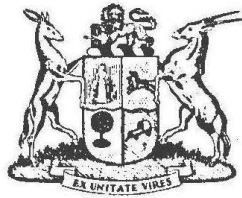


Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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GOVERNMENT GAZETTE

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KAAPSTAD, 6 JULIE 1983

OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 1466.

6 July 1983

No. 1466.

6 Julie 1983

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

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

No. 86 of 1983: Administration of Estates Amendment Act, 1983.

No. 86 van 1983: Boedelwysigingswet, 1983.

Act No. 86, 1983

ADMINISTRATION OF ESTATES AMENDMENT ACT, 1983

GENERAL EXPLANATORY NOTE:

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

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Administration of Estates Act, 1965, so as to further regulate the duties, functions and powers of the Master, executors and appraisers; to further regulate the liquidation of insolvent deceased estates; to make further provision for the sale of property in an estate; and to replace certain obsolete provisions; and to provide for matters connected therewith.

*(English text signed by the State President.)
(Assented to 27 June 1983.)*

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

Amendment of
section 4 of
Act 66 of 1965.

1. Section 4 of the Administration of Estates Act, 1965 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subparagraph (ii) of the proviso to sub- 5 section (2) of the following subparagraph:

“(ii) in the case of any mentally **[disordered or defective]** ill person who **[is]** under the **[Mental Disorders Act, 1916 (Act No. 38 of 1916)]** Mental Health Act, 1973 (Act No. 18 of 1973), has been received or is detained in any 10 place, jurisdiction shall lie with the Master who, immediately prior to such reception or detention, had jurisdiction in respect of his property under paragraph (a) or (b).”

Amendment of
section 6 of
Act 66 of 1965.

2. Section 6 of the principal Act is hereby amended by the 15 substitution for subsection (5) of the following subsection:

“(5) Every appraiser shall, in respect of every appraisal made by him, be entitled to a reasonable remuneration which shall be assessed according to a prescribed tariff of fees, and shall in case of a dispute regarding the correct- 20 ness thereof submit his account to the Master for taxation.”

Amendment of
section 7 of
Act 66 of 1965.

3. Section 7 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the person signing any death notice was not pres- 25 ent at the death, or did not identify the deceased after death, **[the Master may call upon any person having any interest in the estate for]** such person shall furnish the Master with proof of the death.”

Amendment of
section 18 of
Act 66 of 1965,
as amended by
section 1 of
Act 15 of 1978
and section 1 of
Act 90 of 1981.

4. Section 18 of the principal Act is hereby amended by— 30

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Master shall, subject to the provisions of subsections (3), **[(4)]** (5) and (6)—”;

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- (b) the substitution in subsection (1) for the words following on paragraph (f) of the following words:
 “appoint and grant letters of executorship to such person or persons whom he may deem fit and proper to be executor or executors of the estate of the deceased, or, if he deems it necessary or expedient, by notice published in the *Gazette* and in such other manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the surviving spouse (if any), the heirs of the deceased and all persons having claims against **[his]** the estate, to attend before him or, if more expedient, before any other Master or any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as executor or executors, a person or a specified number of persons.”;
- (c) the substitution for subsection (2) of the following subsection:
 “(2) If the Master has published a notice under subsection (1) he shall, on receipt of **[such]** the recommendation in question or when it appears that the persons concerned have failed to make any recommendation, **[the Master shall]** subject to the provisions of subsection (3) and sections 19, 22 and 23, unless it appears to him to be necessary or expedient to postpone the appointment and to publish another notice under subsection (1), appoint and grant letters of executorship to such person or persons as he deems fit and proper to be executor or executors of the estate of the deceased.”;
- (d) the substitution for subsection (3) of the following subsection:
 “(3) If the value of any estate does not exceed R15 000, the Master may dispense **[with a notice under subsection (1) and]** with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated and distributed.”;
- (e) the deletion of subsection (4); and
- (f) the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
 “The Master may at any time **[without any such notice]**—”

Amendment of section 19 of Act 66 of 1965.

