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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1071.

15 April 1992

No. 1071.

15 April 1992

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 43 van 1992: Wysigingswet tot Wysiging van die Erfreg, 1992.

No. 43 of 1992: Law of Succession Amendment Act, 1992.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the General Law Amendment Act, 1952, so as to repeal a certain provision; to amend the Wills Act, 1953, so as to define or more closely define certain expressions; to further regulate the formalities in the execution of wills; to provide for cases where such formalities are not complied with; to grant a court the power to declare a will to be revoked; to regulate the effect of a divorce or the annulment of a marriage on a will; to provide for the vesting of certain benefits from the testator's will in the surviving spouse or the descendants of certain persons; to provide for the interpretation of wills in certain cases; to repeal the provision for a soldier's will; to further regulate the competency of certain persons to receive a benefit under a will or to be nominated as executor; to repeal the application of the Act to South West Africa; and to provide for the form in which certain certificates may be drawn up; to amend the Administration of Estates Act, 1965, so as to further regulate certain powers and functions of the Master in relation to wills; to amend the Intestate Succession Act, 1987, so as to provide for the vesting of certain benefits from an intestate estate in the surviving spouse or the descendants of certain persons; and to provide for matters connected therewith.

(*Afrikaans text signed by the State President.*)
(*Assented to 7 April 1992.*)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Repeal of section 24 of Act 32 of 1952

1. Section 24 of the General Law Amendment Act, 1952, is hereby repealed.

5 Amendment of section 1 of Act 7 of 1953

2. Section 1 of the Wills Act, 1953 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of "competent witness" of the following definition:

10 "‘amendment’ means a deletion, addition, alteration or interlineation;”;

(b) by the insertion after the definition of "court" of the following definition:

15 "‘deletion’ means a deletion, cancellation or obliteration in whatever manner effected, excluding a deletion, cancellation or obliteration that contemplates the revocation of the entire will;”;

- (c) by the insertion after the definition of "deletion" of the following definition:
 " 'internal law' means the law of a state or territory, excluding the rules of the international private law of that state or territory;";
- 5 (d) by the substitution for the definition of "Master" of the following definition:
 " 'Master' means a Master, Deputy Master or Assistant Master of the Supreme Court **[of South Africa, the Assistant Master at Kimberley or the Master of the High Court of South-West Africa]** appointed under section 2 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);"; and
- 10 (e) by the substitution for the definition of "sign" of the following definition:
 " 'sign' includes the making of initials and, only in the case of a testator, the making of a mark **[but does not include the making of a mark in the case of a witness]**, and 'signature' has a corresponding meaning;".
- 15

Amendment of section 2 of Act 7 of 1953

3. Section 2 of the principal Act is hereby amended—
- 20 (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
 "Subject to the provisions of **[sections three and] section 3bis—**";
- (b) by the substitution for subparagraph (iv) of paragraph (a) of subsection (1) of the following subparagraph:
 25 "(iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person **[and by such witnesses]** anywhere on the page; and";
- (c) by the substitution for subparagraph (v) of paragraph (a) of subsection (1) of the following subparagraph:
 30 "(v) if the will is signed by the testator by the making of a mark or by some other person in the presence and by the direction of the testator, a **[magistrate, justice of the peace]** commissioner of oaths **[or notary public]** certifies **[at the end thereof]** that he has satisfied himself as to the identity of the testator and that the will so signed is the will of the testator, and **[if the will consists of more than one page, each page other than the page on which it ends] each page of the will, excluding the page on which his certificate appears, is also signed, anywhere on the page, by the [magistrate, justice of the peace] commissioner of oaths [or notary public] who so certifies: Provided that—**
- 35 (aa) the will is signed in the presence of the commissioner of oaths in terms of subparagraphs (i), (iii) and (iv) and the certificate concerned is made as soon as possible after the will has been so signed; and
- 40 (bb) if the testator dies after the will has been signed in terms of subparagraphs (i), (iii) and (iv) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate, and sign each page of the will, excluding the page on which his certificate appears;";
- 45 (d) by the substitution in paragraph (b) of subsection (1) for the expression "deletion, addition, alteration or interlineation", wherever it occurs, of the expression "amendment";
- 50 (e) by the substitution for subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph:
 55 "(iv) if the **[deletion, addition, alteration or interlineation] amend-
 ment** is identified by the mark of the testator or the signature of some other person made in his presence and by his
- 60

direction, a [magistrate, justice of the peace] commissioner of oaths [or notary public] certifies on the will that he has satisfied himself as to the identity of the testator and that the [deletion, addition, alteration or interlineation] amendment has been made by or at the request of the testator: Provided that—

