



## **Chief Master's Directive 2 of 2015**

# **Appointment of Executors and/or Master's Representatives in Deceased Estates by the Master**

**This Directive recalls Chief Master's Directive 3 of 2006**

## **1. PREAMBLE**

- 1.1.** The primary function of the Master is to regulate the administration of estates. It is the duty of the Master to ensure that the legal and financial interests of those affected in the administration of an estate are taken care of in a compassionate manner.
- 1.2.** The conduct of the Master must at all times assure the public that the manner in which estates are administered is –
  - 1.2.1. in compliance with the law; and
  - 1.2.2. that the financial and legal interests of all those who may be vulnerable will be protected.
- 1.3.** The Chief Master recognizes that –
  - 1.3.1. the procedures and forms used in the appointment of administrators of estates need to be standardized –
    - (a) to ensure uniformity in all offices;
    - (b) to eliminate all forms of corruption; and
    - (c) to bring about transparency and consistency in the manner in which appointments are made.

## **2. Purpose**

- 2.1.** The purpose of this Directive is to direct all Masters in the

performance of their functions. This Directive is issued in terms of:

2.1.1. Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to "*exercise control, direction and supervision over all the Masters*".

2.1.2. Section 2(1) of the Administration of Estates Act 66 of 1965.

**2.2.** This Directive replaces all previously issued directives in respect of appointments in deceased estates.

### **3. Scope**

This Directive addresses the appointment of executors and Master's Representatives in terms of the Administration of Estates Act.<sup>1</sup>

### **4. Objectives**

**4.1.** This Directive seeks to achieve the following objectives:-

4.1.1. To comply with the Promotion of Administrative Justice Act<sup>2</sup>;

4.1.2. To ensure greater transparency and openness in the functions of the Master;

4.1.3. To establish uniform, fair and transparent appointment procedures to be used by Masters of the High Court in appointing executors and Master's Representatives;

4.1.4. To direct the Masters of the High Court with regard to making appointments of executors and Master's representatives;

4.1.5. To eliminate corruption.

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<sup>1</sup> Act 66 of 1965, as amended; (hereafter referred to as "the Act").

<sup>2</sup> Act 3 of 2000.

## **5. Definitions (for the purpose of this Directive)**

- 5.1.** "**Chief Master**" means the person appointed as the Chief Master of the High Courts in terms of sections 1 and 2(1) of the Act.
- 5.2.** "**Deceased estate**" means (unless otherwise indicated) an estate of a deceased person in terms of the Act.
- 5.3.** "**Executor**" means the executor as defined in section 1 of the Act.
- 5.4.** "**Master**" means the Master as defined in section 1 of the Act.
- 5.5.** "**Master's Representative**" means the person appointed to represent and administer the estate in terms of Section 18(3) of the Act.
- 5.6.** "**Administrator**" means the person appointed/to be appointed as either executor or representative of the estate in terms of Section 18(3)

## **6. Implementation**

- 6.1.** This Directive will be effective as from date of signature by the Chief Master.

## **7. Reporting documents**

The following documents are required when the Master appoints an administrator in an estate:

### **7.1. Death Notice (J294)**

#### *(a) Jurisdiction:*

Every Master is bound by the area of jurisdiction for which

he/she is appointed<sup>3</sup>. Jurisdiction is determined in terms of Section 4(1) of the Act. The ordinary place of residence of the deceased prior to his death, irrespective of the duration of his residence there, determines which Master has jurisdiction.<sup>4</sup>

Ensure that the deceased's residence falls within your area of jurisdiction.

- i) If the place of residence falls outside the area of jurisdiction and there is no application<sup>5</sup> on record in terms of section 4(1) for the Master to assume jurisdiction, the Master then transfers the estate to the appropriate Master's Office which has jurisdiction.
- ii) The Master can only assume jurisdiction with the consent of the Master who has jurisdiction.
- iii) Once the Master has exercised jurisdiction, for instance by registering and accepting the will, he shall continue to have jurisdiction. In such a case, jurisdiction cannot be transferred to or assumed by another Master.

