

- **Please Note: Version as at 5 February 2009. Please check with our librarians [help@lawlibrary .co.za](mailto:help@lawlibrary.co.za) if there have been any further revisions before relying on this .**
- **Applicable Regulations can be obtained from our librarians at help@lawlibrary.co.za**

**ADMINISTRATION OF ESTATES ACT
NO. 66 OF 1965**

[ASSENTED TO 21 MAY, 1965]
[DATE OF COMMENCEMENT: 2 OCTOBER, 1967]

(Except Chapter 3)

(English text signed by the State President)

as amended by

General Law Amendment Act, No. 102 of 1967
[with effect from 21 June, 1967]

Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, No. 15
of 1969
[with effect from 1 May, 1969]

Administration of Estates Amendment Act, No. 54 of 1970

Administration of Estates Amendment Act, No. 79 of 1971

General Law Amendment Act, No. 57 of 1975
[with effect from 20 June, 1975]

Administration of Estates Amendment Act, No. 15 of 1978

Divorce Act, No. 70 of 1979
[with effect from 1 July, 1979]

Administration of Estates Amendment Act, No. 90 of 1981

Administration of Estates Amendment Act, No. 86 of 1983

Administration of Estates Amendment Act, No. 12 of 1984

Administration of Estates Amendment Act, No. 35 of 1986

Transfer of Powers and Duties of the State President Act, No. 97 of 1986
[with effect from 3 October, 1986]

Trust Property Control Act, No. 57 of 1988
[with effect from 31 March, 1989]

- Administration of Estates Amendment Act, No. 63 of 1990
- Mentally Ill Persons' Legal Interests Amendment Act, No. 108 of 1990
[with effect from 13 July, 1990]
- Abolition of Racially Based Land Measures Act, No. 108 of 1991
[with effect from 30 June, 1991]
- Law of Succession Amendment Act, No. 43 of 1992
[with effect from 1 October, 1992]
- General Law Amendment Act, No. 139 of 1992
[with effect from 7 August, 1992]
- General Law Fourth Amendment Act, No. 132 of 1993
[with effect from 1 December, 1993]
- General Law Fifth Amendment Act, No. 157 of 1993
[with effect from 1 December, 1993]
- Guardianship Act, [No. 192 of 1993](#)
[with effect from 1 March, 1994]
- General Law Amendment Act, No. 49 of 1996
[with effect from 4 October, 1996]
- Judicial Matters Amendment Act, No. 104 of 1996
[with effect from 14 February, 1997]
- Public Service Laws Amendment Act, No. 47 of 1997
[with effect from 1 July, 1999]
- Judicial Matters Amendment Act, No. 26 of 1999
[with effect from 28 April, 1999]
- Judicial Matters Amendment Act, No. 62 of 2000
[with effect from 23 March, 2001]
- Administration of Estates Laws Interim Rationalisation Act, No. 20 of 2001
- Administration of Estates Amendment Act, No. 47 of 2002
- Judicial Matters Amendment Act, No. 16 of 2003
[with effect from 18 June, 2004]
- Judicial Matters Amendment Act, No. 22 of 2005
[with effect from 11 January, 2006, unless otherwise indicated]
- Repeal of the Black Administration Act and Amendment of Certain Laws Act, No. 28 of 2005
[with effect from 12 April, 2006]

ACT

To consolidate and amend the law relating to the liquidation and distribution of the estates of deceased persons, the administration 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.

[Long title substituted by s. 26 of Act No. 57 of 1988.]

ARRANGEMENT OF SECTIONS

1. Definitions

CHAPTER I ADMINISTRATIVE PROVISIONS

2. Appointment of Masters, Deputy Masters and Assistant Masters
- 2A. Designation by Minister of service points and of posts of persons to exercise functions on behalf of Master
3. Master's office to be at seat of High Court
4. Jurisdiction of Masters
5. Records of Master's office, etc
6. Appraisers for the valuation of property

CHAPTER II DECEASED ESTATES

7. Death notices
8. Transmission or delivery of wills to Master and registration thereof
9. Inventories
10.
11. Temporary custody of property in deceased estates
12. Appointment of interim curator
13. Deceased estates not to be liquidated or distributed without letters of executorship or direction by Master
14. Letters of executorship to executors testamentary
15. Endorsement of appointment of assumed executors on letters of executorship
16. Letters of executorship and endorsements to or in favour of corporations
17.
18. Proceedings on failure of nomination of executors or on death, incapacity or refusal to act, etc
19. Competition for office of executor
20. Application of section 21 to foreign letters of executorship
21. Sealing and signing of letters granted in a State
22. The Master may refuse to grant, endorse or sign and seal letters of executorship in certain cases
23. Security for liquidation and distribution
24. Reduction of security given by executors
25. 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
26. Executor charged with custody and control of property in estate
27. Inventories by executors and valuation at instance of Master
28. Banking accounts
29. Notice by executors to lodge claims
30. Restriction on sale in execution of property in deceased estates
31. Late claims
32. Disputed claims
33. Rejected claims
34. Insolvent deceased estates
35. Liquidation and distribution accounts
36. Failure by executor to lodge account or to perform duties

37. Massed estates
38. Taking over by surviving spouse of estate or portion thereof
39. Registration of immovable property in deceased estate
40. Endorsement of testamentary trusts against title deeds and bonds
41. Production of title deed or bond to executor
42. Documents to be lodged by executor with registration officer
43. Movable property to which minors and moneys to which absentees or persons under curatorship are entitled
44. Movable property to which minor or unborn heir is entitled subject to usufructuary or fiduciary rights or other like interests
45. Payment of moneys to minors or persons under curatorship domiciled outside the Republic
46. Failure to pay over moneys
47. Sales by executor
48. Extension of time and compounding of debts
49. Purchases by executor of property in estate, or mortgaged or pledged to the deceased
50. Executor making wrong distribution
51. Remuneration of executors and interim curators
52. No substitution or surrogation
53. Absence of executor from Republic
54. Removal from office of executor
55. Continuance of pending legal proceedings by remaining or new executor
56. Discharge of executors, and proceedings against discharged executors

CHAPTER III

57 to 70
inclusive.