5. Section 19 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“If **[at any meeting in pursuance of a notice under section 18 (1)]** more than one person is nominated for recommendation to the Master, the Master shall, in making any appointment, give preference to—”

Amendment of section 27 of Act 66 of 1965.

6. Section 27 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) An executor who has been ordered thereto by the Master or who in terms of section 23 was required to find security, shall—

(a) within thirty days after letters of executorship have been granted to him, or within such further period or periods as the Master may allow, lodge with the Master an inventory in the prescribed form signed by him in person showing the estimated value of all property in the estate; and

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(b) thereafter, whenever he comes to know of any such property which is not mentioned in any inventory lodged by him with the Master, within fourteen days after he has come to know of such property, or within such further period as the Master may allow, lodge with the Master an additional inventory so signed by him showing the estimated value thereof.”; 5

(b) the substitution for subsection (2) of the following subsection: 10

“(2) If [any executor has] in any inventory lodged with the Master [placed upon any property a value] in terms of section 9 or subsection (1) of this section, any estimate has been made of the value of any property which the Master has reason to believe is not [the true value] a reasonably correct estimate thereof, the Master may, at the expense of the estate, [cause the value of] order that property to be appraised by an appraiser or any other person approved by the Master.”; and 15 20

(c) the deletion of subsection (3). 20

Amendment of section 28 of Act 66 of 1965, as substituted by section 3 of Act 79 of 1971.

7. Section 28 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) An executor—

(a) shall, unless the Master otherwise directs, as soon 25 as he has in hand moneys in the estate in excess of [forty rand] R100, open [an] a cheque account in the name of the estate with a banking institution in the Republic and shall deposit therein the moneys which he has in hand and such other moneys as he 30 may from time to time receive for the estate;

(b) may [with the written permission of the Master] open a savings account in the name of the estate with a banking institution or a building society and may transfer thereto so much of the moneys de- 35 posited in the account referred to in paragraph (a) as is not immediately required for the payment of any claim against the estate;

(c) may [with the written permission of the Master] place so much of the moneys deposited in the ac- 40 count referred to in paragraph (a) as is not immediately required for the payment of any claim against the estate on interest-bearing deposit with a banking institution or a building society.”; and

(b) the substitution for subsection (3) of the following sub- 45 section:

“(3) No executor who in compliance with a request of the Master under subsection (2), has notified the Master of the office or branch of the banking institution or building society with which he has opened an account 50 referred to in subsection (1) shall transfer any such account from any such office or branch to any other such office or branch, except after written notice to the Master.”.

Amendment of section 29 of Act 66 of 1965, as amended by section 2 of Act 15 of 1978.

8. Section 29 of the principal Act is hereby amended by the 55 deletion of the proviso to subsection (1).

Amendment of section 30 of Act 66 of 1965, as amended by section 3 of Act 15 of 1978.

9. Section 30 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) thereafter, unless, in the case of property of a value not exceeding [five hundred rand] R5 000, the Master or, 60 in the case of any other property, the Court otherwise directs.”.

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Substitution of section 34 of Act 66 of 1965, as amended by section 4 of Act 15 of 1978.

10. (1) The following section is hereby substituted for section 34 of the principal Act:

"Insolvent deceased estates.

34. (1) On the expiry of the period specified in the notice referred to in section 29 the executor shall satisfy himself as to the solvency of the estate and, if the estate is found to be insolvent then or any time before distribution under subsection (12) of section 35; he shall forthwith by notice in writing (a copy of which he shall lodge with the Master) report the position of the estate to the creditors, informing them that unless the majority in number and value of all the creditors instruct him in writing within a period specified in the notice (not being less than fourteen days) to surrender the estate under the Insolvency Act, 1936 (Act No. 24 of 1936), he will proceed to realize the assets in the estate in accordance with the provisions of subsection (2): Provided that—

- (a) no creditor whose claim amounts to less than R100 shall be reckoned in number;
- (b) any creditor holding any security which a trustee would under section 83 of the said Act have been authorized to take over if the estate had been sequestrated, shall, if called upon to do so in writing by the executor, place a value thereon within the period specified by the executor, and shall be reckoned in respect of the balance of his claim which is, according to such valuation, unsecured; and
- (c) if any creditor fails to place a value on any such security within the said period, he shall not be reckoned as a creditor for the purpose of this subsection.