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<sup>3</sup> The Service Point at the Magistrate's Office where the person was so resident, can make an appointment in the following instances:

(a) Service Points where ICMS Deceased Estates Phase II (PEAS) has not been rolled out:

- i) The deceased did not leave a valid will; and
- ii) The value of the estate is not more than R125 000; and
- iii) The estate is solvent; and
- iv) All the beneficiaries are majors or any one or more of the beneficiaries is a minor and is assisted by his/her legal guardian and the cash assets in the estate are worth R20 000 or less.

(b) Service Points where ICMS Deceased Estates Phase II (PEAS) has been rolled out:

- i) The deceased did not leave a valid will; and
- ii) The value of the estate is not more than R250 000; and
- iii) The estate is solvent; and
- iv) All the beneficiaries are majors or any one or more of the beneficiaries is a minor and is assisted by his/her legal guardian.

All estates, where there is a will and/or codicil or a document purporting to be a will or codicil must be dealt with directly by the Master's Office, irrespective of the value of the assets.

<sup>4</sup> Note that the advertisements in terms of s29 and s35 refer to the place in which the deceased was ordinarily resident 12 months prior to his death. A person is "ordinarily resident" in the place to which the deceased, or other person concerned, would return from wandering; i.e. his real home.

<sup>5</sup> A fully motivated application for transfer of jurisdiction should be made by an interested party – not by the Master.

(b) Where the deceased left a will/codicil:

- i) If the will/codicil has not yet been lodged, it must be requested.
- ii) If only a copy has been lodged, the original must be requested.
- iii) The Registry Personnel must also check that there is no "live will"<sup>6</sup> filed in Registry, and must indicate the result of the checking process on the death notice.
- iv) If a will/codicil has been registered with the Master but the validity of the document has not yet been considered by the Assistant Master, a JM47 must be placed on the inside of the soft cover (J257). This JM47 must be removed as soon as the will has been accepted / rejected by the Assistant Master.
- v) Once the will/codicil has been accepted by the Assistant Master, the original document must be filed in the vault and a copy thereof must be placed on the estate file by Registry.
- vi) Any endorsements made on the will/codicil by the Assistant Master must be noted and taken into account when the appointment is made and/or when any liquidation and distribution account is examined. Form JM27 (a will's advise form) must be issued by Registry. This form indicates whether a will/codicil has been rejected or endorsed in any way.
- vii) The Master may release a will delivered to him to a person lawfully requiring it to liquidate and distribute the estate of the deceased person outside the RSA if he is satisfied that the deceased testator/testatrix has not left any property in the Republic.

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<sup>6</sup> A "live will" is a will which was lodged under the repealed *Administration of Estates Act 24* of 1913, whilst the testator/testatrix was still alive.

(c) Pre-deceased spouse:

If it is indicated on the death notice that there is a pre-deceased spouse, it must be ascertained from the pre-deceased spouse's estate if he/she died testate or intestate and, if testate, whether the will in that estate has any effect on the administration of the estate in question.

(d) Signing of the notice:

The death notice must be correctly signed.

(e) Death Certificate or certified copy:

A death certificate or certified copy thereof must be lodged in all estates.<sup>7</sup>

**7.2. Proof of an alleged marriage or permanent same-sex life partnership**

Proof of marriage or an alleged permanent same-sex life partnership must be lodged in all instances where such relationship is indicated in the death notice; except in instances where the surviving spouse or same-sex life partner is an heir in terms of a valid will. The following documents constitute acceptable proof:

- (a) An original or certified copy of the Marriage certificate must be lodged where a civil marriage in terms of the Marriage Act,<sup>8</sup> or a marriage or civil partnership in terms of the Civil Union Act,<sup>9</sup> or a customary marriage duly registered in terms of the Recognition of Customary Marriages Act<sup>10</sup> is indicated.
- (b) In the case of customary marriages registered after the death of one of the parties, proof of registration issued by the

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<sup>7</sup> When the deceased died of unnatural causes, a death certificate is not issued immediately. The interim proof of death document is then sufficient. A Presumption of Death order by Court will also be sufficient where no death certificate has been issued.

<sup>8</sup> Act 25 of 1961.

<sup>9</sup> Act 17 of 2006.

