**In certain cases property not to be administered without letters of administratorship**

- 57.** No person shall -
- (a) administer any property which has by the will of any person who dies after the commencement of this Chapter, been given under his control to be administered for the benefit, whether in whole or in part, of any other person; or
- (b) after the death of any donor who dies after the commencement of this Chapter, administer any property which has by any written instrument operating *inter vivos* been given under his control by such donor for the said purpose,

except under letters of administratorship granted or signed and sealed under this Chapter, or under an endorsement made under section *fifty-nine*.

**Orders by Master prohibiting administration without letters of administratorship**

- 58.** (1) The Master may, subject to the provisions of subsections (3) and (4) -
- (a) if written application is made therefor by any interested beneficiary under any will or written instrument operating *inter vivos* whereby a testator or donor who has died

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before the commencement of this Chapter, has given any property under the control of any person to be administered for the benefit whether in whole, or in part, of any other person; and

- (b) if a report by an accountant on the administration of the property by the person under whose control it has been so given is submitted with the application; and
- (c) if there are reasonable grounds for believing that the interests of such beneficiary would be prejudiced if the said person is not restrained from administering that property otherwise than under letters of administratorship granted or signed and sealed under this Chapter or under an endorsement made under section *fifty-nine*, as the case may be,

by written order under his hand, prohibit that person from so administering that property.

(2) Any person under whose control any property has been given as aforesaid shall allow any accountant nominated in writing by any beneficiary referred to in paragraph (a) of subsection (1) to examine, for the purposes of compiling the report referred to in paragraph (b) of the said sub-section, any books of account and any document kept by him or in his custody or under his control and relating to his administration of such property.

(3) The Master shall, before exercising his powers under sub-section (1), give the person under whose control the property has been so given, not less than thirty days' notice of the grounds upon which the exercise of those powers is contemplated, and shall consider any representations made or information or evidence submitted to him by such person within that period.

(4) The said notice shall be accompanied by a summary of all the relevant facts relating to the application which have come to the knowledge of the Master.

**Letters of administratorship to administrators nominated by deceased persons, and endorsements in case of assumed administrators**

**59.** (1) The Master shall, subject to the provisions of subsection (3), on the written application of any person -

- (a) under whose control a testator or donor who has died before or after the commencement of this Chapter, has by will or written instrument operating *inter vivos* which has been registered in the office of the Master, given any property to be administered for the benefit, in whole or in part, of any other person; and
- (b) who is not incapacitated from being an administrator of such property and has complied with the provisions of this Act,

grant letters of administratorship to such person.

- (2) The Master shall, subject to the provisions of sub-section (3) -
  - (a) on the written application of any person who has been duly nominated as an assumed administrator by any administrator nominated by a testator or donor referred to in paragraph (a) of sub-section (1), is not incapacitated from being an administrator of the property concerned, and has complied with the provisions of this Act; and
  - (b) on production of the deed of assumption duly signed by the person so assumed and the administrator so assuming him,

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endorse the appointment of such person as assumed administrator on the letters of administratorship granted to the administrator so assuming him.

(3) The provisions of sections *sixteen* and *twenty-two* shall *mutatis mutandis* apply with reference to letters of administratorship to be granted under sub-section (1) and any endorsement to be made under sub-section (2), and the provisions of subsections (2) and (3) of section *fifteen* shall so apply with reference to any such endorsement.

(4) If written application for any letters of administratorship granted under sub-section (1), was made within fourteen days after the death of the testator or donor, or the date of any order made under section *fifty-eight*, as the case may be, such letters of administratorship shall, for the purposes of section *fifty-seven*, or of the prohibition contained in such order, as the case may be, be deemed to have been granted immediately after the death of the testator or donor, or on the date of such order.

**Proceedings on failure of nomination of administrators, or on death, incapacity or refusal to act, etc.**

60. (1) The Master shall, subject to the provisions of sub-section (2) -
- (a) if any person who dies after the commencement of this Chapter, has, without nominating any person as administrator, by will or by written instrument operating *inter vivos* provided for the administration of any property for the benefit, in whole or in part, of any person; or
  - (b) if any eventually referred to in paragraph (b), (c), (d), (e) or (f) of sub-section (1) of section *eighteen*, occurs with reference to any person or persons -
    - (i) who have by will or written instrument operating *inter vivos* been nominated by a person who dies after the commencement of this Chapter to be administrator or administrators; or
    - (ii) against whom an order under section *fifty-eight* has been made; or
    - (iii) to whom letters of administratorship have been granted under this Chapter,

by notice in writing or by a notice published in such manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the persons for whose benefit the property is or is to be administered, to attend before him or, if more expedient, before any other Master or any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as administrator or administrators, a person or a specified number of persons.

(2) Sub-sections (2), (4), (5) and (6) of section *eighteen* shall *mutatis mutandis* apply with reference to administrators: Provided that for the purposes of the application under this sub-section of the said sub-section (2), the reference to subsection (3) of section *eighteen* and to section *nineteen*, shall be deemed to be omitted.

**Competition for office of administrator**

61. If at any meeting in pursuance of a notice under subsection (1) of section *sixty* more than one person is nominated for recommendation to the Master, the Master shall, in making any appointment, prefer the nominee of a more immediate beneficiary to the nominee of a more remote beneficiary: Provided that the Master may -

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- (a) join the nominee of a more immediate beneficiary with the nominee of a more remote beneficiary; or
- (b) if there is any good reason therefor, pass by any or all of such nominees.

**Foreign letters of administratorship**

**62.** Whenever the provisions of section *twenty-one* apply, in terms of section *twenty*, to letters of executorship granted in any State, the said provisions shall *mutatis mutandis* also apply to letters of administratorship so granted.

**Security by administrators**

**63.** (1) Every person to be appointed administrator dative or assumed administrator or against whom an order has been made under section *fifty-eight* shall, before letters of administratorship are granted or signed and sealed, or any endorsement is made under section *fifty-nine*, as the case may be, find security to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his functions.

(2) Every person to be appointed administrator in pursuance of any will or written instrument operating *inter vivos*, shall be under the like obligation of finding security, unless -

- (a) he has been nominated by any will or by any such instrument executed before the commencement of this Chapter, and has not been directed by such will or instrument to find security; or
- (b) he has been nominated by any will or by any such instrument executed after the commencement of this Chapter, and the Master has by such will or instrument been directed to dispense with such security; or
- (c) the Court shall otherwise direct:

Provided that if the estate of any such person has been sequestrated, or if he has committed an act of insolvency, or if he is or resides or is about to reside outside the Republic, or if there is any good reason therefor, the Master may, notwithstanding the provisions of paragraph (a) or (b), refuse to grant or sign and seal letters of administratorship or to make any endorsement under section *fifty-nine*, until he finds such security.

(3) The costs of finding such security shall be paid out of the income derived from the property concerned or out of the property itself: Provided that such costs shall, subject to the terms of the will or written instrument operating *inter vivos*, for the purposes of adjustment between the beneficiaries concerned, be brought into account against the said income and against the property in such proportions as the Master may determine.

