



THE FIDUCIARY INSTITUTE OF SOUTHERN AFRICA



**SUSANDRA VAN WYK**

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Presentation to FISA 90<sup>th</sup> 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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Good morning, ladies and gentlemen.

In this presentation, I will discuss the assumed authority of the Master's Office in approving redistribution agreements, also known as RDAs.

The title includes "unpacking," as it 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 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.

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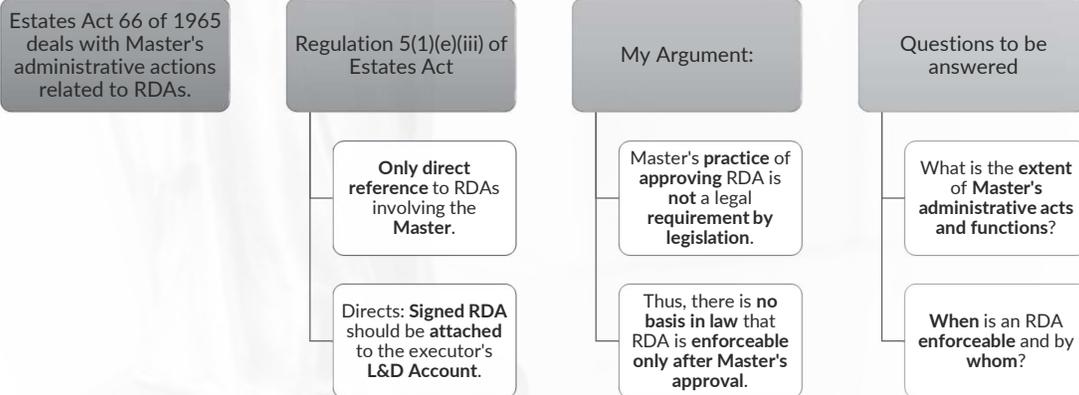
The importance of an RDA lies in its ability to resolve challenges and legal limitations that may arise when winding up a deceased estate. It provides beneficiaries and/or surviving spouses with a means to redistribute their inheritance awards. In 2010, the Chief Master sought a legal opinion from the Office of the Chief State Law Advisor due to conflicting views among officials regarding the proper legal stance on two RDA-related issues and to clarify the Master's administrative acts and functions regarding RDAs. The legal opinion concluded that the Master has a supervisory role and that an RDA is only enforceable after the Master examines and approves its legality, specifically when immovable inheritance property is involved. This practice has caused financial losses and delays in estates in the instance the Master rejects the RDAs legality.

## Why are RDAs important?



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



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I will reflect on the Master's administrative actions related to RDAs in accordance with the Estates Act 66 of 1965, specifically Reg 5(1)(e)(iii). This regulation is the only direct statutory reference to an RDA involving the Master and requires that a signed RDA must be attached to the executor's L&D Account submitted to the Master. I will argue that the Master's practice of approving an RDA is not a legal requirement by legislation. And will also explain to what extent can the Master act within the boundaries of its statutory administrative acts and functions when it comes to an RDA? Also, when is an RDA enforceable and by whom?



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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

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Here is a preview of the main points that will be covered in the presentation. First, I'll give you a quick rundown on RDAs - what they are, how they work, and the legal requirements for creating a valid and enforceable RDA.

Next, I will delve into the role of the Master's Office in overseeing RDAs and their assumed approval authority over these agreements. This will include an examination of the Master's administrative functions. Following this, I will discuss the potential implications, advantages and disadvantages, of the Master's approval authority. Finally, I will examining the legal position of three scenarios where one may challenge the Master's approval authority in RDAs. Situation 1: When the Master disagrees with the legality of an RDA and refuses to grant permission to the executor to advertise the L& D account. Situation 2: When an objection is lodged against the L&D account involving an attached RDA. Situation 3: When a minor is involved as a party to an RDA. Some practical tips when dealing with the Master's Office

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## 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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Let's break down what RDAs are and why they are important in dealing with legal limitations and disputes that may arise when dealing with a deceased estate. Sometimes executors must choose a method for administering an estate that goes beyond simply awarding the inheritance properties as they are. This can include selling some or all the assets or opting for a section 38 takeover. Alternatively, executors can resolve issues through an RDA.