(aa) the amendment is identified in the presence of the commissioner of oaths in terms of subparagraphs (i) and (iii) and the certificate concerned is made as soon as possible after the amendment has been so identified; and

(bb) if the testator dies after the amendment has been identified in terms of subparagraphs (i) and (iii) but before the commissioner of oaths has made the certificate concerned, the commissioner of oaths shall as soon as possible thereafter make or complete his certificate.”;

(f) by the substitution for subsection (2) of the following subsection:

“(2) Any [deletion, addition, alteration or interlineation] amendment made in a will executed after the said date shall for the purposes of subsection (1) be presumed, unless the contrary is proved, to have been made after the will was executed.”; and

(g) by the addition of the following subsections:

“(3) If a court is satisfied that a document or the amendment of a document drafted or executed by a person who has died since the drafting or execution thereof, was intended to be his will or an amendment of his will, the court shall order the Master to accept that document, or that document as amended, for the purposes of the Administration of Estates Act, 1965 (Act No. 66 of 1965), as a will, although it does not comply with all the formalities for the execution or amendment of wills referred to in subsection (1).

(4) The certificate of a commissioner of oaths referred to in subsection (1)(a)(v) or (b)(iv) may be in the form set out in Schedule 1 or 2, as the case may be.”.

35 Insertion of sections 2A, 2B, 2C and 2D in Act 7 of 1953

4. The following sections are hereby inserted in the principal Act after section 2:

“Power of court to declare a will to be revoked

2A. If a court is satisfied that a testator has—

(a) made a written indication on his will or before his death caused such indication to be made;

(b) performed any other act with regard to his will or before his death caused such act to be performed which is apparent from the face of the will; or

(c) drafted another document or before his death caused such document to be drafted,

by which he intended to revoke his will or a part of his will, the court shall declare the will or the part concerned, as the case may be, to be revoked.

Effect of divorce or annulment of marriage on will

2B. If any person dies within three months after his marriage was dissolved by a divorce or annulment by a competent court and that person executed a will before the date of such dissolution, that will shall be implemented in the same manner as it would have been implemented if his previous spouse had died before the date of the dissolution concerned, unless it appears from the will that the

testator intended to benefit his previous spouse notwithstanding the dissolution of his marriage.

Surviving spouse and descendants of certain persons entitled to benefits in terms of will

5 **2C. (1)** If any descendant 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 a benefit, such benefit shall vest in the surviving spouse.

10 (2) If a descendant of the testator, whether as a member of a class or otherwise, would have been entitled to a benefit in terms of the provisions of a will if he had been alive at the time of death of the testator, or had not been disqualified from inheriting, or had not after the testator's death renounced his right to receive such a benefit, the descendants of that descendant shall, subject to the provisions of subsection (1), *per stirpes* be entitled to the benefit, unless the context of the will otherwise indicates.

Interpretation of wills

20 **2D. (1)** In the interpretation of a will, unless the context otherwise indicates—

(a) an adopted child shall be regarded as being born from his adoptive parent or parents and, in determining his relationship to the testator or another person for the purposes of a will, as the child of his adoptive parent or parents and not as the child of his natural parent or parents or any previous adoptive parent or parents, except in the case of a natural parent who is also the adoptive parent of the child concerned or who was married to the adoptive parent of the child concerned at the time of the adoption;

30 (b) the fact that any person was born out of wedlock shall be ignored in determining his relationship to the testator or another person for the purposes of a will;

35 (c) any benefit allocated to the children of a person, or to the members of a class of persons, mentioned in the will shall vest in the children of that person or those members of the class of persons who are alive at the time of the devolution of the benefit, or who have already been conceived at that time and who are later born alive.

40 (2) In the application of this section 'will' means any writing by a person whereby he disposes of his property or any part thereof after his death."

Repeal of section 3 of Act 7 of 1953

5. Section 3 of the principal Act is hereby repealed.

Amendment of section 3bis of Act 7 of 1953, as inserted by section 2 of Act 41 of 1965

6. Section 3bis of the principal Act is hereby amended by the substitution for the expression "law", wherever it occurs, of the expression "internal law".

Insertion of section 4A in Act 7 of 1953

7. The following section is hereby inserted in the principal Act after section 4:

50 **"Competency of persons involved in execution of will**

4A. (1) Any person who attests and signs a will as a witness, or who signs a will in the presence and by direction of the testator, or who

writes out the will or any part thereof in his own handwriting, and the person who is the spouse of such person at the time of the execution of the will, shall be disqualified from receiving any benefit from that will.

