



**the doj & cd**

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**2 November 2023**

**CIRCULAR 59 OF 2023**

**(HEAD OFFICE FILE 12/7/P )**

**CHIEF MASTER DIRECTIVE 9 OF 2023– DECEASED ESTATE MATTERS**

1. Your attention is drawn to the contents of the attached Directive with regards to DECEASED ESTATE MATTERS in the Master's Office.
2. This Directive amends and /or repeals prior Directives, Circulars or instructions regarding this subject as per the effective date indicated on the Directive.
3. Any enquiries should be addressed in writing to the Office of the Chief Master.

**Ms P Roberts**  
**ACTING CHIEF MASTER**

**TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**



## **Chief Master's Directive 9 of 2023**

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

**This Directive recalls Chief Master's Directive 3 of 2006 & 2 of 2015**

#### **1. PREAMBLE**

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

## **2. Purpose**

**2.1.** The purpose of this Directive is to direct all Masters in the performance of their functions. This Directive is issued in terms of:

- i) Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to “*exercise control, direction and supervision over all the Masters*”.
- ii) Section 2(1) of the Administration of Estates Act 66 of 1965.

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

## **3. Scope**

This Directive addresses the appointment of executors and Master’s Representatives in terms of the Administration of Estates Act as well as other matters relating to the administration of estates.<sup>1</sup>

## **4. Objectives**

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

- i) To comply with the Promotion of Administrative Justice Act<sup>2</sup>;
- ii) To ensure greater transparency and openness in the functions of the Master;

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

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

- iii) To establish uniform, fair and transparent appointment procedures to be used by Masters of the High Court in appointing executors and Master's Representatives;
- iv) To direct the Masters of the High Court with regard to making appointments of executors and Master's representatives;
- v) To eliminate corruption.

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

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

## **6. Implementation**

- 6.1.** This Directive will be effective as from the date indicated in par 11 below and will not be applied retrospective, unless so indicated.

## **7. Reporting documents**

### **7.1. Lodgement of documents**

- i) Reporting documents can be lodged in the following ways:
  - a. By making use of the Online Deceased Estate Registration System OR
  - b. Originally, completed documents may be posted/couriered / hand delivered to the relevant office.
  
- ii) Upon receiving reporting documents, the Estate Controller and Assistant Master must, before acting on them, ensure that:
  - a. all relevant details and fields have been completed on all required forms and
  - b. All documents which are to be commissioned, have been properly commissioned and, where a document consists of more than one page, all pages also signed by the commissioner.
  
- iii) When the applicant is making use of the Online Deceased Estate Registration System to register the estate, the Master may accept electronic copies of all documents so lodged, except for the following:
  - a. Original will;
  - b. Bond of security;
  - c. Any document the Master, in their discretion, is of the opinion should be verified against the original thereof.

The executor is expected to keep copies of all such electronically lodged documents in their records, as the Master may request certified hard copies of any such documents during any stage of the administration process, should the Master deem it necessary and/or to verify against what was lodged

electronically.

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

### *i) Jurisdiction:*

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

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

- a. If the place of residence falls outside the area of jurisdiction and there is no application<sup>5</sup> on record in terms of section 4(1) for the Master to assume

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

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

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

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

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

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

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

<sup>5</sup> A fully motivated application for transfer of jurisdiction should be made by an interested party to either the Master who needs to accept jurisdiction, or the Master who needs to transfer jurisdiction. The Master receiving the application, will, if satisfied, then request the other Master's Office to transfer / accept jurisdiction

jurisdiction, the Master then transfers the estate to the appropriate Master's Office that has jurisdiction.