(4) Sub-sections (3) and (5) of section *twenty-three* shall *mutatis mutandis* apply with reference to administrators.

(5) Unless the Master otherwise directs, an administrator shall be required to find security in terms of this section if all the beneficiaries concerned are permanently resident outside the Republic.

**Transfer and mortgage of immovable property by or in favour of administrators**

**64.** (1) An administrator who desires to have any immovable property registered in the name of any beneficiary or to have any endorsement made under section *thirty-nine*, as applied

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by section *seventy*, shall, in addition to lodging any deed or document which he may by law be required to lodge with the registration officer, satisfy the said officer that the proposed transfer or endorsement is in accordance with the will or written instrument operating *inter vivos*.

(2) An administrator who desires to effect transfer of any immovable property in pursuance of a sale, or to effect the registration of a mortgage over immovable property and any person who desires to effect transfer of any immovable property to an administrator or to effect the registration of a mortgage over immovable property in favour of an administrator, shall satisfy the registration officer that it is within the powers of the administrator to effect such transfer or registration, or to acquire such property or accept such mortgage, as the case may be.

**Accounts by Administrators**

[The term “administrators” is not capitalised elsewhere in the Act.]

**65.** (1) An administrator shall at least once in every year not later than a date to be determined by the Master -

- (a) lodge with the Master a statement of account in the prescribed form and an audit certificate in the prescribed form, signed by an accountant appointed in terms of the will or written instrument operating *inter vivos*, or, if no accountant has been so appointed, by an accountant nominated by the Master after consultation with the beneficiaries;
- (b) forward to each beneficiary, or in the case of a minor or a person under curatorship, to the natural guardian, tutor or curator of such minor or person, as the case may be, a copy of such statement and certificate; and
- (c) lodge with the Master a certificate that he has complied with the requirements of paragraph (b).

(2) The Master shall issue to every accountant nominated by him in terms of paragraph (a) of sub-section (1) a certificate of nomination and advise the administrator of the name and address of such accountant.

(3) Subject to the terms of the will or written instrument operating *inter vivos*, any expense incurred in terms of subsection (1) shall be paid out of the income derived from the property concerned or out of the property itself and shall, for the purposes of adjustment between the beneficiaries concerned, be brought into account against the said income and against the property in such proportions as the Master may determine.

**Movable property to which minors and moneys to which absentees or persons under curatorship are entitled**

**66.** (1) The natural guardian of a minor shall, subject to the provisions of sub-section (2) and to the terms of the will or written instrument operating *inter vivos*, be entitled to receive from an administrator for and on behalf of the minor -

- (a) any income accruing to the minor from the property concerned; and
- (b) any money or other movable property to which the minor is entitled under the will or written instrument.

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(2) Sub-sections (2), (3), (4) and (5) of section *forty-three* shall *mutatis mutandis* apply with reference to any money or other movable property referred to in paragraph (b) of subsection (1).

(3) Subject to the provisions of sub-section (1) and of the terms of the will or written instrument operating *inter vivos*, an administrator shall pay into the hands of the Master any money to which any minor, absentee, unknown beneficiary or person under curatorship becomes entitled by way of income from the property concerned or otherwise under the will or written instrument.

**Payment of moneys to minors or persons under curatorship domiciled outside the Republic**

**67.** (1) If any minor or any person under curatorship domiciled outside the Republic, becomes entitled to any sum of money by way of income from any property administered by an administrator or otherwise in terms of the will or written instrument operating *inter vivos* under which any property is administered by an administrator, the administrator with the concurrence of the Master, or the Master, if the said sum has been paid into his hands, may remit the said sum to the government of the country in which such minor or person is domiciled or to the guardian, tutor or curator of such minor or person in that country.

(2) Sub-sections (2) and (3) of section *forty-five* shall *mutatis mutandis* apply with reference to any sum remitted under subsection (1).

**Administrator making wrong distribution**

**68.** Any administrator who makes a distribution otherwise than in accordance with the provisions of the relevant will or written instrument operating *inter vivos* -

- (a) shall be personally liable to make good to any beneficiary or creditor any loss sustained by such beneficiary in respect of the benefit to which he is entitled, or by such creditor in respect of his claim, as a result of his failure to make a distribution in accordance with the said provisions, unless the court otherwise directs; and
- (b) shall be entitled to recover from any person any amount paid or any property delivered or transferred to him in the course of the distribution, which would not have been paid, delivered or transferred to him if a distribution had been made in accordance with the said provisions: Provided that no costs incurred under this paragraph shall be paid out of the property in respect of which such administrator has been appointed or out of any income therefrom.

**Remuneration of administrators**

**69.** (1) Every administrator shall, subject to the provisions of sub-section (2), in respect of his administration and distribution of the property concerned, be entitled to receive out of the income derived from the property concerned or out of the property itself -

- (a) such remuneration as may have been fixed by the will or written instrument operating *inter vivos*; or
- (b) if no such remuneration has been fixed, a remuneration which shall be assessed according to a prescribed tariff and shall be taxed by the Master.

(2) The Master may -



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- (a) if there are in any particular case special reasons for doing so, reduce or increase any such remuneration;
- (b) if the administrator has failed to discharge his duties or has discharged them in an unsatisfactory manner, disallow any such remuneration, either wholly or in part.

(3) Any such remuneration shall, subject to the terms of the will or written instrument operating *inter vivos*, for the purposes of adjustment between the beneficiaries concerned, be brought into account against the said income and against the property in such proportions as the Master may determine.

**Application of certain sections to administrators**

70. (1) Sections *seventeen, twenty-four, twenty-eight, thirty-six, thirty-nine* and *forty-one*, sub-sections (1) and (3) of section *forty-four*, sections *forty-six* to *forty-nine*, inclusive, and sections *fifty-two* to *fifty-six*, inclusive, shall *mutatis mutandis* apply with reference to administrators: Provided that any reference in any of the said sections to a will shall, for the purposes of its application under this sub-section, include a reference to any written instrument operating *inter vivos* and executed by a person who has died.

(2) Section *twenty-seven* shall *mutatis mutandis* apply with reference to administrators appointed to administer any property under a written instrument operating *inter vivos*.

## CHAPTER IV

## TUTORS AND CURATORS

**Certain persons not to administer property as tutor or curator without letters of tutorship or curatorship**

71. (1) No person who has been nominated, appointed or assumed as provided in section *seventy-two* shall take care of or administer any property belonging to the minor or other person concerned, or carry on any business or undertaking of the minor or other person, unless he is authorized to do so under letters of tutorship or curatorship, as the case may be, granted or signed and sealed under this Act, or under an endorsement made under the said section.

(2) Any letters of confirmation or certificate granted or issued under the Administration of Estates Act, 1913 (Act No. 24 of 1913), or under section *sixty-two* of the Mental Disorders Act, 1916 (Act No. 38 of 1916), and in force at the commencement of this Act, shall be deemed to be letters of tutorship or curatorship, as the case may be, granted under this Act.

