



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



SUSANDRA VAN WYK

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Presentation to FISA 90th Annual General Meeting

**Redistribution Agreements in Deceased Estates:
Unpacking the Master's Office Assumed Approval Authority and
Practical Strategies for Challenging It.**

Presented by Dr Susandra van Wyk

15 March 2023

Belmont Square Conference Centre, 212 Belmont Road,
Rondebosch, Cape Town

Topic and Aim of the Presentation

Title: Redistribution Agreements in Deceased Estates:

- *Unpacking the Master's Office Assumed Approval Authority and Practical Strategies for Challenging It.*
- Topic: Discussing the assumed authority of the Master's Office in the approval of redistribution agreements (RDAs).
 - The term "unpacking" refers to the process of breaking down and understanding the Master's assumed approval authority.
- Aim: To provide information to understand how to challenge the existing system and achieve better outcomes in redistribution agreements (RDAs).



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Why are redistribution agreements (RDAs) important?

Why is the Master's Office assumed approval authority relevant?

Redistribution agreement (RDA) resolves challenges and legal limitations.

It provides beneficiaries and/or surviving spouses with a means to **redistribute** their inheritance awards.

In 2010, the former Chief Master requested a **legal opinion** from the **Chief State Law Advisor** on **Master's administrative acts and functions** regarding RDAs.

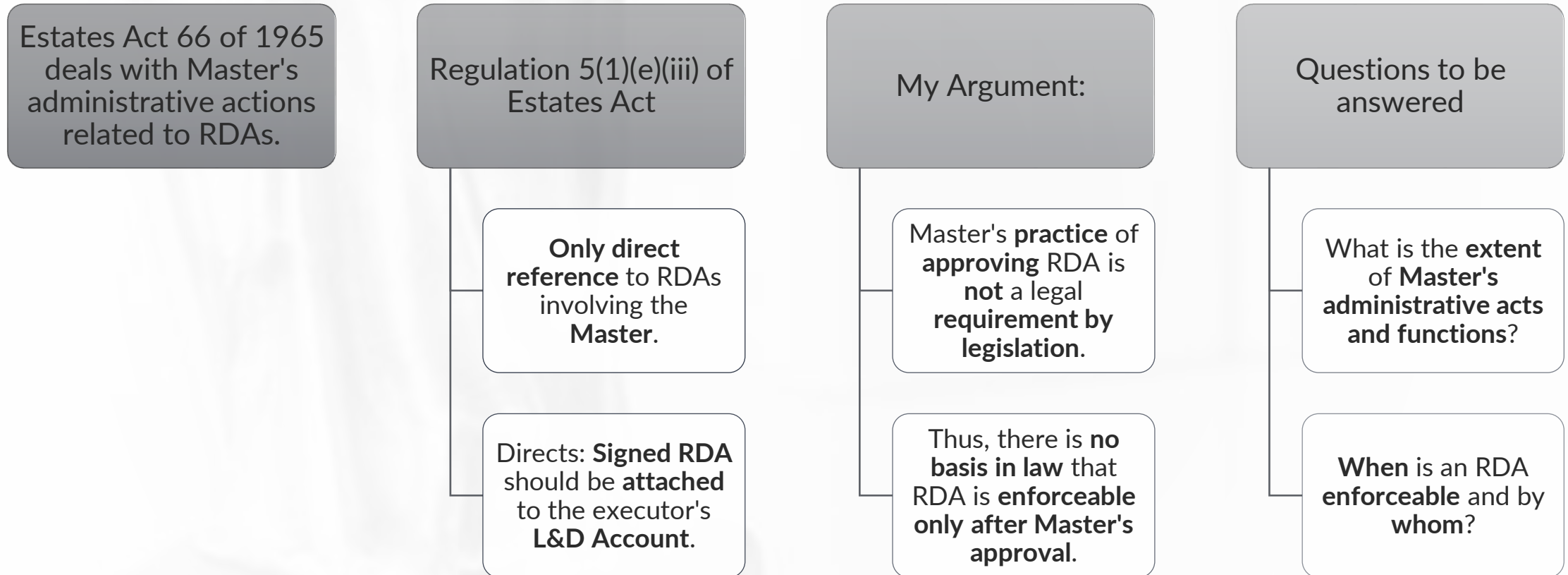
The legal opinion **concluded** that the Master has a **supervisory role**, and RDA is **only enforceable** after the **Master** examines and approves its legality - when **immovable property** is involved.

Significant implications - causing financial loss and delays - can occur if the Master rejects RDA.



Why are RDAs important?

Why is the Master's Office assumed approval authority relevant?





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Preview of the main points

1

Background & Legal Requirements for RDAs.

- What they are and how they work?
- Legal requirements for redistributing.
- Who is required to enforce the RDA? And When?

2

Master's role in overseeing RDAs and assumed approval authority.

- What is the Master?
- Master's overall function.
- Master's administrative function and acts concerning RDAs.

3

Implications, advantages, and disadvantages, of the Master's assumed approval authority.

4

Practical strategies for challenging the assumed approval authority.

- Master refuses grant permission to advertise when refusing to “accept” an RDA.
- Objection submitted against the L&D Account involving RDA.
- Minor a party to the RDA: Is the Master's permission required?
- Some practical tips when dealing with the Master's Office.

5

Conclusive Remarks

1

Background & legal requirements for RDAs

- What they are and how they work?
- Legal requirements for redistributing
- Who is required to enforce the RDA?
- When is the RDA to be enforced?

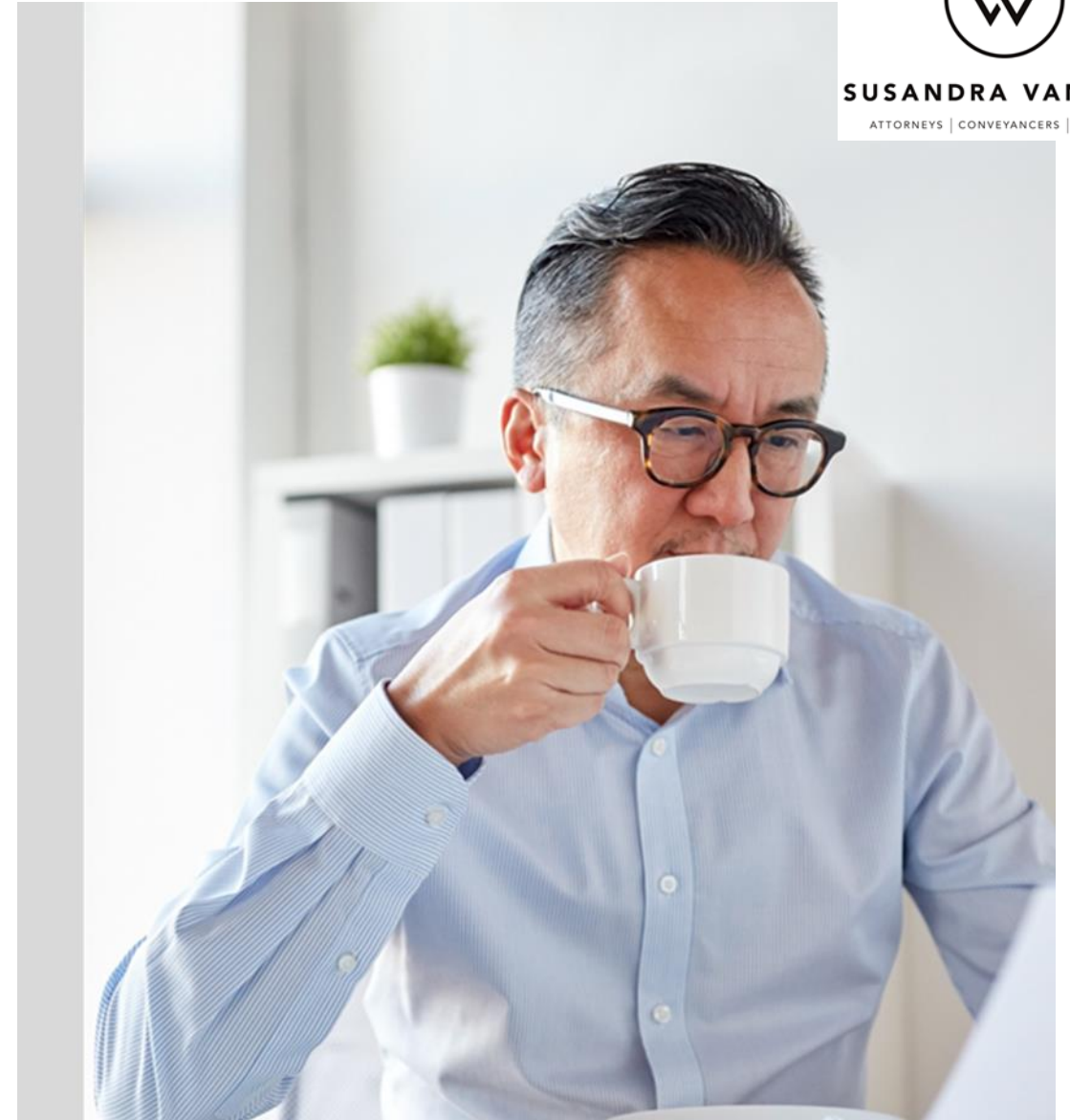


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What RDAs are and how they work

