

# SERVICES OF THE MASTER OF THE HIGH COURT

*Last Will and Testament*

ADMINISTRATION OF DECEASED ESTATES • CUSTOMARY LAW OF SUCCESSION • DYING WITHOUT A WILL • TRUST • THE GUARDIAN'S FUND • CURATOR



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

# TABLE OF CONTENT

	<b>ADMINISTRATION OF DECEASED ESTATES .....</b>	<b>3</b>
	<b>CUSTOMARY LAW OF SUCCESSION .....</b>	<b>7</b>
	<b>DYING WITHOUT A WILL.....</b>	<b>10</b>
	<b>TRUST .....</b>	<b>12</b>
	<b>THE GUARDIAN'S FUND.....</b>	<b>14</b>
	<b>CURATOR.....</b>	<b>16</b>
	<b>FREQUENTLY ASKED QUESTIONS.....</b>	<b>20</b>
	<b>GLOSSARY OF TERMS .....</b>	<b>30</b>
	<b>GUARDIAN'S FUND CONTACT DETAILS .....</b>	<b>30</b>

## THE ORIGIN OF A DECEASED ESTATE

A deceased estate comes into existence when a person dies and leaves property or a document which is a will or is intended as a will. Such an estate must then be administered and distributed in terms of the deceased's will or failing a valid will, in terms of the Intestate Succession Act, 81 of 1987. The procedure which must be followed to administer a deceased's estate is prescribed by the Administration of Estates Act, 66 of 1965 (as amended).

## WHICH DEATHS MUST BE REPORTED TO THE MASTER?

1. The death of a person who dies within the Republic and leaves property or any document that is a will or is intended as a will.
2. The death of a person who dies outside of the Republic, but who leaves property and/or any document that is a will or is intended as a will, in the Republic.

## WHERE MUST THE ESTATE BE REPORTED?

- One must distinguish between those instances where the deceased was living within the Republic and those where he or she was not living within the Republic.
- Where the deceased was living in the Republic, the estate must be reported to the Master in whose area of jurisdiction the deceased was living 12 months prior to his/her death.
- Where the deceased was not living in the Republic at the time of his/her death, the estate may be reported to any Master, provided it is reported to only one Master. An affidavit in which it is stated that the letters of executorship have not already been granted by any other Master in the Republic, must accompany the reporting documents.
- Since 5 December 2002 all Magistrates' Offices have been declared service points for the Master and estates can be reported there. However, these Service Points have limited jurisdiction. All estates with wills, as well as estates which exceed in value R125 000 where there is no PEAS (Paperless Estate Administration System); R250 000 where there is PEAS will be transferred to the Provincial Master's Office. Therefore it is advisable to report these estates directly to the Master's Office.

## WHEN AND BY WHOM MUST ESTATES BE REPORTED?

The estate of a deceased person must be reported to the Master within 14 days from date of death. The death is to be reported by any person having control or possession of any property or document that is or intends to be a will, of the deceased. The estate is reported by lodging a completed Death Notice and other reporting documents which may be obtained at any Masters office or Magistrates court or on [www.doj.gov.za](http://www.doj.gov.za)

## HOW TO REPORT AN ESTATE TO THE MASTER OR TO A SERVICE POINT OF THE MASTER?

The reporting documents will differ slightly depending on the value of the estate and the type of appointment required. If the value of the estate exceeds R250 000 from 24 November 2014, letters of executorship must be issued and the full process prescribed by the Administration of Estates Act must be followed. However, if the value of the estate is less than R250 000, the Master may dispense with letters of executorship, and issue letters of authority in terms of section 18(3) of the Administration of Estates Act, Act 66 of 1965.

The Magistrates' Offices service points will only have jurisdiction if the deceased did not leave a valid will and the gross value of the estate is less than R 250 000,00. Letters of authority entitles the nominated representative to administer the estate without following the full procedure set out in the Administration of Estates Act.