**Letters of tutorship and curatorship to tutors and curators nominate and endorsement in case of assumed tutors and curators**

72. (1) The Master shall, subject to the provisions of subsection (3) and to any applicable provision of section 4 of the Matrimonial Affairs Ordinance, 1955 (Ordinance 25 of 1955), or any order of court made under any such provision, on the written application of any person -

- (a) who has been nominated by will or written instrument -
  - (i) by the parent to sole guardianship of minor has been granted under subsection (1) of said section 4; or

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- (ii) by the mother of an illegitimate minor who has not been so deprived of the guardianship of such minor or of her parental powers over him or her,

to administer the property of such minor and to take care of his or her person as tutor, or to take care of or administered his or her property as curator; or

**[An obvious formatting error in the substitution made by Act 3 of 2015, concerning the placement of the closing phrase, has been corrected here.]**

- (b) who has been nominated by will or written instrument by any parent of a minor to administer as curator any property which the minor has inherited from such parent; or
- (c) who has been nominated by will or written instrument by any deceased person who has given or bequeathed any property to any other person, to administer that property as curator; or
- (d) who has been appointed by the Court or a judge to administer the property of any minor or other person as tutor or curator and to take care of his person or, as the case may be, to perform any act in respect of such property or to take care thereof or to administer it;
- (e) who is not incapacitated from being the tutor or curator of the minor or other person concerned or of his property, as the case may be, and has complied with the provisions of this Act, and, in the case of a person contemplated in paragraph (f), with the provisions of the Child Care and Protection Act, 2015 (Act No. 3 of 2015); or
- (f) who has been appointed as guardian of a minor by the children's court under section 102 or 113 of the Child Care and Protection Act, 2015 (Act No. 3 of 2015),

grant letters of tutorship or curatorship, as the case may be, to such person.

**[Subsection (1) is substituted by Act 54 of 1970 and amended by Act 70 of 1979. (The Divorce Act 70 of 1979 was not applicable to South West Africa, making the amendments to subsection (1) by that Act irrelevant to South West Africa – but the amendments technically applied to South West Africa by virtue of section 108A of this Act since they came into force before the date of transfer.) Subsection (1) is further amended by Act 1 of 1996. (The amendments in Act 1 of 1996 are made as if the amendments by the Divorce Act 70 of 1979 were not applicable to South West Africa.) Subsection 1 is substituted with amendment markings by Act 3 of 2015.]**

- (2) The Master shall, subject to the provisions of subsection (3) -
  - (a) on the written application of any person who has been duly nominated as an assumed tutor or curator, is not incapacitated from being the tutor or curator of the minor or other person concerned or of his property, as the case may be, and has complied with the provisions of this Act; and
  - (b) on production of the deed of assumption duly signed by the person so nominated and the tutor or curator, as the case may be, so assuming him,

endorse the appointment of such person as assumed tutor or curator on the letters of tutorship or curatorship, as the case may be, granted to such tutor or curator.

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(3) The provisions of sections *sixteen* and *twenty-two* shall *mutatis mutandis* apply with reference to letters of tutorship or curatorship to be granted under sub-section (1) and any endorsement to be made under sub-section (2), and the provisions of sub-sections (2) and (3) of section *fifteen* shall so apply with reference to any such endorsement.

**Proceedings on failure of nomination of tutors or curators, or on death, incapacity or refusal to act, etc.**

73. (1) The Master may, subject to the provisions of subsections (2), (3) and (4) -

[introductory phrase amended by Act 6 of 1986]

(a) if it comes to his knowledge -

(i) that any minor is the owner of any property in the Republic which is not under the care of any guardian, tutor or curator; or

(ii) that any absentee is the owner of any property in the Republic,

and he is satisfied that the said property should be cared for or administered on behalf of such minor or absentee; or

(b) in any case in which it would, in terms of the proviso to section 56(1) of the Mental Health Act, 1973 (Act 18 of 1973), be competent for a judge in chambers to appoint a curator; or

[paragraph (b) amended by Act 6 of 1986]

(c) if any eventuality referred to in paragraph (b), (c), (d), (e) or (f) of sub-section (1) of section *eighteen* occurs with reference to any person who has been nominated as provided in paragraph (a), (b) or (c) of sub-section (1) of section *seventy-two*, or to whom letters of tutorship or curatorship have been granted under the latter section or under this sub-section,

by notice published in the *Gazette* and in such other manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the relatives of the minor, absentee or other person concerned, and upon all persons having an interest in the care or administration of his property to attend before him or, if more expedient, before any other Master or any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as tutor or tutors or as curator or curators, a person or a specified number of persons.

(2) Subsections (2), (5) and (6) of section 18 shall *mutatis mutandis* apply with reference to tutors and curators: Provided that for the purposes of the application under this subsection of the said subsection (2), the reference to subsection (3) of section 18 and to section 19 shall be deemed to be omitted.

[subsection (2) amended by Act 6 of 1986;  
not all of the changes are indicated by amendment markings]

(3) The Master may, without any notice under sub-section (1), if he is satisfied that any absentee or other person would be prejudiced by the non-performance by the absentee of any particular act in respect of any property of the absentee in the Republic, appoint and grant letters of curatorship to such person as he deems fit and proper, to perform such act on behalf of the absentee.

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(4) The Master may, if the value of the property of any minor or absentee or other person referred to in subsection (1) does not exceed R5 000, without any notice under that subsection, appoint and grant letters of tutorship or curatorship to such person or persons as he deems fit and proper as tutor or tutors or curator or curators, as the case may be.

[subsection (4) inserted by Act 6 of 1986;

**Foreign letters of tutorship or curatorship**

74. Whenever the provisions of section *twenty-one* apply, in terms of section *twenty*, to letters of executorship granted in any State, the said provisions shall *mutatis mutandis* apply also to letters of tutorship or curatorship so granted.

**Notifications in respect of tutors and curators**

75. The Master shall, whenever he has granted or signed and sealed letters of tutorship or curatorship or has made an endorsement under section *seventy-two*, to or in favour of any person, and whenever any such person ceases to be a tutor or curator, cause to be published in the *Gazette* and in one or more newspapers circulating in the district in which the minor or person under curatorship is ordinarily resident, or if he is not so resident in any district in the Republic, in one or more newspapers circulating in the area in which such minor or person owns property, a notice stating that a tutor or curator has been appointed to such minor or person, and specifying the names and addresses of the tutor or curator and of such minor or person, or stating that the tutor or curator has ceased to be a tutor or curator and specifying the names and addresses aforesaid, as the case may be.

**Authority conferred by letters of tutorship and curatorship**

76. (1) The Master may -
- (a) by any letters of tutorship granted by him, authorize the tutor to administer the property of the minor, and may by such letters also authorize the tutor to carry on, subject to any law which may be applicable, any business or undertaking of the minor; and
  - (b) by any letters of curatorship granted by him, authorize the curator to do any one or more of the following, namely -
    - (i) to perform any particular act in respect of the property of the person concerned;
    - (ii) to take care of the said property;
    - (iii) to administer the said property; and
    - (iv) to carry on, subject to any law which may be applicable, any business or undertaking of the person concerned.
- (2) The Master shall, by any such letters granted by him -
- (a) in any case referred to in paragraph (d) of sub-section (1) of section *seventy-two*, confer upon the tutor or curator such powers as will give effect to the terms of the appointment by the Court or the judge; and

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- (b) in any case referred to in paragraph (a), (b) or (c) of that sub-section, or in sub-section (2) of that section, if in terms of the will or other written instrument concerned, the curator is to administer the property of the person concerned, or if in terms of the will or other written instrument concerned the tutor or curator is to carry on any business or undertaking of the minor or other person concerned, authorize the curator to administer the property or, as the case may be, authorize the tutor or curator to carry on such business or undertaking subject to any law which may be applicable.