<sup>10</sup> Act 120 of 1998.

Department of Home Affairs may be accepted as an alternative to a marriage certificate.<sup>11</sup>

- (c) Where proof of registration of a customary marriage cannot be lodged, and such proof is required only for purposes of succession, and provided there is no dispute regarding the existence of the customary marriage, a family meeting should be convened to confirm the existence of the alleged customary marriage. Form MBU 16 should be used for this purpose. Note that the Master's acceptance of the minutes of the meeting as sufficient proof of the existence of the marriage in this instance is not a declaration on the validity of the marriage, or an order to register the marriage, but should rather be viewed as assistance to the surviving spouse(s) where the late registration of the marriage which has already been dissolved by the death of one of the parties will delay the administration of the estate.
- (d) Where the deceased was a husband in more than one customary marriage, any of which was entered into after 15 November 2000, a copy of the contract which regulates the matrimonial property system of the marriages, duly approved by court, in terms of section 7(6) of the Recognition of Customary Marriages Act<sup>12</sup> must be requested.
- (e) Where the husband did not comply with the provisions of section 7(6) of the Recognition of Customary Marriages Act, the matter must be dealt with as set out in *Ngwenyama v Mayelane*.<sup>13</sup>

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<sup>11</sup> On 12 December 2014 the Minister of Home Affairs, by notice published in Government Gazette No 38290 dated 12 December 2014 extended the period for registration of customary marriages entered into before and after the commencement of the *Recognition of Customary Marriages Act* 120 of 1998 to 31 December 2016.

<sup>12</sup> Act 120 of 1998.

<sup>13</sup> (474/11) [2012] ZASCA 94 (1 June 2012). The Appellate court ruled that the non-compliance with the requirement of section 7(6) of the Recognition Act did not render the subsequent customary marriage invalid. If the validity requirements of section 3 of the Act have been complied with, the subsequent marriage would be valid, but the matrimonial property consequences of such further marriage would be one of out of community of property. The matrimonial property system existing between the husband and his first customary spouse continues in existence and is not terminated by the conclusion of the further customary marriage where the provisions of section 7(6) have not been complied with. This means that it is possible for a man to be married in community of property to his first customary wife, but out of community of property to a second wife.

- (f) If the deceased was married in terms of religious rites without compliance with the Marriages Act<sup>14</sup> (Muslim and Hindu marriages) proof of the marriage from the Muslim Judicial Council or similar religious body or person who performed such marriage, should be called for.<sup>15</sup>
- (g) Where a permanent same-sex life partnership is alleged in the death notice, and the estate is to devolve intestate, an affidavit (form MBU 19 – see ANNEXURE A) should be requested as confirmation of the alleged partnership.<sup>16</sup>

### **7.3 Proof of alleged customary seed-raiser relationship**

Where a seed-raiser union as contemplated in Section 2(2)(b) or (c) of the Reform of Customary Law of Succession and Regulation of Related Matters Act<sup>17</sup> is alleged, the Master's or Service Point Official should convene a family meeting to confirm the existence of such union. Form MBU 18 is used for this purpose.

The completed minutes of the meeting should form part of the records on file.

### **7.4 Divorce order**

A copy of the divorce order must be obtained where the deceased passed away within 3 months from date of the divorce and left a valid will in terms of which his/her ex-spouse benefits.<sup>18</sup>

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<sup>14</sup> Act 25 of 1961.

<sup>15</sup> In this regard also see *Daniels v Campbell and Others* 2004(5) SA 331 (CC); *Khan v Khan* 2005 (2) SA 272 TPD; *Hassam v Jacobs N.O. & Others* (2008) JOL 22098 (C) and *Govender v Ragavayah and Others* 2009 (4) SA 178 (D).

<sup>16</sup> Refer to *Gory v Kolver NO and Others (Starke and Others intervening)* 2007 (4) SA 97 (CC). In terms of a legal opinion given by the Senior State Law Adviser under reference 59/2014/15 dated 10 July 2014 the decision in *Gory v Kolver* still stands and reflects the current law. Thus, notwithstanding the enactment of the Civil Union Act, a partner in a permanent same-sex partnership is, by virtue of the said judgment entitled to the benefits granted to a spouse in terms of the Intestate Succession Act.

