



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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Sub Office File: 7/1/1

1 July 2016

CIRCULAR ⁶⁵ OF 2016
(HEAD OFFICE FILE 12/4/3)

CHIEF MASTERS DIRECTIVE 3 OF 2016 – DECEASED ESTATES: DEALING WITH AN EXECUTOR'S APPLICATION FOR DISCHARGE

1. Your attention is drawn to the contents of the attached Directive with regards to DECEASED ESTATES: DEALING WITH AN EXECUTOR'S APPLICATION FOR DISCHARGE
2. This Directive is effective from **30 June 2016** and should be implemented as such.
3. Any enquiries should be addressed in writing to the Office of the Chief Master.

Adv. L G Basson
Chief Master

TO ALL OFFICES IN THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT



CHIEF MASTER'S DIRECTIVE 3 OF 2016

DECEASED ESTATES: DEALING WITH AN EXECUTOR'S APPLICATION FOR DISCHARGE

1. PURPOSE OF THIS DIRECTIVE

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

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

2. BACKGROUND

- 2.1 In terms of section 56(1) and (3) of the Administration of Estates Act 66 of 1965, an executor may apply to the Master to be discharged from his duties as the appointed executor, upon completion of his/her liquidation and distribution of the estate, to the satisfaction of the Master.
- 2.2 Subject to the provisions of section 17 of the Estate Duty Act 45 of 1955, the executor can then be discharged from his/her duties.
- 2.3 If such discharge has been given by the Master, no person shall institute any legal proceedings against any person who has been so discharged, in respect of any claim against the deceased estate or any benefit out of that estate.
- 2.4 This, however, does not exempt any such discharged executor from liability in respect of any fraudulent dealing in connection with the estate or the liquidation or distribution thereof, whilst he/she was still executor. (Sec 56(2))

- 2.5 The discharged executor may, after 2 years and with consent of the Master, in writing, destroy all books and documents in his/her possession relating to the estate of which he/she was executor. (Sec 56(3))
- 2.6 Though the Act does not prescribe the procedure to be used by an executor in order to apply for such a discharge, the Master created Standard Operating Procedures (SOPS) in order to formalise the procedure to be used.
- 2.7 However, many stakeholders contacted the Office of the Chief Master to obtain clarity on this procedure, as it is not followed uniformly in all offices.
- 2.8 This Directive seeks to achieve the following objectives:-
- 2.8.1 To ensure greater transparency and openness in the functions of the Master;
 - 2.8.2 To establish uniform, fair and transparent procedures to be used by Masters of the High Court in considering the discharge of executors ;
 - 2.8.3 To direct the Masters of the High Court with regard to making appointments of executors and Master's representatives;

3. PROCEDURE TO BE FOLLOWED WHEN DEALING APPLICATIONS FOR DISCHARGE

In terms of the above mentioned agreement, an application for discharge will be dealt with as follows:

- a) An application, **in form of an affidavit**, must be lodged by the applicant with the relevant Master. This affidavit must contain the following information:
 - i) Confirmation that all estate liabilities have been discharged;
 - ii) Confirmation that all assets have been transferred to the rightful heirs and/or legatees;
 - iii) Confirmation that the estate duty has been paid, if applicable;
 - iv) Confirmation that any amounts due to SARS for personal / capital gains taxes have been paid;

- v) That the executor completed all his/her duties as set out in the Administration of Estates Act 66 of 1965;
- vi) Confirmation that the Master has been requested to reduce the Bond (if any) to NIL.
- vii) Confirmation that all records of the estate will be kept for the 2 year period as prescribed in Section 56(3)
- viii) Confirmation that the executor is aware of the fact that such a discharge does not exempt the executor from liability in respect of any fraudulent dealing in connection with the estate or the liquidation or distribution thereof, whilst he/she was still executor;
- ix) The application must be signed by the executor personally.

- b) The executor also needs to attach the original Letter of Executorship (and any certified copies in his/her possession) to his/her application.
- c) Should the Master be satisfied that all requirement set during examination of the estate (in the J248) and that all above mentioned requirements have been met, the Master may proceed to provide the discharge as requested.
- d) It should be noted, that the Master in his/her discretion, and provided he/she has good reason, may request any further requirements he/she deems necessary.

4 EFFECTIVE DATE

This directive recalls other prior Directives. Circulars or instruction on this subject, with effect from the date of signature hereof

This Directive will come into effect as from **date of signature** of this Directive.



Adv. L.G. BASSON

CHIEF MASTER

DATE..... 30/6/2016