- b. The Master can only assume jurisdiction with the consent of the Master who has jurisdiction.
- c. Once the Master has exercised jurisdiction, for instance by registering and accepting the will, they shall continue to have jurisdiction. In such a case, jurisdiction cannot be transferred to or assumed by another Master.

ii) Where the deceased left a will/codicil:

- a. If the will/codicil has not yet been lodged, it must be requested.
- b. If only a copy has been lodged, the original must be requested.
- c. The Registry Personnel must also check that there is no "live will"<sup>6</sup> filed in Registry, and must indicate the result of the checking process on the death notice.
- d. If a will/codicil has been registered with the Master but the validity of the document has not yet been considered by the Assistant Master, a JM47 must be placed on the inside of the soft cover (J257). This JM47 must be removed as soon as the will has been accepted / rejected by the Assistant Master.
- e. Once the Assistant Master has accepted the will/codicil, the original document must be filed in the vault and a copy thereof must be placed on the estate file by Registry.

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

- f. Any endorsements made on the will/codicil by the Assistant Master must be noted and taken into account when the appointment is made and/or when any liquidation and distribution account is examined. Form JM27 (a will's advise form) must be issued by Registry. This form indicates whether a will/codicil has been rejected or endorsed in any way.
- g. The Master may release a will delivered to him to a person lawfully requiring it to liquidate and distribute the estate of the deceased person outside the RSA if he is satisfied that the deceased testator/testatrix has not left any property in the Republic.

iii) Pre-deceased spouse:

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

iv) Signing of the notice:

The death notice must be correctly signed.

v) Death Certificate or certified copy:

A certified copy of the death certificate must be lodged in all estates<sup>7</sup> except

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



- a. in applications done on the Online registration system, where an electronic copy of the death certificate will suffice as the application can only proceed once the system verified the status of the deceased through the link with the Department Home Affairs.

In estates registered with a passport or old RSA ID, a certified copy of the death certificate must be lodged, as, in those cases the death is not verified through the Home Affairs link.

### **7.3. Proof of an alleged marriage or permanent life partnership**

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

- i) An original or certified copy of the Marriage certificate where a civil marriage in terms of the Marriage Act,<sup>8</sup> or a marriage or civil partnership in terms of the Civil Union Act,<sup>9</sup> or a customary marriage duly registered in terms of the Recognition of Customary Marriages Act<sup>10</sup> is indicated.
- ii) In the case of customary marriages registered after the death of one of the parties, proof of registration issued by the Department of Home Affairs may be accepted as an alternative to a marriage certificate.<sup>11</sup>
- iii) Where proof of registration of a customary marriage cannot be lodged, and such proof is required only for purposes of succession, and provided there is no dispute

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

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

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

<sup>11</sup> On 8 August 2019 the Minister of Home Affairs, by notice published in Government Gazette No 42622 dated 8 August 2019 extended the period for registration of customary marriages entered into before and after the commencement of the *Recognition of Customary Marriages Act* 120 of 1998 to **30 June 2024**.

regarding the existence of the customary marriage, a family meeting should be convened to confirm the existence of the alleged customary marriage.

- a. Form **MBU 16** should be used for this purpose.

*Note that the Master's acceptance of the minutes of the meeting as sufficient proof of the existence of the marriage in this instance is not a declaration on the validity of the marriage, or an order to register the marriage, but should rather be viewed as assistance to the surviving spouse(s) where the late registration of the marriage which has already been dissolved by the death of one of the parties will delay the administration of the estate.*

- iv) Where the deceased was a husband in more than one customary marriage, any of which was entered into after 15 November 2000, a copy of the contract which regulates the matrimonial property system of the marriages, duly approved by court, in terms of section 7(6) of the Recognition of Customary Marriages Act<sup>12</sup> must be requested.