- **Executor** chooses a **method** in the winding-up of an estate:
 - Award properties as they are.
 - Sell and divide cash.
 - Section 38 taken over.
 - RDA.
- Oversimplified example of an RDA:
 - Undivided shares farmland and two motor vehicles with estate debts to be paid.
 - Three beneficiaries.
- **Executor** is required to **resolve some issues**:
 - **Practicality** of sharing co-ownership of the vehicles.
 - **SA law prohibits** award of farmland to more than one [S 3 Subdivision of Agricultural Land Act 70 of 1970].
- Some solutions:
 - Sell and divide cash.
 - Redistribute via sale, donation, or exchange:
 - A gets farmland,
 - B&C each a vehicle, and
 - A will pay for the estate debts to balance award of farmland.



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What RDAs are and how they work

RDAs confirmed in court decisions: statutorily recognised on 11 Sept 1937.
- Ss 14(1)(b)(iii) and (iv) of the Deeds Act.

- Include bringing-in of non-estate assets to equalise the redistribution if desired.

Reg 5(1)(e)(iii) to the Estates Act on 24 March 1972.

- Required RDA to be attached to L&D Account.
- Prescribed format requirements of the Distribution-section in the L&D Account.
- Say who is responsible for enforcing the RDA.

RDA is NOT a distribution of awards BUT a REDistribution of inheritances as agreed in an agreement.

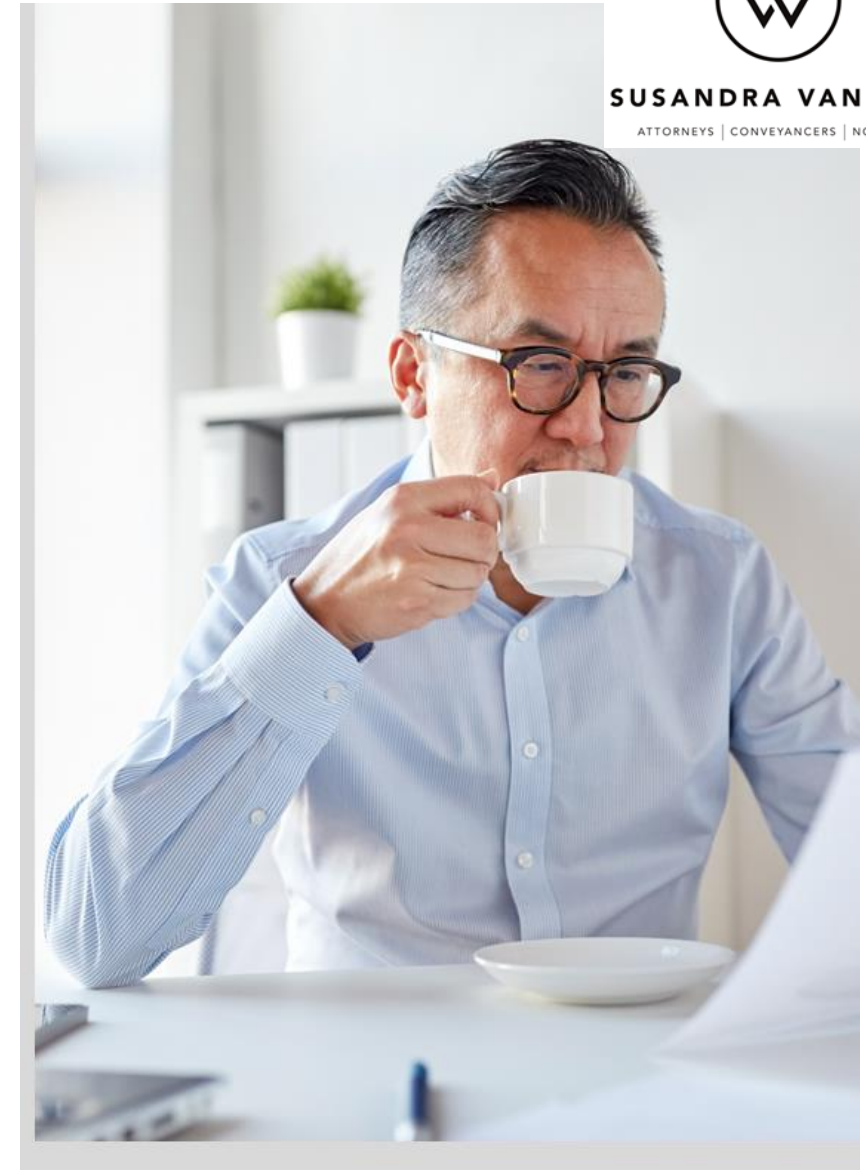
Redistributed inheritance awards in Distribution-section required to be listed & match with the redistribution awards in the RDA.

RDA may address demands and developments in testate and intestate succession law.

Beneficiaries can "trade" their bequests through sale, exchange, or donation.
[Klerck v [Registrar of Deeds 1950 1 SA 626 (T) 630-631].



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Legal requirements for RDAs



Usually drafted by executor's attorney or conveyancer.



There is no standardised prescribed form for an RDA.



A valid RDA is a contract between beneficiaries signed by them.



Best practice: to be signed by two competent witnesses.

[Estate Smith v Estate Follett 1942 AD 383; Greenberg v Estate Greenberg 1955 3 SA 361 (A); Klerck v Registrar of Deeds 1950 1 SA 626 (T) 630-631.]

[Bydawell v Chapman at 523B refer to an RDA as a "case of schichten en delen (division and distribution) between beneficiaries of full capacity".]