CHAPTER IV TUTORS AND CURATORS

71. Certain persons not to administer property as tutor or curator without letters of tutorship or curatorship
72. Letters of tutorship and curatorship to tutors and curators nominate and endorsement in case of assumed tutors and curators
73. Proceedings on failure of nomination of tutors or curators, or on death, incapacity or refusal to act, etc
74. Foreign letters of tutorship or curatorship
75. Notifications in respect of tutors and curators
76. Authority conferred by letters of tutorship and curatorship
77. Security by tutors and curators
78. Inventories by tutors and curators
79. Returns by Masters to registration officers of immovable property included in inventory
80. Restriction on alienation or mortgage of immovable property by natural guardian, tutor or curator
81. Purchase by tutor or curator of property administered by him
82. Payment to Master of certain moneys
83. Accounts by tutors and curators
84. Remuneration of tutors and curators
85. Application of certain sections to tutors and curators

CHAPTER V
THE GUARDIAN'S FUND

- 86. Existing guardian's fund to continue
- 87. Moneys in guardian's fund to be deposits for purposes of [Act 45 of 1984](#)
- 88. Interest on certain moneys in guardian's fund
- 89. Payments from guardian's fund
- 90. Payments to natural guardians, tutors and curators, or for and on behalf of minors and persons under curatorship
- 90A. Payment to usufructuary or fiduciary or to his tutor or curator
- 91. Publication of list of unclaimed moneys
- 92. Forfeiture to State of moneys unclaimed for thirty years
- 93. Statements of certain unclaimed moneys to be published, and amounts unclaimed to be paid into guardian's fund

CHAPTER VI
MISCELLANEOUS PROVISIONS

- 94. Consent of Master to sub-division of immovable property on behalf of minor or unborn heir
- 95. Review of Master's appointments, etc
- 96. Proceedings by Master
- 97. Master's costs
- 98. Recovery of costs ordered to be paid *de bonis propriis* by executor, etc
- 99. Master incapacitated from being executor, etc
- 100. Exemption from liability for acts or omissions in Master's office
- 101. Evidence
- 102. Penalties
- 103. Regulations
- 104. Application of Act
- 105. Repeal of laws, and savings
Re-instatement for certain purposes of the provisions which were contained
- 106. in [subsection \(2\)](#) of [section 5](#) of [Act 24 of 1913](#) prior to its substitution in terms of section 16 of Act 68 of 1957
- 107.
- 108.
- 108A.
- 109. Short title and commencement
- Schedule Laws repealed

PRELIMINARY

1. Definitions.—In this Act, unless the context otherwise indicates—

"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"

[Definition of "accountant" deleted by s. 26 of Act No. 57 of 1988.]

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

"administrator"

[Definition of "administrator" deleted by s. 26 of Act No. 57 of 1988.]

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

"bank" means a public company registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990);

[Definition of "bank" inserted by s. 1 (b) of Act No. 20 of 2001.]

"banking institution"

[Definition of "banking institution" inserted by s. 1 of Act No. 79 of 1971 and deleted by s. 1 (a) of Act No. 20 of 2001.]

"building society"

[Definition of "building society" inserted by s. 1 of Act No. 79 of 1971 and deleted by s. 1 (a) of Act No. 20 of 2001.]

"Court" means the High Court having jurisdiction, or any judge thereof;

[Definition of "Court" substituted by s. 1 (c) of Act No. 20 of 2001.]

"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*;

"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"

[Definition of "letters of administratorship" deleted by s. 26 of Act No. 57 of 1988.]

"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, Deputy Master or Assistant Master of a High Court appointed under section 2, who has jurisdiction in respect of that matter, property or estate and who is subject to the control, direction and supervision of the Chief Master;

[Definition of "Master" substituted by s. 1 (d) of Act No. 20 of 2001 and by s. 2 of Act No. 22 of 2005.]

"Minister" means the Minister of Justice;

"office" includes a sub-office referred to in section 3 (2) (b);

[Definition of "office" inserted by s. 1 (e) of Act No. 20 of 2001.]

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

"property" includes any contingent interest in property;

"Republic"

[Definition of "Republic" inserted by s. 1 (a) of Act No. 54 of 1970 and deleted by s. 1 of Act No. 49 of 1996.]

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

"territory"

[Definition of "territory" inserted by s. 1 (b) of Act No. 54 of 1970 and deleted by s. 1 of Act No. 49 of 1996.]

"trustee" means a trustee as defined in section 1 of the Trust Property Control Act, 1988;

[Definition of "trustee" inserted by s. 26 of Act No. 57 of 1988.]

"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*.

CHAPTER I ADMINISTRATIVE PROVISIONS

2. Appointment of Masters, Deputy Masters and Assistant Masters.—

(1) (a) Subject to subsection (2) and the laws governing the public service, the Minister—

(i)

shall appoint a Chief Master of the High Courts;

(ii)

shall, in respect of the area of jurisdiction of each High Court, appoint a Master of the High Court; and

(iii)

may, in respect of each such area, appoint one or more Deputy Masters of the High Court and one or more Assistant Masters of the High Court, who may,

subject to the control, direction and supervision of the Master, do anything which may lawfully be done by the Master.

(b) The Chief Master—

is subject to the control, direction and supervision of the Minister; (i)

is the executive officer of the Masters' offices; and (ii)

shall exercise control, direction and supervision over all the Masters. (iii)

[Sub-s. (1) substituted by s. 2 of Act No. 20 of 2001, by s. 14 of Act No. 16 of 2003 and by s. 3 of Act No. 22 of 2005.]

(1A) The Minister may appoint a person as Master, Deputy Master or Assistant Master in respect of the area of jurisdiction of more than one High Court.

[Sub-s. (1A) substituted by s. 2 of Act No. 20 of 2001.]

(2) No person shall be appointed as Master, Deputy Master or Assistant Master of a High Court unless he or she has passed the diploma *iuris* examination or an examination deemed by the Minister for the Public Service and Administration to be equivalent thereto, or has before the commencement of this Act held a substantive appointment as a Master or Assistant Master of the Supreme Court: Provided that whenever a Master, Deputy Master or Assistant Master of a High Court is because of absence or for any other reason unable to carry out the functions of his or her office or whenever such office becomes vacant, the Minister may authorize any officer in the public service to act in his or her place during his or her absence or incapacity or to act in the vacant office until the vacancy is filled, as the case may be.

[Sub-s. (2) substituted by s. 2 of Act No. 20 of 2001.]

(3)

[Sub-s. (3) deleted s. 2 of Act No. 20 of 2001.]

(4) The Minister may delegate any power conferred on him or her by this section, to the Director-General: Justice or a Deputy Director-General in the Department of Justice.

[S. 2 amended by s. 2 of Act No. 79 of 1971 and by s. 35 of Act No. 47 of 1997. Sub-s. (4) substituted by s. 2 of Act No. 20 of 2001.]

2A. Designation by Minister of service points and of posts of persons to exercise functions on behalf of Master.—(1) The Minister may designate posts in, or additional to, the fixed establishment of the Department of Justice and Constitutional Development for the purpose of this section.

(2) Persons appointed to, or acting in, posts which have been designated by the Minister, must exercise the powers and perform the duties delegated to them on behalf of, and under the direction of, the Master.

(3) The Minister may designate places within the area of jurisdiction of a Master as service points where the powers are exercised and the duties are performed on behalf of the Master in terms of subsection (2).