**Security by tutors and curators**

77. (1) Every person appointed or to be appointed tutor or curator as provided in paragraph (d) of subsection (1) of section 72 or subsection (2) of that section or under section 73 or 74, shall, before letters of tutorship or curatorship are granted or signed and sealed, or any endorsement is made, as the case may be, and at any time thereafter when called upon by the Master to do so, find security or additional security to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his functions.

[subsection (1) amended by Act 6 of 1986;  
not all of the changes are indicated by amendment markings]

(2) Every person nominated as provided in paragraph (a), (b) or (c) of sub-section (1) of section *seventy-two* to be a tutor or curator, shall be under the like obligation of finding security unless -

- (a) he has been nominated by will or written instrument executed before the first day of October, 1913, or if he is the parent of the minor, by will or written instrument executed before the commencement of this Act, and has not been directed by the will or instrument to find security; or
- (b) he has been nominated by will or written instrument executed after the first day of October, 1913, or if he is the parent of the minor, by will or written instrument executed after the commencement of this Act, and the Master has in such will or instrument been directed to dispense with such security; or
- (c) the Court shall otherwise direct:

Provided that if the estate of any such person has been sequestered or if he has committed an act of insolvency or is or resides or is about to reside outside the Republic, or if there is any good reason therefor, the Master may, notwithstanding the provisions of paragraph (a) or (b), refuse to grant letters of tutorship or curatorship until he finds such security.

(3) The Master may by notice in writing require any tutor or curator (including any tutor or curator who would not otherwise be under any obligation of finding security) whose estate or whose surety's estate has been sequestered, or who or whose surety has committed an act of insolvency, or who is about to go or has gone to reside outside the Republic, or who is the parent of the minor or other person concerned and is or becomes a widower or widow or divorced and remarries, to find, within a period specified in the notice, security or additional security, as the case may be, to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his functions.

(4) The costs of finding any security under this section shall be paid out of the income derived from the property concerned or out of the property itself.

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(5) If any default has been made by any tutor or curator in the proper performance of his functions, the Master may enforce the security and recover from such tutor or curator or his sureties the loss to the minor or person under curatorship.

**Inventories by tutors and curators**

78. (1) A tutor or curator shall -

- (a) within thirty days after letters of tutorship or curatorship have been granted to him, or within such further period as the Master may allow, lodge with the Master an inventory in the prescribed form signed by him in person of all the property to be taken care of or administered by him;
- (b) thereafter, whenever he comes to know of any such property which is not mentioned in any inventory lodged by him with the Master, within fourteen days after he has come to know of such property, or within such further period as the Master may allow, lodge with the Master an additional inventory thereof so signed by him: and
- (c) if any immovable property is included in any such inventory, specify therein all particulars known to him concerning such property.

(2) A tutor or curator shall not dispose of any property which he has been appointed to take care of or to administer, if that property has not been mentioned in any inventory lodged by him with the Master, unless he does so in the ordinary course of any business or undertaking carried on by him as tutor or curator.

**Returns by Masters to registration officers of immovable property included in inventory**

79. (1) The Master shall forthwith after receipt by him of any inventory under section *seventy-eight* in which immovable property has been included, furnish to the registration officer concerned a return specifying the name of the minor or other person concerned and of the tutor or curator, and particulars of such property.

(2) No registration officer who has been furnished with such a return, shall register any transaction in respect of such property entered into by the tutor or curator concerned, except in pursuance of any will or written instrument by which that tutor or curator has been nominated or in pursuance of any authority granted under section *eighty*.

**Restriction on alienation or mortgage of immovable property by natural guardian, tutor or curator**

80. (1) No natural guardian shall alienate or mortgage any immovable property belonging to his minor child, and no tutor or curator shall alienate or mortgage any immovable property which he has been appointed to administer, unless he is authorized thereto by the Court or by the Master under this section or, in the case of a tutor or curator, by any will or written instrument by which he has been nominated.

(2) The Master may at any time authorize -

- (a) any alienation of immovable property belonging to a minor or to a person for the administration of whose property a tutor or curator has been appointed, if the value of the particular property to be alienated does not exceed the amount prescribed and the alienation would be in the interest of the minor or of such person, as the case may be; and

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[paragraph (a) amended by Act 15 of 1978 and by Act 15 of 2001]

- (b) any mortgage of any such immovable property to an amount not exceeding in the case of any one such minor or person, the amount prescribed, if the mortgage is necessary for the preservation or improvement of the property or for the maintenance, education or other benefit of such minor or person, as the case may be.

[paragraph (b) amended by Act 15 of 1978 and by Act 15 of 2001]

**Purchase by tutor or curator of property administered by him**

**81.** If any tutor or curator or the spouse, parent, child, partner, employer, employee or agent of any tutor or curator, purchases any property which he has been appointed to administer, the purchase shall, subject to the terms of any will or written instrument by which he has been nominated, be void, unless it has been consented to or is confirmed by the Court or the Master.

**Payment to Master of certain moneys**

**82.** Every tutor and curator shall, whenever he receives any money belonging to the minor or other person concerned, from any person other than the Master, forthwith pay the money into the hands of the Master: Provided that the foregoing provisions of this section shall not apply -

- (a) if the Court appointing the tutor or curator or if the Master otherwise directs; or
- (b) if any will or written instrument by which the tutor or curator has been nominated or by which the money has been disposed of, otherwise provides; or
- (c) to so much of the money as is immediately required -
  - (i) for the payment of any debt of the minor or other person; or
  - (ii) for the preservation or safe custody of any property of the minor or other person; or
  - (iii) for the maintenance or education of the minor or other person or any of his dependants; or
  - (iv) to meet any current expenditure in any business or undertaking of the minor or other person carried on by the tutor or curator.

**Accounts by tutors and curators**

- 83.** (1) Every tutor or curator shall -
- (a) on or before the date in every year which the Master may in each case determine, lodge with the Master a complete account in the prescribed form of his administration during the year ending upon a date three months prior to the date so determined, supported by vouchers, receipts and acquittances and including a statement of all property under his control at the end of such last-mentioned year, and if he carries on any business or undertaking in his capacity as tutor or curator, also a statement relating to such business or undertaking; and



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- (b) if required to do so by the Master by notice in writing, produce, within a period specified in the notice, for inspection by the Master or by any person nominated by him for the purpose, any securities held by him as tutor or curator.