This agreement involves beneficiaries and possibly a surviving spouse agreeing to redistribute their inheritance property through sale, donation, or exchange. For example, A, B, and C are set to inherit undivided shares in 5000 hectares of farmland and two motor vehicles. However, complications have arisen due to the practicality of sharing co-ownership of the vehicles and the legal restrictions that prohibits the transfer of the farm property to more than one beneficiary. To address these challenges, there are at least two potential solutions. The first is to sell the assets and distribute the proceeds equally among the beneficiaries. The second is to redistribute the assets in a way that is mutually agreeable. For example, A could receive the farmland in exchange for B and C each receiving a vehicle. A could then contribute cash to cover the estate debts and balance the award of the farmland to A.

# 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].



RDAs confirmed in court decisions were first recognized by means of legislation in 1937 with the commencement of the Deeds Act - Sections 14(1)(b)(iii) and (iv). The provisions in the Deeds Act allow for the redistribution of immovable inheritance property and/or rights and the bringing-in of non-estate movable property to equalise the division. Later, in 1972, Regulation 5(1)(e)(iii) of the Estates Act was introduced. The regulation requires an RDA to be attached to the L&D account and prescribes the format requirements of the distribution section of the L&D account and who was responsible for enforcing the RDA. Basically, an RDA is just an agreement to redistribute the original inheritance awards among beneficiaries. And when it's done, the distribution section of the L&D account must reflect the agreed redistributed awards. Today, the use of RDAs has expanded beyond its traditional purpose, and it now caters to various demands and new developments in testate and intestate succession law. Beneficiaries can now "trade" their bequests through sale, exchange, or donation, and they can even bring-in non-estate assets to balance the redistribution, if they so wish.

*Footnote: Regulations published by the Minister of Justice in GN R473 in GG 3425 of 24 March 1972 as granted to do so in terms of s 103.*

## Legal requirements for RDAs



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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".]



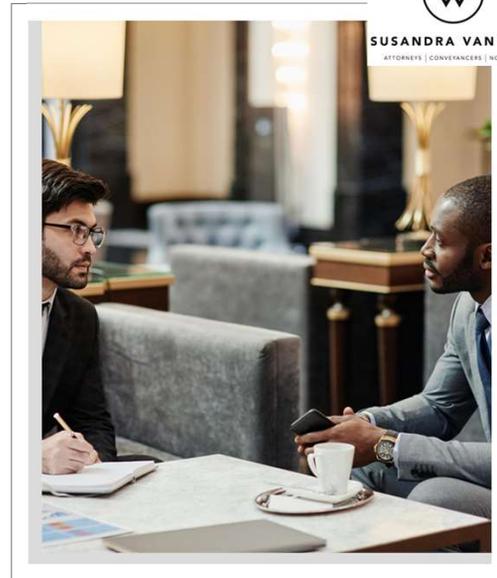
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The L&D and RDA are typically drafted by the legal professionals involved in the estate, such as the executor's attorney or conveyancer. There is no standardised prescribed form for an RDA. The RDA is a contract between beneficiaries. Thus, the RDA must be signed by the contracting parties and, as a best practice in contract signing, should also be signed by two competent witnesses.

*Footnote: The Bydawell v Chapman case referred to an RDA as a "case of schichten en delen 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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When immovable property is involved, it is the duty of the conveyancer to verify the content of the RDA and assess the correctness and accuracy of all documentation submitted for the purpose of registering the immovable inheritance property in the Deeds Office. If the signing is to take place outside of the borders of RSA, then the executor must ensure proper authentication. In other words, one must comply with the provisions of Rule 63 of the Supreme Court Rules. In accordance with provisions Children's Act 38 of 2005, permission from the parents or guardians is required for transactions involving minors. Both parents must provide permission for transactions involving immovable property, while only one parent's permission is required for transactions involving movables.

## 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.**



The executor is required to attach the signed RDA to the L&D Account and submit it to the Master within the specified timeframe. In the distribution section of the account, Reg 5(1)(e)(ii) mandates the executor to provide the full name, age, and marital status of the beneficiaries. It's important to note that a third party who is not an entitled beneficiary cannot be a part of an RDA. Regulation indicates that the 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 Bydowell case 523G-H, 515E-H, 516; Ex parte Grant 1952 4 SA 95 (N); Ex parte Adams 1964 SA 135 (CPD).]



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Reg 5(1)(e)(iii) consists of two parts. First, it instructs the executor to provide specific details regarding the inheritance awards in the distribution section, such as property information and reasons for each award. Second, the executor must specify the method of inheritance distribution, whether it will adhere to the provisions of the will, intestate succession rules, or any attached RDA. This means that, when drafting an RDA, the executor must obtain the informed consent of all entitled beneficiaries to the agreement's terms. This regulation highlights that the executor is responsible for ensuring that the redistributed awards agreed upon in the RDA are both lawful and feasible.