5

(2) Notwithstanding the provisions of subsection (1)—

10

(a) a court may declare a person or his spouse referred to in subsection (1) to be competent to receive a benefit from a will if the court is satisfied that that person or his spouse did not defraud or unduly influence the testator in the execution of the will;

15

(b) a person or his spouse who in terms of the law relating to intestate succession would have been entitled to inherit from the testator if that testator has died intestate shall not be thus disqualified to receive a benefit from that will: Provided that the value of the benefit which the person concerned or his spouse receives, shall not exceed the value of the share to which that person or his spouse would have been entitled in terms of the law relating to intestate succession;

20

(c) a person or his spouse who attested and signed a will as a witness shall not be thus disqualified from receiving a benefit from that will if the will concerned has been attested and signed by at least two other competent witnesses who will not receive any benefit from the will concerned.

25

(3) For the purposes of subsections (1), and (2)(a) and (c), the nomination in a will of a person as executor, trustee or guardian shall be regarded as a benefit to be received by such person from that will.”.

Repeal of sections 5 and 6 of Act 7 of 1953

8. Sections 5 and 6 of the principal Act are hereby repealed.

30 Substitution of section 7 of Act 7 of 1953

9. The following section is hereby substituted for section 7 of the principal Act:

“Repeal of laws

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7. The laws specified in [the] Schedule 3 are hereby repealed to the extent set forth in the fourth column of the Schedule: Provided that the laws so repealed shall continue to apply in respect of any will executed before the first day of January, 1954.”.

Repeal of section 8 of Act 7 of 1953

10. Section 8 of the principal Act is hereby repealed.

40 Insertion of Schedules 1 and 2 in Act 7 of 1953

11. The following Schedules are hereby inserted in the principal Act, the existing Schedule becoming Schedule 3:

“Schedule 1

Certificate in terms of section 2(1)(a)(v)

I, (full name),
of (full address),
5,
in my capacity as commissioner of oaths certify that I have satisfied myself as to
the identity of the testator (full name)
.....
and that the accompanying will is the will of the testator.

10,
Signature
Commissioner of Oaths
.....
Capacity
.....

15,
Place Date

Schedule 2

Certificate in terms of section 2(1)(b)(iv)

I, (full names),
20 of (full address),
.....
in my capacity as commissioner of oaths certify that I have satisfied myself as to
the identity of the testator (full name)
.....

25 and that the alteration(s) to this will was/were made by/at the request of the
testator.
.....

30,
Signature
Commissioner of Oaths
.....
Capacity
.....

.....
Place Date”.

Amendment of section 8 of Act 66 of 1965

35 **12.** Section 8 of the Administration of Estates Act, 1965, is hereby amended
by the insertion after subsection (4) of the following subsections:

LAW OF SUCCESSION AMENDMENT ACT, 1992

Act No. 43, 1992

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

5 (4B) The Master may for the purposes of this Act also accept a duplicate of the original will.”.

Amendment of section 54 of Act 66 of 1965, as amended by section 16 of Act 86 of 1983

10 13. Section 54 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

15 “(i) if he has been nominated by will and that will has been declared to be void by the Court or has been revoked, either wholly or in so far as it relates to his nomination, or if he has been nominated by will and the Master is of the opinion that the will is for any reason invalid; or”.

Amendment of section 1 of Act 81 of 1987

14. Section 1 of the Intestate Succession Act, 1987, is hereby amended—

20 (a) by the deletion of paragraph (c) of subsection (4); and

(b) by the addition of the following subsections:
25 “(6) If a descendant of a deceased, excluding a minor or mentally ill descendant, who, together with the surviving spouse of the deceased, is entitled to a benefit from an intestate estate renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse.

30 (7) If a person is disqualified from being an heir of the intestate estate of the deceased, or renounces his right to be such an heir, any benefit which he would have received if he had not been so disqualified or had not so renounced his right shall, subject to the provisions of subsection (6), devolve as if he had died immediately before the death of the testator and, if applicable, as if he was not so disqualified.”.

Transitional clause

35 15. The provisions of this Act are, subject to the provisions of section 7 of the Wills Act, 1953 (Act No. 7 of 1953), not applicable to a will of which the testator died before the commencement of this Act.

Short title and commencement

40 16. This Act shall be called the Law of Succession Amendment Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.