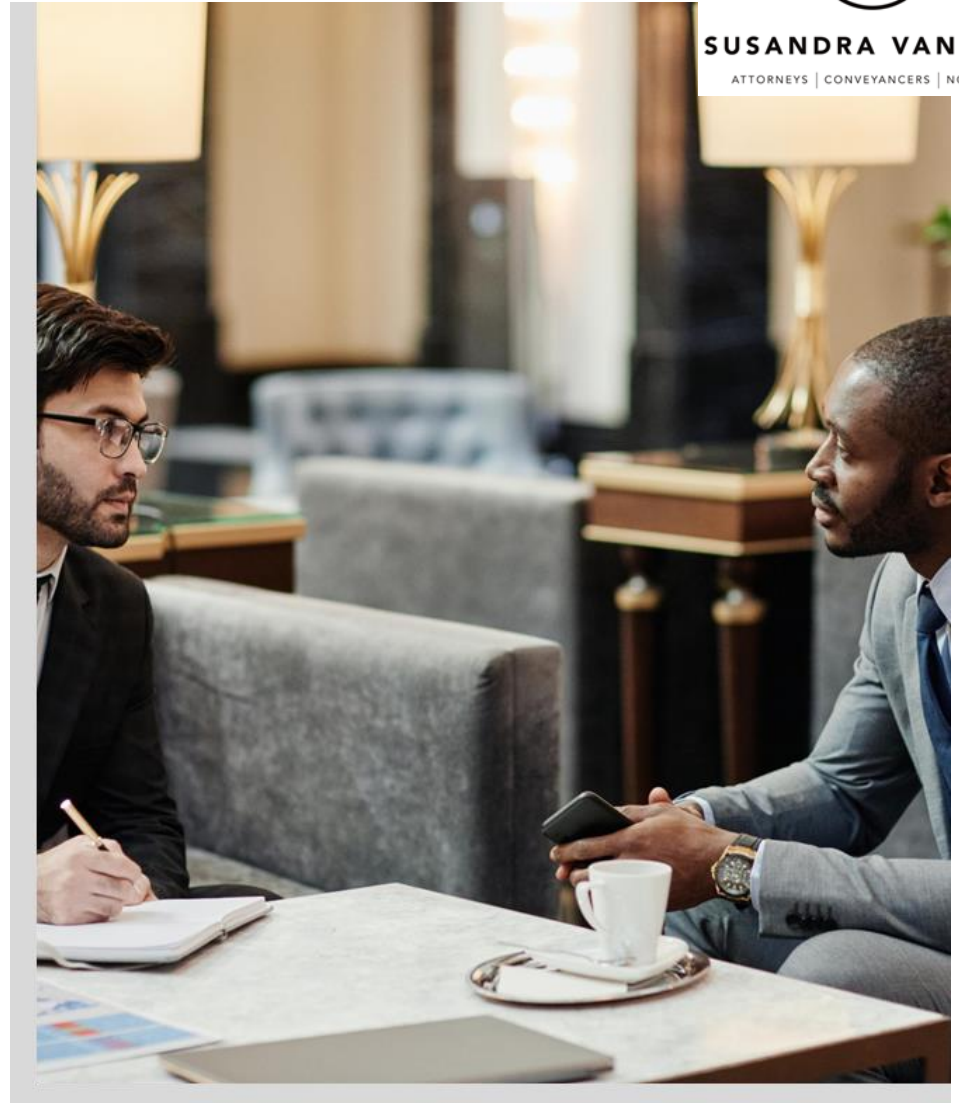
Legal requirements for RDAs

- Immovable inheritance property:
 - Conveyancer is responsible for verifying the contents of the RDA,
 - Assessing correctness and accuracy of all documentation for submission in the Deeds Office.
[Relevant sections: S 42(1) of the Estates Act; S 15(A) read with Reg 44A of the Regulations to the Deeds Registries Act 47 of 1937]
- Other statutory provisions:
 - S 2(1) of the Alienation of Land Act 68 of 1981.
 - S 15(2) of the Matrimonial Property Act 88 of 1984.
 - RDA signed outside the borders of RSA: Rule 63 of the Supreme Court Rules for the proper authentication of documents.
 - Minor involved:
 - Immovable: Both parents/guardians' consent are required.
 - Movable: One parent/guardian consent.
[ss 18(3)(c) reading with 18(5) of the Children's Act 38 of 2005]



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Legal requirements for RDAs

- RDA to be attached to L&D Account and submitted in time: S 35(1)(a) read with second proviso to Reg 5(1)(e)(iii).
- Reg 5(1)(e)(iii) reads:

... and where any RDA was entered into by the heirs and distribution has been made by the executor pursuant to such an agreement, **the RDA shall accompany the Account.**

- Reg 5(1)(e)(ii):
 - Executor to **identify each beneficiary** in the Distribution-section re their **full name, age, and marital status.**
 - Regulation indicates: **Executor is responsible** for ensuring that the **contractual and statutory requirements** are met, including **verifying the parties' contractual capacity.**





Legal requirements for RDAs

- Reg 5(1)(e)(iii) consists of two parts.
- First part (*shows property info, reason & method*) reads:
... **details of the property** included in every award and the **reason** for every award and if the **award to** any beneficiary or administrator is **subject to any condition** in the will, stating that it is made subject to and in terms of such condition without specifying or summarising the terms of the condition.

- Second part of regulation 5(1)(e)(iii) directly refers to an RDA and reads:

... and where any RDA was **entered** into by the **heirs** and **distribution** has been made by the **executor pursuant to such an agreement**, the RDA shall accompany the Account.

- The executor is responsible to ensure
 - Agreed awards are both lawful and feasible,
 - Agreement based on the informed consent of beneficiaries, and
 - L&D Account is in line with the RDA's awards.

[See Bydawell case 523G-H, 515E-H, 516; Ex parte Grant 1952 4 SA 95 (N); Ex parte Adams 1964 SA 135 (CPD).]





Who is required to enforce the RDA?

- S 14(1)(b)(iii) of the Deeds Act defines an RDA as an agreement entered into by beneficiaries and/or the surviving spouse.
- Also, that it is the executor who is responsible to transfer to award. The section reads:

(iii) if in the administration of the estate of a deceased person (including a fiduciary) any **redistribution** of the whole or any portion of the assets in such estate **takes place among the heirs and legatees** (including ascertained fidei-commissary heirs and legatees) of the deceased, **or between such heirs and legatees and the surviving spouse, the executor or trustee of such estate may transfer the land or cede the real rights therein direct to the persons entitled thereto in terms of such redistribution.**

- Similarly, second proviso of Reg 5(1)(e)(iii) directs:

... and where **any RDA** was entered into by the heirs and **distribution has been made by the executor pursuant to such an agreement**, the RDA shall accompany the account.

- **Executor responsible for enforcing** the RDA and to distribute the assets according to the RDA.



When is the RDA to be enforceable?



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- **After last inspection day in the advertisement notice of the L&D Account but only if no objections were submitted or all objections resolved. [Ss 35(4) & (12)]**
- Then, **beneficiaries obtain vested rights** in inheritance awards.

[See Greenberg v Estate Greenberg 1955 3 SA 361 (A) and Commissioner of Inland Revenue v Estate Crewe 1943 AD 656]

- Ss 35 (12) & (13):
 - Executor required to **finalise all payments and transfers**. To be done - **two months after the advertisement notice's** expired inspection period. [S 35(5) advertisement]
- Ss 39(1) read with 35(12):
 - Executor must ensure that immovable property is registered and submit s 42(1) "certificate" as proof.
- Master obliged to ensure the executor's required submission of proof of compliance.

2

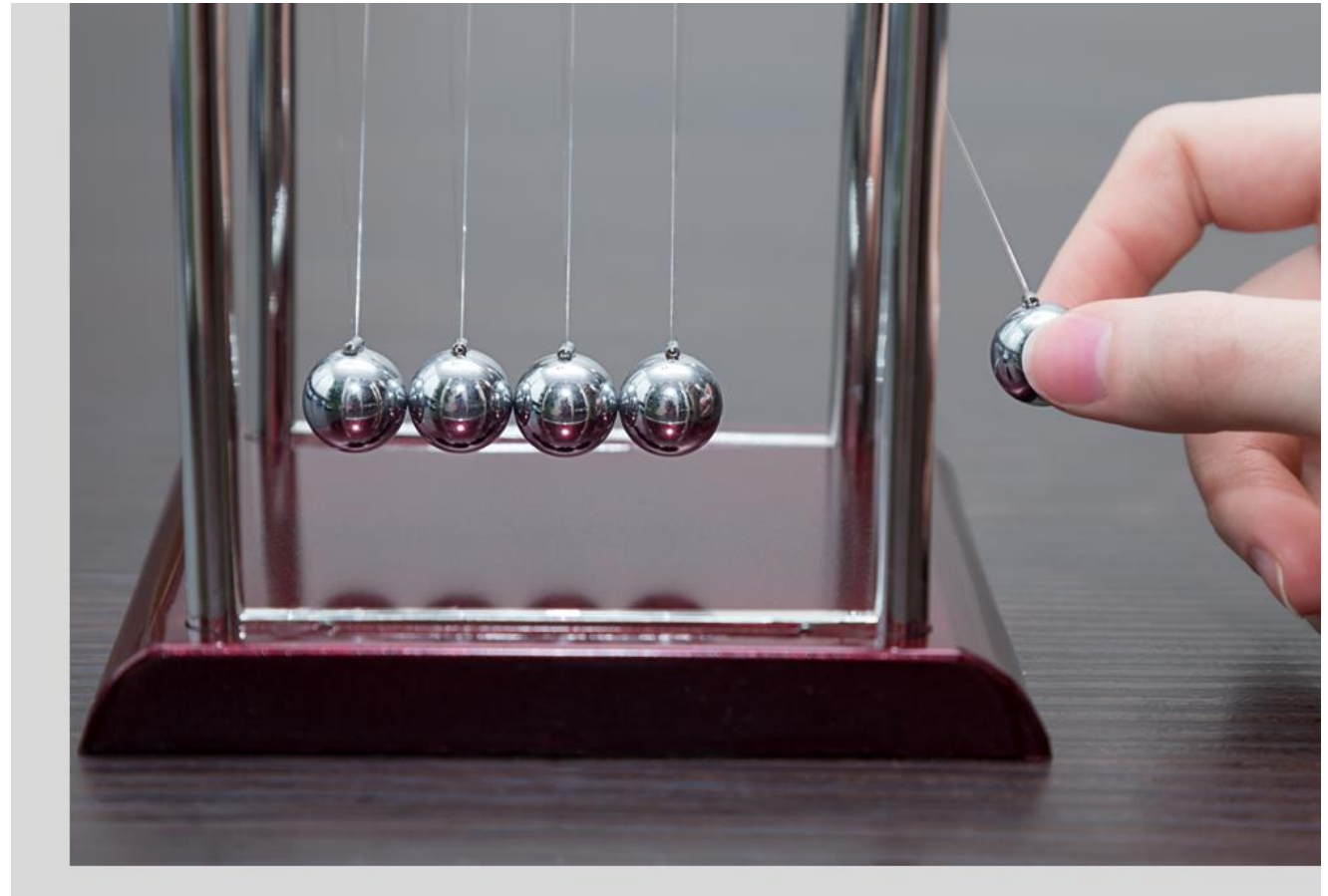
The role of the Master and its administrative actions concerning RDAs

- What is the Master?
- Master's overall function.
- Master's administrative actions concerning RDAs.