(4) The Minister may delegate any power conferred on him or her in terms of this section to the Director-General: Justice and Constitutional Development or to a person in the Department holding the rank of a Deputy Director-General.

[S. 2A inserted by s. 1 of Act No. 47 of 2002.]

3. Master's office to be at seat of High Court.—(1) Each Master shall, subject to subsection (2), have an office at the seat of the High Court in respect of whose area of jurisdiction he or she has been appointed.

(2) If a person has been appointed as Master in respect of the area of jurisdiction of more than one High Court, the Minister—

- (a) shall specify the seat of the High Court at which the Master concerned shall have an office; and
- (b) may designate one or more places, within the area of jurisdiction in respect of which that Master has been appointed, where sub-offices of that Master may be established.

(3) The Minister may direct that a person who has been appointed as Deputy Master or Assistant Master shall be the head of a sub-office referred to in subsection (2) and he or she shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon him or her by or under this Act or any other law, subject to the control, direction and supervision of the Master of the High Court concerned.

[S. 3 amended by s. 20 of Act No. 15 of 1969 and substituted by s. 3 of Act No. 20 of 2001.]

4. Jurisdiction of Masters.—(1) In respect of the estate of a deceased person which is not governed by the principles of customary law, or of any portion thereof, jurisdiction shall lie—

- (a) in the case of a deceased person who was, at the date of his or her death, ordinarily resident within the area of jurisdiction of a High Court, with the Master appointed in respect of that area; and
[Para. (a) substituted by s. 4 (a) of Act No. 20 of 2001.]
- (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 to sign and seal any such letters already granted in respect of the estate 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.

[Sub-s. (1) amended by s. 26 of Act No. 57 of 1988 and by s. 2 (a) of Act No. 47 of 2002.]

(1A) The Master shall not have jurisdiction in respect of any property if the devolution of the property is governed by the principles of customary law, or of the estate of a person if the devolution of all the property of the person is governed by the principles of customary law, and no documents in respect of such property or estate shall be lodged with the Master, except a will or a document purporting to be a will.

[Sub-s. (1A) inserted by s. 2 (b) of Act No. 47 of 2002.]

(2) In respect of the property belonging to a minor, including property of a minor governed by the principles of customary law, or property belonging 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 High 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—

(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 or her property; and

(ii)

in the case of any mentally ill person who under the Mental Health Act, 1973 (Act No. 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 or her property under paragraph (a) or (b).

[Sub-s. (2) amended by s. 1 of Act No. 86 of 1983 and by s. 4 (b) of Act No. 20 of 2001 and substituted by s. 2 of Act No. 28 of 2005.]

(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, tutorship or curatorship, by any other Master in respect of that estate or property, shall thereupon be cancelled by such other Master.

[Sub-s. (4) amended by s. 26 of Act No. 57 of 1988.]

5. Records of Master's office, etc.—(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, and such other documents lodged at his office as the Master may determine.

[Sub-s. (1) substituted by s. 2 of Act No. 54 of 1970 and amended by s. 1 of Act No. 49 of 1996.]

(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 any executor, trustee, tutor or curator, or his surety, may inspect any such document or cause it to be inspected without payment of any fee.

[Sub-s. (2) amended by s. 26 of Act No. 57 of 1988.]

6. Appraisers for the valuation of property.—(1) The Minister or any officer of the Department of Justice with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may from time to time appoint for any area specified by the Minister or the delegated officer such and so many persons as the Minister or the delegated officer thinks fit, to be appraisers for the valuation of property for the purposes of this Act, and may at any time revoke any appointments so made.

[Sub-s. (1) substituted by s. 3 of Act No. 26 of 1999.]

(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—

- (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.

[Sub-s. (5) substituted by s. 2 of Act No. 86 of 1983.]

CHAPTER II DECEASED ESTATES

7. Death notices.—(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.

[Sub-s. (4) substituted by s. 3 of Act No. 86 of 1983.]

8. Transmission or delivery of wills to Master and registration thereof.—(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 subsection (3), refuse to accept it for the purposes of this Act until the validity thereof has been determined by the Court.

(4A) In taking a decision concerning the acceptance of a will for the purposes of this Act, the Master shall take into account the revocation of a will by a later will, but not the common law presumptions concerning the revocation of a will.

[Sub-s. (4A) inserted by s. 12 of Act No. 43 of 1992.]

(4B) The Master may for the purposes of this Act also accept a duplicate original will.

[Sub-s. (4B) inserted by s. 12 of Act No. 43 of 1992 and substituted by s. 10 of Act No. 104 of 1996.]

(5) If the Master is satisfied that the person who executed any will transmitted or delivered to him in terms of subsection (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.

9. Inventories.—(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 subsection (1), by written notice—

- (a) require any person to make, in the presence of such persons referred to in paragraph (a) of the said subsection as may attend, to subscribe and endorse as provided in paragraph (b) of the said subsection 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 subsection, 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 subsection (1) or under paragraph (a) of subsection (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.

10.

[S. 10 repealed by s. 1 of Act No. 12 of 1984.]

11. Temporary custody of property in deceased estates.—(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;

- (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 subsection (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.

12. Appointment of interim curator.—(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—

- (a) collect any debt and sell or dispose of any movable property in the estate, wherever situate within the Republic;

- (b) subject to any law which may be applicable, carry on any business or undertaking of the deceased; and

- (c)

release such money and such property out of the estate as in his opinion are sufficient to provide for the subsistence of the deceased's family or household.

[Sub-s. (3) substituted by s. 1 of Act No. 63 of 1990.]

(4) If any interim curator is authorized under subsection (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 118 \(1\)](#) of the Liquor Act, 1989 ([Act No. 27 of 1989](#)), 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.

[Sub-s. (5) substituted by s. 3 of Act No. 54 of 1970, amended by s. 1 of Act No. 49 of 1996 and substituted by s. 5 (a) of Act No. 20 of 2001.]

(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) Sections 23 (3), (4) and (5), 26, 28, 36, 46 and 54 (1) (b) (ii) shall with the necessary changes apply with reference to interim curators.

[Sub-s. (7) substituted by s. 5 (b) of Act No. 20 of 2001.]

13. Deceased estates not to be liquidated or distributed without letters of executorship or direction by Master.—(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.

(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 subsection (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.

14. Letters of executorship to executors testamentary.—(1) The Master shall, subject to subsection (2) and sections 16 and 22, 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.

[Sub-s. (1) amended by s. 6 of Act No. 20 of 2001.]

(2) For the purposes of paragraph (a) of subsection (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.

15. Endorsement of appointment of assumed executors on letters of executorship.—(1) The Master shall, subject to subsection (2) and sections 16 and 22—

- (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.

[Sub-s. (1) amended by s. 7 of Act No. 20 of 2001.]

(2) No endorsement under subsection (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 subsection (1) shall not be affected by the subsequent incapacity or death of the executor by whom he was assumed.