- a. Where the husband did not comply with the provisions of section 7(6) of the Recognition of Customary Marriages Act, the matter must be dealt with as set out in *Ngwenyama v Mayelane*.<sup>13</sup>

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

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

- v) If the deceased was married in terms of religious rites without compliance with the Marriages Act<sup>14</sup> (Muslim and Hindu marriages) proof of the marriage from the Muslim Judicial Council or similar religious body or person who performed such marriage, should be called for.<sup>15</sup>
- vi) Where a permanent life partnership, wherein parties undertook a reciprocal duty to support each other, is alleged in the death notice, and the estate is to devolve intestate,
  - a) an affidavit (**form MBU 19 – see ANNEXURE A**) must be lodged as confirmation of the alleged partnership.<sup>16</sup>

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

<sup>15</sup> In this regard also see Daniels v Campbell and Others 2004(5) SA 331 (CC); Khan v Khan 2005 (2) SA 272 TPD; Hassam v Jacobs N.O. & Others (2008) JOL 22098 (C) and Govender v Ragavayah and Others 2009 (4) SA 178 (D). As well as Moosa and Others v Minister of Justice and Correctional Services and Others 2018 ZACC 19 Section 2C (1) of the Wills Act, 1953 (Act No. 7 of 1953) (the Wills Act) was declared unconstitutional and is to be read as including the following underlined words:

“If any descendants of a testator, excluding a minor or a mentally ill descendant, who, together with the surviving spouse of the testator, is entitled to a benefit in terms of a will, renounces his right to receive such benefit, such benefit shall vest in the surviving spouse. For the purposes of this sub-section, a ‘surviving spouse’ includes every husband and wife of a monogamous and polygamous Muslim marriage solemnised under the religion of Islam.”

The declaration of invalidity operates retrospectively with effect from 27 April 1994 except that it does not invalidate any transfer of ownership that was finalised prior to the date of this order of any property pursuant to the application of section 2C(1) of the Wills Act, unless it is established that, when the transfer was effected, the transferee was on notice that the property in question was subject to a legal challenge on the grounds upon which the applicant brought the present application.

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

- b) Documents supporting what is stated in the MBU 19, must also be attached and submitted, to the satisfaction of the Master.
- c) Should there be any dispute with regards to the validity/existence of such partnership, the party alleging the partnership, should be referred to court for a declaratory order.

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

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

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

### 7.4 **Divorce order**

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

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- i) *LAUBSCHER NO v DUPLAN AND OTHERS 2017 (2) SA 264 (CC)*. The protection to inherit on intestacy has only been granted to same sex relationships at date of death of one of the parties whilst they undertook a reciprocal duty to support each other.
  - ii) *BWANYA v MASTER OF THE HIGH COURT, CAPE TOWN AND OTHERS 2022 (3) SA 250 (CC)*, **implementable as from 1 July 2023**, with regards to
    - a. the right of a surviving partner in a permanent heterosexual life partnership to claim maintenance under the Maintenance of Surviving Spouses Act 27 of 1990,; and
    - b. The right of a surviving partner of a permanent opposite-sex life partnership to inherit from the estate of the deceased partner under the Intestate Succession Act 81 of 1987.

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

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

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

- i) All original or duplicate original wills<sup>20</sup> or codicils and any other document purporting to be a will, if any, must be lodged. (Refer to section 8(4B)).<sup>21</sup>
- ii) Only copies of registered and accepted wills or codicils must be filed in the estate file.
- iii) The original will must be kept secure in a lockable vault / storeroom and a register must be implemented in order control of movement of original wills.
- iv) Copies of invalid / rejected wills or codicils are not kept on file - only a note containing the date of the will and the reason of invalidity / rejection is filed in the estate file.

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

- i) The Next-of-Kin Affidavit should be requested where the deceased -
  - a. left no valid will indicating the heirs (died intestate);  
or
  - b. left a will nominating heirs in a class, without specific mention of the names of the heirs.<sup>22</sup>(this can be requested at lodgement of the account, if it does not affect the appointment of the executor)
- ii) The Next-of-Kin affidavit must be completed by someone who knew the deceased and his/her family well.

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

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

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

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

- iii) A Commissioner of Oaths and the person making the affidavit must sign the Next-of-Kin affidavit, as well as any annexure attached thereto. All pages and any alterations or amendments must also be initialled accordingly.
- iv) Where a next-of-kin affidavit is necessary, such an affidavit should also be completed for each descendant of the deceased who predeceased him/her.
- v) Where a customary adoption as contemplated in section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act,<sup>23</sup> is alleged, a family meeting should be convened to confirm the allegation. The Form **MBU 17** should be used for this purpose and should form part of the records of the Master's File.