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What is the Master?

Master is a functionary of Department of Justice.

S 4 of the Estates Act: **statutory designated jurisdiction** over the estates of deceased persons in South Africa.

Deemed "**creature of statute**," meaning "Master's powers, function, and administrative acts are restricted by national legislation such as the Estates Act and its regulations."

Estates Act - Master is required to perform **several prescribed administrative acts**

E.g.: examining the L&D account

E.g.: requesting documents or information regarding the executor's handling of the estate, etc.

- Estates Act of 1965 and repealed Estates Act 24 of 1913 do not mention RDAs.
- Master's statutory administrative acts and functions regarding **RDAs** is **limited to Reg 5(1)(e)(iii)**.



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Master's Overall Function

- Chief State Law Advisor's legal opinion:

- **Master's duty to "protect"** the parties involved.

[Wessels v The Master of the High Court 1892]

- **Constitution:**

- *Duty to be transparent, responsible, open, and accountable in their administrative acts.*
- These values are **promoted** by laws like the Promotion of Access to Information Act 2 of 2000 (PAIA) and the Promotion of Administrative Justice Act 3 of 2000 (AJA).



- Sept 1997 "**People First**" Batho Pele White Paper, guiding principles for public service delivery:

- Prioritise customer satisfaction.
- Commitment to being transparent, accountable, and efficient.

- **2005 Law Commission Report** recommended Master to be an impartial adjudicator to ensure fairness.

Master's administrative acts concerning RDAs



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Master acts are **administrative acts** empowered by statute.

Distinction between **clerical acts** and acts of **quasi judicial function**.

Clerical act:

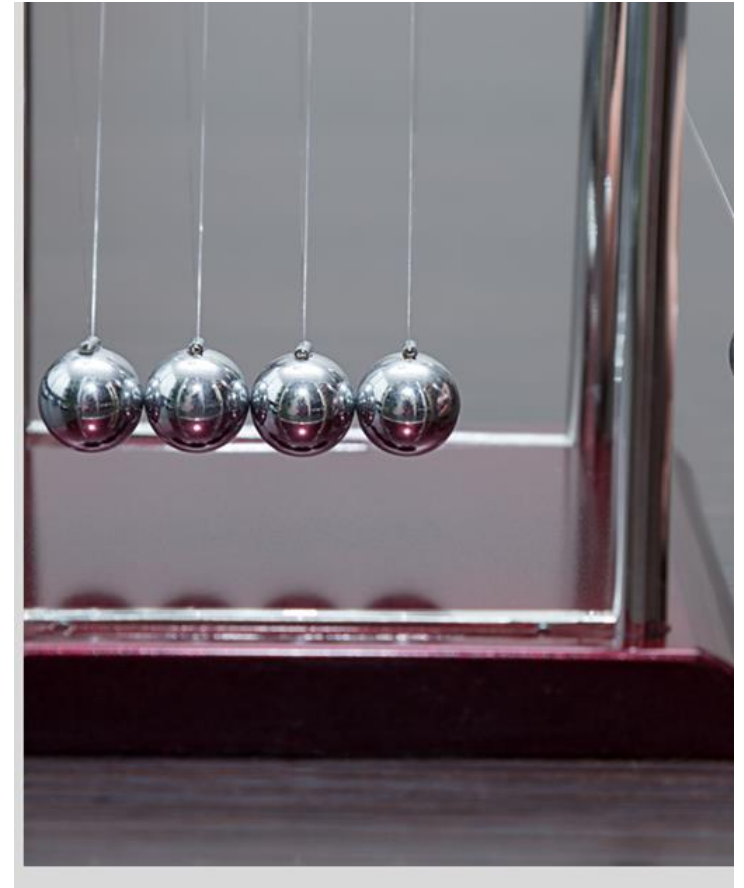
- E.g., examining the L&D Account with its attached RDA
- Excludes the involvement of a judgment.
- It relates to the Master's routine documentation and administrative tasks as directed by statute.

- Administrative actions of **quasi-judicial function**,
 - E.g., decision about an objection.
 - "Called upon to make evaluations of the documents presented to them and to exercise some judgment or choice".
[Nedbank Ltd v Mendelow 2013 6 SA 130 (SCA) paras 11, 28].
 - These actions are reviewable under the Promotion of Administrative Justice Act 3 of 2000 (AJA).



Master's *clerical* administrative acts concerning RDAs

- **Master ensure: RDA to be attached to L&D Account and submitted in time:**
 - **6 months** after issuing Letters of Executorship.
[S 35(1)(a) read with the second proviso to Reg 5(1)(e)(iii)]
- **Master ensure: L&D Account met the format requirements of Reg 5(1).**
- **Reg 5(5) limits the Master's discretion to waive non-compliance:** only if it is “not material”.
- **Master's practice: not to insist** on submission of RDA when **only movables** are involved.
- However, second part of Reg 5(1)(e)(iii) **directly refers** to an **RDA** that is required to be **attached**, and it reads
... and where any RDA was entered into, the RDA shall accompany the Account.
- **Any type of RDAs to be attached** to L&D Account.
[Reg 5(1)(e)(iii), as per s 35(1) read with Reg 5(1)]



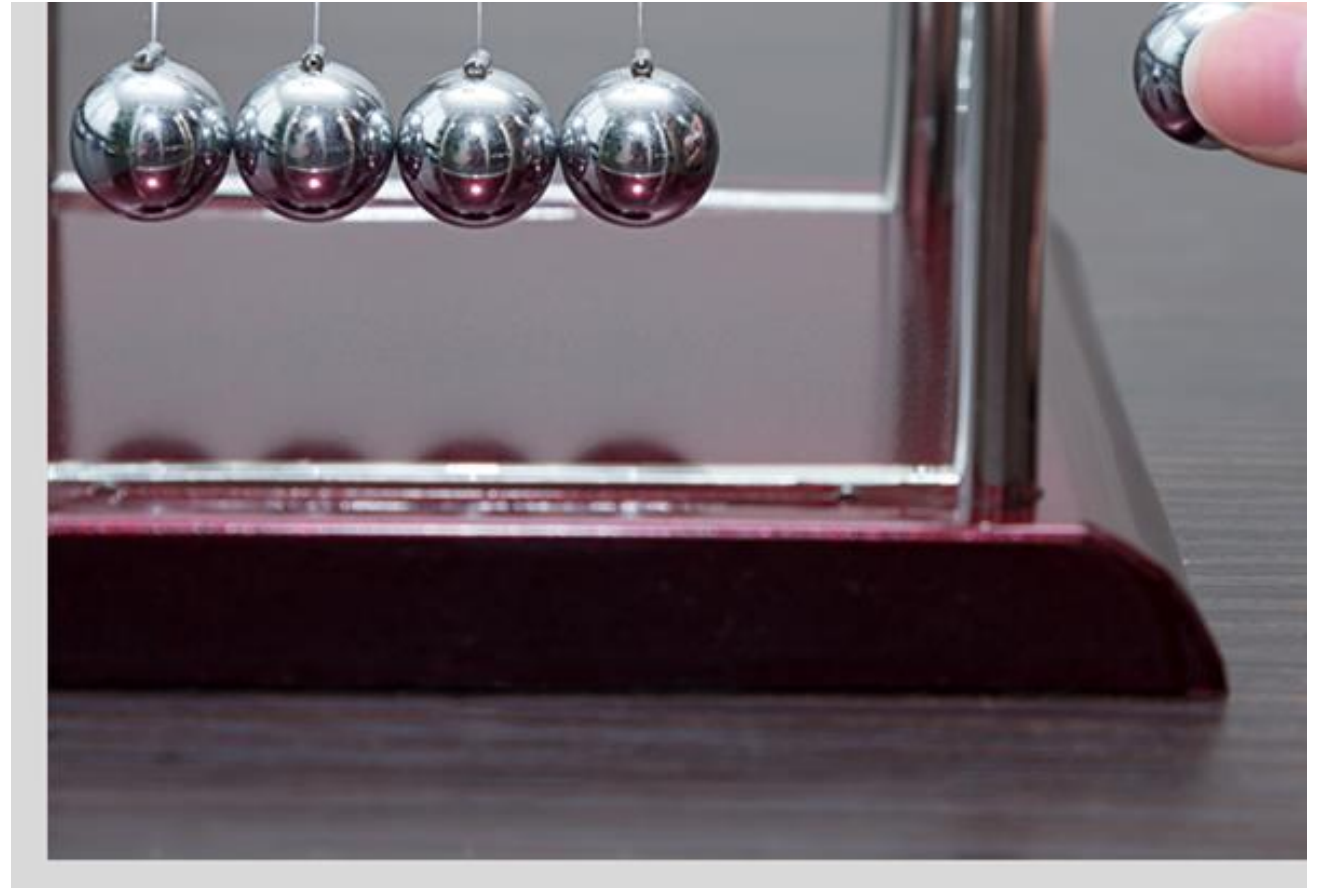


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Master's *clerical* administrative acts concerning RDAs