(2) Any person who ceases to be tutor or curator shall, not later than thirty days thereafter, or within such further period as the Master may allow, lodge with the Master a complete account, in the prescribed form, of his administration between the date up to which his last account was rendered under sub-section (1) and the date on which he ceased to be tutor or curator, supported by vouchers, receipts and acquittances, and including a statement of all property under his control immediately before he ceased to be tutor or curator.

**Remuneration of tutors and curators**

**84.** (1) Every tutor and curator shall, subject to the provisions of sub-section (2), be entitled to receive out of the income derived from the property concerned or out of the property itself -

- (a) such remuneration as may have been fixed by any will or written instrument by which he has been nominated; or
- (b) if no such remuneration has been fixed, a remuneration which shall be assessed according to a prescribed tariff and shall be taxed by the Master.

(2) The Master may -

- (a) if there are in any particular case special reasons for doing so, reduce or increase any such remuneration; or
- (b) if the tutor or curator has failed to discharge his duties or has discharged them in an unsatisfactory manner, disallow any such remuneration, either wholly or in part.

**Application of certain sections to tutors and curators**

**85.** Sections 24, 26, 28, 36, 42(2), 46, 48, 49(2), 52, 53, 54 and 56 shall *mutatis mutandis* apply with reference to tutors and curators: Provided that any reference in any of the said sections to a will shall, for the purposes of its application under this section, include a reference to any written instrument by which the tutor or curator concerned has been nominated.

[section 85 substituted by Act 1 of 1996]

## CHAPTER V

## THE GUARDIAN'S FUND

**Existing guardian's fund to continue**

**86.** (1) There is hereby established a guardian's fund to be known as the Guardian's Fund of South West Africa (in this Act referred to as the guardian's fund) which shall consist of all moneys -

- (a) which have been or are received by the Master at any time, whether before, on or after 1 April 1987, in terms of this Act or any other law or an order of the Court;
- (b) which have been or are so accepted by the Master in trust for any known or unknown person.

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**[subsection (1) substituted by Act 2 of 1987]**

(2) Whenever any money is so received or accepted by the Master, he shall open in the books of the guardian's fund an account in the name of the person to whom that money belongs or the estate of which that money forms part: Provided that if it is not known to whom any such money belongs, or if it is more convenient, the account may be opened in the name of the person from whom that money has been received, or of the estate from which that money is derived, as the case may be.

**Banking account of guardian's fund**

**87.** (1) There shall be maintained at a banking institution in the territory a cheque account in the name of the guardian's fund -

- (a) into which shall be deposited all amounts received by the Master which may or are required to be deposited in the guardian's fund in terms of this Act; and
- (b) from which shall be paid all amounts which are, in terms of this Act, required to be paid out as a charge to the guardian's fund.

(2) The Minister, after consultation with the Master and with the concurrence of the Minister responsible for finance, may by notice in the *Gazette* determine the governance framework for investment of moneys, in the cheque account referred to in subsection (1), which are not required for immediate use.

**[subsection (2) substituted by Act 22 of 2018]**

(3) The Auditor-General must annually, not later than a date to be determined by the Master, audit the books of account, accounting statements and annual financial statements of the guardian's fund and shall submit a copy of the report on the audit to the Minister and the Master.

**[subsection (3) inserted by Act 22 of 2018]****[section 87 substituted by Act 2 of 1987]****Payment of certain moneys in respect of minors and persons under curatorship**

**87A.** (1) Notwithstanding any other law, any money and interest on any money -

- (a) that is payable in respect of a minor or a person under curatorship which money derives from a long term insurance policy in favour of a minor or a person under curatorship; or
- (b) that is payable in respect of a minor or a person under curatorship which money derives from an annuity, pension fund, a bequest in a deceased estate or any other source nominating a minor or a person under curatorship or a trust in favour of a minor or a person under curatorship,

shall be paid directly to the guardian's fund within a period of thirty days after the date upon which the amount became payable.

(2) Any person who fails to pay over any money in terms of subsection (1), shall pay the prescribed interest on the amount that is payable and any interest earned on the amount as from the due date until the date of payment of the money into the guardian's fund as contemplated in that subsection.

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(3) The Master may with approval of the Minister, on good cause shown, in writing exempt any person, in whole or in part, from any liability which he or she may have incurred under subsection 2.

[section 87A inserted by Act 22 of 2018]

**Interest on certain moneys in guardian's fund**

**88.** (1) Subject to the provisions of sub-sections (2) and (3), interest calculated on a monthly basis at the rate per annum determined from time to time by the Minister, with the concurrence of the Minister responsible for finance and compounded annually at the thirty first day of March, shall be allowed on each Namibia Dollar of the principal of every sum of money received by the Master for account of any minor, person under curatorship, deceased estate, mentally ill person, unborn heir or any person having an interest therein or a usufructuary, fiduciary or fideicommissary nature.

[Subsection (1) is amended by Act 2 of 1987 and substituted with amendment markings by Act 22 of 2018; the amendment markings are incomplete. The number "thirty-first" is normally written with a hyphen. The phrase "or a usufructuary, fiduciary or fideicommissary nature" was probably intended to be "of a usufructuary, fiduciary or fideicommissary nature".]

- (2) No interest shall be allowed on any sum of money -
- (a) in the case of money which became legally claimable before the first day of April, 1962, in respect of any period after it became so claimable;
  - (b) in the case of money which became legally claimable on or after the said date, in respect of any period after the expiration of five years after it became so claimable, unless it is legally claimed before such expiration.

(3) Interest shall be calculated in the case of any sum of money held by the Master on the first day of April, 1962, from that date, and in all other cases from the first day of the month following that in which the money has been received by the Master, until -

- (a) in the case of any sum of money claimed after the expiration of a period of five years after it became claimable, the last day of the month preceding the month during which such period expires:

[The colon at the end of paragraph (a) should be a semicolon.]

- (b) in all other cases, the last day of the month preceding the month during which the money is paid out.

**Payments from guardian's fund**

**89.** The Master shall, upon the application of any person who has become entitled to receive any money out of the guardian's fund, pay that money to that person.

**Payments to natural guardians, tutors and curators, or for and on behalf of minors and persons under curatorship**

**90.** (1) The Master may, subject to subsection (2) and subject to the terms of any will or written instrument disposing of the money or, in the case of a tutor or curator, by which the tutor or curator has been nominated, pay to the natural guardian or to the tutor or curator, or for

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and on behalf of the minor or other person concerned, so much of any moneys standing to the credit of the minor or other person in the guardian's fund as may be immediately required for the maintenance, education or other benefit of the minor or other person or any of his dependants, or for any purpose referred to in sub-paragraph (i), (ii) or (iv) of paragraph (c) of the proviso to section 82, or for any investment in immovable property within the Republic or in any mortgage over such immovable property on behalf of the minor or other person, approved by the Master: Provided that, subject to the terms of any such will or instrument, the aggregate of the payments made in the case of any minor or other person for purposes of maintenance, education or other benefit shall not, without the sanction of the Court, exceed the amount prescribed of the capital amount received for account of the minor or other person concerned.

