



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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DEPARTEMENT VAN DIE EERSTE MINISTER.

DEPARTMENT OF THE PRIME MINISTER.

No. 1561.

23 September 1970.

No. 1561.

23rd September, 1970.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 54 van 1970: Boedelwysigingswet, 1970.

No. 54 of 1970: Administration of Estates Amendment Act, 1970.

WET

Tot wysiging van die Boedelwet, 1965, ten einde daardie Wet op die gebied Suidwes-Afrika van toepassing te maak; en om vir bykomstige aangeleenthede voorsiening te maak.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 15 September 1970.)*

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 66 van 1965.

1. Artikel 1 van die Boedelwet, 1965 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur na die omskrywing van „erfgenaar” die volgende omskrywing in te voeg:
„„gebied’ die gebied Suidwes-Afrika;”; en
- (b) deur na die omskrywing van „rekenmeester” die volgende omskrywing in te voeg:
„„Republiek’ ook die gebied;”.

Wysiging van artikel 5 van Wet 66 van 1965.

2. Artikel 5 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

„(1) Behoudens die bepalings van regulasies kragtens artikel 103 uitgevaardig, bewaar elke Meester in sy kantoor alle oorspronklike testamente, afskrifte van testamente ingevolge artikel 14 (2) gesertifiseer, geskrifte, sterfkennisse, inventarisse en rekenings by sy kantoor ingelewer ingevolge die bepalings van hierdie Wet of ’n vorige wet waarkragtens sulke stukke by die kantoor van die Meester, Weesheer of registrateur van aktes van die betrokke provinsie of van die gebied ingelewer is, en die ander by sy kantoor ingelewerde stukke wat die Meester bepaal.”.

Wysiging van artikel 12 van Wet 66 van 1965.

3. Artikel 12 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang:

„(5) Die verwysing in artikel 47 (1) van die Drankwet, 1928 (Wet No. 30 van 1928), en in artikel 156 (1) van die Drankordonnansie, 1969 (Ordonnansie No. 2 van 1969), van die gebied, na ’n kurator, is ook ’n verwysing na ’n kragtens subartikel (1) aangestelde tussentydse kurator wat kragtens subartikel (3) gemagtig is om die besigheid van die in gemelde artikels bedoelde lisensiehouer of persoon voort te sit.”.

Wysiging van artikel 39 van Wet 66 van 1965.

4. Artikel 39 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

„(1) ’n Eksekuteur moet, behoudens die bepalings van subartikels (2) en (3), die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), en die Registrasie van Aktes

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ACT

To amend the Administration of Estates Act, 1965, so as to apply that Act to the territory of South-West Africa; and to provide for incidental matters.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 15 September 1970.)*

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

1. Section 1 of the Administration of Estates Act, 1965 (hereinafter referred to as the principal Act), is hereby amended—

Amendment of section 1 of Act 66 of 1965.

- (a) by the insertion after the definition of "property" of the following definition:
" 'Republic' includes the territory;"; and
- (b) by the insertion after the definition of "State" of the following definition:
" 'territory' means the territory of South-West Africa;".

2. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 5 of Act 66 of 1965.

"(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."

3. Section 12 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

Amendment of section 12 of Act 66 of 1965.

"(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."

4. Section 39 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

Amendment of section 39 of Act 66 of 1965.

"(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 Pro-

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Proklamasie, 1939 (Proklamasie No. 37 van 1939), van die gebied, onroerende goed (met inbegrip, in die geval van 'n saamgevoegde boedel, enige sodanige goed wat deel van die langsliewende of oorlewendes se aandeel in daardie boedel uitmaak) waarop 'n erfgenaam volgens 'n distribusierekening geregtig is, op naam van die erfgenaam laat registreer, onderworpe aan enige regte en voorwaardes wat bedoelde goed raak.

(2) Indien 'n reg van vruggebruik of 'n ander soortgelyke beperkte reg op onroerende goed aan iemand bemaak is met die opdrag dat, na die verval van daardie reg, die goed op die een of ander onbepaalde persoon moet oorgaan of die opbrengs van die goed op die een of ander persoon, hetsy 'n bepaalde of onbepaalde persoon moet oorgaan, dan moet die eksekuteur, behoudens die bepalings van artikel 25 van gemelde Wet en artikel 25 van gemelde Proklamasie, die bepalings van die testament of 'n verwysing daarna teen die titelbewyse van die goed laat aanteken, en 'n sertifikaat deur die betrokke registrasiebeampte of 'n transportbesorger dat bedoelde aantekening aangebring is, by die Meester inlewer."

Wysiging van artikel 40 van Wet 66 van 1965.

5. Artikel 40 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

„(2) Die bepalings van artikel 23 (2), (3), (4) en (5) is *mutatis mutandis* van toepassing, in die geval van die gebied, op 'n administrateur wat aangestel is by 'n testament of *inter vivos* geldende geskrif, en in die geval van die Republiek met uitsluiting van die gebied, op 'n administrateur wat aangestel is by 'n testament of *inter vivos* geldende geskrif wat voor die inwerkingtreding van die Trustgelde Beskermings Wet, 1934 (Wet No. 34 van 1934), verly is."

