

Chief Master's Directive 3 of 2006

Re: Appointment of Executors and/or Master's Representatives in Deceased Estates by the Master

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 a Master must at all times assure the public that the manner in which estates are administered is –
 - 1.2.1. in compliance with the law; and
 - 1.2.2. that the financial and legal interests of all those who may be vulnerable will be protected.
- 1.3. The Chief Master recognizes that –
 - 1.3.1. the procedures and forms used in the appointment of administrators of estates needs 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 way appointments are done.

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 –
- 2.1.1. Section 14 (a) of the Judicial Matters Amendment Act, 2003 which entitles the Chief Master as the executive officer of the Master's offices to "*exercise such supervision over all the Masters in order to bring about uniformity in the practice and procedure*";
 - 2.1.2. Section 3 of the Judicial Matters Amendment Act, 2005 which requires the Chief Master to "*exercise control, direction and supervision over all the Masters*".
 - 2.1.3. Section 2(1) of the Administration of Estates Act
- 2.2. This Directive replaces all previously issued directives in respect of appointments in deceased estates.

3. Scope

- 3.1. This Directive addresses the appointment of executors, and Master's Representatives in terms of the
- 3.1.1. Administration of Estates Act, 1965 (Act No. 66 of 1965);

4. Objectives

- 4.1. This Directive seeks to achieve the following objectives:-
- 4.1.1. Compliance with the Promotion of Administration of Justice Act 3 of 2000.
 - 4.1.2. To ensure greater transparency and openness in the functions of the Master.
 - 4.1.3. Establish uniform, fair and transparent appointment procedures to be used by Masters of the High Court in appointing executors and Master's Representatives;
 - 4.1.4. To direct the Masters of the High Court with regard to making appointments of executors and Master's representatives;
 - 4.1.5. 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 Administration of Estates Act, 1965.
- 5.2. "**Deceased estate**" means (unless otherwise indicated) an estate of a deceased person in terms of the Administration of Estates Act, 1965.
- 5.3. "**Executor**" means the executor as defined in section 1 of the Administration of Estates Act, 1965
- 5.4. "**Master**" means the Master as defined in section 2 of the Administration of Estates Act, 1965.
- 5.5. "**Master's Representative**" means the person appointed in terms of Section 18(3) of the Administration of Estates Act, 1965
- 5.6. "**Administrator**" means the person appointed / to be appointed as either executor or Master's Representative in the estate

6. Implementation

- 6.1. This Directive will be effective as from date of signature of the Chief Master.

7. Reporting documents

The following documents are required when the Master appoints an administrator in an estate.

7.1 Death Notice (J294)

- (a) Every Master is bound by the area of jurisdiction for which he/she is appointed¹.
 - i) 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.²

- (b) Ensure that the deceased's residence falls within your area of jurisdiction.
 - i) If the place of residence falls outside the area of jurisdiction and there is no application³ on record in terms of section 4(1) for the Master to assume jurisdiction, the Master transfer the estate to the appropriate Master's Office with jurisdiction.
 - ii) The Master can only assume jurisdiction with the consent of the Master who has jurisdiction.
 - iii) Once the Master has exercised jurisdiction, for instance by registering and accepting the will, he shall continue to have jurisdiction. In such a case, jurisdiction cannot be transferred to or assumed by another Master.

¹ The Service Point, at the Magistrate's Office where the person was so resident, can make an appointment in the following instances:

- i) The deceased did not leave a valid will and;
- ii) The value of the estate is not more than R50 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 and the cash assets in the estate are worth R20 000 or less.

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

² Note that the advertisements in terms of section 29 and 35, refer to the place the deceased was ordinarily resident *12 months* prior to his death. A person is "ordinarily resident" at the place to which the deceased, or other person concerned, would return from wandering, his real home.

³ A fully motivated application for transfer of jurisdiction should be made by an interested party – not the Master.

- (c) Where the deceased left a will/codicil.
 - i) If the will/codicil has not been lodged yet, it must be called for.
 - ii) If only a copy has been lodged, the original must be called for.
 - iii) The Registry Personnel must also check that there is no "live will"⁴ filed in Registry, and indicate as such on the death notice.
 - iv) If a will/codicil was registered but has not yet been accepted 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.
 - v) Once the will/codicil has been accepted by the Assistant Master, the original will must be filed in the vaults and a copy must be placed on the file by Registry.
 - vi) Any endorsements made on the will/codicil by the Assistant Master, must be noted and taken into account. A will's advice (JM27) must be issued by Registry, which indicates whether a will/codicil has been rejected or endorsed in any way.
 - vii) 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.
- (d) If it is indicated on the death notice that there is a pre-deceased spouse, it has to be ascertained from the pre-deceased spouse's estate that the will in that estate would have any effect on the administration of the estate in question.
- (e) This document must be properly signed.⁵
- (f) A Death Certificate, or certified copy thereof, must be lodged in all estates, accept in matters where the person signing the Death notice was present or identified the body of the deceased. Even though not required by law in the

