

# ESTATES

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

**Summary:** This Proclamation regulates the administration of estates in Rehoboth.

**Amendments:** The Estates and Succession Amendment Act 15 of 2005 repeals the Proclamation, but provides that the rules of intestate succession that applied by virtue of Schedule 2 of the Proclamation before the date of its repeal “continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said Proclamation not been repealed”. Section 3 of the amending Act addresses the administration of the principal Act.

**Assignment of powers:** GN 43/2006 (GG 3591) assigns certain powers of the Master of the High Court to magistrates.

## ***Administration of Estates Act 66 of 1965***, as amended in South Africa to November 1979.

**Summary:** This Act governs the liquidation and distribution of the estates of deceased persons.

**Applicability to SWA:** Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 108A 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” -- thus excluding the Rehoboth Gebiet from the operation of the Act.

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979.

Section 3(1)(o) of the Transfer Proclamation excluded sections 2, 88, 91, 92, 93, 97 and 103(1)(b) from the operation of section 3(1) of the General Proclamation. All the references to the “Republic” in the Act were also excluded from section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

**Amendments:** Act 17/1981 amends sections 18, 29 and 34 of the Act. Act 6/1986 and Act 2/1987 make substantial amendments to the Act. The Married Persons Equality Act 1 of 1996 repeals section 17, amends section 72 and substitutes section 85. Act 15/2001, which came into operation on 1 July 2002 (GN 107/2002, GG 2760), amends sections 1, 18, 28, 30, 34, 80, 90, 91, 93, 102 and 103 of the Act.

The Estates and Succession Amendment Act 15 of 2005 makes the Act applicable to all deceased estates, whether testate or intestate, of persons who died on or after the date of commencement of the amending Act (29 December 2005). It also inserts section 4A which authorises the Minister to assign functions of the Master to magistrates. Section 3 of the amending Act addresses the administration of the principal Act.

**Regulations:** Regulations are contained in RSA GN R.473 of 24 March 1972; RSA GN R.817 of 13 May 1977, RSA GN R.1209 of 13 June 1980; RSA GN 107 of 15 November 1985, GN 56/1993 (GG 645), GN 33/1999 (GG 2051) and GN 108/2002 (GG 2760).

**Cases:** *Berendt & Another v Stuurmann & Others* 2003 NR 81 (HC) (the application of the Act); *Kuhlmann & Others v The Master & Others* 2007 (2) NR 611 (HC) (review under section 95 of Master's refusal to appoint co-executor under section 18; Master's role under sections 18 and 19)

See also **SUCCESSION**.