- Master checks:
 - Compliance of **L&D Account** with **format requirements** outlined in Reg 5(1).
- Master checks the **Distribution-section**, but not RDA:
 - Limited to check if the **details** in the **Distribution-section** of L&D Account **match** the details in the **RDA**.
[S 35(4) read with Reg 5(1)(e)(i)-(iii)]
- *Remaining admin acts: discussed under section "Practical strategies..."*



3

Potential, advantages, implications, and disadvantages of the Master's assumed approval authority



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Presumed Advantages of the Master's approval authority

The **Chief Master** shared the **State Law Advisor's** opinion and instructed all branches to implement its **recommendations as standard practice**.

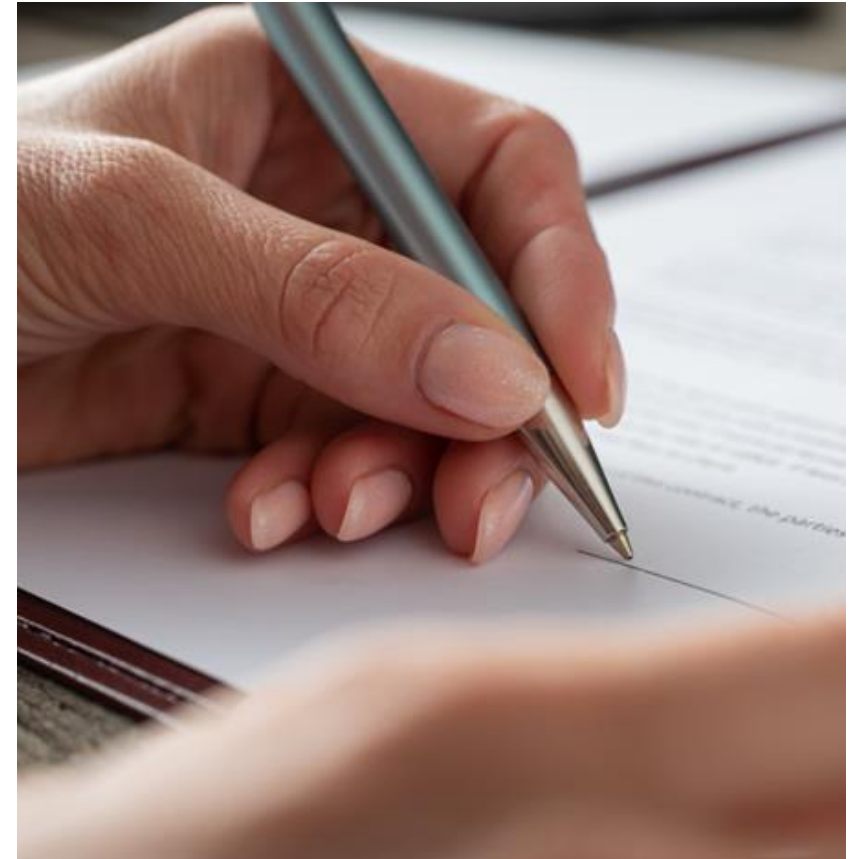
This was to **ensure consistency** in the **decision-making and procedures** related to RDAs.

Legal opinion is **only an interpretation of statute** regarding what the Master's practice should be relating to RDAs.

Also, the Chief Master's instruction or directive **is not a source of law**.

The instruction is a **written product** of the **Master's interpretation** of statute giving rise to **certain practices and procedures at a given time**.

Practices that may arise from directives with **no legal basis** and may become **difficult to eliminate over time**.





Alternative to the Master's approval endorsement

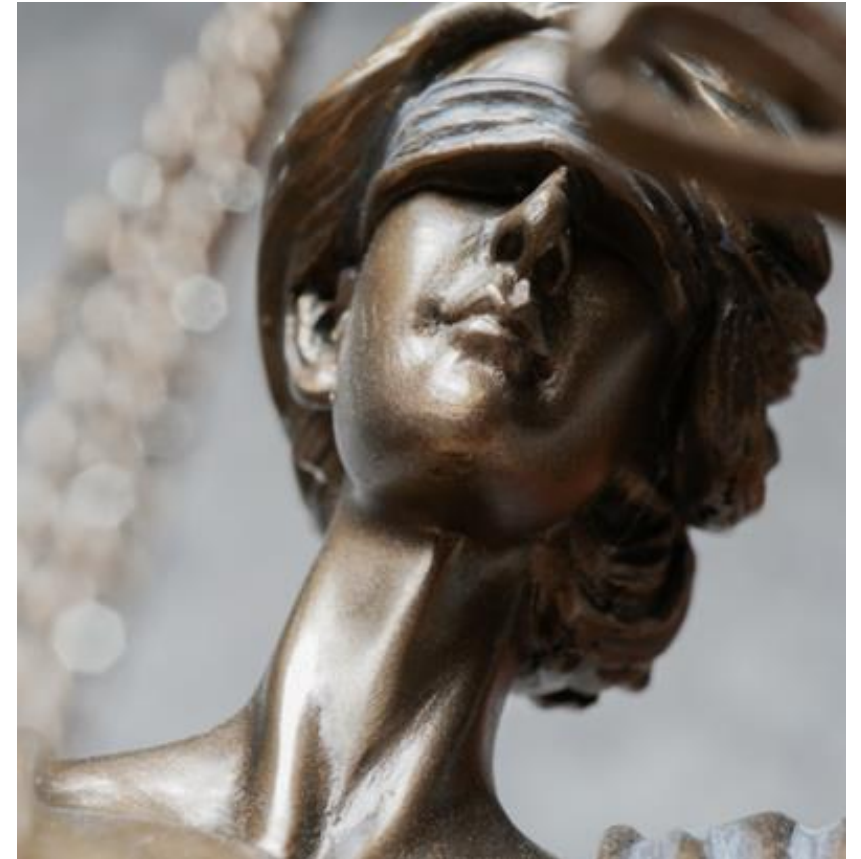
- The **Estates Act** and its regulations do not **authorise** the **Master**, as a creature of statute, to assess the **legality** of an **RDA's** form and **content**.
- The **Master's approval** of an **RDA** without statutory authorisation is **unnecessary**.
- **Instead** of the Master evaluating the RDA, they should **provide information** if requested under s 3 of PAIA regarding an RDA.
- Master's confirmation should include:
 - (1) whether an L&D account with an attached RDA **was submitted**,
 - (2) if the account **was advertised** under ss 35(4) and 35(5), and
 - (3) whether **objections** were made against the L&D account.





Implications of the Master's approval authority

- Does not affect the **registration and distribution** of the **redistributed inheritance awards** to beneficiaries.
- **Master's practice** of approving RDAs **cannot replace the executor's and conveyancer's responsibility** to assess the RDA's **validity** in both **content and form**.
[also compare Principle 8. DPSA 1997 <http://www.dpsa.gov.za/dpsa2g/documents/acts®ulations/frameworks/white-papers/transform.pdf>.]
- The **Law Commission** noted that the **executor is not obligated to follow the Master's instructions** for **administering** the deceased estate **in general**.
[SALRC Administration of Estates para 5.2.14 at 20]
- Also, **s 99** of the Estates Act directs that "**no Master** in his official capacity shall be **capable of acting as executor, tutor or curator**".
[Compare Meyerowitz Administration of Estates para 1.7 at 1-5 and The Master v Van Zyl 1944 TPD 211 215]



Disadvantages of the Master's approval authority

- The Master's **unauthorised approval** of an RDA may **contravene the Batho Pele White Paper's guidelines**.
- The Batho Pele White Paper guidelines **call for public officials:**
 - to **provide authorised quality services** and
 - **avoid wasting taxpayer money on unnecessary and expensive internal procedures**.
- **Counting on the Master to safeguard parties' interests:**
 - may **discourage parties from taking responsibility** for their interests
 - **create a false sense of security**.
[See SALRC Administration of Estates para 5.2.13 at 20]
- Executors and conveyancers may **rely on the Master's approval to guarantee the RDA's validity**, but if it's invalid, it could **result in faulty distribution and registration of unlawful awards**.