<sup>17</sup> Act 11 of 2009.

<sup>18</sup> See in this regard Section 2B of the Wills Act, 7 of 1953.



## **7.5 Will or document purporting to be a will**<sup>19</sup>

- (a) All original or duplicate original wills<sup>20</sup> or codicils and any other document purporting to be a will, if any, must be lodged. (Refer to section 8(4B)).<sup>21</sup>
- (b) Only copies of registered and accepted wills or codicils must be filed in the estate file.
- (c) Copies of invalid / rejected wills or codicils are not kept on file - only a note containing the date of the will and the reason of invalidity / rejection is filed in the estate file.

## **7.6 Next-of-Kin Affidavit (J192)**

- (a) The Next-of-Kin Affidavit should be requested where the deceased -
  - i) left no valid will indicating the heirs (died intestate); or
  - ii) left a will nominating heirs in a class, without specific mention of the names of the heirs.<sup>22</sup>(this can be requested at lodgement of the account, if it does not affect the appointment of the executor)
- (b) The Next-of-Kin affidavit must be completed by someone who knew the deceased and his/her family well.
- (c) A Commissioner of Oaths and the person making the affidavit must sign the Next-of-Kin affidavit, as well as any annexure attached thereto. All pages and any alterations or amendments must also be initialled accordingly.
- (d) Where a customary adoption as contemplated in section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act,<sup>23</sup> is alleged, a family meeting should be convened to confirm the allegation. The Form MBU 17 should

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<sup>19</sup> Any reference to a will includes a reference to a codicil where applicable.

<sup>20</sup> Counterparts of wills originally signed (not certified or photostat copies of wills)

<sup>21</sup> Once the above documents have been lodged, the examiner must request Registry to refer the documents (original or duplicate original wills, codicils or other documents purporting to be a will) to the Assistant Master for registration and acceptance or rejection.

<sup>22</sup> E.g. "my children", "my sons" etc.

<sup>23</sup> Act 11 of 2009.

be used for this purpose and should form part of the records of the Master's File.

### **7.7 Declaration: Reporting (MBU 5)**

- (a) If the deceased died before 2007, a declaration, in accordance with MBU 5, must be provided by the applicant, confirming that the estate has not been reported to any other Master's Office or Service Point of the Master
  - i) This form must be dated and duly signed

### **7.8 Inventory (J243)**

- (a) A provisional inventory must be lodged in terms of section 9 within 14 days after date of death of the deceased or within such further period as the Master may allow.
- (b) If the deceased was married in community of property, the assets of the joint estates of the deceased and the surviving spouse must be reflected in the inventory.
- (c) The value of assets must be included as this will indicate what type of appointment must be issued.<sup>24</sup>
- (d) In the case of the death of one or more of the persons who have massed their estates in terms of section 37, the massed estate must be reflected.<sup>25</sup>
- (e) Where an estate is to be administered in terms of Section 18(3), and the inventory reflects any:
  - i) Immovable property as part of the assets of the deceased, a municipal valuation in respect of the immovable property must be lodged with the inventory;
  - ii) Bank accounts, Policies or other like interests in financial institutions, proof of the value must be lodged with the

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<sup>24</sup> Although an executor is not usually appointed in an estate where the asset value is R250 000 or less, there may be cases where the Assistant Master could decide to appoint an executor rather than to make an appointment in terms of s 18 (3). Also see Amended Master's Instruction no 6 dated 04 June 1992.

<sup>25</sup> S 9(1)(iii)

inventory. If the applicant however does not have such proof, the Master must provide the applicant with a duly completed, signed and rubberstamped MBU 9(A) or MBU 9(B) (attached as ANNEXURES B and C), whichever is applicable, to enable the applicant to obtain the value of these assets from the relevant institutions.

iii) Movable property, the value as estimated by the deponent of the inventory will be sufficient.

(f) The inventory must be signed and dated.

