



## the doj & cd

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

# Chief Masters Directive 4 of 2007

### 1. Purpose

The purpose of the directive is to ensure a uniform approach by Masters in respect of the matters listed below.

### 2. Motivation / Background

A number of role players have approached my Office for clarity on certain matters. As part of my statutory obligations I have decided to provide the following guidelines to ensure a uniform approach by Masters to the matters raised.

All previous Master's Directives on points addressed by this Chief Master's Directive are revoked.

### 3. The following has been decided:

- Municipal Valuations and executors fees

**The Chief Master's previous communiqué in respect of asset valuations remain in force. It has been communicated to the Industry as follows:**

The recent rapid increase in immovable property values has brought about the need to reassess concessions made in the past by the Chief Master concerning the use of alternative means of appraising property in deceased estates.

Among the concessions referred to above is the permission to use other valuations such as municipal and estate agents valuations to value immovable property for administration purposes. Municipal valuations often do not reflect the commercial value of immovable property.

The value of immovable property in deceased estates is important for a number of reasons.

I am desirous to limit costs for beneficiaries to the minimum and to ensure that valuations do not become unrealistic or unfair.

I need to provide guidelines to the Masters on a uniform approach to the valuation of immovable property in deceased estates.

- The **Administration of Deceased Estates Act 66 of 1965 (the Act)** provides for appraisers to be appointed for the purpose of placing values on assets in deceased estates.
- In any estate where the value of property is in doubt or dispute it would be correct for the executor to obtain, at the estate's expense, an appraisal from an appraiser appointed in terms of the **Act**.
- The costs of any valuation in an estate will be limited to an amount to which an appraiser, appointed in terms of the **Act**, would be allowed in terms of the regulations to the **Act**.
- The issue of the increase or reduction of executor's remuneration remains within the discretion of the Master in terms of the **Act**. The Master's discretion must be exercised judiciously.

- **Section 18(3): Jurisdictional value**

The recommendation by the South African Law Reform Commission to have the jurisdiction of Masters increased to R500 000.00 in terms of **Section 18(3) of the Act** is supported.

Concerns that this increase may expose minors and other vulnerable beneficiaries to unnecessary risks must be met by Masters exercising their discretion cautiously.

The reasons for an appointment in terms of **Section 18(3)** in matters where there are minor beneficiaries, absent or undetermined heirs, maintenance claims or the interests of any person not able to protect his/her own interests, must be clearly recorded in the file and available for scrutiny during quality control processes.

- **Dispensing of Bank accounts where an executor uses an attorney's trust account**

The Chief Master supports the view of the **Law Societies of South Africa** that Masters should dispense with the requirement to open an estate bank account in matters where a practising attorney uses his/her Trust Account to administer the deceased estate's funds.

This dispensation is granted on the premise that the executor accepts and retains the responsibility to have deceased estate funds invested in the name of the estate in an

interest bearing account. The attorney must communicate this responsibility to the executor who must confirm his consent thereto in writing.

Any failure to duly invest funds not required for distribution or administration purposes will amount to negligence for which the attorney must assume liability.

The attorney must also undertake to pay into the Guardian's Fund, on demand of the Master, any funds he/she holds for an estate.

- **Transfer of immovable properties in small estates**

Masters must take reasonable care that immovable properties in small estates are transferred to beneficiaries. This obligation should be discharged by notice to the Deeds Office and a directive in their letters of appointment, to appointees of their responsibility to transfer the property.

- **Customary adoption of minor children**

The legal interests of minors can only be protected by duly authorised guardians. Masters have a responsibility to ensure that guardians have the *locus standi* to attend to the affairs of a minor child.

Masters should be aware that there is proposed legislation to provide for the recognition of customary law adoptions.

Two decisions in which customary adoption was recognised are:

- 1) **Kewana v Santam Insurance C. Ltd 1993 (4) SA 771 (TKA)**
- 2) **Thibela v Minister van Wet en Orde en Andere 1994 (6) SA 147 (T).**

Further authority on this point is **Section 1 of the Children's Act 38 of 2005** which came into operation on 1 July 2007. It defines an '*adopted child*' as "*a child adopted by a person in terms of any law*"

- **Prefixes for Inter Vivos Trusts**

The request by members of the public to affix prefixes to Inter Vivos Trusts that would enable them to distinguish and identify trusts in various Masters Offices cannot be acceded to. The new ICMS registration system will adequately address any concerns in this regard.

- **Selling of property in Section 18(3) estates - Masters certificate**

The provisions of **Section 42(2)** of the Act do not apply in **Section 18(3)** estates. The Master cannot therefore issue a **Section 42(2)** certificate in **Section 18(3)** estate. Masters should ensure that an appointment in terms of **Section 18(3)** is revoked if the value of the assets in an estate exceeds the **Section 18(3)** limit.

- **Reg 910 - where the executor does the estate him/herself**

Masters should guard against misreading the provisions of **Reg 910**.

There is no need to insist on an agent where the nominated executor in a will indicates that he/she will administer the estate personally.

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.

- **Withdrawal of signing/acting appointment**

When a person has been appointed as an Acting Deputy or Assistant Master by the Chief Master, such appointment can only be withdrawn by the Chief Master. Masters are entitled to allocate and withdraw work from such Acting Appointee as the Master deems fit.

- **Accuracy of Home Affairs documentation**

The Chief Master interacts with several stake holders. One of the stake holders is the Department of Home Affairs. The interaction provides a platform to discuss areas of concern. One of those areas is the reliability of the Home Affairs documentation.

Should any master come across any incorrect documents, the incident must immediately be reported to the Office of the Chief Master.

- **Standing Committee on Deceased Estates**

The purpose of standing committees is to discuss matters at a more detailed level than could be done at management meetings. This provides an opportunity for in depth analysis of issues and transfer of skills.

The standing committee will report to the Masters' Management meeting. The standing committees may determine the frequency of their meetings. It is recommended that they meet quarterly.

- **Legislative changes to provide for the ability to join executor**

In the past several requests have been made for legislation to give the Master the discretion to appoint a co- executor for good cause.

This approach is not supported. Masters should avail themselves of the remedies in the **Act** to deal with recalcitrant executors.

- **Postages and Petties**

The minimum amounts that are allowed for postages and petties in estates have been adjusted as follows for Accounts lodged on or after 1<sup>st</sup> August 2007:

Deceased Estates	R 150.00
Curators & Tutors	R 200.00
Insolvencies: Postages and Petties	R 350.00
Per proved creditors	R 14.00
Storage fee	R 600.00
Subsequent accounts	R 200.00

This determination will replace all previous amounts allowed for the abovementioned items in any Master' Directive.

It remains within the Master's discretion to allow any additional amount for the abovementioned expenses if acceptable vouchers are submitted. These vouchers must remain on file for scrutiny.



Hassen Ebrahim  
Chief Master  
12 July 2007