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

- i) ONLY if the deceased died before 2007, a declaration, in accordance with **MBU 5**, must be provided by the applicant, confirming that the estate has not been reported to any other Master's Office or Service Point of the Master<sup>24</sup>
  - a. This form must be dated and duly signed

## **7.8 Inventory (J243)**

- i) A provisional inventory must be lodged in terms of section 9 within 14 days after date of death of the deceased or within such further period as the Master may allow.
- ii) If the deceased was married in community of property, the

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

<sup>24</sup> This is necessitated by the fact that prior to that date estate was not registered electronically and will not form part of the information on PEAS

assets of the joint estates of the deceased and the surviving spouse must be reflected in the inventory.

- iii) The value of assets must be included as this will indicate what type of appointment must be issued.<sup>25</sup>
- iv) In the case of the death of one or more of the persons who have massed their estates in terms of section 37, the massed estate must be reflected.<sup>26</sup>
- v) Where an estate is to be administered in terms of Section 18(3), and the inventory reflects any:
  - a. Immovable property as part of the assets of the deceased, a municipal valuation in respect of the immovable property must be lodged with the inventory;
  - b. Bank accounts, Policies or other like interests in financial institutions, proof of the value must be lodged with the inventory.

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

- c. Movable property, the value as estimated by the deponent of the inventory will be sufficient.
- vi) The inventory must be signed and dated.

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<sup>25</sup> Although an executor is not usually appointed in an estate where the asset value is R250 000 or less, there may be cases where the Assistant Master could decide to appoint an executor rather than to make an appointment in terms of s 18 (3). Also see Amended Master's Instruction no 6 dated 04 June 1992.

<sup>26</sup> S 9(1)(iii)

## **7.9 Nominations**

- i) Where the deceased-
  - a. died intestate; or
  - b. no administrator has been nominated in a valid will; or
  - c. the nominated administrator is untraceable, incapacitated or refuses to act;<sup>27</sup> or
  - d. the nominated administrator in the will is deceased and no provision is made in the will to substitute; or
  - e. the nominated administrator in the will, when called upon by the Master, by notice in writing to take up the appointment within the period specified by the Master, fails to respond to the Master's request, all interested parties must nominate, in writing, a person to be appointed as executor / Master's Representative.

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

- ii) Nominations should only be obtained from all major heirs and/or legal guardians of minor heirs.
- iii) In intestate estates the heirs, in this regard, must be determined by examining the Next-of-Kin Affidavit.
- iv) If there is competition for the office of administrator, the Master shall give preference<sup>28</sup> to:
  - a. the surviving spouse or his/her nominee,

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<sup>27</sup> S18(1) of the Act.

<sup>28</sup> See s 19 (i) and (ii) of the Act.



- b. an heir or his/her nominee,
  - c. a creditor or his/her nominee,
  - d. a tutor/curator so nominated of any heir/creditor who is a minor/ person under curatorship.
  - e. Where there is more than one surviving spouse, all spouses must be consulted before making an appointment.
  - f. It is advisable to follow the process of a formal meeting in terms of section 18 where there is competition for the office of executor in an estate.
- v) If a corporation<sup>29</sup> is nominated as an administrator,
- a. the appointment letter shall be granted to a person who is an officer / director of the nominated corporation; and
  - b. has been duly authorised by the said corporation to act on their behalf and for whose acts and omissions, as executor, the corporation accepts liability.
- vi) Electronic copies of nominations may be lodged with the Master, but the executor is expected to keep the originals of all such electronically lodged documents in their records, as the Master may request these, or certified hard copies of any such documents during any stage of the administration process, should the Master deem it necessary and/or to verify against what was lodged electronically.