(2) If after the expiry of the period specified in the notice under subsection (1) the executor has not in accordance with such notice been directed to surrender the estate, he shall, after the creditors have been notified in writing, for a period not being less than fourteen days, of the manner and conditions of the intended sale of the assets, sell the assets in the estate.

(3) A creditor may at any time before the sale of an asset lodge with the executor an objection to the intended sale of that asset, and shall send a copy of that objection to the Master.

(4) After considering the objection, any comment the executor may have made regarding the objection and the further particulars which the Master may have required, the Master shall order the executor to proceed with the sale or give any other order regarding the sale of the asset as he thinks fit.

(5) In so far as a date of sequestration is relevant for the purposes of the distribution of an estate under this section, such date shall be deemed to be the date immediately following the date on which the period specified in the notice given in respect of the estate in question under subsection (1), has expired.

(6) If any creditor has under paragraph (b) of the proviso to subsection (1) placed a value on any security, the executor may at any time within six weeks thereafter deal therewith *mutatis mutandis* in the manner provided in section 83 of the Insolvency Act, 1936.

(7) (a) An executor shall, as soon as may be after the expiry of the period specified in a notice referred to in subsection (1), but within—

(i) six months after letters of executorship have been granted to him; or

(ii) such further period as the Master may in any case allow,

submit to the Master an account in the prescribed form, supported by vouchers, of the liquidation and distribution of the estate.

(b) Such account shall provide for the distribution of the proceeds in the order of preference prescribed under the Insolvency Act, 1936, in the case of a sequestrated estate.

(8) The Master may at any time in any case in which he has exercised his powers under subsection (7) (a) (ii) or in which an executor has funds in hand which ought, in the opinion of the Master, to be distributed or applied towards the payment of debts, direct the executor in writing to submit to him within a specified period an interim account in the prescribed form, supported by vouchers.

(9) The provisions of subsections (3) to (11), inclusive, of section 35 shall *mutatis mutandis* apply with reference to any account referred to in this section.

(10) When an account has lain open for inspection and—

(a) no objection has been lodged; or

(b) an objection has been lodged and the account has been amended in accordance with the Master's direction and has again lain open for inspection and no application has been made to the Court to set aside the Master's decision; or

(c) an objection has been lodged but has been withdrawn or has not been sustained, and no such application has been made to the Court within the said period,

the Master shall confirm the account and his confirmation shall be conclusive save as against a person in whose favour the Court may, before a dividend has been paid out in accordance with the account, have granted an order to reopen the account.

(11) When an account has been confirmed by the Master, the executor shall forthwith pay the creditors and distribute the estate among the heirs, if any, in accordance with the account, and lodge with the Master the receipts and acquittances of the creditors and heirs, if any: Provided that a cheque purporting to be drawn payable to a creditor or heir in respect of any claim or share due to him and paid by the banker on whom it is drawn, may be accepted by the Master in lieu of any such receipt or acquittance.

(12) The executor shall not later than two months after the estate has become distributable in terms of subsection (11), pay to the Master for deposit in the guardian's fund on behalf of the persons entitled thereto, all moneys which he has for any reason been unable to distribute in accordance with the account.

(13) The provisions of this section shall not prevent the sequestration of any estate in terms of the Insolvency Act, 1936."

(2) If before the commencement of subsection (1) an executor has reported to the Master that an estate is insolvent, that estate shall be dealt with as if section 34 of the principal Act had not been substituted by subsection (1).

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(3) Subsection (1) shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Amendment of section 35 of Act 66 of 1965, as amended by section 5 of Act 15 of 1978.