## **7.9 Nominations**

- (a) Where the deceased-
- i) died intestate; or
  - ii) no administrator has been nominated in a valid will or
  - iii) the nominated administrator is untraceable, incapacitated or refuses to act;<sup>26</sup> or
  - iv) the nominated administrator in the will is deceased and no provision is made in the will to substitute; or
  - v) the nominated administrator in the will, when called upon by the Master, by notice in writing to take up the appointment within the period specified by the Master, fails to respond to the Master's request, all interested parties must nominate, in writing, a person to be appointed as executor / Master's Representative.

The Master may in any of the above-mentioned consider calling a meeting in terms of section 18 for the purposes of electing an executor.

- (b) Nominations should only be obtained from all major heirs and/or legal guardians of minor heirs.
- (c) In intestate estates the heirs, in this regard, must be determined by examining the Next-of-Kin Affidavit.

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<sup>26</sup> S18(1) of the Act.

- (d) If there is competition for the office of administrator, the Master shall give preference<sup>27</sup> to:
- i) the surviving spouse or his/her nominee,
  - ii) an heir or his/her nominee,
  - iii) a creditor or his/her nominee,
  - vi) a tutor/curator so nominated of any heir/creditor who is a minor/ person under curatorship.
  - vii) Where there is more than one surviving spouse, all spouses must be consulted before making an appointment.
  - viii) It is advisable to follow the process of a formal meeting in terms of section 18 where there is competition for the office of executor in an estate.
- (e) If a corporation<sup>28</sup> is nominated as an administrator,
- i) the appointment letter shall be granted to a person who is an officer / director of the nominated corporation and
  - ii) has been duly authorised by the said corporation to act on their behalf and for whose acts and omissions, as executor, the corporation accepts liability;
  - iii) the Corporation nominated in the will as executor, must qualify to liquidate and distribute the estate of a deceased person in terms of R.910, otherwise section 16 cannot be implemented.

#### **7.10 Acceptance of Trust as Executor (J190) / Undertaking and Acceptance of Master's Directions (J155/MB.48)**

- (a) Where the gross value of the assets of the estate is more than R250 000 the applicant(s) must complete the J190 in duplicate:
- i) Every person applying must complete the J190 in full.
  - ii) The form must be signed by the applicant.
  - iii) A certified copy of the applicant's ID must be lodged.
  - iv) If the applicant is a lay person *and has not been exempted in terms of Regulation 910<sup>29</sup>*, he/she must be

<sup>27</sup> See s 19 (i) and (ii) of the Act.

<sup>28</sup> See s 16 of the Act regarding the issuing of letters of executorship and endorsements to or in favour of corporations.

<sup>29</sup> Note that, **amongst other exemptions**, where an executor has been nominated in a valid will and is going to administer the estate personally, he/she is EXEMPTED from the

- required to be assisted by a person who, to the satisfaction of the Master, has the necessary capabilities and trustworthiness to assist him/her. The agent must confirm so in writing to the Master.
- v) A legally incapacitated person such as a minor may not act as an administrator of a deceased person.
  - vi) Any Board of Executors, trust company, public accountant and person licensed under Act 44 of 1962, as defined in Regulation 910, may act as an administrator.<sup>30</sup>
  - vii) The will must be checked for any endorsement by the Assistant Master, to ensure that the nominated executor is not disqualified in terms of Section 4A (3) and 4A(1) of the Wills Act.<sup>31</sup>
  - viii) A copy of the Acceptance of Trust as Executor must be forwarded to SARS. Ensure that the estate reference number is inserted on the J190 before dispatch.

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requirement to appoint an agent – offices may thus not insist on him still obtaining the services of an agent where he/she indicated that he will not make use of such.

However, you may, of course, make the nominated, lay executor aware of the fact that he/she needs to comply with the act and can be held personally liable for any wrong distributions etc., hence it might be better to obtain the assistance of a professional person – but should he still insist that he can and will do it himself, we cannot insist on an agent being appointed.