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<sup>29</sup> See s 16 of the Act regarding the issuing of letters of executorship and endorsements to or in favour of corporations.

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

- i) Where the gross value of the assets of the estate is more than R250 000 the applicant(s) must complete the J190 in duplicate:
- a. Every person applying must complete the J190 in full.
  - b. The form must be signed by the applicant.
  - c. A certified copy of the applicant's ID must be lodged.
  - d. If the applicant is a lay person **and has not been exempted in terms of Regulation 910<sup>30</sup>**, he/she must be required to be assisted by a person who, to the satisfaction of the Master, has the necessary capabilities and trustworthiness to assist him/her. The agent must confirm so in writing to the Master.
    - The Master may under no circumstances refer a client to a specific attorney or professional person, or

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<sup>30</sup> Note that, **amongst other exemptions**, where an executor who is nominated in a valid will, is the surviving spouse or descendant of the deceased and is going to administer the estate personally, he/she is EXEMPTED from the requirement to appoint an agent. [Offices may not insist on him/her still obtaining the services of an agent where the executor indicated that he/she will not make use of such.]

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

Note however the Master's discretion to ask for security where there is cause to do so. In this regard also note the contents of **Chief Master's Directive 4 of 2007**:

*"Further considerations like the interests of minor's or other vulnerable persons may justify the Master calling for security in terms of the Act.  
The provisions of the will with regard to security by the executor must be duly adhered to and any deviation from that should be properly motivated and supported by written reasons which shall be kept on file."*

suggest the name of any such person to assist, to the client.<sup>31</sup>

- e. A legally incapacitated person such as a minor etc. may not act as an administrator of a deceased person.<sup>32</sup>
  - f. Any Board of Executors, trust company, public accountant and person licensed under Act 44 of 1962, as defined in Regulation 910, may act as an administrator.<sup>33</sup>
  - g. The will must be checked for any endorsement by the Assistant Master, to ensure that the nominated executor is not disqualified in terms of Section 4A (3) and 4A(1) of the Wills Act.<sup>34</sup>
- ii) Where the gross value of the estate is R250 000 or less, the estate may be administrated in terms of Section 18(3), unless otherwise directed by the Master.
- a. Every person applying must complete the J155 in duplicate.
  - b. A full list of known creditors must be provided in the J155. If there are no known creditors, same must be indicated accordingly.
  - c. The applicant must sign the form.
  - d. A certified copy of the applicant's ID must be lodged.
  - e. A legally incapacitated person such as a minor may not act as an administrator of a deceased estate.

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<sup>31</sup> The action of referring a client to a specific Attorney or Professional person will / can be construed as misconduct in violation of the Departmental Code of Conduct.

<sup>32</sup> Section 18(6) of 66 of 1965.

<sup>33</sup> Note the contents of Regulation 910: R.910 prohibits the liquidation or distribution of the estates of deceased persons by any person other than an attorney, notary, conveyancer or law agent. However, any board of executors, trust company, public accountant and person licensed under Act 44 of 1962 are permanently exempt from these prohibitions. Natural persons nominated as executor by will are also exempt from the prohibitions to the extent as specified in R.910. (R.910 can be found in the handbook by *Meyerowitz on the Administration of Estates and Estate Duty*, sixth edition, pp A-63 to A-65 or in the latest 2010 edition titled *Administration of Estates and Their Taxation* on pp A-64 to A-66

<sup>34</sup> Act 7 of 1953.