16. Letters of executorship and endorsements to or in favour of corporations.—

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

- (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.

17.

[S. 17 repealed by s. 16 of Act No. 132 of 1993.]

18. Proceedings on failure of nomination of executors or on death, incapacity or refusal to act, etc.—(1) The Master shall, subject to the provisions of subsections (3), (5) and (6)—

- (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 *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 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.

[Sub-s. (1) amended by s. 4 (a) and (b) of Act No. 86 of 1983.]

(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 subsection (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.

[Sub-s. (2) substituted by s. 4 (c) of Act No. 86 of 1983.]

(3) If the value of any estate does not exceed the amount determined by the Minister by notice in the *Gazette*, 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.

[Sub-s. (3) substituted by s. 1 (a) of Act No. 15 of 1978, by s. 1 of Act No. 90 of 1981, by s. 4 (d) of Act No. 86 of 1983 and by s. 2 of Act No. 63 of 1990.]

[General Note: Amount determined under Government Notice No. R.1318 in *Government Gazette* 25456 of 19 September, 2003: R125 000.]

(4)

[Sub-s. (4) substituted by s. 1 (b) of Act No. 15 of 1978 and deleted by s. 4 (e) of Act No. 86 of 1983.]

(5) The Master may at any time—

(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.

[Sub-s. (5) amended by s. 4 (f) of Act No. 86 of 1983.]

(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.

19. Competition for office of executor.—If more than one person is nominated for recommendation to the Master, the Master shall, in making any appointment, give preference to—

(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.

[S. 19 amended by s. 5 of Act No. 86 of 1983.]

20. Application of section 21 to foreign letters of executorship.—(1) The Minister may by notice in the *Gazette* declare that the provisions of section *twenty-one* shall, as from the date fixed by such notice or during a period specified in such notice, apply to letters of executorship granted in any State so specified, and may by like notice withdraw or amend any such notice.

[Sub-s. (1) amended by ss. 46 and 47 of Act No. 97 of 1986.]

(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 subsection (1).

21. Sealing and signing of letters granted in a State.—Whenever letters of executorship granted in any State and authenticated as provided in the rules made under section 6 (1) (i) of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), are produced to or lodged with the Master by the person in whose favour those letters have been granted or his or her duly authorized agent, those letters may, subject to sections 22 and 23, be signed by the Master and sealed with his or her 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 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.

[S. 21 amended by s. 8 of Act No. 20 of 2001.]

22. The Master may refuse to grant, endorse or sign and seal letters of executorship in certain cases.—(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 subparagraph (ii), (iii) or (iv) of paragraph (a) of subsection (1) of section *fifty-four* or subparagraph (iii) of paragraph (b) of that subsection; 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.

23. Security for liquidation and distribution.—(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—

- (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.

24. Reduction of security given by executors.—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.

25. 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.—(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 subsection (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
- (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.

[S. 25 substituted by s. 2 of Act No. 12 of 1984.]

26. Executor charged with custody and control of property in estate.—(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.

(1A) The executor may before the account has lain open for inspection in terms of section 35 (4), with the consent of the Master release such amount of money and such

property out of the estate as in the executor's opinion are sufficient to provide for the subsistence of the deceased's family or household.

[Sub-s. (1A) inserted by s. 3 of Act No. 63 of 1990.]

(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 subsection (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.

27. Inventories by executors and valuation at instance of Master.—(1) An executor who has been ordered thereto by the Master or who in terms of section 23 was required to find security, shall—

(a) within thirty 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 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 so signed by him showing the estimated value thereof.

[Sub-s. (1) substituted by s. 6 (a) of Act No. 86 of 1983.]

(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.

[Sub-s. (2) substituted by s. 6 (b) of Act No. 86 of 1983.]

(3)

[Sub-s. (3) deleted by s. 6 (c) of Act No. 86 of 1983.]

28. Banking accounts.—(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 R1 000, open a cheque account in the name of the estate with a bank in the Republic 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;

(b)

may open a savings account in the name of the estate with a bank 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 interest-bearing deposit with a bank.

[Sub-s. (1) substituted by s. 7 (a) of Act No. 86 of 1983 and by s. 9 (a) of Act No. 20 of 2001.]

(2) Every executor shall whenever required by the Master to do so, notify the Master in writing of the bank and the office or branch thereof with which he or she 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.

[Sub-s. (2) substituted by s. 9 (b) of Act No. 20 of 2001.]

(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 bank with which he or she 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.

[Sub-s. (3) substituted by s. 7 (b) of Act No. 86 of 1983 and by s. 9 (c) of Act No. 20 of 2001.]

(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 or herself possesses, and may examine all vouchers in relation thereto, whether in the hands of the bank or of the executor.

[Sub-s. (5) substituted by s. 9 (d) of Act No. 20 of 2001.]

(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.

[S. 28 substituted by s. 3 of Act No. 79 of 1971.]

29. Notice by executors to lodge claims.—(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.

[Sub-s. (1) amended by s. 2 of Act No. 15 of 1978 and by s. 8 of Act No. 86 of 1983.]

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

30. Restriction on sale in execution of property in deceased estates.—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 R5 000, the Master or, in the case of any other property, the Court otherwise directs,
[Para. (b) substituted by s. 3 of Act No. 15 of 1978 and by s. 9 of Act No. 86 of 1983.]

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.

31. Late claims.—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 subsection (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.

32. Disputed claims.—(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 subsection (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 subsection (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.

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

34. Insolvent deceased estates.—(1) On the expiry of the period specified in the notice referred to in section 29 the executor shall satisfy himself as to the solvency of the estate and, if the estate is found to be insolvent then or any time before distribution under subsection (12) of section 35, he shall forthwith 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 the majority in number and value of all the creditors instruct him in writing within a period specified in the notice (not being less than fourteen days) to surrender the estate under the Insolvency Act, 1936 (Act No. 24 of 1936), he will proceed to realize the assets in the estate in accordance with the provisions of subsection (2): Provided that—

(a) no creditor whose claim amounts to less than R1 000 shall be reckoned in number;
[Para. (a) substituted by s. 10 of Act No. 20 of 2001.]

(b) any creditor holding any security which a trustee would under section 83 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
[Para. (b) amended by s. 3 (1) (a) of Act No. 12 of 1984 (English only).]

(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 subsection.

(2) If after the expiry of the period specified in the notice under subsection (1) the executor has not in accordance with such notice been directed to surrender the estate, he shall, after the creditors have been notified in writing, for a period not being less than fourteen days, of the manner and conditions of the intended sale of the assets, sell the assets in the estate.

(3) A creditor may at any time before the sale of an asset lodge with the executor an objection to the intended sale of that asset, and shall send a copy of that objection to the Master.