Wysiging van artikel 44 van Wet 66 van 1965.

6. Artikel 44 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

„(3) Die bepalings van subartikel (1) is nie van toepassing nie met betrekking tot 'n beskikking in 'n testament wat verly is in die Republiek, uitgesonderd die gebied, voor 'n datum twaalf maande na die datum van inwerkingtreding van hierdie Wet of in die gebied voor 'n datum twaalf maande na die datum van inwerkingtreding van die Boedelwysigingswet, 1970."

Wysiging van artikel 72 van Wet 66 van 1965.

7. Artikel 72 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

„(1) Die Meester moet, behoudens die bepalings van subartikel (3) en enige toepaslike bepaling van artikel 5 van die Wet op Huweliksaangeleenthede, 1953 (Wet No. 37 van 1953), en artikel 4 van die Ordonnansie op Huweliksaangeleenthede, 1955 (Ordonnansie No. 25 van 1955), van die gebied, of 'n bevel van die hof kragtens so 'n bepaling maak, op skriftelike aansoek van iemand—

(a) wat by testament of geskrif benoem is—

(i) deur die vader van 'n wettige minderjarige, wat nie as gevolg van 'n bevel kragtens subartikel (1) van gemelde artikel 5 of subartikel (1) van gemelde artikel 4 die voogdy oor die minderjarige, of kragtens artikel 60 van die Kinderwet, 1960 (Wet No. 33 van 1960), of artikel 58 van die Kinderordonnansie 1961, (Ordonnansie No. 31 van 1961), van die gebied, sy ouerlike magte oor hom ontnem is nie; of

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clamation, 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.

(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 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.”.

5. Section 40 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 40 of Act 66 of 1965.

“(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* 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).”.

6. Section 44 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: Amendment of section 44 of Act 66 of 1965.

“(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.”.

7. Section 72 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 72 of Act 66 of 1965.

“(1) The Master shall, subject to the provisions of subsection (3) and to any applicable provision of section 5 of the Matrimonial Affairs Act, 1953 (Act No. 37 of 1953), and section 4 of the Matrimonial Affairs Ordinance, 1955 (Ordinance No. 25 of 1955), of the territory, 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 father of a legitimate minor, who has not been deprived, as a result of an order under subsection (1) of the said section 5 or subsection (1) of the said section 4, of the guardianship of such minor, or under section 60 of the Children's Act, 1960 (Act No. 33 of 1960), or section 58 of the Children's Ordinance, 1961 (Ordinance No. 31 of 1961), of the territory, of his parental powers over him; or

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- (ii) deur die moeder van 'n onwettige minderjarige of van 'n wettige minderjarige wie se vader oorlede is, wat nie aldus die voogdy van die minderjarige of haar ouerlike magte oor hom ontnem is nie; of
- (iii) deur die ouer aan wie die uitsluitlike voogdy oor 'n minderjarige toegeken is kragtens subartikel (1) van gemelde artikel 5 of kragtens subartikel (1) van gemelde artikel 4, of aan wie die uitsluitlike reg om ouerlike magte met betrekking tot 'n minderjarige uit te oefen, verleen is kragtens gemelde artikel 60 of gemelde artikel 58, om as voog die goed van daardie minderjarige te administreer en vir sy persoon te sorg, of om as kurator vir sy goed te sorg of dit te administreer; of
- (b) wat by testament of geskrif deur 'n ouer van 'n minderjarige benoem is om as kurator enige goed wat die minderjarige van daardie ouer geërf het, te administreer; of
- (c) wat by testament of geskrif deur 'n oorledene wat aan 'n ander persoon goed gegee of nagelaat het, benoem is om daardie goed as kurator te administreer; of
- (d) wat deur die Hof of 'n regter aangestel is om as voog of kurator die goed van 'n minderjarige of ander persoon te administreer en vir sy persoon te sorg, of, na gelang van die geval, om 'n handeling ten opsigte van sulke goed te verrig of daarvoor te sorg of dit te administreer; en
- (e) wat nie onbevoeg is om die voog of kurator van die betrokke minderjarige of ander persoon, of van sy goed, na gelang van die geval, te wees nie, en aan die bepalings van hierdie Wet voldoen het, aan daardie persoon 'n voogdybrief of 'n brief van kuratele, na gelang van die geval, uitreik."

Vervanging van artikel 94 van Wet 66 van 1965.

8. Artikel 94 van die Hoofwet word hierby deur die volgende artikel vervang:

„Toestemming van Meester ten behoeve van minderjarige of ongebore erfgenaam, tot onderverdeling van onroerende goed.