Note however the Master's discretion to ask for security where there are cause to do so. However, in this regard also note the contents of **Chief Master's Directive 4 of 2007**: *"Further considerations like the interests of minor's or other vulnerable persons may justify the Master calling for security in terms of the Act. The provisions of the will with regard to security by the executor must be duly adhered to and any deviation from that should be properly motivated and supported by written reasons which shall be kept on file."*

<sup>30</sup> Note the contents of Regulation 910. R.910 prohibits the liquidation or distribution of the estates of deceased persons by any person other than an attorney, notary, conveyancer or law agent. However, any board of executors, trust company, public accountant and person licensed under Act 44 of 1962 are permanently exempt from these prohibitions. Natural persons nominated as executor by will are also exempt from the prohibitions to the extent as specified in R.910. (R.910 can be found in the handbook by *Meyerowitz on the Administration of Estates and Estate Duty*, sixth edition, pp A-63 to A-65 or in the latest 2010 edition titled *Administration of Estates and Their Taxation* on pp A-64 to A-66.) A legally incapacitated person such as a minor may also not act as executor of the estate of a deceased person - s 18(6) refers.

<sup>31</sup> Act 7 of 1953.

- (b) Where the gross value of the estate is R250 000 or less, the estate may be administrated in terms of Section 18(3), unless otherwise directed by the Master.
- i) Every person applying must complete the J155 in duplicate.
  - ii) A full list of known creditors must be provided in the J155. If there are no known creditors, same must be indicated accordingly.
  - iii) The form must be signed by the applicant.
  - iv) A certified copy of the applicant's ID must be lodged.
  - v) A legally incapacitated person such as a minor may not act as an administrator of a deceased person.
  - vi) Where minor heirs are involved the Master may refer the estate to Legal Aid SA to determine whether they can assist.
  - vii) Instances where in which the Master may request an executor to be appointed for such an estate:
    - Minors being heirs / creditors of the estate; or
    - Adults who are incapable of managing their own affairs (persons placed under curatorship or administration in terms of the Mental Health Care Act 17 of 2002) being heirs / creditors of the estate;<sup>32</sup> or
    - Insolvent deceased estates; or
    - The Will determines that property is to be sold.<sup>33</sup>
    - Dispute/complaints by creditors and/or heirs.

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<sup>32</sup> Where minors or adults incapable of managing their own affairs are involved, an attorney, bank, trust company or accountant should be appointed in s 18(3) estates. An undertaking should be obtained from this person to deposit the cash due to the minor into the Guardians Fund within two months (60 days) from date of appointment. A note to this effect should also be effected on the Letters of Authority issued in terms of 18(3). The file should be diarized accordingly.

<sup>33</sup> Where immovable property is reflected at municipal valuation, it may appear that the estate is worth R250 000 or less, but the sale of immovable property may result in this amount being exceeded.

**7.11 Security in terms of section 23 (in estates with a value of more than R250 000)**

- (a) Every person who has not been nominated by a will as an executor, must lodge security as follows, in terms of section 23:
- i) in an amount determined by the Master for the proper performance of his functions; and
  - ii) the amount is determined by the value reflected in the section 9 inventory (provisional inventory).
- (b) The following persons are exempt from furnishing security, unless the Master directs him/her to furnish security (e.g. if he is insolvent, has committed an act of insolvency or resides or is about to reside outside the Republic):
- i) The parent, child or surviving spouse of the testator or a person who has, in terms of the will, been assumed as executor by such person.
  - ii) A person nominated by a will executed before 01 October 1913 or assumed by such a person and has not been directed by the will to find security.
  - iii) A person nominated by a will executed after 01 October 1913 and the Master has been directed to dispense with security.
  - iv) A person who has been exempt from furnishing security by the Court.
- (c) The Master may by notice in writing, require any executor (dative or testamentary) to lodge security if:
- i) His/Her estate has been sequestrated;
  - ii) He/She has committed an act of insolvency;
  - iii) He/She is about to reside or resides outside the Republic;<sup>34</sup> or
  - iv) There is "any good reason" for the Master to do so.<sup>35</sup>

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<sup>34</sup> Proviso to s 23(4) stipulates that the Master may, notwithstanding the exceptions mentioned above, refuse to grant or sign and seal letters of executorship or make any endorsement under section fifteen until he finds such security.