(4) After considering the objection, any comment the executor may have made regarding the objection and the further particulars which the Master may have required, the Master shall order the executor to proceed with the sale or give any other order regarding the sale of the asset as he thinks fit.

(5) In so far as a date of sequestration is relevant for the purposes of the distribution of an estate under this section, such date shall be deemed to be the date immediately following the date on which the period specified in the notice given in respect of the estate in question under subsection (1), has expired.

(6) If any creditor has under paragraph (b) of the proviso to subsection (1) 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 83 of the Insolvency Act, 1936.

(7) (a) An executor shall, as soon as may be after the expiry of the period specified in a notice referred to in subsection (1), but within—

(i)

six months after letters of executorship have been granted to him; or

(ii)

such further period as the Master may in any case allow,

submit to the Master an account in the prescribed form, supported by vouchers, of the liquidation and distribution of the estate.

(b) Such account shall provide for the distribution of the proceeds in the order of preference prescribed under the Insolvency Act, 1936, in the case of a sequestrated estate.

(7A) (a) If at any time after the account contemplated in subsection (7) 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 supported by vouchers.

(b) The provisions of subsection (7) (b) shall *mutatis mutandis* apply in respect of a supplementary account contemplated in paragraph (a) of this subsection.

[Sub-s. (7A) inserted by s. 3 (1) (b) of Act No. 12 of 1984.]

(8) The Master may at any time in any case in which he has exercised his powers under subsection (7) (a) (ii) 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 within a specified period an interim account in the prescribed form, supported by vouchers.

(9) The provisions of subsections (3) to (11), inclusive, of section 35 shall *mutatis mutandis* apply with reference to any account referred to in this section.

(10) When an account has lain open for inspection 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 and no application has been made to the Court to set aside the Master's decision; or

(c) an objection has been lodged but has been withdrawn or has not been sustained, and no such application has been made to the Court within the said period,

the Master shall confirm the account and his confirmation shall be conclusive save as against a person in whose favour the Court may, before a dividend has been paid out in accordance with the account, have granted an order to re-open the account.

(11) When an account has been confirmed by the Master, the executor shall forthwith pay the creditors and distribute the estate among the heirs, if any, in accordance with the account, and lodge with the Master the receipts and acquittances of the creditors and heirs, if any: Provided that 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, may be accepted by the Master in lieu of any such receipt or acquittance.

(12) The executor shall not later than two months after the estate has become distributable in terms of subsection (11), 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.

(13) The provisions of this section shall not prevent the sequestration of any estate in terms of the Insolvency Act, 1936.

[S. 34 amended by s. 4 of Act No. 15 of 1978 and substituted by s. 10 (1) of Act No. 86 of 1983.]

35. Liquidation and distribution accounts.—(1) An executor shall, as soon as may be after the last day of the period specified in the notice referred to in section 29 (1), 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.

[Sub-s. (1) amended by s. 5 of Act No. 15 of 1978, substituted by s. 11 (a) of Act No. 86 of 1983 and amended by s. 4 (a) of Act No. 12 of 1984.]

(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.

[Sub-s. (1A) inserted by s. 4 (b) of Act No. 12 of 1984.]

(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.

[Sub-s. (2) substituted by s. 11 (b) of Act No. 86 of 1983 and by s. 4 (c) of Act No. 12 of 1984.]

(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 him such voucher or vouchers in support of the account or any entry therein as he may require for the purpose of performing his functions in connection with the examination or amendment of the account.

[Sub-s. (2A) inserted by s. 4 (d) of Act No. 12 of 1984.]

(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).

[Para. (b) added by s. 4 (e) of Act No. 12 of 1984.]

(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.

(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 subsection (11), and no application has been made to the Court

within the period referred to in subsection (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.

[Sub-s. (12) amended by s. 4 (f) of Act No. 12 of 1984.]

(13) The executor shall not later than two months after the estate has become distributable in terms of subsection (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.

36. Failure by executor to lodge account or to perform duties.—(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.

[Sub-s. (1) substituted by s. 5 of Act No. 12 of 1984.]

(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*.

37. Massed estates.—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.

38. Taking over by surviving spouse of estate or portion thereof.—(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 subsection (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) Subsections (3), (4) and (5) of section *forty-three* shall *mutatis mutandis* apply in respect of any security given under subsection (1).

39. Registration of immovable property in deceased estate.—(1) An executor shall, subject to the provisions of subsections (2) and (3), the Deeds Registries Act, 1937 (Act No. 47 of 1937), 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.

[Sub-s. (1) substituted by s. 4 of Act No. 54 of 1970 and amended by s. 1 of Act No. 49 of 1996.]

(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, 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.

[Sub-s. (2) substituted by s. 4 of Act No. 54 of 1970 and amended by s. 1 of Act No. 49 of 1996.]

(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.

(4) If the executor is a practising conveyancer and has performed any work in terms of this section in connection with the registration of, or the endorsement against the title deeds of, immovable property referred to in subsection (1), he shall be entitled to remuneration for such work in accordance with the fees and charges prescribed by regulation under section 10 (1) (c) of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

[Sub-s. (4) added by s. 7 of Act No. 139 of 1992.]

40. Endorsement of testamentary trusts against title deeds and bonds.—(1) If a trustee 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 trustee), the executor shall—

(a) deliver to the trustee 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 section 41 (2), to the trustee; and

(c) lodge with the Master the trustee'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 has been endorsed as aforesaid.

[Sub-s. (1) substituted by s. 26 of Act No. 57 of 1988.]

(2)

[Sub-s. (2) substituted by s. 5 of Act No. 54 of 1970 and by s. 29 of Act No. 57 of 1975 and deleted by s. 26 of Act No. 57 of 1988.]

(3)

[Sub-s. (3) deleted by s. 26 of Act No. 57 of 1988.]

41. Production of title deed or bond to executor.—(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.

(3) Any person who fails to comply with the provisions of subsection (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.

42. Documents to be lodged by executor with registration officer.—(1) Except as is otherwise provided in subsection (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.

[Sub-s. (1) substituted by s. 12 of Act No. 86 of 1983.]

(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.

[S. 42 substituted by s. 19 of Act No. 102 of 1967.]

43. Movable property to which minors and moneys to which absentees or persons under curatorship are entitled.—(1) The natural guardian of a minor shall, subject to the provisions of subsections (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 liquidation and distribution account in any deceased estate, entitled.

[Sub-s. (1) substituted by s. 1 of Act No. 35 of 1986.]

(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 of 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.

[Sub-s. (2) substituted by s. 6 of Act No. 12 of 1984.]

(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 sequestrated, 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 subsection (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 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 subsection (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 subsection (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.

44. Movable property to which minor or unborn heir is entitled subject to usufructuary or fiduciary rights or other like interests.—(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 subsection (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 subsection (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) Subsections (3), (4) and (5) of section *forty-three* shall *mutatis mutandis* apply in respect of any security given under subsection (1).