[subsection (1) amended by Act 15 of 2001]

(2) Where a natural guardian gives security in terms of section 43(2) after the sum of money to which a minor is, according to any distribution account in any deceased estate, entitled as heir, has been paid into the guardian's fund, the Master may pay to that guardian, for and on behalf of such minor, the sum of money standing to the credit of the minor in the guardian's fund, whereafter the provisions of section 43(3), (4) and (5) shall *mutatis mutandis* apply.

[section 90 amended by Act 6 of 1986;  
not all of the changes are indicated by amendment markings]

**Publication of list of unclaimed moneys**

91. The Master shall in the month of September of each year cause to be published in the *Gazette* a list of all amounts of the amount prescribed or more in the guardian's fund, other than the amounts deposited therein in terms of section 93(3)(a), which have been claimable and have remained unclaimed by the persons entitled thereto for a period exceeding one year but not exceeding three years.

[section 91 amended by Act 6 of 1986 and by Act 15 of 2001]

**Forfeiture to State of moneys unclaimed for thirty years**

92. Any money in the guardian's fund (whether such money has been paid into the said fund before or after the commencement of this Act) which has remained unclaimed by the person entitled thereto for a period of thirty years as from the date upon which such person became entitled to claim the said money, shall be forfeited to the State and shall be deposited into the Central Revenue Fund.

[section 92 amended by Act 2 of 1987]

**Statements of certain unclaimed moneys to be published, and amounts unclaimed to be paid into guardian's fund**

93. (1) Every person carrying on business in Namibia shall in the month of January in each year prepare in the prescribed form and publish in the *Gazette* a detailed statement in respect of all amounts of the amount prescribed or more which were held by him or her or by any agent on his or her behalf in Namibia on the thirty-first day of December of the immediately preceding year and which were not his or her property or subject to any valid lien, but at the time of the preparation of the said statement have remained unclaimed for a period of five years or more by the rightful owners.

[subsection (1) amended by Act 6 of 1986 and by Act 15 of 2001]

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(2) Any person who has prepared the said statement for publication, may deduct from the said amounts the cost of publication apportioned as far as possible among the owners.

**[subsection (2) amended by Act 6 of 1986]**

(3) After the expiration of three months from the date of publication of the said statement, such person shall forthwith transmit a statement and affidavit in the prescribed form -

**[introductory phrase of subsection (3) amended by Act 6 of 1986]**

- (a) to the Master and deposit in the guardian's fund to the credit of the rightful owners all such amounts still remaining unclaimed by the rightful owners who are not Black as defined in section *one* of the Population Registration Act, 1950 (Act No. 30 of 1950); or

**[paragraph (a) amended by AG 3 of 1979]**

- (b) to the Secretary for Plural Relations and Development and deposit in the South African Development Trust Fund established under section 8 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), to be utilized in accordance with the provisions of that Act, all such amounts still remaining unclaimed by the rightful owners who are Blacks as so defined: Provided that the rightful owners may claim such amounts from the South African Development Trust Fund within a period of thirty years from the date upon which they became entitled to claim such amounts.

**[Paragraph (b) is substituted by Act 79 of 1971 and amended by AG 3 of 1979. The References to Plural Relations and Development Act 10 of 1979 (OG 4023), which came into force on 1 July 1979 (section 2 of Act 10 of 1979), although it contains an error of wording, obviously intended to provide that a reference in any law to the Secretary for Plural Relations and Development shall be construed as a reference to the Secretary for Co-operation and Development – without technically amending any laws.]**

## CHAPTER VI

## MISCELLANEOUS PROVISIONS

**Consent of Master to sub-division of immovable property on behalf of minor or unborn heir**

**94.** If the Master is satisfied that it is expedient to partition any immovable property which is registered in the name of any minor or in which any minor has or any unborn heir may acquire any interest, and that the proposed sub-division is fair and equitable, he may, upon such terms as to costs or otherwise as he thinks fit, and subject to the provisions of section 30 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or section 30 of the Deeds Registries Proclamation, 1939 (Proclamation No. 37 of 1939), of the territory, consent, on behalf of such minor or heir, to the sub-division and to any exchange of property, payment of money or mortgage incidental to the sub-division.

**[Section 94 is substituted by Act 54 of 1970. The Deeds Registries Proclamation 37 of 1939 was repealed by the South African Deeds Registries Amendment Act 3 of 1972, which made the South African Deeds Registries Act 47 of 1937 applicable to South West Africa. The Deeds Registries Act 47 of 1937 has since been replaced by the Deeds Registries Act 14 of 2015.]**

**Review of Master's appointments etc.**

**[Elsewhere in the Act, "etc." is preceded by a comma.]**

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95. Every appointment by the Master of an executor, administrator, tutor, curator or interim curator, and every decision, ruling, order, direction or taxation by the Master under this Act shall be subject to appeal to or review by the Court upon motion at the instance of any person aggrieved thereby, and the Court may on any such appeal or review confirm, set aside or vary the appointment, decision, ruling, order, direction or taxation, as the case may be.

**Proceedings by Master**

96. (1) Notwithstanding anything in any other law contained, the Master may -

- (a) institute any civil proceedings in pursuance of the provisions of this Act, against any executor, administrator, tutor, curator or interim curator, in the division of the Supreme Court within whose area of jurisdiction the appointment of such executor, administrator, tutor, curator or interim curator was made, whether or not such executor, administrator, tutor, curator or interim curator is resident within that area or otherwise subject to the jurisdiction of that division; and
- (b) in any such proceedings, proceed by way of application or motion and report to the Court in writing the facts upon which he relies instead of stating them in an affidavit.

(2) Whenever in the course of his duties the Master finds it necessary to lay any facts before the Court otherwise than upon formal application or motion, he may do so by a report in writing: Provided that the Court may refer any such report back to the Master and direct him to proceed by way of formal application or motion.

(3) Whenever any difference of opinion upon a question of law arises between the Master and an executor in the distribution of an estate and a minor is interested in the decision of that question, the Master and the executor may state a case in writing for determination by a judge in chambers, and the determination of the judge shall be binding upon the Master and the executor, without prejudice to the rights of other persons interested in the distribution: Provided that the judge may refer the matter to the Court for argument.

**Master's costs**

97. All costs incurred by the Master in the exercise of his powers and the performance of his duties under this Act or in any proceedings in pursuance of the provisions of this Act which cannot be recovered from any other source may, unless the Court has ordered that they be paid by him *de bonis propriis*, be paid out of the guardian's fund: Provided that the Minister may specially authorize that any costs ordered to be paid by the Master *de bonis propriis* be refunded to him or be paid out of the said fund.

[section 97 amended by Act 6 of 1986 and by Act 2 of 1987]

**Recovery of costs ordered to be paid *de bonis propriis* by executor, etc.**

98. Whenever any executor, administrator, tutor, curator, interim curator or surety has been ordered to pay *de bonis propriis* the costs of any proceedings instituted by the Master, the Master may, if he is unable to recover the said costs from any property belonging to the executor, administrator, tutor, curator, interim curator or surety, recover them from the property in the deceased estate or the property subject to the administration of the administrator, tutor or curator, as the case may be.

**Master incapacitated from being executor, etc.**

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**99.** No Master shall in his official capacity be capable of acting as executor, administrator, tutor or curator.