<sup>35</sup> "Any good reason" may include:

- i) Where the nominated executor has been convicted of fraud or theft; or
- ii) Where an executor was ordered by the Master or required in terms of s 23 to furnish security, and when he files the final inventory (s 37 of the Act), the security furnished to the Master is insufficient to cover all the assets reflected in the inventory, the Master must call for additional security.

## **7.12 Sequence of documents in an Estate File:**<sup>36</sup>

Reporting documents must be filed in the following order, in the front section of the file:

- (a) Death Notice (J294)
- (b) Death Certificate
- (c) Marriage certificate/proof of registration of a customary marriage/minutes of a family meeting (MBU 16) where proof of registration of a customary marriage cannot be furnished /proof of religious marriage (Muslim or Hindu)/declaration (MBU 19) confirming the existence of a same-sex life partnership
- (d) MBU 18 (seed-raiser union) if any
- (e) Copy of divorce order, if any
- (f) Copy of the accepted will (if any)
- (g) Next-of-Kin Affidavit (J192)
- (h) MBU 17 (customary adoption), if any
- (i) Inventory (J234)
- (j) Written nominations for the appointment of an administrator
- (k) Undertaking and Acceptance (J155) OR Acceptance of Trust as Executor (J190) together with the certified copy of the identity document of the person to be appointed
- (l) Originally signed copy of Letter of Appointment once issued

## **8. Letters of Appointment**<sup>37</sup>

### **8.1 Letters of Executorship**

- (a) Where the gross value of the assets of the estate is more than R250 000, the Master must, if satisfied that the above requirements have been met, issue Letters of Executorship.

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<sup>36</sup> A full list of documents can be found in the Code Examiners, and the sequence as set out therein, must be followed.

<sup>37</sup> After sending off the Letter of Appointment the file should be diarized accordingly for the estate account to be lodged or funds to be deposited as mentioned in footnote 28 above.



The Letters of Executorship must contain the following details:

- i) Estate number.
- ii) Full names and ID number of the Executor.
- iii) If the nominated executor is a corporation, letters of executorship shall be granted to a person who is an officer or director of the nominated corporation, indicating that he/she is acting on behalf of said corporation.
- iv) Full names and ID number of the deceased.
- v) Where spouses were married in community of property, both the name and ID number of the deceased and his/her surviving spouse should be reflected and that fact recorded on the Letters of Executorship.
- vi) Date of death.
- vii) Signed by the Assistant Master/Deputy Master/Master.
- viii) Contain a date stamp.
- ix) It should be prepared and signed in triplicate as one copy must be given to the appointee, one copy must be filed on record and one copy must be placed on the APP (Annual Performance Plan) file.

(b) The following documentation must be sent with the letter of appointment:

- i) Estate Duty Return Form (REV 267).
- ii) Notice to creditors of the deceased (J193).
- iii) If security was lodged, an inventory in terms of Section 27 must be sent with the letters of appointment.<sup>38</sup>

## **8.2 Letters of Authority (Section 18(3))**

**8.1.** Where the gross value of the estate does not exceed R250 000 the estate may be administrated in terms of Section 18(3), unless otherwise directed by the Master. The Master must, if satisfied that all requirements have been met, issue a Letter of Authority appointing the applicant(s) to represent and administer the estate in terms of Section 18(3) of the Act.

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<sup>38</sup> This must be signed by the executor personally within 30 days of the appointment.

(a) This Letter of Authority must contain the following:

- i) Estate number.
- ii) Full names and ID number of the appointee.
- iii) If the nominated appointee is a corporation, letters of appointment shall be granted to a person who is an officer or director of the nominated corporation, indicating that he/she is acting on behalf of said corporation.
- iv) Full names and ID number of the deceased.
- v) Where spouses were married in community of property, both the name and ID number of the deceased and his/her surviving spouse should be reflected.
- vi) Date of death.
- vii) All assets, and the value thereof, as indicated in the Inventory on record.
- viii) Signed by the Assistant Master/ Deputy Master / Master.
- ix) Contain a date stamp.
- x) It should be completed in triplicate as one copy must be given to the appointee, one copy must be filed on record and one copy must be placed on the APP (Annual Performance Plan) file.