⁴ 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

⁵ If the document is signed by the making of an "X", the mark of the signatory must be witnessed by a commissioner of oaths.

latter instance, it would be prudent to call for the Death Certificate.⁶

8.1 Marriage Certificate⁷

- (a) An original or certified copy of the Marriage certificate or Proof of Registration, issued by Home Affairs, may be accepted.⁸
- (b) A Marriage Certificate must be lodged where the deceased
 - i) died intestate leaving one/more surviving spouse(s) or
 - ii) died testate and the spouse claims to be an interested party due to his/her half share of the estate in terms of an alleged marriage in community of property, unless such spouse is named the sole heir in the will.

8.2 Original Will⁹

- (a) The original Will, if any, must be lodged or a duplicate original Will. (Refer to section 8(4B)).¹⁰
- (b) Only copies of registered and accepted wills or codicils must be on file.
- (c) Copies of invalid / rejected wills or codicils are not kept on file, only a note containing the date of the will and the reason why it is invalid / rejected is filed in the file.

⁶ When the deceased died of unnatural causes, a death certificate is not issued immediately. The interim proof of death document is then sufficient. An Presumption of Death order by Court will also be sufficient, where no Death Certificate has been issued.

⁷ The marriage certificate serves as proof of the existence of the marriage and determines the preference in terms of section 19 of the Act

⁸ In this regard also see *Daniels v Campbell and Others* 2004(5) SA 331 (CC) and *Khan v Khan* 2005(2) SA 272 TPD.

⁹ Any reference to a will includes a reference to a codicil where applicable.

¹⁰ Once the above documents have been lodged, the examiner must request Registry to refer the original Will to the Assistant Master for acceptance.

8.3 Next-of-Kin Affidavit (J192)

- (a) The Next-of-Kin Affidavit should be called for where the deceased
 - i) left no Surviving Spouse or
 - ii) left a surviving spouse, but he/she will no be the sole heir and/or
 - iii) left no valid will, indicating the heirs or
 - iv) left a will nominating heirs in a class, without specific mention of the name of the heirs.¹¹
- (b) The Next-of-Kin affidavit must be completed by someone who knew the deceased and his/her family well.
- (c) A Commissioner of Oaths, and the person making the affidavit, must sign the Next-of-Kin affidavit, as well as any annexure attached thereto. Any alterations or amendments must also be signed accordingly.

8.4 Inventory (J243)

- (a) A provisional inventory must be lodged in terms of section 9 within 14 days after date of death of the deceased.
- (b) If the deceased was married in community of property, the assets of the joint estates of the deceased and the surviving spouse must be reflected in the inventory.
- (c) The value of assets must be included as this will indicate what type of appointment must be issued.¹²
- (d) 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.¹³
- (e) Where an estate is to be administered in terms of Section 18(3), a municipal valuation must be lodged as proof of

¹¹ E.g. "my children", "my sons" etc.

¹² Although an executor is not usually appointed in an estate where the asset value is R125 000 or less, there may be cases where the Assistant Master would decide to appoint an executor rather than to make an appointment in terms of section 18 (3). Also see Amended Master's Instruction no 6 dated 04 June 1992.

¹³ Section 9(1)(iii)

the value of the mentioned assets.

- (f) The inventory must be signed and dated.

8.5 List of creditors (MBU 4)

- (a) In all estates, which are administered in terms of Section 18(3), a full list of creditors must be provided on the form J155
- (b) Where this part of the J155 has not been completed, written confirmation must be provided that there are no creditors or a separate list must be provided.