## Who is required to enforce the RDA?



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- 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.



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This raises the question of who is responsible for enforcing the RDA. S 14(1)(b)(iii) of the Deeds Act stipulates that it is the executor who is responsible for transferring the redistributed awards, and the section also specifies that the RDA is an agreement entered into by the beneficiaries and/or the surviving spouse. Similarly, Reg 5(1)(e)(iii) requires the executor to distribute the estate assets "pursuant to such an agreement." According to S 14(1)(b)(iii) of the Deeds Act and Reg 5(1)(e)(iii), the executor is responsible for enforcing the RDA. In practical terms, this means that the executor must distribute the assets according to the agreement made by the beneficiaries and/or surviving spouse.

# 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.

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To address the question when is the RDA to be enforceable by the executor? After the last inspection day in the advertisement notice of the L&D Account with the attached RDA, the executor is required by law to enforce the RDA but only if no objections were submitted or all objections resolved. In other words, the beneficiary's vested rights and the enforceability of the RDA only come into effect when the advertised L&D account and its attached RDA are free from any objections. Additionally, ss 35(12) and (13) mandate that the executor must finalise payments and transfers of claims and inheritance awards within two months from the end of the inspection period. Also, the executor has the duty to ensure that any immovable inheritance property is registered in the name of the beneficiary. The Master is responsible for ensuring that the executor provides proof of compliance with these obligations.

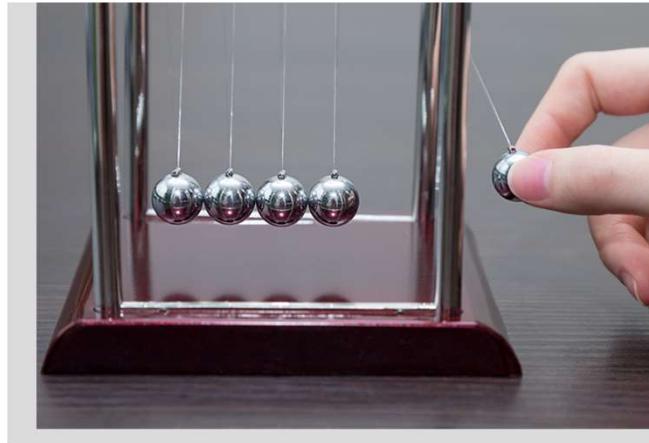
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## **The role of the Master and its administrative actions concerning RDAs**

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



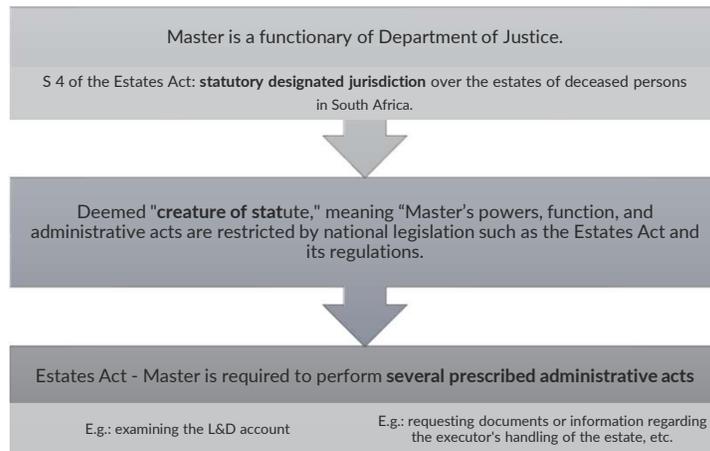
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# What is the Master?



- 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).

The Master is a functionary of the Department of Justice who holds jurisdiction over the estates of deceased individuals in South Africa. Their authority is defined by national legislation and is limited to specific administrative tasks and functions, such as examining accounts and requesting documents. Due to their limited role, the courts refer to the Master as a creature of statute. While the Estates Act does not make any specific reference to RDAs. Reg 5(1)(e)(iii) assigns the Master responsibility for overseeing them, BUT ONLY regarding checking the distribution section of the L&D Account.