### *(A) Where the value of the estate exceeds R250 000, the following reporting documents will be required:*

- Completed Death Notice form – J294
- Original or certified copy of the Death Certificate
- Original or certified copy of Marriage Certificate (if applicable) or acceptable proof of marriage, as requested by the Master
- All original wills and codicils or documents intended as such (if any)
- Next-of-Kin Affidavit – J192 (if the deceased did not leave a valid will)
- Completed Inventory form - J243
- Nominations by the heirs for the appointment of an executor in the case of an intestate estate or where no executor has been nominated in the will, or the nominated executor has died or declines the appointment.
- Completed Acceptance of Trust as Executor forms – J190 in duplicate by the person(s) nominated as executor(s) and a certified copy of the photo page of the executor's ID document.
- Undertaking and bond of security – J262(unless the nominated executor has been exempted from providing security in the will, or is the parent, spouse or child of the deceased)
- If the deceased passed away before 2007, a declaration by the next of kin of a deceased person, who has died without leaving a valid will, to the effect that the estate has not already been reported to another Master or Service Point (if applicable).

**(B) Reporting documents where the value of the estate is less than R250 000**

- Completed Death Notice form – J294
- Original or certified copy of the Death Certificate and ID document of the deceased.
- Original or certified copy of Marriage Certificate (if applicable) or acceptable proof of marriage, as requested by the Master
- All original wills and codicils or documents intended as such
- Next-of-Kin Affidavit – J192 (if the deceased did not leave a valid will)
- Completed Inventory form – J243
- List of creditors of deceased (if applicable)
- Nominations by the heirs for the appointment of a Master's Representative in the case of an intestate estate or where no executor has been nominated in the will, or the nominated executor declines the appointment.
- Undertaking and acceptance of Master's directions form – J155.
- If the deceased passed away before 2007, a declaration confirming that the estate has not already been reported to another Master's Office or Service Point of the Master.



## **PROOF OF THE EXISTENCE OF A CUSTOMARY UNION OR ALLEGED SAME-SEX PARTNERSHIP**

Proof of marriage or an alleged permanent same-sex life partnership must be lodged in all instances where such relationship is indicated in the death notice; except in instances where the surviving spouse or same-sex life partner is an heir in terms of a valid will.

The following documents constitute acceptable proof:

(a) An original or certified copy of the Marriage certificate must be lodged where a civil marriage in terms of the Marriage Act, or a marriage or civil partnership in terms of the Civil Union Act, or a customary marriage duly registered in terms of the Recognition of Customary Marriages Act is indicated.

(b) In the case of customary marriages registered after the death of one of the parties, proof of registration issued by the Department of Home Affairs may be accepted as an alternative to a marriage certificate.

(c) Where proof of registration of a customary marriage cannot be lodged, and such proof is required only for purposes of succession, and provided there is no dispute regarding the existence of the customary marriage, a family meeting can be convened by the Master to confirm the existence of the alleged customary marriage.

d) Where the deceased was a husband in more than one customary marriage, any of which was entered into after 15 November 2000, a copy of the contract which regulates the matrimonial property system of the marriages, duly approved by court, in terms of section 7(6) of the Recognition of Customary Marriages Act must be lodged.

(e) If the deceased was married in terms of religious rites without compliance with the Marriages Act (Muslim and Hindu marriages) proof of the marriage from the Muslim Judicial Council or similar religious body or person who performed such marriage, must be lodged.

(f) Where a permanent same-sex life partnership is alleged in the death notice, and the estate is to devolve intestate, an affidavit (form MBU 19) must be lodged as confirmation of the alleged partnership.

The Service Point of the Master can assist with further advice in this regard. When a certificate of registration cannot be lodged, please contact the Master's Office further guidance with regards to the available remedies. The abovementioned reporting documents must be posted to, or handed in at the Master's Office or service point.

## INTRODUCTION

Customary Law has been dramatically affected by the Bhe-decision, which changed the way estates of deceased persons will be distributed. It also changed the way the Department of Justice and Constitutional Development will supervise the administration of deceased estates.

## WHAT HAPPENED IN THE BHE DECISION?

While he was still alive, the deceased lived with Ms Bhe and one of their two daughters in Khayelethu. There was some doubt whether Ms Bhe and the deceased were married or not. Their second daughter lived with the deceased's father in Berlin in the Eastern Cape. The deceased died without will, and his estate was to be distributed in terms of customary law. This meant that the deceased's father would have inherited the estate to the exclusion of Ms Bhe and her two daughters. The estate consisted of a shack and the property on which the shack was built. The father wanted to sell the property to pay for his son's funeral. If he proceeded, Ms Bhe and her children would have been destitute. Ms Bhe applied to Court to have her two daughters declared the only beneficiaries of her husband's estate.