(3) The provisions of subsection (1) shall not apply in relation to any disposition in a will executed in the Republic prior to a date twelve months after the date of commencement of this Act.

[Sub-s. (3) substituted by s. 6 of Act No. 54 of 1970 and amended by s. 1 of Act No. 49 of 1996.]

45. Payment of moneys to minors or persons under curatorship domiciled outside the Republic.—(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 subsection (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 subsection (1).

46. Failure to pay over moneys.—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.

47. Sales by executor.—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 stock-broker 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 the 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.

[S. 47 substituted by s. 13 of Act No. 86 of 1983.]

48. Extension of time and compounding of debts.—An executor may accept from a debtor of the deceased estate who is unable to pay his or her 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 or her debt in so far as this is compatible with section 35: Provided that if the debt exceeds R2 000, 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 or she has been authorized to do so by the Master.

[S. 48 substituted by s. 11 of Act No. 20 of 2001.]

49. Purchases by executor of property in estate, or mortgaged or pledged to the deceased.—(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.

50. Executor making wrong distribution.—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.

51. Remuneration of executors and interim curators.—(1) Every executor (including an executor liquidating and distributing an estate under subsection (4) of section *thirty-four*) shall, subject to the provisions of subsections (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 subsection (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 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 section 34 (11) or 35 (12), as the case may be, unless payment of such remuneration has been approved in writing by the Master.

[Sub-s. (4) substituted by s. 14 of Act No. 86 of 1983.]

52. No substitution or surrogation.—It shall not be competent for any executor to substitute or surrogate any other person to act in his place.

53. Absence of executor from Republic.—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.

[S. 53 substituted by s. 15 of Act No. 86 of 1983.]

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

(a) by the Court—

.....

(i)

[Sub-para. (i) deleted by s. 16 (a) of Act No. 86 of 1983.]

(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

(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 if he has been nominated by will and the Master is of the opinion that the will is for any reason invalid; or

[Sub-para. (i) substituted by s. 13 of Act No. 43 of 1992.]

(ii)
if he fails to comply with a notice under section 23 (3) within the period specified in the notice or within such further period as the Master may allow; or

[Sub-para. (ii) substituted by s. 16 (b) of Act No. 86 of 1983.]

(iii)
if he or she is convicted, in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged instrument or perjury, and is sentenced to imprisonment without the option of a fine, or to a fine exceeding R2 000; or

[Sub-para. (iii) substituted by s. 12 of Act No. 20 of 2001.]

(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.

55. Continuance of pending legal proceedings by remaining or new executor.—

(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 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.

56. Discharge of executors, and proceedings against discharged executors.—

(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.

(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 subsection 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

[Heading to Chapter III repealed by s. 26 of Act No. 57 of 1988.]

57 to 70 inclusive.

[Ss. 57 to 70 inclusive repealed by s. 26 of Act No. 57 of 1988.]

CHAPTER IV
TUTORS AND CURATORS

71. Certain persons not to administer property as tutor or curator without letters of tutorship or curatorship.—(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.

72. Letters of tutorship and curatorship to tutors and curators nominate and endorsement in case of assumed tutors and curators.—(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](#)), or any order of court made under any such provision or any provision of the Divorce Act, 1979, on the written application of any person—

(a)

who has been nominated by will or written instrument—

(i)

by the parent of a legitimate minor who has not been deprived, as a result of an order under subsection (1) of the said section 5 or the Divorce Act, 1979, of the guardianship of such minor and who immediately before his death was the sole natural guardian of such minor; or

[Sub-para. (i) substituted by [s. 3 \(b\)](#) of [Act No. 192 of 1993](#).]

(ii)

by the mother of a minor born out of wedlock who has not been so deprived of the guardianship of such minor or of her parental powers over him or her; or

[Sub-para. (ii) substituted by [s. 3 \(c\)](#) of [Act No. 192 of 1993](#) and by s. 6 of Act No. 62 of 2000.]

(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 the Divorce Act, 1979,

[Sub-para. (iii) substituted by [s. 3 \(d\)](#) of [Act No. 192 of 1993](#).]

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.

[Sub-s. (1) substituted by s. 7 of Act No. 54 of 1970 and amended by s. 17 of Act No. 70 of 1979 and by s. 3 (a) of Act No. 192 of 1993.]

(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.

(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 subsection (1) and any endorsement to be made under subsection (2), and the provisions of subsections (2) and (3) of section *fifteen* shall so apply with reference to any such endorsement.

73. Proceedings on failure of nomination of tutors or curators, or on death, incapacity or refusal to act, etc.—(1) The Master may, subject to the provisions of subsections (2), (3) and (4)—

- (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 No. 18 of 1973), be competent for a judge in chambers to appoint a curator, or in any case in which the Master would be competent to appoint a curator in terms of section 56A of the said Act; or

[Para. (b) substituted by s. 17 (b) of Act No. 86 of 1983 and by s. 6 of Act No. 108 of 1990.]

(c)

if any eventuality referred to in paragraph (b), (c), (d), (e) or (f) of section 18 (1) occurs with reference to any person who has been nominated or appointed as provided in paragraph (a), (b), (c) or (d) of section 72 (1), or to whom letters of tutorship or curatorship have been granted under the latter section or under this subsection,

[Para. (c) substituted by s. 4 of Act No. 63 of 1990.]

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.

[Sub-s. (1) amended by s. 17 (a) of Act No. 86 of 1983.]

(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 section 18 (3) and to section 19 shall be deemed to be omitted.

[Sub-s. (2) substituted by s. 17 (c) of Act No. 86 of 1983.]

(3) The Master may, without any notice under subsection (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.

(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.

[Sub-s. (4) added by s. 17 (d) of Act No. 86 of 1983.]

74. Foreign letters of tutorship or curatorship.—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.

75. Notifications in respect of tutors and curators.—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.

76. Authority conferred by letters of tutorship and curatorship.—(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 subsection (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
- (b) in any case referred to in paragraph (a), (b) or (c) of that subsection, or in subsection (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.

77. Security by tutors and curators.—(1) Every person appointed or to be appointed tutor or curator as provided in section 72 (1) (d) or (2) or under section 73 or 74, shall, subject to the proviso to section 57 (3) of the Mental Health Act, 1973 (Act No. 18 of 1973), 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.

[Sub-s. (1) substituted by s. 18 of Act No. 86 of 1983 and by s. 7 of Act No. 108 of 1990.]

(2) Every person nominated as provided in paragraph (a), (b) or (c) of subsection (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 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) 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 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, 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.

(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.

78. Inventories by tutors and curators.—(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.

79. Returns by Masters to registration officers of immovable property included in inventory.—(1) The Master shall forthwith after receipt by him of an 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*.