**9. Effective date**

This Directive will come into effect as from 1 August 2015



**ADV LG BASSON  
CHIEF MASTER  
MASTER'S BRANCH**

*31/7/2015.*

**DATE**



**the doj & cd**  
Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

**AFFIDAVIT / AFFIRMATION**

I, (full names) \_\_\_\_\_

Identity number \_\_\_\_\_

of (address) \_\_\_\_\_

**Declare as follows**

The deceased (name) \_\_\_\_\_

and I (name of surviving partner) \_\_\_\_\_

- (a) were partners in a permanent same-sex life partnership; and
- (b) undertook a mutual agreement of support; and
- (c) we cohabitated at the following address: \_\_\_\_\_

(d) the partnership still existed at the time of death of the deceased.

The following facts are submitted as proof of a mutual agreement of support:

*(This can include any of the following or additional information: the length of the relationship; that the relationship was exclusive of other persons; that the parties shared family responsibilities; affidavits confirming the extent to which the partners were acknowledged by friends and family as life partners; mutual provision made for the surviving partner after the death of the other such as the partners being nominated as a beneficiary of a pension fund of the deceased. )*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature of deponent: \_\_\_\_\_

Signature of Commissioner of Oaths \_\_\_\_\_

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote his/her answers in his/her presence.

- (a) Do you know and understand the contents of the affidavit/affirmation?  
Answer: \_\_\_\_\_
- (b) Do you have any objection to taking the prescribed oath/affirmation?  
Answer: \_\_\_\_\_
- (c) Do you consider the prescribed oath/affirmation as binding on your conscience?  
Answer: \_\_\_\_\_

I have satisfied myself as to the identity of the deponent and certify that the deponent has acknowledged that he/she knows and understands the contents of the of the declaration.

The above signature/mark of the deponent has been affixed to the affidavit /affirmation in my presence.

Signed and sworn to/affirmed before me at \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
**Signature of Commissioner of Oaths**

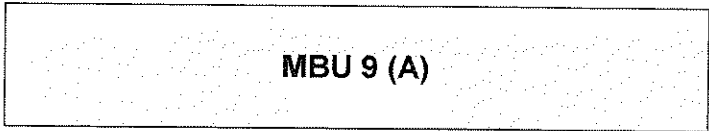
Area for which appointed \_\_\_\_\_

ANNEXURE B



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



Master of the High Court  
Private Bag \_\_\_\_\_

Ref: \_\_\_\_\_

Date: \_\_\_\_\_

Dear Sir or Madam

**ESTATE LATE:** \_\_\_\_\_

In terms of the inventory submitted to my office, the deceased was an account holder at your Bank. The inventory reflects the balance as \_\_\_\_\_. Kindly confirm the last available balance from your records.

**Name of Account Holder:** \_\_\_\_\_  
**Identity Number:** \_\_\_\_\_  
**Bank Account Number:** \_\_\_\_\_  
**Branch:** \_\_\_\_\_

Kindly further confirm if the deceased had any other accounts at your bank and the balances thereof.

The above information is required to enable me to exercise my discretion in issuing letters of appointment in terms of section 18(3) of the Administration of Estates Act, 66 of 1965 (as amended) in the estate. Please do not hesitate to contact me, should you have any doubts concerning the validity of this request.

Sincerely,

**MASTER OF THE HIGH COURT**



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

MBU 9 (B)

Ref: \_\_\_\_\_

Master of the High Court  
Private Bag \_\_\_\_\_

Date: \_\_\_\_\_

Dear Sir or Madam

**ESTATE LATE:** \_\_\_\_\_

In terms of the inventory submitted to my office, the deceased was the owner of a policy with your company which is payable to his/her estate. The inventory reflects the approximate value of the policy as \_\_\_\_\_. Kindly confirm the value of the policy according to your records.

**Name of the policy owner:** \_\_\_\_\_

**Identity Number:** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

The above information is required to enable me to exercise my discretion in issuing letters of appointment in terms of section 18(3) of the Administration of Estates Act, 66 of 1965 (as amended) in the estate. Please do not hesitate to contact me should you have any doubts concerning the validity of this request.

Sincerely,

**MASTER OF THE HIGH COURT**