The Constitutional Court held that the customary law of succession was constrained by section 23 of the Black Administration Act, and was not allowed to develop to meet the changes in the society that it was meant to serve. As a result it stagnated and became out of touch with the realities of urbanization and changing family relationships. In its current guise it is unconstitutional since it discriminates on the bases of gender and birth.

## HOW DID THE BHE DECISION CHANGE THE WAY ESTATES WILL BE DISTRIBUTED?

All deceased estates will be distributed in terms of the Intestate Succession Act. This means that the beneficiaries in order of preference are:

- The spouse of the deceased
- The descendants of the deceased
- The parents of the deceased (Only if the deceased died without surviving spouse or descendants)
- The siblings of the deceased (Only if one or both parents are predeceased)The Intestate Succession Act should be read in such a way that it can accommodate cases where the deceased was a husband in polygamous customary union:
  - When the deceased left only spouses and no descendants, the wives will inherit the estate in equal shares.
  - When the deceased left spouses and descendants, the spouses and descendants will inherit the estate in equal shares, but
  - Each wife should inherit at least R 250 000
  - When the estate is not large enough to allow each wife to inherit
  - R250 000, the spouses will inherit the estate in equal shares while the descendants will not receive anything.

## WHO IS A SPOUSE FOR PURPOSES OF INTESTATE SUCCESSION?

As starting point it can be said that any party to a valid marriage in terms of the Marriage Act, 25 of 1961 (a civil marriage) is regarded as a spouse for purposes of intestate succession.

A party in a subsisting customary marriage which is recognized in terms of section 2 of the Recognition of Customary Marriages Act, 120 of 1998 is also a spouse for intestate succession purposes. These marriages include customary marriages which were validly concluded before the Act came into operation, and which still existed at the commencement of the Act (15 November 2000) as well as marriages concluded in terms of the provisions of the Act after the commencement of the Act.

Section 3(1) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 11 of 2009, which came into operation on 20 September 2010, has created a further group of women who qualify as spouses for intestate succession purposes. They are the seed-bearing woman in terms of Customary Law.

Persons married in terms of Muslim and Hindu religious rites should be regarded as spouses for purposes of intestate succession and are entitled to inherit from their deceased partner in terms of the Intestate Succession Act, despite the fact that their “marriage” is not recognised as a valid marriage in terms of our current law.

Persons who died before 1 December 2006, and were partners in a same-sex life partnership at the time of their death, should be regarded as “spouses” for purposes of intestate succession, while persons in same-sex relationships who died on or after 1 December 2006 should only be regarded as “spouses” if they had entered into a marriage or civil partnership in terms of the Civil Union Act.

## HOW DID THE BHE DECISION CHANGE THE WAY THE ADMINISTRATION OF ESTATES WILL BE SUPERVISED?

After the Bhe decision deceased estates will all be administered in terms of the Administration of Estates Act. [Act 66 of 1966(as amended)]. This implies the following changes to current practice:

- Magistrates will no longer supervise and administer deceased estates; only the Master of the High Court will do so.
- The Master of the High Court does not have the power to administer estates on behalf of beneficiaries. The Master will appoint a suitable person to administer the estate.

## CUSTOMARY LAW: THE WAY FORWARD

### HAS THE CUSTOMARY LAW OF SUCCESSION BEEN ABOLISHED?

**No:**

- When planning his or her estate, a person may still arrange that his or her estate be distributed in terms of customary law. This should be done by making a will.

- The Master of the High Court has a constitutional obligation to ensure the development of customary law. This should be done by allowing the family of deceased to agree on the way the estate should be distributed. The Master of the High Court may not, however, allow vulnerable groups like women and children to be exploited as a result of a family agreement

## SUMMARY

The Bhe decision fundamentally changed the way deceased estates will be administered and distributed. All estates will now be administered in terms of the Administration of Estates Act [Act 66 of 1965 (as amended)] and will be distributed in terms of the Intestate Succession Act. [Act 81 of 1987 (as amended)].