- f. Where minor heirs are involved the Master should refer the estate to Legal Aid SA to determine whether they can assist.<sup>35 36</sup>
  - g. Despite the preceding paragraphs, the Master may in certain instances, request an executor to be appointed for the following estates where:
    - Minors are heirs / creditors of the estate;<sup>37</sup> or
    - The heirs / creditors of the estate are adults who are incapable of managing their own affairs (persons placed under curatorship or administration in terms of the Mental Health Care Act 17 of 2002) being;
    - The estate is an insolvent deceased estates;
    - The Will determines that property is to be sold;<sup>38</sup>
    - There are disputes/complaints by creditors and/or heirs.
- iii) Where a creditor is applying to be appointed as executor / administrator, the Master must:
- a. Request him/her to provide proof, to the satisfaction of the Master, that they tried their utmost to contact the heirs of the deceased to take up the appointment; and
  - b. Request the creditor to confirm in writing that they will finalise the estate fully in terms of the Administration of Estates Act and ensure that all heirs and creditors receive what is due to them; and
  - c. When applying to be appointed as Executor, request the applicant to provide security to the satisfaction of the Master.

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<sup>35</sup> In terms of the Co-Operation Agreement between the Master and Legal Aid South Africa signed in March 2015.

<sup>36</sup> Cash that is due to minor heirs should be deposited into the Guardians Fund within two months (60 days) from date of appointment.

<sup>37</sup> An undertaking should be obtained from the attorney, bank, trust company or accountant committing to deposit the cash due to the minor into the Guardians Fund within two months (60 days) from date of appointment. A note to this effect should also be effected on the Letters of Authority issued in terms of 18(3), and the file should be diarized accordingly.

<sup>38</sup> Where immovable property is reflected at municipal valuation, it may appear that the estate is worth R250 000 or less, but the sale of immovable property may result in this amount being exceeded.

iv) Should it become evident, after the appointment has been issued in terms of the preliminary inventory lodged, that the true value of the assets constitutes a different type of appointment, the Master may recall the appointment and issue the relevant type of appointment, on the following conditions:

- a. The appointee must hand back the original appointment letter to the Master, unless it was a QR-coded appointment letter, in which case the QR-code on the appointment letter will be cancelled by the Master;
- b. An amended inventory needs to be lodged, reflecting the true assets;
- c. Fully completed J190/ J155, whichever is applicable to the new appointment, must be lodged;
- d. Where a letter of executorship needs to be amended to a section 18(3) appointment, the Master may change the appointment. In these instances the appointee must—
  - lodge an amended inventory with proof of the value of the reflected assets;
  - lodge an affidavit confirming why the assets are now R250 000 or less and that only the reflected assets have and will be dealt with;
  - confirm the current status quo of the administration process of the estate; and
  - lodge an account of assets and liabilities with the Master upon finalisation of the administration.

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

- i) Every person who has not been nominated by a will as an executor, or who has not been exempted in a will from lodging

security, must in terms of section 23, lodge security as follows:

- a. in an amount determined by the Master for the proper performance of his functions; and
  - b. the amount is determined by the value reflected in the section 9 inventory (provisional inventory).
- ii) The following persons are exempt from furnishing security, unless the Master directs him/her to furnish security (e.g. if he is insolvent, has committed an act of insolvency or resides or is about to reside outside the Republic):
- a. The parent, child or surviving spouse of the testator or a person who has, in terms of the will, been assumed as executor by such person.
  - b. A person nominated by a will executed before 01 October 1913 or assumed by such a person and has not been directed by the will to find security.
  - c. A person nominated by a will executed after 01 October 1913 and the Master has been directed to dispense with security.
  - d. A person who has been exempt from furnishing security by the Court.
- iii) The Master may by notice in writing, require any executor (dative or testamentary) to lodge security if:
- a. His/Her estate has been sequestrated;
  - b. He/She has committed an act of insolvency;
  - c. He/She is about to reside or resides outside the Republic;<sup>39</sup> or
  - d. There is "any good reason" for the Master to do so.<sup>40</sup>

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<sup>39</sup> Proviso to s 23(4) stipulates that the Master may, notwithstanding the exceptions mentioned above, refuse to grant or sign and seal letters of executorship or make any endorsement under section fifteen until he finds such security.