## Master's Overall Function



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- Chief State Law Advisor's legal opinion:

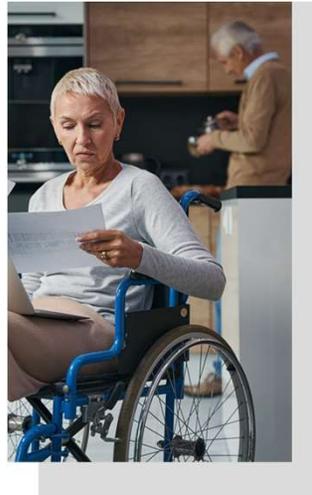
- Master's duty to "protect" the parties involved.

[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.

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Chief State Law Advisor legal opinion states that the Master's officials should see their administrative acts as a way to "protect" parties involved, which aligns with the court ruling in *Wessels v The Master of the High Court* in 1892. However, since 1994, public officials must also abide by a constitutional duty to act transparently, responsibly, openly, and accountably in their administrative acts, as promoted by laws such as the Promotion of Access to Information Act and the Promotion of Administrative Justice Act. The "People First" Batho Pele White Paper, released in September 1997, aims to promote these principles and contains eight guiding principles for public service delivery that prioritize customer satisfaction, and a commitment to being transparent, accountable, and efficient. In 2005 a Law Commission Report make recommendations for proposed draft legislation and review of the administration of estates to create a unitary system for all South Africans. The Law Commission recommended that the "role" of the Master is that of an "independent adjudicator" to ensure fairness.

*Footnote: OCSLA's legal opinion para 6.3 at 10. On this basis the OCSLA's legal opinion recommends that because an RDA affects the interest of involved parties, the Master's "duly examination and approval" of an RDA is a prerequisite for its enforcement. 2005 Law Commission Report - thirty-four commentators were representatives from the different sectors in the deceased estate industry including SARS, a trust company, the law society, the magistrates' commission, six senior level Master officials, two attorneys, a professor of law, an appraiser and eleven magistrates (SALRC Administration of Estates annex 4 at 129).*

## 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).

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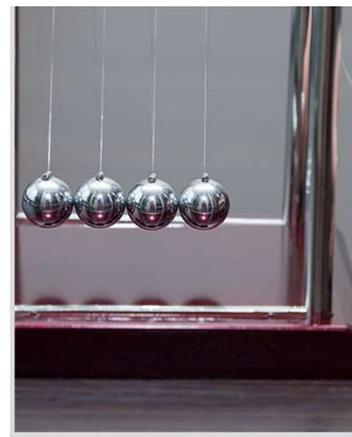
Regarding the extent of the Master's administrative acts, *Nedbank Ltd v Mendelow* established that all acts of a Master official are "administrative acts" empowered by statute. The court distinguished between administrative acts holding quasi-judicial functions and those that are purely clerical. An RDA falls under the latter and involves the Master's clerical actions during the examination of the L&D account, where the executor lists all inheritance properties, administration costs, and creditor claims in a prescribed format. Except for when an objection is submitted against the L&D account. Here the Master's actions holds a quasi-judicial function and are reviewable under AJA when making a decision. *Footnote: Abbreviations: Promotion of Access to Information Act 2 of 2000 (hereafter "PAIA") and the Promotion of Administrative Justice Act 3 of 2000 (hereafter "AJA")*

## Master's *clerical* administrative acts concerning RDAs



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- **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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One of the clerical administrative acts performed by the Master is ensuring that the executor submits the L&D account with its attached RDA within six months of receiving the appointment letter. Another clerical act is to check that the L&D Account met the format requirements of reg 5(1). Before 1985, the Master had no power to waive any non-compliance with the prescribed format requirements stated in regulation 5(1). But then, regulation 5(5) was introduced and now allows the Master to waive non-compliance in instances where it is deemed "not material". It is a Master's office practice that when only movable inheritance property is involved, the Master does not require submission of an RDA, but written confirmation may be requested that the beneficiaries agree with the redistribution of their movable inheritance awards. Nonetheless, I believe that the submission of any type of RDA is required because, in terms of reg 5(1)(e)(iii), as per s 35(1) read with reg 5(1), where the beneficiaries agreed to any RDA, it must be attached to the L&D account.