It is important that all South Africans be made aware of these changes, so that they can plan their estates accordingly.

The Chief Master of the High Court has established a help line where more information can be obtained.

## CONTACT DETAILS

Tel: 012 406 4805 | Email: [chiefmaster@justice.gov.za](mailto:chiefmaster@justice.gov.za)

# DYING WITHOUT A WILL

- **Deceased leaves no spouse or descendants, but both parents who are alive.**  
*His/her parents will inherit the intestate estate in equal shares.*
- **Deceased leaves no spouse and no descendants but leaves one parent, while the deceased parent left descendants (brothers/sisters of the deceased).**  
*The surviving parent will inherit one half of the intestate estate and the descendants of the deceased parent the other half.*
- **Deceased leaves no spouse or descendants but leaves one surviving parent, while the deceased parent did not leave any other descendants.**  
*The surviving parent will inherit the whole estate.*
- **Deceased does not leave a spouse or descendants or parents, but both his/her parents left descendants.**  
*The intestate estate will be split into equal parts. One half of the estate is then divided among the descendants related to the deceased through the predeceased mother and the other half among the descendants related to the deceased through the predeceased father.*
- **Deceased does not leave a spouse, descendant or parents, but only one of the predeceased parents left descendants.**  
*The descendants of the predeceased parent who left descendants, will inherit the entire intestate estate.*
- **The deceased does not leave a spouse or descendants or parents or descendants of his parents.**  
*The nearest blood relation inherits the entire intestate estate.*
- **The deceased is not survived by any relative.**  
*Only in this instance will the proceeds of the estate devolve on the state.*



- **What is the position with regard to a child of the deceased born out of wedlock?**

*A child born out of wedlock can inherit from both blood relations, the same as a child born in wedlock.*

- **What is the position with regard to an adopted child of the deceased?**

*An adopted child will be deemed*

- *to be a descendant of his adoptive parent or parents.*
- *not to be a descendant of his natural parent or parents, except in the case of a natural parent who is also the adoptive parent of that child or was, at the time of the adoption, married to the adoptive parent of the child.*

- **Who is a spouse for purposes of intestate succession?**

*As starting point it can be said that any party to a valid marriage in terms of the Marriage Act, 25 of 1961 (a civil marriage) is regarded as a spouse for purposes of intestate succession.*



A party in a subsisting customary marriage which is recognised in terms of section 2 of the Recognition of Customary Marriages Act, 120 of 1998 is also a spouse for intestate succession purposes. These marriages include customary marriages which were validly concluded before the Act came into operation, and which still existed at the commencement of the Act (15 November 2000) as well as marriages concluded in terms of the provisions of the Act after the commencement of the Act.

Section 3(1) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 11 of 2009, which came into operation on 20 September 2010, has created a further group of women who qualify as spouses for intestate succession purposes. They are the seed-bearing woman in terms of Customary Law.

Persons married in terms of Muslim and Hindu religious rites should be regarded as spouses for purposes of intestate succession and are entitled to inherit from their deceased partner in terms of the Intestate Succession Act, despite the fact that their “marriage” is not recognised as a valid marriage in terms of our current law

Persons who died before 1 December 2006, and were partners in a same-sex life partnership at the time of their death, should be regarded as “spouses” for purposes of intestate succession, while persons in same-sex relationships who died on or after 1 December 2006 should only be regarded as “spouses” if they had entered into a marriage or civil partnership in terms of the Civil Union Act.

The administration of trusts is governed by the provisions of the Trust Property Control Act, Act 57 of 1988.

There are two types of trusts, e.g. an inter-vivos trust and a testamentary trust: (a) An inter-vivos trust is created between living persons and (b) A testamentary trust derives from a valid will of a deceased.

***(A) The following documents must be lodged in order to enable the Master to register an inter-vivos trust and to issue letters of authority to the nominated trustee(s).***

The inter-vivos trust must be registered with the Master in whose area of jurisdiction the greatest portion of the trust assets are situated. If more than one Master has jurisdiction over the trust assets, the Master in whose office the trust was first registered will continue to have jurisdiction.