**Exemption from liability for acts or omissions in Master's office**

**100.** No act or omission of any Master or of any officer employed in a Master's office shall render the State or such Master or officer liable for any damage sustained by any person in consequence of such act or omission: Provided that if such act or omission is *mala fide* or if such Master or officer has, in connection with such act or omission in the course of his duties or functions, not exercised reasonable care and diligence, the State shall be liable for the damage aforesaid.

**Evidence**

**101.** (1) A copy certified by the Master of any letters of executorship, administratorship, tutorship or curatorship lodged with him under section *twenty-one*, or under the said section read with section *sixty-two* or *seventy-four*, as the case may be, or of a copy of any such letters, shall be admissible in evidence as if it were the original letters.

(2) A certificate under the hand of the Master that any person named in the certificate has under any such letters signed and sealed by him been authorized -

- (a) in the case of an executor, to liquidate and distribute the estate in the Republic of the deceased person named in the certificate;
- (b) in the case of an administrator, to administer and distribute the property in the Republic given under his control by the person so named; and
- (c) in the case of a tutor or curator, to perform any act in respect of or to take care of or administer the property in the Republic of the minor or other person so named, or to carry on any business or undertaking in the Republic of such minor or person, as the case may be,

shall be admissible in evidence as *prima facie* proof that such first-mentioned person has been so authorized.

(3) A certificate under the hand of the Master shall be *prima facie* proof of any loss referred to in sub-section (5) of section *twenty-three*, or in the said sub-section as applied by sub-section (4) of section *sixty-three*, or in sub-section (5) of section *seventy-seven*, and of any value referred to in sub-section (1) of section *thirty-five*, or in section *forty-six* or in the last-mentioned section as applied by section *seventy* or by section *eighty-five*.

**Penalties**

**102.** (1) Any person who -

- (a) steals or wilfully destroys, conceals, falsifies or damages any document purporting to be a will; or
- (b) wilfully makes any false inventory under this Act; or
- (c) wilfully submits to or lodges with a Master any false account under this Act; or
- (d) wilfully makes any false valuation for the purposes of this Act; or



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- (e) when being interrogated under oath under section *thirty-two*, makes, relative to the subject in connection with which he is interrogated, any statement whatever which he knows to be false or which he does not know or believe to be true; or
- (f) being an executor or administrator, wilfully distributes any estate or property otherwise than in accordance with the provisions of sub-section (12) of section *thirty-five*, or of the relevant will or written instrument operating *inter vivos*; or
- (g) contravenes or fails to comply with the provisions of subsection (1) or (3) of section 9, section 13, subsection (1) of section 27 or of the last-mentioned section as applied by sub-section (2) of section 70, subsection (13) of section 35, section 47, section 57, subsection (1) of section 65, section 71, section 78, section 83, subsection (1) or (3) of section 93, or with any notice under sub-section (2) of section 9 or any order under sub-section (1) of section 58, or hinders or obstructs any accountant nominated by the Master in terms of paragraph (a) of sub-section (1) of section 65 in the execution of his duty; or

[paragraph (g) amended by Act 6 of 1986; not all of the changes are indicated by amendment markings]

- (h) contravenes or fails to comply with the provisions of section 6(4), section 8(1) or (2), section 11(1), section 26(1) or of the last-mentioned section as applied by section 85, section 28(1), (2) or (3) or of the last-mentioned section as applied by section 12(7) or by section 70(1) or by section 85, section 30, section 35(1), or with any direction under section 35(2) or any notice under section 43 (3) or (4) or of the last-mentioned section as applied by section 66(2); or

[paragraph (h) amended by Act 15 of 1978; not all of the changes are indicated by amendment markings]

- (i) contravenes or fails to comply with the provisions of sub-section (1) or (2) of section *seven*, sub-section (8) of section *thirty-five*, sub-section (1) of section *forty-one* or the last-mentioned section as applied by section *seventy*, sub-section (5) of section *fifty-four* or of the last-mentioned section as applied by subsection (1) of section *seventy* or by section *eighty-five*, or with any notice under sub-section (3) of section *seven* or any direction under sub-section (6) of section *twenty-eight* or of the last-mentioned section as applied by sub-section (1) of section *seventy* or by section *eighty-five*, or fails without reasonable excuse to comply with a notice under paragraph (b) of sub-section (1) of section *thirty-two*, or, having appeared in answer to such notice, refuses to take the oath or to submit to examination or to answer fully and satisfactorily any lawful question put to him,

shall be guilty of an offence and liable on conviction -

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment;

[paragraph (i) amended by Act 15 of 2001]

- (ii) in the case of an offence referred to in paragraph (b), (c), (d) or (e), to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;

[paragraph (ii) amended by Act 15 of 2001]

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- (iii) in the case of an offence referred to in paragraph (f) or (g), to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment;

**[paragraph (iii) amended by Act 15 of 2001]**

- (iv) in the case of an offence referred to in paragraph (h), to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

**[paragraph (iv) amended by Act 15 of 2001]**

- (v) in the case of an offence referred to in paragraph (i), to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

**[paragraph (v) amended by Act 15 of 2001]**

(2) The court convicting any person for failure to perform any act required to be performed by him by or under this Act may, in addition to any penalty which it imposes, order such person to perform such act within such period as the court may fix.

**Regulations**

- 103. (1) The Minister, after consultation with the Master, may make regulations -

**[introductory phrase of section 103 amended by Act 2 of 1987 and substituted by Act 22 of 2018]**

- (a) providing for the custody and preservation of any records, moneys or securities in the offices of Masters, the removal from such offices and preservation in any other place of such records and the destruction of such records of an ephemeral nature;
- (b) as to payments out of working balances of the guardian's fund;

**[Section 3(1)(o) of the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979 as originally enacted excluded this paragraph from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, but this exclusion was removed by Act 2 of 1987, which amended section 3(1)(o) of the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979. Section 10(2) of Act 2 of 1987 provided the following transitional provision:**

**"Anything done under section 103(1)(b) of the principal Act [Act 66 of 1965] before the commencement of this Act [Act 2 of 1987], shall be deemed to have been done under that section as amended and applied by and by virtue of the provisions of this Act [Act 2 of 1987]."**

- (c) providing for the good conduct of Masters' offices or prescribing the practice and procedure to be observed therein;
- (d) prescribing the matters in respect of which Master's fees shall be payable, the tariff of such fees and the manner in which such fees shall be payable;
- (e) prescribing a tariff of remuneration payable to any person performing any act relating to the liquidation or distribution of an estate on behalf of the executor of the estate in question and prohibiting the charging or recovery of remuneration at a higher tariff than the tariff so prescribed;
- (f) as to all matters which by this Act are required or permitted to be prescribed; and

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- (g) generally, as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Any regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of N\$1 000 or imprisonment for a period of three months.

[subsection (2) amended by Act 15 of 2001; not all of the changes are indicated by amendment markings]

(3) Any regulations made under section *one hundred and eighteen* of the Administration of Estates Act, 1913 (Act No. 24 of 1913), shall be deemed to have been made under subsection (1).