94. Indien die Meester oortuig is dat dit wenslik is om onroerende goed wat op naam van 'n minderjarige geregistreer staan of waarop 'n minderjarige 'n reg het of 'n ongebore erfgenaam 'n reg sou kan verkry, te verdeel, en dat die voorgestelde onderverdeling billik is, kan hy, op die voorwaardes aangaande koste of andersins wat hy goedvind en behoudens die bepalings van artikel 30 van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), of artikel 30 van die Registrasie van Aktes Proklamasie, 1939 (Proklamasie No. 37 van 1939), van die gebied, ten behoeve van bedoelde minderjarige of erfgenaam tot die onderverdeling toestem asook tot enige ruil van goed, betaling van geld of beswaring met verband wat met die onderverdeling in verband staan."

Wysiging van artikel 105 van Wet 66 van 1965.

9. Artikel 105 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

„(3) Indien die langslewende eggenoot van iemand—

- (a) wat in die Republiek, uitgesonderd die gebied, voor die inwerkingtreding van hierdie Wet oorlede is; of
- (b) wat in die gebied voor die inwerkingtreding van die Boedelwysigingswet, 1970, oorlede is; of
- (c) wat na die in paragraaf (a) of (b) bedoelde inwerkingtreding maar voor die in artikel 44 (3) vermelde toepaslike datum te sterwe gekom het of te sterwe kom en wat 'n testament laat uit hoofde waarvan 'n minderjarige kind van die oorledene en sodanige eggenoot op

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- (ii) by the mother of an illegitimate minor or of a legitimate minor whose father is dead, who has not been so deprived of the guardianship of such minor or of her parental powers over him; or
- (iii) by the parent to whom the sole guardianship of a minor has been granted under subsection (1) of the said section 5 or under subsection (1) of the said section 4 or on whom the exclusive right to exercise parental powers in regard to a minor has been conferred under the said section 60 or the said section 58,

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

- (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; and
- (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,

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

8. The following section is hereby substituted for section 94 of the principal Act: Substitution of section 94 of Act 66 of 1965.

“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.”.

9. Section 105 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: Amendment of section 105 of Act 66 of 1965.

“(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

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roerende goed geregtig is of, wanneer hy gebore is, geregtig sal wees onderworpe aan 'n vruggebruik of fidusiêre regte of 'n ander soortgelyke belang ten gunste van sodanige eggenoot, van voorneme is om te trou in omstandighede waar 'n sertifikaat ingevolge artikel 56 van die Boedelwet, 1913 (Wet No. 24 van 1913), nodig sou gewees het (as dit nie vir die herroeping van daardie Wet was nie) voordat die voorgename huwelik bevestig kon word, is die bepaling van gemelde artikel 56 met betrekking tot die voorgename huwelik van toepassing asof hierdie Wet nie aangeneem was nie."

Invoeging van artikel 108A in Wet 66 van 1965.

10. Die Hoofwet word hierby gewysig deur die invoeging na artikel 108 van die volgende artikel:

„Toepassing van hierdie Wet op Suidwes-Afrika. 108A. Hierdie Wet en enige wysiging daarvan is ook van toepassing in die gebied, met inbegrip van die Oostelike Caprivi Zipfel, maar is in die gebied wat die „Rehoboth Gebiet" genoem word en omskryf word in die Eerste Bylae by die ooreenkoms vermeld in die Bylae by Proklamasie No. 28 van 1923, van die gebied, nie van toepassing nie met betrekking tot die boedel van iemand op wie Proklamasie No. 36 van 1941, van die gebied, van toepassing is."

Herroeping van Wette.

11. (1) Behoudens die bepaling van subartikel (2), word die wette van die gebied Suidwes-Afrika in die Bylae vermeld, hierby herroep in die mate in die derde kolom van die Bylae uiteengesit.

(2) Die boedel van iemand wat voor die inwerkingtreding van hierdie Wet oorlede is, word beredder en verdeel, en enige aangeleentheid met betrekking tot die bereddering en verdeling van sodanige boedel word afgehandel, asof hierdie Wet nie aangeneem was nie.

(3) Hierdie artikel is ook in die Oostelike Caprivi Zipfel van toepassing.

Kort titel en inwerkingtreding.

12. Hierdie Wet heet die Boedelwysigingswet, 1970, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* vasstel.

Bylae.

WETTE HERROEP.

No. en Jaar van Wet.	Kort titel.	In hoeverre herroep.
Proklamasie No. 52 van 1921.	Betere Rechtsbedeling Proklamatie 1921.	Die geheel, behalwe vir sover dit op artikel 115 <i>bis</i> van die Boedelwet, 1913 (Wet No. 24 van 1913), soos op die gebied toegepas, betrekking het.
Ordonnansie No. 22 van 1958.	Algemene Regswysigingsordonnansie 1958.	Artikels 3, 4, 5, 6, 7, 8 en 9.

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property subject to usufructuary or fiduciary rights or any other like interest in favour of such spouse, 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."

10. The principal Act is hereby amended by the insertion after section 108 of the following section:

Insertion of section 108A in Act 66 of 1965.

"Applica-
tion 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."

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.

Repeal of laws.

(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.

12. This Act shall be called the Administration of Estates Amendment Act, 1970, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

Short title and commencement.

Schedule.

LAWS REPEALED.

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 115bis 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.