80. Restriction on alienation or mortgage of immovable property by natural guardian, tutor or curator.—(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 determined by the Minister from time to time by notice in the *Gazette* and the alienation would be in the interest of the minor or of such person, as the case may be; and

(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 determined by the Minister from time to time by notice in the *Gazette*, 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.

[Sub-s. (2) substituted by s. 6 of Act No. 15 of 1978 and amended by s. 3 of Act No. 157 of 1993.]

[General Note: Amount determined under Government Notice No. R.1318 in *Government Gazette* 25456 of 19 September, 2003: R100 000.]

81. Purchase by tutor or curator of property administered by him.—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.

82. Payment to Master of certain moneys.—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 provision 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.

83. Accounts by tutors and curators.—(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
- (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 subsection (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.

84. Remuneration of tutors and curators.—(1) Every tutor and curator shall, subject to the provisions of subsection (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.

85. Application of certain sections to tutors and curators.—Sections 24, 26, 28 and 36, subsection (2) of section 42, sections 46 and 48, subsection (2) of section 49 and

sections 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.

[S. 85 substituted by s. 17 of Act No. 132 of 1993.]

CHAPTER V THE GUARDIAN'S FUND

86. Existing guardian's fund to continue.—(1) The guardian's fund established by section ninety-one of the Administration of Estates Act, 1913 (Act No. 24 of 1913), shall continue in existence, and shall consist of all moneys—

- (a) in that fund at the commencement of this Act; or
- (b) received by the Master under this Act or any other law or in pursuance of an order of Court; or
- (c) accepted by the Master in trust for any known or unknown person.

(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.

(3)

[Sub-s. (3) added by Proclamation No. R.57 of 31 March, 1987 and deleted by s. 1 of Act No. 49 of 1996.]

87. Moneys in guardian's fund to be deposits for purposes of Act 45 of 1984.—The moneys in the guardian's fund shall be deemed to be deposits for the purposes of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984), and the Master may from time to time pay out of any working balance retained at his or her disposal under the said Act, any amounts due and payable out of the said fund.

[S. 87 substituted by s. 19 of Act No. 86 of 1983 and by s. 13 of Act No. 20 of 2001.]

88. Interest on certain moneys in guardian's fund.—(1) Subject to the provisions of subsections (2) and (3), interest calculated on a monthly basis at the rate per annum determined from time to time by the Minister of Finance, and compounded annually at the thirty-first day of March, shall be allowed on each rand of the principal of every sum of money received by the Master for account of any minor, lunatic, unborn heir or any person having an interest therein of a usufructuary, fiduciary or fidei-commissary 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;
- (b) in all other cases, the last day of the month preceding the month during which the money is paid out.

89. Payments from guardian's fund.—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.

90. Payments to natural guardians, tutors and curators, or for and on behalf of minors and persons under curatorship.—(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 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 subparagraph (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 determined by the Minister from time to time by notice in the *Gazette* of the capital amount received for account of the minor or other person concerned.

[Sub-s. (1) amended by s. 4 of Act No. 157 of 1993.]

(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 liquidation and distribution account in any deceased estate or by virtue of any other source, entitled, 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.

[S. 90 amended by s. 20 of Act No. 86 of 1983 and substituted by s. 7 of Act No. 12 of 1984. Sub-s. (2) substituted by s. 2 of Act No. 35 of 1986.]

[General Note: Amount determined under Government Notice No. R.1318 in *Government Gazette* 25456 of 19 September, 2003: R100 000.]

90A. Payment to usufructuary or fiduciary or to his tutor or curator.—(1) The Master may, where any person has a right as usufructuary or fiduciary to money which was paid into the guardian's fund, pay such money to that person or, if that person is a minor or a person under curatorship, to his tutor or curator, on condition that such person or his tutor or curator, as the case may be, has given security to the satisfaction of the Master for the refund

of such money on the termination of his right or of his tutorship or curatorship, as the case may be.

(2) The provisions of section 43 (3), (4) and (5) shall *mutatis mutandis* apply in respect of any security given under subsection (1).

[S. 90A inserted by s. 3 of Act No. 35 of 1986.]

91. Publication of list of unclaimed moneys.—The Master shall in the month of September of each year cause to be published in the *Gazette* a list of all amounts of R1 000 or more in the guardian's fund, other than the amounts deposited therein in terms of section 93 (3), which have been claimable and have remained unclaimed by the persons entitled thereto for a period exceeding one year but not exceeding three years.

[S. 91 substituted by s. 21 of Act No. 86 of 1983, amended by s. 25 of Act No. 108 of 1991 and substituted by s. 14 of Act No. 20 of 2001.]

92. Forfeiture to State of moneys unclaimed for thirty years.—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.

93. Statements of certain unclaimed moneys to be published, and amounts unclaimed to be paid into guardian's fund.—(1) Every person carrying on business in the Republic 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 R100 or more which were held by him or her or by any agent on his or her behalf in the Republic 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.

[Sub-s. (1) substituted by s. 22 (1) (a) of Act No. 86 of 1983, by s. 5 of Act No. 63 of 1990 and by s. 15 of Act No. 20 of 2001.]

(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.

[Sub-s. (2) substituted by s. 22 (1) (b) of Act No. 86 of 1983.]

(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 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.

[Sub-s. (3) amended by s. 4 of Act No. 79 of 1971 and by s. 22 (1) (c) of Act No. 86 of 1983 and substituted by s. 26 of Act No. 108 of 1991.]

CHAPTER VI MISCELLANEOUS PROVISIONS

94. Consent of Master to sub-division of immovable property on behalf of minor or unborn heir.—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), 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.

[S. 94 substituted by s. 8 of Act No. 54 of 1970 and amended by s. 1 of Act No. 49 of 1996.]

95. Review of Master's appointments, etc.—Every appointment by the Master of an executor, 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.

[S. 95 amended by s. 26 of Act No. 57 of 1988.]

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

(a)

institute any civil proceedings in pursuance of this Act, against any executor, tutor, curator or interim curator, in the High Court within whose area of jurisdiction the appointment of such executor, tutor, curator or interim curator was made, whether or not such executor, tutor, curator or interim curator is resident within that area or otherwise subject to the jurisdiction of that High Court; and

[Para. (a) amended by s. 26 of Act No. 57 of 1988 and substituted by s. 16 of Act No. 20 of 2001.]

(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.

97. Master's costs.—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.

98. Recovery of costs ordered to be paid *de bonis propriis* by executor, etc.—Whenever any executor, 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, tutor, curator, interim curator or surety, recover them from the property in the deceased estate or the property subject to the administration of the tutor or curator, as the case may be.

[S. 98 amended by s. 26 of Act No. 57 of 1988.]

99. Master incapacitated from being executor, etc.—No Master shall in his official capacity be capable of acting as executor, tutor or curator.

[S. 99 amended by s. 26 of Act No. 57 of 1988.]