**Application of Act**

**104.** (1) This Act shall not apply -

- (a) to the property on board any vessel in any port or harbour of the Republic and belonging to any person who, being one of the officers or crew or a passenger of that vessel, dies when on land within the Republic or on board that vessel while it is lying in such port or harbour unless at the time of his death the person so dying has left any property other than personal effects within the Republic, or was domiciled within the Republic; or
- (b) to the property of any person belonging to and serving with any visiting force as defined in section *one* of the Defence Act, 1957 (Act No. 44 of 1957), who dies within the Republic while on service with that force, unless it be shown to the satisfaction of the Court or the Master that for the proper liquidation and distribution of that property it is expedient that it be dealt with under this Act.

**Repeal of laws, and savings**

**105.** (1) Subject to the provisions of sub-sections (2) and (3), the laws set out in the Schedule are hereby repealed to the extent specified in the third column thereof.

(2) The estate of any person who died before the commencement of this Act shall be liquidated and distributed, and any matter relating to the liquidation and distribution of such estate shall be dealt with as if this Act had not been passed.

(3) If the surviving spouse of any person -

- (a) who died in the Republic, excluding the territory, before the commencement of this Act; or
- (b) who died in the territory before the commencement of the Administration of Estates Amendment Act, 1970; or
- (c) who died or dies after the commencement referred to in paragraph (a) or (b) but before the relevant date referred to in section 44(3) leaving a will in terms of which any minor child of the deceased and such spouse is or will when born be entitled to any movable property subject to usufructuary or fiduciary rights or any other like interest in favour of such spouse,

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intends to marry under circumstances where a certificate under section 56 of the Administration of Estates Act, 1913 (Act No. 24 of 1913), would, but for the repeal of that Act, have been required before the intended marriage could be solemnized, the provisions of the said section 56 shall apply in relation to the intended marriage as if this Act had not been passed.

**[subsection (3) substituted by Act 54 of 1970]**

**Re-instatement for certain purposes of the provisions which were contained in sub-section (2) of section 5 of Act 24 of 1913 prior to its substitution in terms of section 16 of Act 68 of 1957**

**106.** For the purposes of the application of sub-section (2) of section *one hundred and five* in respect of any estate which prior to the substitution effected by section *sixteen* of the General Law Amendment Act, 1957, was being dealt with under the provisions which prior to such substitution were contained in sub-section (2) of section *five* of the Administration of Estates Act, 1913, the said provisions shall with effect from the date of commencement of the said section *sixteen*, be deemed not to have been affected by such substitution.

**Amendment of section 62 of Act 38 of 1916 as amended by section 1 of Act 13 of 1946**

**107.** Section *sixty-two* of the Mental Disorders Act, 1916, is hereby amended by the substitution in sub-section (1) for the words “in respect of his property any act or power referred to in section *sixty-five* or generally to take care of or to administer his property and so to perform and exercise all the acts and powers referred to in the said section” of the words “any particular act in respect of his property or to take care of or administer his property or to carry on any business or undertaking of such person”.

**[The Mental Disorders Act 38 of 1916, with the exception of sections 27 to 29bis inclusive, was replaced by the Mental Health Act 18 of 1973. The remaining provisions were repealed by the Criminal Procedure Act 51 of 1977.]**

**Limitation of application of Act 34 of 1934**

**108.** The Trust Moneys Protection Act, 1934, shall not apply with reference to any moneys in respect of the administration of which security has been given under this Act.

**Application of this Act to South-West Africa**

**108A.** This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel, but shall, in the territory known as the “Rehoboth Gebiet” and defined in the First Schedule to the agreement referred to in the Schedule to Proclamation No. 28 of 1923, of the territory, not apply to the estate of any person to whom Proclamation No. 36 of 1941, of the territory, applies.

**[Section 108A is inserted by Act 54 of 1970, which provides the following additional repeals and transitional provisions in section 11:**

**“Repeal of laws**

**11.** (1) Subject to the provisions of subsection (2), the laws of the territory of South-West Africa set out in the Schedule are hereby repealed to the extent specified in the third column thereof.

(2) The estate of any person who died before the commencement of this Act shall be liquidated and distributed, and any matter relating to the liquidation and distribution of such estate shall be dealt with as if this Act had not been passed.

(3) This section shall apply also in the Eastern Caprivi Zipfel.”

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No. and year of Law.	Short title.	Extent of repeal.
Proclamation No. 52 of 1921.	Better Administration of Justice Proclamation, 1921.	The whole, except in so far as it relates to section 115 <i>bis</i> of the Administration of Estates Act, 1913 (Act No. 24 of 1913), as applied to the territory.
Ordinance No. 22 of 1958.	General Law Amendment Ordinance, 1958.	Sections 3, 4, 5, 6, 7, 8 and 9.

**Act 15 of 2005 repeals section 18(1), (2), (9) and (10) of the Native Administration Proclamation 15 of 1928 and the Repeal of Administration of Estates (Rehoboth Gebiet) Proclamation 36 of 1941 in its entirety, but provides that the rules of intestate succession that applied by virtue of the repealed provisions before the date of their repeal continue to be of force in relation to persons to whom these rules would have been applicable had the provisions in question not been repealed. Section 3 of Act 15 of 2005 provides transitional provisions which apply Act 66 of 1965 to estates already being administered in terms of the repealed laws:**

**“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 -

- (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.”]

**Short title and commencement**

**109.** (1) This Act shall be called the Administration of Estates Act, 1965, and shall, subject to the provisions of subsection (2), come into operation upon a date to be fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may in terms of sub-section (1) be fixed in respect of Chapter III and the remaining provisions of this Act.

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**Schedule**

LAWS REPEALED

Number and year of law	Short title	Extent of repeal
24 of 1913	Administration of Estates Act, 1913	The whole
38 of 1916	Mental Disorders Act, 1916	Sections <i>sixty-four</i> and <i>sixty-five</i>
44 of 1926	Financial Adjustments Act, 1926	Section <i>three</i>
45 of 1931	Financial Adjustments Act, 1931	Section <i>four</i>
49 of 1935	Finance Act, 1935	Section <i>eight</i>
17 of 1938	Finance Act, 1938	Sections <i>twenty</i> and <i>twenty-one</i>
46 of 1944	Finance Act, 1944	Section <i>eighteen</i>
57 of 1946	Finance Act, 1946	Section <i>nineteen</i>
45 of 1953	Finance Act, 1953	Section <i>twelve</i>
62 of 1955	General Law Amendment Act, 1955	Sections <i>eight</i> to <i>twelve</i> , inclusive, and the First Schedule
68 of 1957	General Law Amendment Act, 1957	Sections <i>fifteen</i> to <i>twenty-one</i> , inclusive
81 of 1957	Finance Act, 1957	Section <i>eight</i>
37 of 1958	Finance Act, 1958	Section <i>ten</i>
76 of 1961	Finance Act, 1961	Section <i>five</i>
93 of 1962	General Law Further Amendment Act, 1962	Sections <i>six</i> to <i>twelve</i> , inclusive
93 of 1963	General Law Further Amendment Act, 1963	Section <i>one</i>