<sup>40</sup> "Any good reason" may include:

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

## **7.12 Sequence of documents in an Estate File:<sup>41</sup>**

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

- i) Death Notice (J294)
- ii) Death Certificate
- iii) Marriage certificate/proof of registration of a customary marriage/minutes of a family meeting (MBU 16) where proof of registration of a customary marriage cannot be furnished /proof of religious marriage (Muslim or Hindu)/declaration (MBU 19) confirming the existence of a permanent life partnership
- iv) MBU 18 (seed-raiser union) if any
- v) Copy of divorce order, if any
- vi) Copy of the accepted will (if any)
- vii) Next-of-Kin Affidavit (J192)
- viii) MBU 17 (customary adoption), if any
- ix) Inventory (J234) and proof of assets
- x) Written nominations for the appointment of an administrator
- xi) Undertaking and Acceptance (J155) OR Acceptance of Trust as Executor (J190) together with the certified copy of the identity document of the person to be appointed
- xii) Originally signed copy of Letter of Appointment / Copy of the QR-coded appointment letter, once issued.

## **8. Letters of Appointment<sup>42</sup>**

### **8.1 Letters of Executorship**

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

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<sup>41</sup> A full list of documents can be found in the Code Examiners, and the sequence as set out therein, must be followed.

<sup>42</sup> After sending off the Letter of Appointment the file should be diarized accordingly for the estate account to be lodged or funds to be deposited as mentioned in footnote 36 above.

The Letters of Executorship must comply with Chief Masters Directive 1 of 2023, where applicable.

In offices where the QR-code has not been implemented yet, the appointment letter must contain the following:

- a. Estate number.
  - b. Full names and ID number of the Executor.
  - c. If the nominated executor is a corporation, letters of executorship shall be granted to a person who is an officer or director of the nominated corporation, indicating that he/she is acting on behalf of said corporation.
  - d. Full names and ID number of the deceased.
  - e. Where spouses were married in community of property, both the name and ID number of the deceased and his/her surviving spouse should be reflected and that fact recorded on the Letters of Executorship.
  - f. Date of death.
  - g. Signed by the Assistant Master/Deputy Master/Master.
  - h. Contain a date stamp.
  - i. It should be prepared and signed in triplicate as one copy must be given to the appointee, one copy must be filed on record and one copy must be placed on the APP (Annual Performance Plan) file.
- ii) The following documentation must be sent with the letter of appointment:
- a. Estate Duty Return Form (REV 267).
  - b. Notice to creditors of the deceased form (J193).
  - c. If security was lodged, an inventory in terms of section 27 must be sent with the letters of appointment.<sup>43</sup>

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

- i) Where the gross value of the estate does not exceed R250 000 the estate may be administrated in terms of section 18(3),

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<sup>43</sup> This must be signed by the executor personally within 30 days of the appointment.



unless otherwise directed by the Master. The Master must, if satisfied that all requirements have been met, issue a Letter of Authority appointing the applicant(s) to represent and administer the estate in terms of section 18(3) of the Act.

- ii) The Letter of Authority must comply with Chief Masters Directive 1 of 2023, where applicable.

In offices where the QR-code has not been implemented yet, the appointment letter must contain the following:

- a. Estate number.
- b. Full names and ID number of the appointee.
- c. If the nominated appointee is a corporation, letters of appointment shall be granted to a person who is an officer or director of the nominated corporation, indicating that he/she is acting on behalf of said corporation.
- d. Full names and ID number of the deceased.
- e. Where spouses were married in community of property, both the name and ID number of the deceased and his/her surviving spouse should be reflected.
- f. Date of death.
- g. All assets, and the value thereof, as indicated in the Inventory on record.
- h. Signed by the Assistant Master/ Deputy Master / Master.
- i. Contain a date stamp.<sup>44</sup>
- j. It should be completed in triplicate as one copy must be given to the appointee, one copy must be filed on record and one copy must be placed on the APP (Annual Performance Plan) file.

iii) **Issuing a JM 13:**

When an estate is reported to the Master or Service Point, but it is clear from the inventory that the deceased did not leave any assets of value, the Master must, issue the applicant with a **JM 13** document which confirms to any interested third party that the estate has indeed been registered, but has no assets.