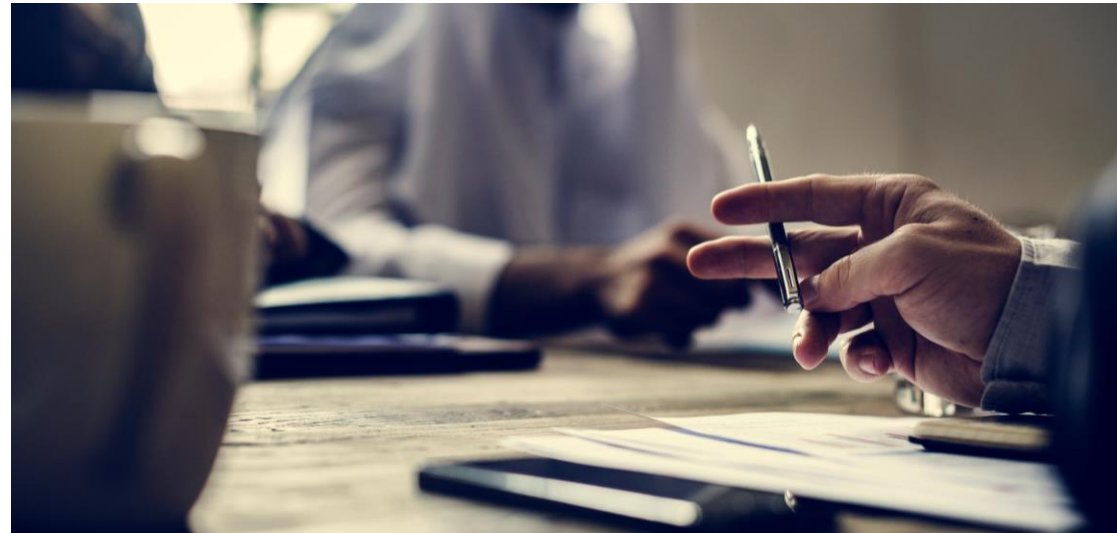
Practical strategies for challenging the Master's approval authority

- Scenario 1: Master refuses grant written confirmation to advertise.
- Scenario 2: Objection submitted against the L&D Account involving RDA.
- Scenario 3: Minor a party to the RDA: Is the Master's permission required?
- Some practical tips when dealing with the Master.



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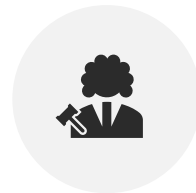


Situation 1: Master refuses to give written confirmation to advertise



Master's practice:

Master should "duly examine and approve" the L&D account and its attached RDA [s 34].



However, s 35(4) reads:

"Every executor's account shall, after the Master has examined it ... lie open at the office of the Master ... for inspection by any person interested in the estate".



Examines means the observation or inspection of an L&D account.



But s 35(4) does not mention "approve".

Approve means the formal authorisation or acceptance of something.



Master only required to examine L&D Account and attached RDA.

[S 35(1)(a) read with the 2nd proviso to Reg 5(1)(e)(iii)]



The Master gives written permission for the executor to advertise the L&D account but cannot legally prohibit the executor from doing so.

Situation 1: Master refuses to give confirmation to advertise

Examine what?

- Master to check L&D Account's compliance with Reg 5(1) format requirements.
 - Reg 5(1)(e)(iii): Master to check **inheritance awards in Distribution-section** were distributed **accurately** with those in **attached RDA** and accordance with agreed terms.
 - RDA there to **support info** in L&D.
 - Reg 5(1)(i): **Executor's submission of certificate** to L&D Account:
 - Executor confirms **winding up accurately accounted** for.
 - Consequently, executor confirms **legality of RDA**.



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Situation 1: Master refuses to give confirmation to advertise



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When is it appropriate to ask for the Master's written confirmation to advertise?

When Master finalises the "examination" of the L&D Account, and

Executor has complied with Master's enquiries and/or call for documents relating to the L&D account.

S 35(4): Master only required to examine the L&D Account to ensure compliance with the formatting requirements specified in Reg 5(1).



Situation 1: Master refuses to give confirmation to advertise

Strategy to followed?

- Executor can argue:
 - ✓ Master lacks the power to validate an RDA, and
 - ✓ Master cannot refuse to advertise the L&D Account, once the Master has examined it, and Executor has provided all requested documents.
- Also request the Master's legal basis for exercising such powers.
- If the Master persists, the Executor can seek a High Court ruling to validate the RDA, overriding the Master's decision.



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Situation 2: Objection submitted involving an RDA



S 35(9) :

Master takes decision-based action when objections are raised against the L&D account.

This has significant implications for those involved.

Affected parties can seek legal redress through the High Court

[S 35(10); Meyerowitz Administration of Estates para 16.20; Nedbank case para 25 read with s 95 of the Estates Act].

Mandatory provisions:

Master must give adequate notice to executor when an objection is submitted.

[Ss 3 of AJA read with 35(7&8): Götz v The Master 1986 1 SA 499 (N)]

The executor must be given a reasonable period to respond.

The Master should give written reasons to the executor and objector for the administrative action,
along with notice of any right to review and appeal.

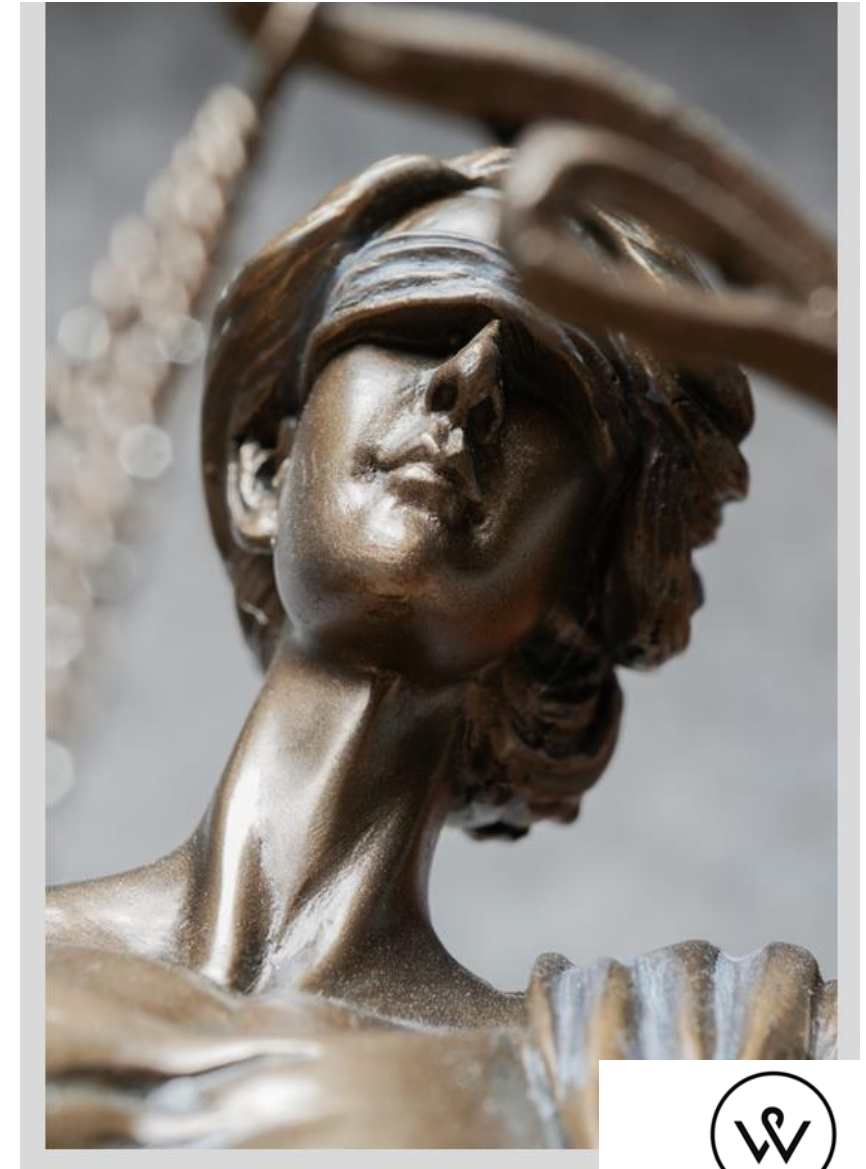
[Ss 3 of AJA, read 35(9)]



Situation 2: Objection submitted involving an RDA

Legislation limits the scope of the Master's decision, as follows:

- Meyerowitz recommends, that the "Master should use his **power mero motu** (*decision without party's request*) to **direct an amendment sparingly and only** in cases where the **L&D Account is clearly wrong.**" [Administration of Estates para 16.18].
- When may the Master **refuse to make a decision?**
 - Master **lacks authorisation.**
 - **Objection is frivolous or unfounded.**
 - **Factual dispute:** such as a disagreement over the terms of an RDA (the Master does not have adequate procedures to establish facts.)
- The Master may **amend or change** their decision if **new information** arises.
[Gray v The Master 1984 2 SA 271 (T); Van Niekerk v Van Niekerk 2011 2 SA 145 (KZP)].
- L&D account **involving an RDA:** Reg 5(1)(e)(iii) with s 35(9).
 - **Well-founded objection.**
 - **Limited to details** of L&D Account, esp. **Distribution-section**, that does not correspond with the agreed RDA.
 - The Master may **instruct the executor to amend the L&D in line with the agreed terms and conditions in the attached RDA.**





Situation 2: Objection submitted involving an RDA

So, what can the executor do to defend the RDA?