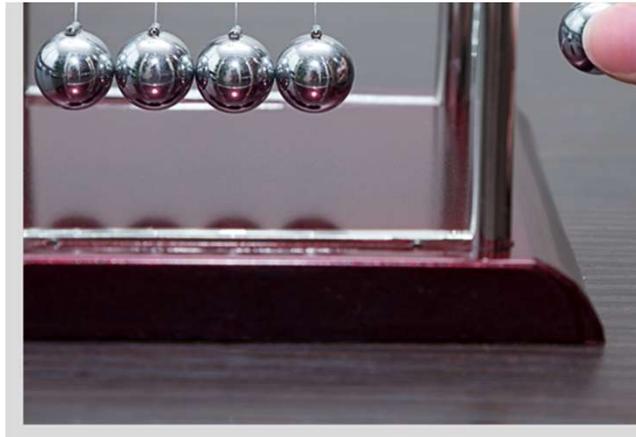
*Footnote: GN R2482 of in GG 9986 of 1 November 1985 read with GN 125 in GG 5618 of 27 January 1956.*

## Master's *clerical* administrative acts concerning RDAs



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- 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..."



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Upon submission the Master checks if the L&D account to which the RDA is attached complies with Reg 5(1). Master's examination of the RDA attached to the L&D Account is limited in terms of S 35(4) read with Reg 5(1)(e)(i)-(iii) to check that the details in the distribution section match the details in the attached RDA. I will delve into the remaining Master's administrative acts when discussing practical strategies for challenging the Master's approval authority. *Footnote: Section 35(1)(b) explicitly stated that the L&D account must be framed in a "prescribed form". However, in the Repealed Estates Act no format requirements were prescribed.*

*In terms of reg 5(1), the executor is obliged to ensure that the submitted L&D account contains specific headings. Each sub-section of reg 5(1) prescribes the content of such a heading, for example its wording and manner of columns.*

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



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However, before that, let us examine the potential implications, advantages, and disadvantages of the Master's approval of an RDA that is not required or allowed by law.



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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**.



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The Chief Master shared the Chief State Law Advisor's legal opinion and instructed all branches to implement its recommendations as a standard practice. This was to ensure consistency in the decision-making and procedures related to RDAs. The legal opinion is only an interpretation of statute regarding what the Master's practice should be relating to RDAs. However, an instruction or directive by the Chief Master 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. Unfortunately, practices that may arise from instructions/directions with no legal basis 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.



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The Estates Act and its regulations do not authorise the Master, as a statutory entity, 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 section 3 of PAIA regarding RDAs. The Master's confirmation should include the following vital details: (1) whether an L&D account with an attached RDA was submitted, (2) if the account was advertised under sections 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&regulations/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]



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Implications are: Does not affect the registration and distribution of the redistributed inheritance awards to beneficiaries. It's important to note that the Master's practice of approving RDAs cannot replace the executor's and conveyancer's responsibility to assess RDA's validity in both content and form. [also see Principle 8. DPSA 1997 <http://www.dpsa.gov.za/dpsa2g/documents/acts&regulations/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. Also, section 99 of the Estates Act directs that "no Master in his official capacity shall be capable of acting as executor, tutor or curator".

## 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.

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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 authorized quality services and avoid wasting taxpayer money on unnecessary and expensive internal procedures. Counting on the Master to safeguard parties' interests may discourage them from taking responsibility for their interests and create a false sense of security. 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.

*Footnote; The Law Commission recommended that the "role" of the Master is that of an "independent adjudicator". The Law Commission warned that relying on the Master to protect the interest of parties involved "creates a false sense of security and discourages beneficiaries and creditors from protecting their own interests". SALRC Administration of Estates para 5.2.13 at 20.*

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## 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.



In this discussion, I will cover the legal position and some strategies that can be followed when individuals may successfully challenge the Master's assumed authority in RDAs.

I will discuss the following three situations:

Situation 1: The Master disagrees with the legality of an RDA and refuses to give permission to the executor to advertise the account.

Situation 2: An objection is lodged against the account involving an attached RDA.

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

Finally, providing some practical tips when dealing with the Master.

## 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.

The Master's offices follow the practice that the Master must "duly examine and approve" the L&D account and its attached RDA as also advocated by the Chief State Law Advisor's office.

However, this practice is not based on the law. The only requirement in Section 35(4) is for the Master to "examine" the L&D account before allowing interested parties to inspect it. This examination is to ensure compliance with regulation 5(1) formatting requirements. The verbs "examine" and "approve" are different, with "examine" referring to observation or inspection and "approve" to formal authorisation or acceptance.