100. Exemption from liability for acts or omissions in Master's office.—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.

101. Evidence.—(1) A copy certified by the Master of any letters of executorship, tutorship or curatorship lodged with him under section 21, or under the said section read with section 74, or of a copy of any such letters, shall be admissible in evidence as if it were the original letters.

[Sub-s. (1) substituted by s. 26 of Act No. 57 of 1988.]

(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)

[Para. (b) deleted by s. 26 of Act No. 57 of 1988.]

(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 section 23 (5) or in section 77 (5), and of any value referred to in section 35 (1) or in section 46 or in the last-mentioned section as applied by section 85.

[Sub-s. (3) substituted by s. 26 of Act No. 57 of 1988.]

102. Penalties.—(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

(e)

when being interrogated under oath under section 32, makes, relative to the subject in connection with which he or she is interrogated, any statement whatever which he or she knows to be false or which he or she does not know or believe to be true; or

[Para. (e) substituted by s. 17 (a) of Act No. 20 of 2001.]

(f)

being an executor wilfully distributes any estate otherwise than in accordance with the provisions of section 35 (12), or of the relevant will; or

[Para. (f) substituted by s. 26 of Act No. 57 of 1988.]

(g)

contravenes or fails to comply with the provisions of section 9 (1) or (3), 13, 27 (1), 35 (13), 47, 71, 83, 93 (1) or (3), or with any notice under section 9 (2); or

[Para. (g) substituted by s. 23 of Act No. 86 of 1983 and by s. 26 of Act No. 57 of 1988.]

(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 85, section 30, section 35 (1), or with any direction under section 35 (2) or any notice under section 43 (3) or (4); or

[Para. (h) substituted by s. 7 of Act No. 15 of 1978 and by s. 26 of Act No. 57 of 1988.]

(i)

contravenes or fails to comply with the provisions of sections 7 (1) or (2), section 35 (8), section 41 (1), section 54 (5) or of the last-mentioned section as applied by section 85, or with any notice under section 7 (3) or any direction under section 28 (6) or of the last-mentioned section as applied by section 85, or fails without reasonable excuse to comply with a notice under section 32 (1) (b), 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,

[Para. (i) substituted by s. 26 of Act No. 57 of 1988.]

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 or to imprisonment for a period not exceeding seven years;

[Para. (i) substituted by s. 17 (b) of Act No. 20 of 2001.]

(ii)

in the case of an offence referred to in paragraph (b), (c), (d) or (e), to a fine or to imprisonment for a period not exceeding five years;

[Para. (ii) substituted by s. 17 (b) of Act No. 20 of 2001.]

(iii)
in the case of an offence referred to in paragraph (*f*) or (*g*), to a fine or to imprisonment for a period not exceeding twelve months;

[Para. (iii) substituted by s. 17 (*b*) of Act No. 20 of 2001.]

(iv)
in the case of an offence referred to in paragraph (*h*), to a fine or to imprisonment for a period not exceeding six months; and

[Para. (iv) substituted by s. 17 (*b*) of Act No. 20 of 2001.]

(v)
in the case of an offence referred to in paragraph (*i*), to a fine or to imprisonment for a period not exceeding three months.

[Para. (v) substituted by s. 17 (*b*) of Act No. 20 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.

103. Regulations.—(1) The Minister may make regulations—

- (*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;
- (*c*) providing for the good conduct of Master's 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
- (*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.

[Sub-s. (1) amended by s. 46 of Act No. 97 of 1986.]

(2) Any regulations made under subsection (1) may provide that any person who contravenes such regulations or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding three months.

[Sub-s. (2) substituted by s. 18 of Act No. 20 of 2001.]

(3) Any regulations made under [section 118](#) of the Administration of Estates Act, 1913 ([Act No. 24 of 1913](#)), shall be deemed to have been made under subsection (1).

[Sub-s. (3) substituted by s. 18 of Act No. 20 of 2001.]

104. Application of Act.—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.

105. Repeal of laws, and savings.—(1) Subject to the provisions of subsections (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 before the commencement of this Act; or
[Para. (a) amended by s. 1 of Act No. 49 of 1996.]
- (b)
[Para. (b) deleted by s. 1 of Act No. 49 of 1996.]
- (c) who died or dies after the commencement referred to in paragraph (a) 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,
[Para. (c) substituted by s. 19 of Act No. 20 of 2001.]

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.

[Sub-s. (3) substituted by s. 9 of Act No. 54 of 1970.]

106. Re-instatement for certain purposes of the provisions which were contained in subsection (2) of section 5 of Act 24 of 1913 prior to its substitution in terms of section 16 of Act 68 of 1957.—For the purposes of the application of subsection (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 subsection (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.

107. Amends section 62 of the Mental Disorders Act, No. 38 of 1916.

108.

[S. 108 repealed by s. 26 of Act No. 57 of 1988.]

108A.

[S. 108A inserted by s. 10 of Act No. 54 of 1970 and repealed by s. 1 of Act No. 49 of 1996.]

109. Short title and commencement.—This Act shall be called the Administration of Estates Act, 1965, and shall come into operation upon a date to be fixed by the State President by proclamation in the *Gazette*.

[S. 109 substituted by s. 26 of Act No. 57 of 1988.]

Schedule LAWS REPEALED

<i>No. and Year of Law</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
No. 24 of 1913	Administration of Estates Act, 1913	The whole
No. 38 of 1916	Mental Disorders Act, 1916	Sections <i>sixty-four</i> and <i>sixty-five</i>
No. 44 of 1926	Financial Adjustments Act, 1926	Section <i>three</i>
No. 45 of 1931	Financial Adjustments Act, 1931	Section <i>four</i>
No. 49 of 1935	Finance Act, 1935	Section <i>eight</i>
No. 17 of 1938	Finance Act, 1938	Sections <i>twenty</i> and <i>twenty-one</i>
No. 46 of 1944	Finance Act, 1944	Section <i>eighteen</i>
No. 57 of 1946	Finance Act, 1946	Section <i>nineteen</i>
No. 45 of 1953	Finance Act, 1953	Section <i>twelve</i>
No. 62 of 1955	General Law Amendment Act, 1955	Sections <i>eight</i> to <i>twelve</i> , inclusive, and the First Schedule
No. 68 of 1957	General Law Amendment Act, 1957	Sections <i>fifteen</i> to <i>twenty-one</i> , inclusive
No. 81 of 1957	Finance Act, 1957	Section <i>eight</i>
No. 37 of 1958	Finance Act, 1958	Section <i>ten</i>
No. 76 of 1961	Finance Act, 1961	Section <i>five</i>

No. 93 of 1962	General Law Further Amendment Act, 1962	Sections <i>six to twelve</i> , inclusive
No. 93 of 1963	General Law Further Amendment Act, 1963	Section <i>one</i>