8.6 Declaration: Reporting (MBU 5)

- (a) In all estates, where the assets are valued at R50 000, or less, a declaration must be provided by the applicant, that the matter has not been reported to any Service Point, in the form of MBU 5
- i) This form must be dated and duly signed

8.7 Declaration of subsisting marriages and or co-habitation relationship

- (a) In all estates, a declaration must be provided by the applicant, indicating if the deceased was a partner in of any of the following:
- i) One/more subsisting Customary marriages¹⁴ or
- ii) One/more subsisting Religious marriages¹⁵ or
- iii) A same sex co-habitation relationship¹⁶ or

¹⁴ Recognition of Customary Marriages Act 120 of 1998

¹⁵ Daniels v Campbell 2004(5) SA 331 CC; Khan v Khan 2005(2) SA 272 T; Amod v Multi Lateral Motor Vehicle Accident Fund (Commission for Gender Equality intervening) 1999(4) SA 1319 SCA; Ryland v Edras 1997(2) SA 690 C

¹⁶ Mark Gory v Daniel Gerhardus Kolver NO and Others (Erilda Stark & others intervening) Case no. CCT 28/06

- iv) A Civil marriage¹⁷
- (b) If any of the above is applicable, full details must be provided consisting of:
 - i) Full names of all partners
 - ii) ID number of each partner(if available)
 - iii) Contact particulars of each partner(if available)

8.8 Nominations

- (b) Where the deceased
 - i) died intestate or
 - ii) no administrator has been nominated in a valid will or
 - iii) the nominated administrator is untraceable, incapacitated or refuses to act¹⁸ or
 - iv) the nominated administrator in the will is deceased and no provision and no provision is made in the will to substitute or
 - v) the nominated administrator in the will, when called upon by the Master, by notice in writing to take out letter of 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 RepresentativeThe Master must in every of the above-mentioned consider the calling of a meeting in terms of section 18 for the purposes of electing an executor.
- (c) Nominations should only be obtained from major heirs and/or legal guardians of minor heirs.
- (c) In intestate estates the heirs, in this regard, must be determined by examining the Next-of-Kin Affidavit
- (d) If there is competition for the office of administrator, the Master shall give preference to¹⁹
 - i) the surviving spouse or his/her nominee,
 - ii) an heir or his/her nominee,
 - iii) a creditor or his/her nominee,

¹⁷ Volks v Robinson 2005(5) BLLR 446 CC

¹⁸ Section 18(1)

¹⁹ See the provisions of Section 19 (i) and (ii)

- iv) a tutor/curator so nominated of any heir/creditor who is a minor/ person under curatorship
 - v) where there is more than one surviving spouse, all spouses must be consulted before making an appointment
 - vi) 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.
- (e) If a corporation is nominated as an administrator,
- i) the appointment letter shall be granted to a person who is an officer / director of the nominated corporation and
 - ii) has been duly authorised by the said corporation to act on their behalf and for whose acts and omissions as executor the corporation accept liability;
 - iii) the Corporation nominated in the will as executor, must qualify to liquidate and distribute the estate of a deceased person in terms of R.910, otherwise section 16 cannot be implemented.

8.9 Acceptance of Trust as Executor (J190) / Undertaking and Acceptance of Master's Directions (J155/MB.48)

- (a) Where the gross value of the assets of the estate is more than R125 000 the applicant(s) must complete the J190 in duplicate
- i) Every person applying must complete the J190 in full;
 - ii) The form must be signed and properly witnessed
 - iii) A certified copy of the applicant's ID must be lodged
 - iv) If the applicant is a lay person, 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.
 - v) A legally incapacitated person, such as a minor, may not act as an administrator of a deceased person

- vi) Any Board of Executors, trust company, public accountant and person licensed under Act 44 of 1962, may act as an administrator.²⁰
 - vii) The will must be checked for any endorsement by the Assistant Master, to the effect that the nominated executor is disqualified in terms of Section 4A (3) and 4A(1) of the Wills Act 7 of 1953.
 - viii) A copy of the Acceptance of Trust as Executor must be forwarded to SARS. Make sure that the estate reference number is inserted on the J190 before dispatch.
- (b) Where the gross value of the estate is R125 000 or less, the estate may be administrated in terms of Section 18(3), unless otherwise directed by the Master. Applicant(s) must complete form MB. 48, in duplicate
- i) Every person applying must complete the J155 in full;
 - ii) The form must be signed and properly witnessed
 - iii) A certified copy of the applicant's ID must be lodged
 - iv) A legally incapacitated person, such as a minor, may not act as an administrator of a deceased person
 - v) Instances where the Master may request an executor to be appointed for such an estate:
 - 1) Minors or mental patients being heirs / creditors of the estate²¹
 - 2) Insolvent deceased estates
 - 3) Will determines property to be sold²²
 - 4) Dispute/complaints by creditors and/or heirs

²⁰ 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 exempted from these prohibitions. Natural persons nominated as executor by Will are also exempted 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*, sixth edition, pp A-63 to A-65 or in the latest 2004 edition on pp A-64 to A-66.) A legally incapacitated person, such as a minor, may also not act as executor of the estate of a deceased person - section 18(6) refers.