11. Section 35 of the principal Act is hereby amended by—

(a) the substitution for subsection (1) of the following subsection: 5

“(1) An executor shall, as soon as may be after the last day of the period specified in the notice referred to in section 29 (1), but within—

(a) six months after letters of executorship have been granted to him [if the gross value of the estate exceeds five thousand rand]; or 10

[(b) three months after letters of executorship have been granted to him if the gross value of the estate does not exceed five thousand rand; or

(c) (b) such further period as the Master may in any case allow, 15

submit to the Master an account in the prescribed form, supported by vouchers, of the liquidation and distribution of the estate.”; and

(b) the substitution for subsection (2) of the following subsection: 20

“(2) The Master may at any time in any case in which he has exercised his powers under paragraph [(c)] (b) of subsection (1) or in which an executor has funds in hand which ought, in the opinion of the Master, to be distributed or applied towards the payment of debts, direct the executor in writing to submit to him an interim account in the prescribed form, supported by vouchers, within a period specified.” 25

Amendment of section 42 of Act 66 of 1965, as substituted by section 19 of Act 102 of 1967.

12. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30

“(1) Except as is otherwise provided in subsection (2), an executor who desires to have any immovable property registered in the name of any heir or other person legally entitled to such property or to have any endorsement made under section 39 or 40 shall, in addition to any other deed or document which he may be by law required to lodge with the registration officer, lodge with the said officer a certificate by [the Master] a conveyancer that the proposed transfer or endorsement, as the case may be, is in accordance with the liquidation and distribution account.” 35 40

Substitution of section 47 of Act 66 of 1965.

13. The following section is hereby substituted for section 47 of the principal Act:

“Sales by executor.

47. Unless it is contrary to the will of the deceased, an executor shall sell property (other than property of a class ordinarily sold through a stockbroker or a bill of exchange or property sold in the ordinary course of any business or undertaking carried on by the executor) in the manner and subject to the conditions which the heirs who have an interest therein approve in writing: Provided that— 45 50

(a) in the case where an absentee, a minor or a person under curatorship is heir to the property; or

(b) if the said heirs are unable to agree on the manner and conditions of the sale, 55

the executor shall sell the property in such manner and subject to such conditions as the Master may approve.”

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Amendment of
section 51 of
Act 66 of 1965.

14. Section 51 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) An executor shall not be entitled to receive any remuneration before the estate has been distributed as provided in section 34 [(4)] (11) or 35 (12), as the case may be, unless payment of such remuneration has been approved in writing by the Master.”.

Substitution of
section 53 of
Act 66 of 1965.

15. The following section is hereby substituted for section 53 of the principal Act:

“Absence of executor from Republic. 53. An executor shall not be absent from the Republic for a period exceeding 60 days unless—
(a) the Master has before his departure from the Republic granted him permission in writing to be absent;
(b) he complies with such conditions as the Master may think fit to impose; and
(c) he has given such notice of his intention to be so absent as the Master may have directed.”.

Amendment of
section 54 of
Act 66 of 1965.

16. Section 54 of the principal Act is hereby amended by—

(a) the deletion of subparagraph (i) of paragraph (a) of subsection (1); and

(b) the substitution for subparagraph (ii) of paragraph (b) of subsection (1) of the following subparagraph:

“(ii) if he fails to comply with a notice under section 23 (3) within the period specified in the notice or within such further period as the Master may allow [and was, prior to the issue of such notice, under an obligation to find security for the proper performance of his functions]; or”.

Amendment of
section 73 of
Act 66 of 1965.

17. Section 73 of the principal Act is hereby amended by—

(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Master may, subject to the provisions of subsections (2), [and] (3) and (4)—”;

(b) the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) in any case in which it would, in terms of the proviso to [subsection (1) of section sixty-two of the Mental Disorders Act, 1916 (Act No. 38 of 1916)] section 56 (1) of the Mental Health Act, 1973 (Act No. 18 of 1973), be competent for a judge in chambers to appoint a curator; or”;

(c) the substitution for subsection (2) of the following subsection:

“(2) Subsections (2), [(4)] (5) and (6) of section 18 shall *mutatis mutandis* apply with reference to tutors and curators: Provided that for the purposes of the application under this subsection of the said subsection (2), the reference to section 18 (3) and to section 19 shall be deemed to be omitted.”; and

(d) the addition of the following subsection:

“(4) The Master may, if the value of the property of any minor or absentee or other person referred to in subsection (1) does not exceed R5 000, without any notice under that subsection, appoint and grant letters of tutorship or curatorship to such person or persons as he deems fit and proper as tutor or tutors or curator or curators, as the case may be.”.