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

*Footnote: OCSLA's legal opinion para 6.3 at 10. On this basis the OCSLA's legal opinion recommends that because an RDA affects the interest of involved parties, the Master's "duly examination and approval" of an RDA is a prerequisite for its enforcement.*

## 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)(j): 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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The RDA provides proof to the Master that the inheritance awards in the Distribution-Account are distributed accurately and in accordance with the wishes of the beneficiaries. The RDA supports the information provided in the distribution section of the L&D account and with this helps the Master ensure that the executor has fulfilled their duties properly. The executor's certificate is also an important part of the L&D account, as it confirms that the estate's winding-up was accurately accounted for. Specifically, the certificate confirms the legality of the RDA. Therefore, it's essential for the Master to ensure that the executor submitted the certificate.

## Situation 1: Master refuses to give confirmation to advertise

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).



The Master's "permission" refers to the point in time when the Master finalises the "examination" of the L&D account and after the executor has complied with the Master's enquiries and/or call for documents relating to the L&D account. The Master's examination of the L&D account in terms of section 35(4) and regulation 5(1)(e)(iii) entails an assessment to verify that the awards in the distribution section align with the agreed awards in the attached RDA. In short, according to Section 35(4), the Master is only required to examine the L&D account to ensure compliance with the formatting requirements specified in Regulation 5(1).

## Situation 1: Master refuses to give confirmation to advertise



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### 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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Strategy to follow?: The executor can argue that the Master lacks the power to validate an RDA and cannot refuse to advertise the Account once the Master has examined the L&D account and the Executor has provided all requested documents. Then to request the Master's legal basis for exercising assumed powers. If the Master is still refusing, the Executor can seek a High Court ruling to validate the RDA, overriding the Master's decision.

## Situation 2: Objection submitted involving an RDA



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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)]

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The Master's authority to evaluate objections against an L&D account when there is an RDA involved is not unlimited. According to S 35(9), the Master must act when objections have been raised against the L&D account that may also pertain to an RDA. This decision-based action has significant implications for the parties involved. Affected parties can seek legal redress through the High Court. Mandatory provisions that require the Master to take certain steps when an objection is submitted against the L&D Account. This include that the Master must give the executor sufficient notice and a copy of the objection. The executor is then granted a reasonable period to respond to the objector's comments. In addition, the Master must provide the executor with written reasons for their administrative action and inform them of their right to review or appeal.

## 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.

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Legislation limits the scope of the Master's decision, as follows: The legislature intended, as recommended by Meyerowitz, that the Master should exercise their power to direct amendments sparingly and only in cases where the L&D account is clearly incorrect. Moving on, the Master may refuse to make a decision regarding an RDA if they lack authorisation or if the objection is frivolous or unfounded. In cases where there is a factual dispute, such as a disagreement over the terms of an RDA, the Master may not have adequate procedures to establish facts. This could result in a refusal to make a decision. However, the Master may amend or change their decision if new information arises that affects their initial decision. However, when reading the provisions of Reg 5(1)(e)(iii) with S 35(9) a well-founded objection involving an RDA is limited to details of the L&D account, especially the distribution section, that do not correspond with the agreed RDA. The Master may then instruct the executor to amend the L&D account in line with the agreed terms and conditions in the attached RDA.



## Situation 2: Objection submitted involving an RDA

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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.

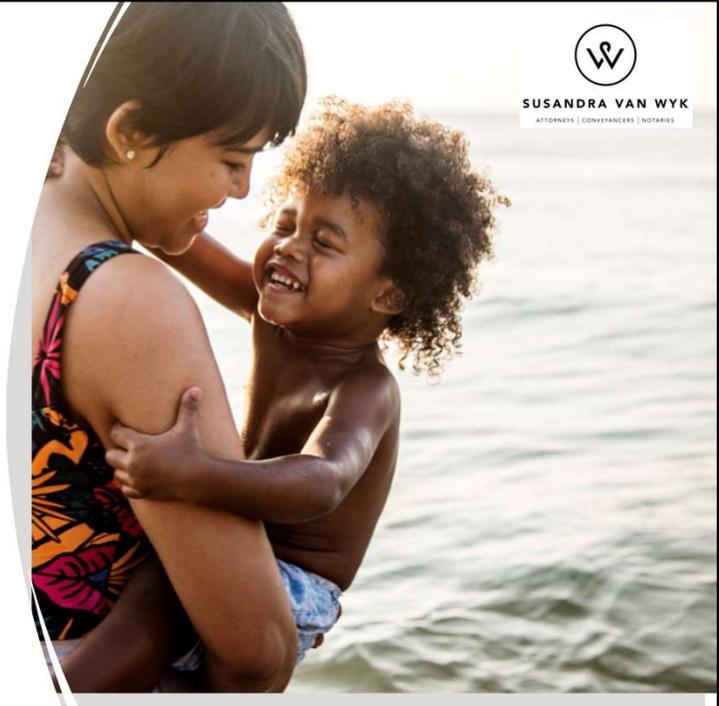
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So, what can the executor do to defend the RDA? The executor can argue that the RDA was entered into with the consent of all parties involved and that it complies with all relevant laws and regulations. The executor can also argue that the RDA is an agreement between the parties and is not subject to the Master's approval. Then request the Master's legal basis for exercising assumed powers. If the Master persists, the Executor can seek a High Court ruling to validate the RDA, overriding the Master's decision.