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<sup>44</sup> Where the Appointment letter is issued by a Service Point, the Estate Clerk at the Service Point must ensure that the date stamp corresponds with the printed date of approval indicated on the appointment letter.

iv) **Issuing a MBU 12**

Where funds are urgently needed for funeral purposes, but the Master is not ready yet to issue a final appointment, the Master may, in exceptional circumstances issue a **MBU 12 (Attached as ANNEXURE D)** which will be used to only obtain funds from the bank for funeral purposes only.<sup>45</sup>

In order to issue the MBU 12, the following requirements must be provided:

- a. An original quotation by a registered funeral parlour; and
  - The Master must verify this information with the funeral parlour before approving.
- b. A preliminary inventory indicating the assets of the deceased; and
- c. Proof of the value of the deceased's bank account to be utilised; and
- d. Next-of-kin affidavit / original will; and
- e. Written permission by all known heirs that funds may be released as such; and
- f. The amount to be released must be indicated on the appointment letter by the Master.

## **9. OTHER DECEASED ESTATE DETERMINATIONS**

### **9.1 Reducing of security**

In terms of section 24 of the Administration of Estates Act, the Master may reduce the amount of security if he/she is satisfied that the executor has accounted satisfactorily for the property, of which the value was taken into consideration when the security amount was determined, to an amount which would, in his/her opinion, be sufficient to cover the value of the property the executor has not

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<sup>45</sup> Proviso to section 11(1)(b) of the Administration of Estate Act 66 of 1965 – Temporary custody of property in deceased estates

*"Provided that the provisions of this paragraph shall not prevent the disposal of any such property for the bona fide purpose of providing a suitable funeral for the deceased or of providing for the subsistence of his family or household or the safe custody or preservation of any part of such property"*

accounted for yet.

However,

- i) upon finalisation of the administration of the estate, to the satisfaction of the Master, the Master must ensure that the security is reduced to NIL, before the file is bound, to enable the executor to cancel the bond and stop payment of the premiums.

## **9.2 Inspection period for accounts**

In terms of section 35(6) of the Act, the Magistrate shall endorse on an account that it has lain open for inspection at his/her court without objection, and transmit the account to the Master.

However, in practise the Magistrate normally only issues a certificate indicating as such and forward this to the Master or the executor.

- i) The Master must ensure that, when such an endorsement or certificate is received from the Magistrate, the executor is informed accordingly, without delay, to enable him/her to proceed without delay, with the finalisation of the estate.
- ii) Should the inspection period have expired and the Magistrate has not forwarded the endorsement or certificate to the Master within a reasonable time, it is the duty of the executor to enquire from the Magistrate as to the whereabouts of the certificate and lodge same with the Master.

## **10. DEVIANCY IN EXEPTIONAL CIRCUMSTANCES**

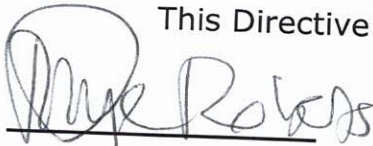
Despite the above, the Chief Master reserves the right to, for a specified period and only in exceptional circumstances, instruct a deviation from these directions and—

- i) Such deviations shall be made in writing by the Chief Master;
- ii) Will only be applicable for the period specified in the above written instruction, but can be extended by the Chief

- Master in writing;
- iii) The instruction shall be sent from the Chief Master to the relevant Heads of Offices for implementation;
  - iv) Any such instructions must be printed by the Head of Office and filed with this Directive for future reference;
  - v) It is within the Chief Master's discretion to determine which exceptional circumstances may cause the need for deviation;
  - vi) Upon expiry of the specified period, the Directive will be in full effect again.

**11. Effective date**

This Directive will come into effect as from 3.November 2023



Mike Roberts

**CHIEF MASTER  
MASTER'S BRANCH**

03/11/2023  
**DATE**