²¹ Where minors or mental patients are involved, an attorney, bank, trust company or accountant should be appointed in section 18(3) estates. An undertaking should be obtained from this person 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 affected on the Letters of Authority issued in terms of section 18(3). The file should be diarized accordingly.

²² Where immovable property is reflected at municipal valuation, it may appear that the estate is worth R125 000 or less, but the sale of immovable property may result in this amount being exceeded.

8.10 Security in terms of section 23(in estates with a value of more than R125 000)

- (a) Every person who has not been nominated by will, as an executor, must lodge security in terms of section 23;
 - i) in an amount determined by the Master for the proper performance of his functions.
 - ii) The amount is determined by the value reflected in the section 9 inventory (provisional inventory).

- (b) The following persons are exempted 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):
 - (i) 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.
 - (ii) 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.
 - (iii) A person nominated by a will executed after 01 October 1913 and the Master has been directed to dispense with security.
 - (iv) A person who has been exempted from furnishing security by the Court.

- (c) The Master may by notice in writing require any executor (dative of testamentary) to lodge security if:
 - (i) His/Her estate has been sequestrated.
 - (ii) He/She has committed an act of insolvency.
 - (iii) He/She is about to go or has gone to reside outside the Republic
 - (iv) There is good reason for it. Refer to section 23(2), proviso.²³

²³ Where the nominated executor has been convicted of fraud or theft, this may be a "good reason" why he may be required by the Master to find security. Where an executor was ordered by the Master or who in terms of section 23 was required to find security, must within thirty days from date of appointment lodge a section 27 inventory (final inventory), which reflects all the property in the estate. The file must be diarized accordingly. When the inventory is lodged, you should check whether the section 23 security filed, is sufficient to cover all the assets of the estate. If not, additional security should be called for.

8.11 Sequence of documents in an Estate file:²⁴

The 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 (if any)
- iv) Copy of the accepted will (if any)
- v) Next-of-Kin Affidavit (J192)
- vi) Inventory (J234)
- vii) List of creditors of the deceased (MBU 4 -see 8.8 hereunder)
- viii) Declaration confirming that the estate has not been reported to any other Master's Office or service Point (MBU 5)
- ix) Declaration of subsisting marriages
- x) Written Nominations for the appointment of an administrator
- xi) Undertaking and Acceptance (J155) OR Acceptance of Trust as Executor (J190)
- xii) Originally signed copy of Letter of Appointment once issued.

²⁴ A full list of documents can be found in the Code Examiners, and the sequence as set out there in, must be followed.

8. Letters of Appointment²⁵

9.1 Letters of Executorship

- (a) Where the gross value of the assets of the estate is more than R125 000, the Master must, if satisfied that the above requirements have been met, issue the Letters of Executorship which must contain the following:
- i) Estate number
 - ii) Full names and ID number of the Executor
 - iii) 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
 - iv) Full names and ID number of the deceased, including the maiden name of a woman, or previous surnames where the deceased was previously married
 - v) 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.
 - vi) Date of death
 - vii) Signed by the Assistant Master/ Deputy Master / Master
 - viii) Contains a date stamp
 - ix) It should be prepared and signed in duplicate as one copy must be given to the appointee, and the other must be filed on record
- (b) The following documentation must be sent with the Letter of appointment:
- i) Estate Duty Return Form (REV 267)
 - ii) Notice to Creditors of the Deceased (J193)
 - iii) If security was lodged, an inventory in terms of Section 27 must be sent with the letters of appointment.²⁶

²⁵ After sending off the Letter of Appointments the file should be diarized accordingly for the estate account to be lodged or funds to be deposited as mentioned in Footnote 17 above.

²⁶ This must be signed by the executor personally within 30 days after appointment

9.2 Letters of Appointment of Master's Representative (Section 18(3))

- (a) Where the gross value of the estate does not exceed R125 000, the estate may be administrated in terms of Section 18(3), unless otherwise directed by the Master. The Master must, if satisfied that all requirements have been met, issue a Letter of Appointment as Master's Representative which must contain the following :
- i) Estate number
 - ii) Full names and ID number of the appointee
 - iii) 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
 - iv) Full names and ID number of the deceased, including the maiden name of a woman, or previous surnames where the deceased was previously married
 - v) 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
 - vi) Date of death
 - vii) All assets, and the value thereof, as indicated in the Inventory on record
 - viii) Signed by the Assistant Master/ Deputy Master / Master
 - ix) Contains a date stamp
 - x) It should be completed in duplicate as one copy must be given to the appointee, and the other must be filed on record

H EBRAHIM
CHIEF MASTER
MASTER'S BRANCH

DATE