## 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]

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The Chief State Law Advisor's legal opinion highlights the role of the Master as a protector, particularly with regard to a minor's interest in an RDA. The court in *Ex parte Smith, Ex parte Meyer* initially stated that one of the Master's social welfare duties was to protect the interests of minors and their property, but subsequent court decisions have established that the executor is responsible for safeguarding regardless of any practices followed by the Master. *Footnote: The opinion provided the following scenarios as examples:* • "Where a minor is involved, the Master must still be satisfied that the minor is not placed at a disadvantage in the sense that the assets which the minor will receive are equivalent in value to his or her original undivided share in the inheritance", • "if the Master considers it desirable, the Master may even require the High Court to approve an RDA in which minor beneficiaries have an interest." (OCSLA's legal opinion para 6.3 at 10.) Also: "... [it] does not appear that one may lightly assume that the role of the Master is no more than that of a passive observer ...", adding that the Master has a "right to refuse to approve such agreements if they are unfair or would be prejudicial to a beneficiary who is a minor" (OCSLA's legal opinion para 3.13 at 5). The executor's duty is extended to s 28(2) of the Constitution, that gives it a wider application, as confirmed in s 9 of the Children's Act 38 of 2005 in that every child's best interest is paramount in all matters concerning the child's care, protection, and well-being.



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## 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?

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

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

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

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

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

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**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**.

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There has been a long-standing debate on whether the Master is obliged to protect the interests of minors in an RDA. In the 1980s, officials from the Master and Deeds Office argued over whether the Master's approval was necessary when a minor was a party to an RDA, as section 80 mandates the Master's or court's authorisation before alienating immovable property belonging to a minor. The Master has jurisdiction over a minor's property administration under S 4(2) and chapter IV of the Estates Act, where S 80 is included. The unreported Gauteng case of Estate Late PM Venter held that the Master's consent was required, and this was followed by Gauteng officials. However, Cape officials followed the unreported Cape court decision in Ex parte Fuard Tofie, which stated that the Master's consent was unnecessary. To standardize the practice among Deeds Office officials, RCR 30 of 2010 was introduced. The registrars' conference resolution argued that the word "belonging" in s 80 only referred to "immovable property belonging to such minor" and that at the "time of the conclusion of an RDA, the (inheritance) property does not belong to the minor." Currently, it seems that the Master does not have jurisdiction over a minor's right to inheritance in a deceased estate that involves an RDA.

## 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.



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Additionally, s 96(3) offers a solution for resolving disputes between the Master and the executor concerning a minor's inheritance by allowing them to refer the matter to a judge of the court in chambers. This provision is beneficial in terms of saving time and expenses, particularly as such disagreement could negatively affect the estate and the minor's interests. Moreover, it can serve as an 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**.



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To settle disputes between the executor and the Master, the following aspects should be considered:

- The disagreement should involve a legal question, and not a factual issue.
- The dispute should pertain to the distribution of an estate, which includes the reallocation of inheritance awards concerning a minor's interest, such as in an RDA.
- The disagreement can arise at any time before the estate distribution, as specified in sections 35(11-13).
- Both parties must 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, but it does not impact the rights of other parties.
- If the 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.



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Strategy to counter Master's stance: Currently, the 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 section 4(2) and chapter IV of the Estates Act. The executor is responsible for safeguarding a minor's interests if their inheritance is at stake. To save time and money in case of a dispute regarding a minor's interest, s 96(3) can be used for a legal resolution through a judge in chambers. Alternatively, if the Master refuse to accept the RDA, the executor can apply to the court for approval of the RDA, with the court considering the best interests of the minor before granting approval.