The following documents must be lodged:

- The original trust deed or notarial certified copy thereof
- Due to the abolition of stamp duty Masters fees a registration fee of R100 must be paid into the Department of Justice's bank account.
- Application form (J401),
- Acceptance of Trusteeship by Trustee (J417),
- Undertaking and Auditor/Accountant (inter-vivos Trust) (J405),
- Beneficiary Declaration (J450).

- Trustee(s) Identification – Certified copies of ID / Passport / Organization Proof of Registration (CK1),
- Trustee(s) Representative Identification – Certified copies of ID or Passport (Mandatory for Organization Trustee(s)),
- Beneficiaries Identification – Certified Copies of ID or Birth Certificates / Passport / Organization (CKI),
- Bond of Security - form J344 or Proof of Exemption (If applicable),
- Final Certified Court Order (if applicable).
- Confirmation that the trust is created as a “Family Business Trust” – if not, one of the trustees needs to be an objective person, not related to the trust in any way.

***(B) For a testamentary trust (Trust created in a valid will) the following requirements have to be lodged:***

- copy of the registered and accepted Will or Testamentary trust,
- Trustee(s) Identification – Certified copies of ID / Passport / Organization Proof of Registration (CK1),
- Trustee(s) Representative Identification - Certified copies of ID or Passport (Mandatory for Organization Trustee(s)),
- Beneficiaries Declaration form,

- Beneficiaries Identification – Certified Copies of ID or Birth Certificates / Passport /Organization (CKI),
- Beneficiaries' Guardian Identification –Certified Copies of ID or Passport
- Bond of Security- form J344 or Proof of Exemption (If applicable),
- Undertaking by an Auditor or Account (if applicable), There are no fees involved and the deceased's last will serves as the trust document.

The mentioned forms can all be obtained directly from the Master's Office or from the website by using the following link:

<http://www.justice.gov.za/master/forms.html>

On receipt of all the required documents, the Master may issue the nominated trustees with Letters of Authority, to administer the trust. No trustee may act as such without the written authority of the Master. Trustee's should keep accurate Financial statements to comply with their fiduciary obligations to the beneficiaries. The Master may request the trustees to account for the administration of the trust.

# THE GUARDIAN'S FUND

The Guardian's Fund falls under the administration of the Master of the High Court.

It is a fund created to hold and administer funds which are paid to the Master on behalf of various persons known or unknown, for example, minors, persons incapable of managing their own affairs, unborn heirs, missing or absent persons or persons having an interest in the moneys of a usufructuary, fiduciary or fideicommissary nature.

## WHAT HAPPENS WITH THE MONEYS WHEN DEPOSITED IN THE GUARDIAN'S FUND?

When the Master receives or accepts any money he/she must open an account in the books of the Guardian's Fund in the name of the person to whom the money belongs or the estate of which that money forms part. If it is not known to whom such money belongs, the account may be opened in the name of the person from whom the money has been received, or the estate from which the money is derived, as the case may be.

The money in the Guardian's Fund is invested with the Public Investment Commission and audited annually.

## WHAT IS THE POSITION WITH THE PAYMENT OF INTEREST?

Interest is payable on amounts paid into the Guardian's Fund on behalf of any minors, persons incapable of managing their own affairs, unborn heirs and persons having an interest in the moneys of a usufructuary, fiduciary or fideicommissary nature.

The interest is calculated compounded monthly at a rate determined from time to time by the Minister of Justice in consultation with the Minister of Finance. Interest is earned for a period from a month after receipt up to five years after it has become legally claimable.

## CAN I CLAIM ANY ALLOWANCE MAINTENANCE FROM THE GUARDIAN'S FUND, AND IF SO, HOW?

The guardian of a minor/ persons incapable of managing their own affairs can claim maintenance/allowance from the Guardian's Fund. The Master is entitled to pay for maintenance, such as school and university fees, clothes, medical fees, boarding and lodging and any other needs that can be fully motivated.

Maintenance can be claimed by the guardian/tutor/curator/or person looking after the person of the beneficiary by way of using an application form J 341, supported by quotations and accounts and verification of the applicants fingerprints on application. Payments can be made directly to the service provider, like schools, universities, bookshops, etc.