- ✓ Argue RDA was entered into with the consent of all parties involved, and
- ✓ RDA complies with all relevant laws and regulations, and
- ✓ RDA's enforcement is not subject to the Master's approval.
- Then request the Master's legal basis for exercising such powers.
- If the Master persists, the Executor can seek a High Court ruling to validate the RDA, overriding the Master's decision.



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Situation 3: Minor is involved as a party to an RDA

- Legal opinion: **Master is protector** of a minor's interest in an RDA.
- **Ex parte Smith, Ex parte Meyer** (1976 2 OPA 95 98H) held: Master's "**crucial social welfare duty** is to **protect** the interests of **minors** and their property".
- However, **other court cases: Duty on executor and NOT established Master practice.**
[See also *Bank v Sussman* 1968 2 SA 15 (O); *Liquidators of the Union Bank v Watson's Executors* 8 SC 300 306]





Situation 3: A minor is involved as a party to an RDA

Is consent of the Master necessary when the minor's inheritance property is involved?

Ongoing debate from 1980s if the Master's has a **presumed duty to protect** the interest of minors in an RDA.

Debate about the **interpretation of s 80** of the Estate Act.

[S 4(2) and Ch IV of the Estates Act (incl s 80): Master has jurisdiction over the administration of a minor's property]

Unreported Gauteng case of **Estate Late PM Venter** held: Master's **consent is necessary** (followed by Gauteng officials)

Unreported Cape court decision in **Ex parte Fuard Tofie** held: Master's **consent unnecessary** (followed by Cape officials)

RCR 30 of 2010 (practice amongst officials of the **Deeds Office**):

* "**belonging**" in s 80 only refers to "**immovable property belonging to such minor**" and

* at the "**time of the conclusion of an RDA**, the (inheritance) property **does not belong to the minor.**"

It seems that **s 80 does not apply** when a minor's inheritance is involved in an RDA.

Master have **no jurisdiction to consider approval** of RDA relating to **minor's inheritance property**.

Situation 3: Minor involved as a party to an RDA

Alternative option: S 96(3) Estates Act

- Refer dispute to a **judge** of the **High Court** in chambers.
- **Saving time** and **expenses** when disagreement could **negatively affect** the **estate** and the **minor's interests**.
- **Alternative** to the executor's choice of **challenging** the **Master's decision** by applying to the **High Court** for a **review**.



Situation 3: Minor is involved as a party to an RDA

S 96(3) Estates Act: Aspects to considered with application

- Disagreement should involve a **legal question**, not a factual issue.
- Dispute about **estate's distribution**: such as reallocation of minor's inheritance.
- Disagreement: arise at any time **before** the **estate distribution** as specified in Ss 35(11-13).
- **Executor & Master: submit** their dispute **in writing** to the judge in chambers, outlining the **legal issue** and their respective **conclusions**.
- The judge's decision is **conclusive regarding the minor**. It does not impact the rights of other parties.
- When dispute **involves factual matters**, the judge may refer the matter to the **High Court for a hearing**.



Situation 3: Minor is involved as a party to an RDA

Strategy to counter Master's stance

- Executor may argue:
 - ✓ Currently, **Master lacks jurisdiction** over a minor's inheritance rights in an estate with an RDA. Master only has jurisdiction over the administration of a minor's property under s 4(2) and chapter IV of the Estates Act, and
 - ✓ The **executor is responsible** for **safeguarding a minor's interests** if their inheritance is at stake.
 - Then **request the Master's legal basis** for exercising such powers.
- To **save time and money**, s 96(3) can be used for a **legal resolution** through a **judge in chambers**.
- **Alternatively**, executor can **apply to the court** for approval of the RDA, with the court considering the best interests of the minor before granting approval.



SUSANDRA VAN WYK
ATTORNEYS | CONVEYANCERS | NOTARIES

Some practical tips dealing with Master's Office

- Get **written answers** and clear explanations **for decisions**.
- **Telephone conversations** are **unreliable** as there's **no way to prove** what was said, making calls a potential waste of time.



- Seeking a **second opinion** from colleagues.
- They may **offer suggestions and insights** that can **help** you make **decisions** or **refine ideas**.

- **Keep detailed records of communication and documentation:**
 - recording the date, the people involved, and the details of the communication, including what was said.
- This is to ensure that everyone involved has a **clear understanding** of the **decisions that were made**, and
- A **paper trail** may **prevent misunderstandings** and **disputes** in the future.



Summary

Deeds Act, Estates Act and its Regulations

RDA is a contract between
beneficiaries.

Executor enforces the RDA.

Enforces RDA after advertisement
inspection period, free from
objections.

RDA to be legally valid

Parties with legal capacity to sign it.

Good practice: witnesses to sign.

Any changes must be agreed upon.

Executor's and conveyancer's
responsibility to check contractual- &
statutory requirements, and parties'
contractual capacities.

RDA attached to L&D: Master's clerical acts

S 35 (1) Master ensure submission.

Time-limit for submission.

Submit all types RDAs.

Master cannot exempt ito Reg 5(5).

Examination of L&D: Master's clerical acts

S 35(4) examination of L&D Account
(not approval).

Check L&D to comply with Reg 5(1)
format requirements.

Reg 5(1)(e)(iii) check
beneficiaries' details and awards
in distribution are align with RDA.



Summary

Executor's certificate: Master's clerical acts

Reg 5 (1)(i): Master ensure submission.

To be attached to L&D Account.

Executor's confirmation of accuracy of redistribute awards

Consequently, executor confirms legality of RDA.

Permission to advertise: Clerical act

S 35(5): Master to give written confirmation to advertise L&D.

When Master finalises examination and executor complies with enquiries and call for documents.

Objection: Master's act quasi-judicial function

S 35(9): Master decision limited.

Well-founded objection, and not frivolous, or factually based.

Instruct revise of L&D Account to align with attached RDA.

Minor involved

Master's s 80 consent not necessary.

Executor's duty to look after minor's interests.

S 96(3): Dispute to a judge in chambers to save time and expenses.



To conclude

- **Master's assumed approval authority of an RDA:**
 - Does **not** serve as a **guarantee** of RDA's legality.
 - Does **not** serve as **confirmation** of **RDA's legality**.
- The Master's assumed weighing of the validity of an RDA is **unnecessary** since the **executor** and/or the **conveyancer** bear the **responsibility** of **assessing the correctness of facts** and the **validity of an RDA**.