## 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.

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Some practical tips when one will possibly need to challenge the Master's Office assumed authority in RDAs are:

- It's important to get **written answers** and **clear written explanations** for decisions in writing. Telephone conversations can be **unreliable** as there's **no way to prove** what was said, making them a potential waste of time.
- Seeking a **second opinion** from colleagues can be very valuable. Engaging with colleagues who can provide **feedback or ideas**, often in a **creative or professional setting**, is important. They may offer **suggestions and insights** that can help you make **decisions** or **refine ideas**, making the process more **effective and successful**.
- It is important to **keep detailed records of communication and documentation**. This includes recording the date, the people involved, and the details of the communication, including what was said. By keeping **accurate and comprehensive records**, you can ensure that everyone involved has a **clear understanding** of the **decisions that were made**. By keeping a **paper trail**, it can help to **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.

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In conclusion, to recap what has been said, the following points should be considered. The Estates Act and the Deeds Act confirm that RDAs, are contracts or agreements between beneficiaries during the estate's winding-up.

The executor is responsible for enforcing the RDA. The enforceability of the RDA only come into effect when the advertised L&D account and its attached RDA are free from any objections.

For an RDA to be legally valid, all parties with legal capacity must sign it, and any changes require the agreement of the beneficiaries, who are the contractual parties. Best practice in contract signing, should also be signed by two competent witnesses. Executor is responsible for ensuring that the contractual and statutory requirements are met, including verifying the parties' contractual capacity.

The Master must ensure that the L&D Account and attached RDA is submitted in time: Reg 5(5) limits the Master's discretion to waive non-compliance: only if it is "not material". The submission of any type of RDA is required because, reg 5(1)(e)(iii), directs that where the beneficiaries agreed to any RDA, it must be attached to the L&D account.

Section 35(4) requires the Master to examine the L&D account to ensure it complies with the format requirements specified in Reg 5(1). The Master's the examination of the L&D account, including verifying that the redistributed awards align with the agreed awards in the attached RDA. Executor is responsible for ensuring that the redistributed awards agreed upon in the RDA are both lawful and feasible.

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## Summary

Executor's certificate: Master's clerical acts	Permission to advertise: Clerical act	Objection: Master's act quasi-judicial function	Minor involved
<p>Reg 5 (1)(i): Master ensure submission.</p> <hr style="width: 20%; margin: 5px auto;"/> <p>To be attached to L&amp;D Account.</p> <hr style="width: 20%; margin: 5px auto;"/> <p>Executor's confirmation of accuracy of redistribute awards Consequently, executor confirms legality of RDA.</p>	<p>S 35(5): Master to give written confirmation to advertise L&amp;D.</p> <hr style="width: 20%; margin: 5px auto;"/> <p>When Master finalises examination and executor complies with enquiries and call for documents.</p>	<p>S 35(9): Master decision limited.</p> <hr style="width: 20%; margin: 5px auto;"/> <p>Well-founded objection, and not frivolous, or factually based.</p> <hr style="width: 20%; margin: 5px auto;"/> <p>Instruct revise of L&amp;D Account to align with attached RDA.</p>	<p>Master's s 80 consent not necessary.</p> <hr style="width: 20%; margin: 5px auto;"/> <p>Executor's duty to look after minor's interests.</p> <hr style="width: 20%; margin: 5px auto;"/> <p>S 96(3): Dispute to a judge in chambers to save time and expenses.</p>

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**Executor's certificate:** The Master ensure that the executor's certificate is also attached to the L&D account, as it confirms that: the estate's winding-up was accurately accounted for and Consequently, executor confirms the legality of RDA.

**Permission to advertise:** The Master's "permission" refers to the point in time when the Master finalises the "examination" of the L&D account and after the executor has complied with the Master's enquiries and/or call for documents relating to the L&D account. cannot refuse to advertise the Account once the Master has examined the L&D account and the Executor has provided all requested documents.

**When an objection is submitted:** In terms of S 35(9) the Master's decision is limited to make a decision on a well-founded objection that is not factual bases. If there's an RDA objection, the Master can only authorize the executor to revise the L&D account to comply with the terms in the attached RDA.

**When a minor is involved:** Master's consent not is necessary when the minor's inheritance property is involved. the executor can refer disputes to a judge in chambers under S 96(3), saving 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.

In conclusion, it is important to note that the Master's acceptance and approval of an RDA does not serve as a guarantee or confirmation of its 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 the RDA.

Thank you for your attention, and please feel free to ask any questions you may have at the conclusion of the presentation.



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**Thank you for your  
attention.**

*This presentation is a revised version of 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>*

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