## WHEN CAN AN APPLICANT CLAIM THE INVESTED MONEY, AND HOW?

### Minors

A minor can claim the invested money, as well as the accrued interest on reaching the age of majority, i.e. on the eighteenth birthday, marriage or declaration of majority by the High Court. However, a testator can stipulate another age when a beneficiary is entitled to the invested capital.

Money can be claimed by the beneficiary when entitled by way of an application using form J251, supported by a certified copy of the Applicant's certified identity document/passport/marriage certificate/order of court and verification of the applicants fingerprints.

## **UNTRACED OR UNDETERMINED BENEFICIARIES**

Money can be claimed by the beneficiary when the benefit comes to his/her attention by contacting any Masters Office directly without any third party assistance.

The Masters Office will supply the necessary information and forms to be completed to claim this benefit.

## **HOW DO PAYMENTS TAKE PLACE?**

Benefits are paid by means of EFT directly in the payee's banking account.

## **WHAT HAPPENS WITH THE MONEY IF NOT CLAIMED ON TIME?**

After the lapse of a period of thirty years and the money is not claimed it will be forfeited to the state. Every year during September the Master advertises in the Government Gazette accounts that have been unclaimed.

## **CHARGES**

Services rendered by the Guardian's Fund are free of charge for payment of Inheritances and Maintenance allowances.

## **MASTER OF THE HIGH COURT HELP LINE**

Tel: 012 406 4805  
chiefmaster@justice.gov.za  
www.justice.gov.za



A Tutor is a person appointed by the Master or court to administer the property of a minor.

Minors are under disability, in that the law does not regard them as capable of managing their own affairs. Where they are possessed of property, therefore, it is necessary that there be someone to administer it on their behalf. Usually, the minor has parents who as his natural guardians supervise his/her affairs and these need no appointment. It sometimes happens, however, that a minor has no natural guardian and if he/she is possessed of property it may be necessary to appoint a tutor to administer that property. The court may do so even where there is a natural guardian. Where the minor's property consists of money deposited in the Guardian's Fund, no tutor to his property will be required, though a tutor may be appointed.

The appointment of a tutor over the affairs of a minor can have a dual purpose. It can be:

- To administer the property of a minor; or/and
- To take care of the person of the minor.

According to South African law a minor is a person under the age of 18 years, who has not yet been emancipated by marriage or order of court.

## Requirements for an appointment

- Application to the Master
- A preliminary **inventory** – form J243 which reflects the assets of the minor
- Nominations of a suitable person to be appointed as tutor by the next-of-kin of the minor (these nominations are usually obtained during a meeting convened by the Master for this purpose)
- **Undertaking and bond of security** – form J262 by the nominated tutor.
- Application for appointment as tutor – form J197
- Certified copies of the identity document of the nominated Tutor, as well as the identity document or birth certificate of the minor.

## TESTAMENTARY APPOINTED TUTOR

Only the following persons may validly nominate a tutor in their will:

- The sole natural guardian (surviving parent) of a legitimate minor, who has not been deprived of his/her guardianship over such minor by the court
- The mother of an illegitimate minor, who has not been deprived by the court of guardianship of such minor
- The parent to whom the sole guardianship of the minor has been granted by the court.

### Requirements for an appointment

- The will in which the tutor has been nominated must be properly registered and accepted by the Master
- A preliminary inventory – form J243 which reflects the assets of the minor
- A declaration by the nominated tutor wherein he/she declares that the person who nominated him or her in the will was legally competent to do so
- Undertaking and bond of security – form J262 by the nominated tutor, unless the tutor has been exempted from providing security in the will
- Application for appointment as tutor – form J197
- Certified copies of the identity document of the nominated Tutor, as well as the identity document or birth certificate of the minor.

## TUTOR APPOINTED BY THE COURT

The court, as the upper guardian of all minors, may appoint a person as tutor of a minor to take care of the person of the minor and to administer the property of the minor.

It is usually an interested party who applies to Court. On receipt of the application the court will usually appoint a curator-ad-litem to protect the interests of the minor and to investigate the merits of the application. Both the curator-ad-litem and the Master must lodge reports to the court.

Once the court has granted the application and appointed a tutor, the Master must give effect to the court order by issuing Letters of Tutorship and thereby authorizing the appointed tutor to act.