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**Thank you for your
attention.**

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Reading List (Bibliography)

Literature (History of RDAs – common law)

Denoon G "Vesting of Ownership" 1945 SALJ 312-325

Huber U Heedensdaegse Rechtsgeleertheit (Translation: Gane P The Jurisprudence of My Time) vol 1 (Butterworths Durban 1939)

Kaser M Römisches Privatrecht (Translation: Dannenburg R Roman Private Law) 13th ed (Unisa Pretoria 1984)

Maasdorp AFS The Introduction to Dutch Jurisprudence of Hugo Grotius 3rd ed (Juta Cape Town 1903)

Van Warmelo P "Die Geskiedkundige Ontwikkeling van die Mede-eiendom in die Romeinse en Romeins-Hollandse Reg" 1950 THRHR 205-242

Voet J Commentarius ad Pandectas (Translation: Gane P The Selective Voet, Being the Commentary on the Pandects) vol 7 (Butterworths Durban 1955-1957)

Literature (Recent RDAs)

Abrie W et al Deceased Estates 10th ed (ProPlus Lynnwood Ridge 2014)

Bouwer APJ Die Beredderingsproses van Bestorwe Boedels (Van der Walt Pretoria 1978)

Office of the Chief Registrar of Deeds The Consolidated Practice Manuals of the Deeds Office of South Africa (Juta Cape Town 2016)

Claassens SJ "Herverdelingsooreenkomste in die Beredderingsproses van Bestorwe Boedels" 2004-2005 Tydskrif vir Boedelbeplanningsreg 36-102

Herbst W "Kontrakte deur Eksekuteur" 2010 De Rebus 3:17

Kernick LA Administration of Estates and Drafting of Wills 4th ed (Juta Cape Town 2006)

Kerr AJ The Principles of the Law of Contract (Butterworths Durban 2002)

Kotzé LJ "The Application of Just Administrative Action in South African Environmental Governance Sphere" 2004 PELJ 57-94

Meyerowitz D The Law and Practice of Administration of Estates 5th ed (Juta Cape Town 2010)

Nel HS Jones Conveyancing in South Africa 4th edition (Juta Cape Town 2008)

South African Law Reform Commission Discussion Paper 10, Project 134: Administration of Estates (SALRC Pretoria 2005)

Swart JN et al The Planning and Administration of Estates. An Introduction (Butterworths Durban 1985)

Thornhill C "The Role of the Public Protector. Case Studies in Public Accountability African" 2011 Journal of Public Affairs 79-88

Van Heerden M "The Constitutional Obligation on Government to Perform Public Administration Efficiently and Effectively" 2009 Politeia 46-65

West AS The Practitioners Guide to Conveyancing and Notarial Practice 2nd edition (LexisNexis Durban 2010)

Wiechers NJ and Vorster I Administration of Estates (LexisNexis Durban 1996)

Van Wyk SJ "Debunking the Master of the High Court's Assumed Approval Authority Over a Redistribution Agreement in a Deceased Estate" PER / PELJ 2021(24) – DOI

<http://dx.doi.org/10.17159/1727-3781/2022/v25i0a8994>

Reading List (Bibliography)

Case Law

Bank v Sussman 1968 2 SA15 (O)
Biowatch Trust v Registrar Genetic Resources 2009 6 SA 232 (CC)
Brink's Curator v Brink's Trustee 5 Searle 329
Broodryk v Die Meester 1991 4 SA 825 (C)
Bydawell v Chapman 1953 3 SA 514 (A)
Commissioner of Inland Revenue v Emary 1961 2 SA 621 (A)
Commissioner of Inland Revenue v Estate Crewe 1943 AD 656
Commissioner South African Revenue Service v Estate Late Streicher (194/03) [2004] ZASCA 126 (31 May 2004)
Cradock's Estate v Cradock 1951 3 SA 51 (N)
De Wet v De Wet 1951 4 SA 212 (CPD)
Du Toit v Thomas (635/15) [2016] ZASCA 94 (1 June 2016)
Estate Smith v Estate Follett 1942 AD 383
Esterhuizen's Executor Dative v Registrar of Deeds 5 Searle 124
Ex parte Adams 1964 2 SA 135 (CPD)
Ex parte Bloch 1936 WLD 48
Ex parte Evans and Evans 1950 3 SA 732 (T)
Ex parte Forbes 1912 NPD 352 Ex parte Fuad Tofie (unreported) case number 11191/1989 of 3 November 1989
Ex parte Grant 1952 4 SA 95 (N)
Ex parte Jooste 1968 4 SA 437 (O)
Ex parte Mapherson 18 CTR 154 Ex parte Smith, Ex parte Meyer 1976 2 OPA 95
Ex parte Trustees MH Adam 1927 NPD 314
Feldman v Migdin 2006 6 SA 12 (SCA)
Ferreira v Die Meester 2001 3 SA 365 (O)
Gory v Kolver 2007 4 SA 97 (CC)
Götz v The Master 1986 1 SA 499 (N)
Gray v The Master 1984 2 SA 271 (T)
Greenberg v Estate Greenberg 1955 3 SA 361 (A)
Harris v Fisher 1960 4 SA 855 (A)
Hartley v The Master 1921 AD 403 In re Boedel Wyle Petrus Martinus Venter (unreported) case number 6647/84 of 19 April 1984
In re Estate Linder 1935 NPD 99
Klerck v Registrar of Deeds 1950 1 SA 81 (T)
Klerck v Registrar of Deeds 1950 1 SA 626 (T)
Kuzwayo v Representative of the Executor in the Estate of the Late Masilela (28/2010) [2010] ZASCA 167 (1 December 2010)
Leach v Champion Estates Ltd 1956 3 SA 647 (O)
Liquidators of the Union Bank v Watson's Executors 8 SC 300
Lockhat's Estate v North British and Mercantile Insurance Co Ltd 1959 3 SA 295 (A)
Lubbe v Kommissaris van Binnelandse Inkomste 1962 2 SA 503 (O)
Malcomes v Kuhn 1915 CPD 852
Master of the Supreme Court v Stern 1987 1 SA 756 (T)
Meester v Protea Assuransiematskappy Bpk 1981 4 SA 685 (T)
Nedbank Ltd v Mendelow 2013 6 SA 130 (SCA)
Niekara Harriellall v University of KwaZulu-Natal (100/2017) [2017] ZACC 38 (31 October 2017)
Oertel v Pieterse 1954 4 SA 746 (O)
Oudekraal Estates (Pty) Ltd v City of Cape Town 2004 6 SA 222 (SCA)
Punshi v Greene 1965 2 SA NPD 489
Rabie v Die Meester van die Hooggeregshof 1960 3 SA 848 (T)
Reichman v Reichman 2012 4 SA 432 (GSJ)
Simplex (Pty) Ltd v Van der Merwe 1996 1 SA 111 (W)
Stapelberg v Schlebusch 1968 3 SA 596 (O)
Testate Estate of John McDonald (1897) 18 NLR 156
The Master v Talmud 1960 1 SA 236 (C)
The Master v Van Zyl 1944 TPD 211
Van den Berg v Registrateur van Aktes 1974 4 SA 619 (T)
Van der Merwe v De Klerk (82534/2016) [2017] ZAGPPHC 593 (12 September 2017)
Van Niekerk v Van Niekerk 2011 2 SA 145 (KZP)
Wessels v The Master of the High Court (1892) 9 SC 18
Wessels v The Master of the High Court, Pretoria (83560/17) [2018] ZAGPPHC 892 (18 December 2018)

Reading List (Bibliography)

Legislation

Administration of Estates Act 66 of 1965
Administration of Estates Amendment Act 12 of 1984
Alienation of Land Act 68 of 1981
Children's Act 38 of 2005
Constitution of the Republic of South Africa, 1996
Deeds Registries Act 47 of 1937
Estates Act 24 of 1913
Income Tax Act 58 of 1962
Judicial Matters Amendment Act 16 of 2003
Legal Practice Act 28 of 2014
Maintenance Act 99 of 1998
Maintenance of a Surviving Spouse Act 27 of 1990
Matrimonial Property Act 88 of 1984
Promotion of Access to the Information Act 2 of 2000
Promotion of Administrative Justice Act 3 of 2000
Subdivision of Agricultural Land Act 70 of 1970
Transfer Duty Act 40 of 1949

Government publications

GN 125 in GG 5618 of 27 January 1956
GN R2482 of in GG 9986 of 1 November 1985
GN R473 in GG 3425 of 24 March 1972 (Regulations to the Administration of Estates Act 66 of 1965), as amended
GN R474 in GG 466 of 29 March 1963 (Regulations to the Deeds Registries Act 47 of 1937), as amended

Directives of Deeds Office and Master's Office

Chief Master's Directive 2 of 2016
Registrars' Conference Resolution 2 of 1952
Registrars' Conference Resolution 22 of 2002
Registrars' Conference Resolution 34 of 2005
Registrars' Conference Resolution 54 of 2006
Registrars' Conference Resolution 30 of 2010
Registrars' Conference Resolution 52 of 2010
Registrars' Conference Resolution 68 of 2010

Internet Sources

Master's Office Instruction 36 of 2010, Master of the Free State of 21st July 2010
DPSA 1997 <http://www.dpsa.gov.za/dpsa2g/documents/acts®ulations/frameworks/white-papers/transform.pdf>
Department of Public Service and Administration 1997 Batho Pele White Paper: "People First" <http://www.dpsa.gov.za/dpsa2g/documents/acts®ulations/frameworks/white-papers/transform.pdf> accessed 3 June 2019
Lee 2016 <http://www.ghostdigest.com/articles/transfer-of-shares-in-farms/54962>
Lee D 2016 Transfer of Shares in Farms <http://www.ghostdigest.com/articles/transfer-of-shares-in-farms/54962> accessed 2 May 2019