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Amendment of section 77 of Act 66 of 1965.

18. Section 77 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every person appointed or to be appointed tutor or curator as provided in section 72 (1) (d) or (2) or under section 73 or 74, shall, before letters of tutorship or curatorship are granted or signed and sealed, or any endorsement is made, as the case may be, and at any time thereafter when called upon by the Master to do so, find security or additional security to the satisfaction of the Master in an amount determined by the Master, for the proper performance of his functions.”

Substitution of section 87 of Act 66 of 1965.

19. The following section is hereby substituted for section 87 of the principal Act:

“Moneys in guardian’s fund to be deposits for purposes of Act 2 of 1969. 87. The moneys in the guardian’s fund shall be deemed to be deposits for the purposes of the Public Debt Commissioners Act, [1911] 1969 (Act No. 2 of 1969), and the Master may from time to time pay out of any working balance retained at his disposal under the said Act, any amounts due and payable out of the said fund.”

Amendment of section 90 of Act 66 of 1965.

20. Section 90 of the principal Act is hereby amended by the substitution for the proviso of the following proviso:

“Provided that, subject to the terms of any such will or instrument, the aggregate of the payments made in the case of any minor or other person for purposes of maintenance, education or other benefit shall not, without the sanction of the Court, exceed [four thousand rand] R10 000 of the capital amount received for account of the minor or other person concerned.”

Substitution of section 91 of Act 66 of 1965.

21. The following section is hereby substituted for section 91 of the principal Act:

“Publication of list of unclaimed moneys. 91. The Master shall in the month of September of each year cause to be published in the *Gazette* a list of all amounts of [twenty rand] R100 or more in the guardian’s fund, other than the amounts deposited therein in terms of section 93 (3) (a), which have been claimable and have remained unclaimed by the persons entitled thereto for a period exceeding one year but not exceeding [five] three years.”

Amendment of section 93 of Act 66 of 1965, as amended by section 4 of Act 79 of 1971.

22. (1) Section 93 of the principal Act is hereby amended by—
(a) the substitution for subsection (1) of the following subsection:

“(1) Every person carrying on business in the Republic shall in the month of January in each year prepare in the prescribed form and publish in the *Gazette* [separate] a detailed [statements] statement in respect of all amounts of one rand or more [but of less than twenty rand and all amounts of twenty rand or more] which were held by him or by any agent on his behalf in the Republic on the thirty-first day of December of the immediately preceding year and which were not his property or subject to any valid lien, but at the time of the preparation of the said [statements] statement have remained unclaimed for a period of five years or more by the rightful owners.”;

(b) the substitution for subsection (2) of the following subsection:

“(2) Any person who has prepared the said [state-

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ments] statement for publication, may deduct from the said amounts the cost of publication apportioned as far as possible among the owners.”; and

- (c) the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 5
 “After the expiration of three months from the date of publication of the said [statements] statement, such person shall forthwith transmit a statement and affidavit in the prescribed form—”.

(2) Subsection (1) shall come into operation on a date fixed by 10 the State President by proclamation in the *Gazette*.

Amendment of section 102 of Act 66 of 1965, as amended by section 7 of Act 15 of 1978.

23. Section 102 of the principal Act is hereby amended by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) contravenes or fails to comply with the provisions of 15 section 9 (1) or (3), 13, 27 (1) [or (3)] or of the last-mentioned section as applied by section 70 (2), section 35 (13), 47, 57, 65 (1), 71, 78, 83, 93 (1) or (3), or with any notice under section 9 (2) or any order under section 58 (1), or hinders or obstructs any accountant 20 nominated by the Master in terms of section 65 (1) (a) in the execution of his duty; or”.

Short title.

24. This Act shall be called the Administration of Estates Amendment Act, 1983.