### Requirements for an appointment

- A copy of the application to court together with the reports by the curator-ad-litem and the Master
- The court order appointing the tutor
- A Preliminary inventory – form J243, which reflects the assets of the minor
- Undertaking and bond of security – form J262 by the nominated tutor, unless the tutor has been exempted from furnishing security by the court
- Application for appointment as tutor – form J197
- Certified copies of the identity document of the nominated Tutor, as well as the identity document or birth certificate of the minor.

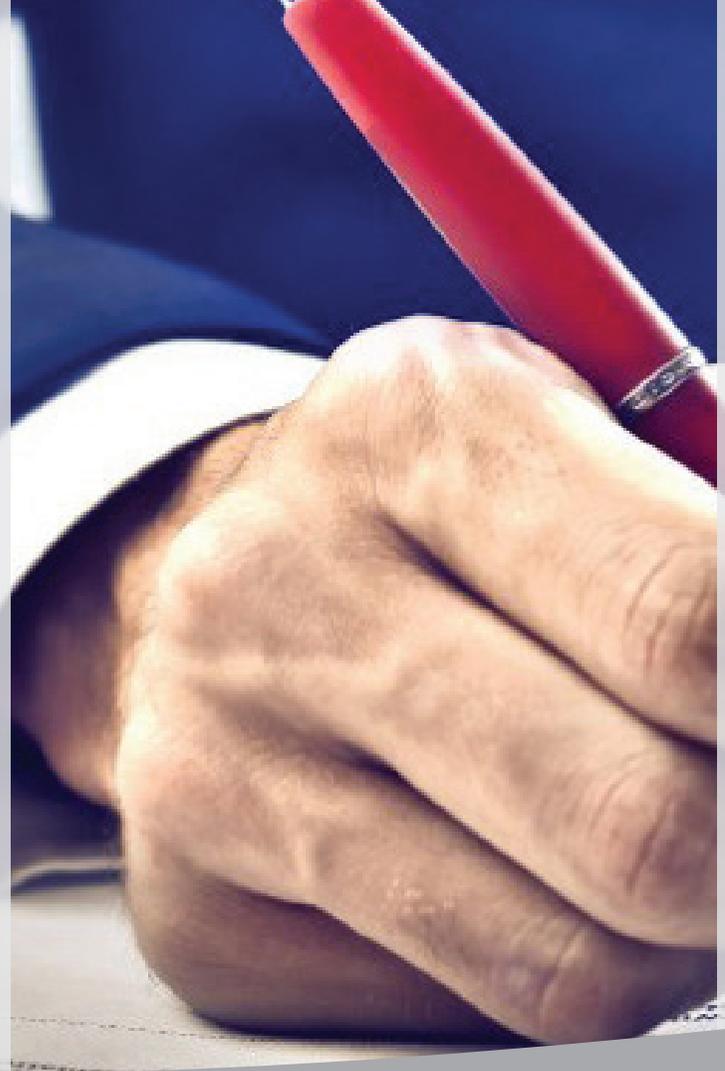
## CURATORS

The Master appoints curators in the following instances:

- To administer the estates of persons incapable of managing their own affairs. These include:
  - mentally deficient persons
  - persons who owing to physical infirmity cannot manage their own affairs.
  - persons declared a prodigal by the court
- To administer the assets of persons and legal entities, attached by the Asset Forfeiture Unit, in terms of a court order
- To administer the assets of an absentee (a person whose whereabouts are unknown, and has no legal representative in the Republic).

### Requirements for an appointment

- A copy of the application to court together with the reports by the curator-ad-litem and the Master.
- The court order appointing the Curator Bonis
- A Preliminary inventory – form J243, which reflects the assets of the incapacitated person .
- Undertaking and bond of security – form J262 by the nominated Curator Bonis, unless the Curator has been exempted from furnishing security by the court
- Application for appointment as Curator Bonis – form J197
- Certified copies of the identity document of the nominated Curator Bonis, as well as the incapacitated person.



## GUARDIANS AND CUSTODIANS

The Master has no jurisdiction to appoint a guardian or custodian over a minor.

Only the High Court can appoint a person, other than the natural guardian of a minor, as the legal guardian of a minor. Likewise, only the High Court can deprive a natural guardian of guardianship over his or her minor.

As far as custody of a minor is concerned, the Children's Act, 2005 (Act No 38 of 2005), provides that the Commissioner for Child Welfare for the district in which the minor is resident, and who is a designated Magistrate, may appoint a custodian over a minor, if after an enquiry, it is found that the minor is a child in need of care.

Section 150 of the Children's Act, 2005 (Act No 38 of 2005) sets out the circumstances in terms of which a minor is deemed to be in need of care and protection, and includes the situation where a child has no parent or guardian or where a child's parent or guardian cannot be traced.

The custodian, whom the Commissioner of Child Welfare appoints, is the person who is responsible for the day-to-day care of the minor. However, the custodian does not have the right to administer the assets of the minor.

## ADMINISTRATOR IN TERMS OF THE MENTAL HEALTH CARE ACT, 2002 (ACT 17 OF 2002)

The Master appoints administrators in the following instances:

- To administer the estates of persons suffering from a mental illness or a severe or profound intellectual disability.

Requirements to consider the application

- Application to the Master – form CB11
- A preliminary inventory – form J243 which reflects the assets of the user.
- Two medical certificates confirming that the user suffers from a mental illness/ intellectual disability
- Certified copy of the identity document of the user.

## ABOUT WILLS, TRUSTS AND THE DISTRIBUTION OF THE ESTATES OF DECEASED PERSONS

***Note:** The information contained in this brochure is intended to inform the reader about some basic aspects of wills, trusts and the distribution of the estates of deceased persons. It is not meant to be a comprehensive guide. The information on intestate succession is also merely intended to provide information about the basic rules of intestate succession. It is not meant to replace the provisions of the Intestate Succession Act, Act 81 of 1987.*

### What is a deceased estate?

A deceased estate comes into existence when a person dies and leaves property or a document, which is a will or is intended as a will. Such an estate must then be administered and distributed in terms of the deceased's will or, in the absence of a valid will, in terms of the Intestate Succession Act, 81 of 1987. The procedure that must be followed to administer a deceased estate is prescribed by the Administration of Estates Act, 66 of 1965 (as amended).

### Which deaths must be reported to the Master of the High Court?

The death of a person who dies within the Republic of South Africa and leaves property or any document that is a will or is intended as a will; and the death of a person who dies outside of the Republic of South Africa, but who leaves property and/or any document that is a will or is intended as a will, in the Republic of South Africa, must be reported to the Master of the High Court.

### Where must estates be reported?

Where the deceased was living in the Republic of South Africa, the estate must be reported to the Master of the High Court in whose area of jurisdiction the deceased was living 12 months prior to his/her death. Where the deceased was not living in the Republic of South Africa at the time of his/her death, the estate may be reported to any Master of the High Court, provided it is reported to only one Master.

An affidavit in which it is stated that the letters of executorships have not already been granted by any other Master of the High Court in the Republic of South Africa must accompany the reporting documents. From 5 December 2002, all Magistrates' Offices are designated service points for the Master of the High Court and estates can be reported there. However, these service points have limited jurisdiction. All estates with wills, as well as estates that exceed R125 000 in value, will be transferred to the provincial Master's Office. Therefore, it is advisable to report these estates directly to the Master's Office.

***Note:** If the estate value is less than R 250 000.00 and there is a minor heir, Legal Aid S.A.(LASA) can be contacted to assist in this regard.*

### When and by whom must estates be reported?

The estate of a deceased person must be reported to the Master of the High Court within 14 days of the date of death. The death is to be reported by any person having control or possession of any property or documents that is or intends to be a will of the deceased. The estate is reported by lodging a completed death notice and other reporting documents with the Master which may be obtained from any Office of the Master of the High Court, Magistrate's Office or on [www.doj.gov.za](http://www.doj.gov.za).

## **How do you report an estate to the Master or to a service point of the Master of the High Court?**

The reporting documents will differ slightly depending on the value of the estate and the type of appointment required. If the value of the estate exceeds R250 000, letters of executorship must be issued and the full process prescribed by the Administration of Estates Act must be followed. However, if the value of the estate is less than R250 000, the Master of the High Court may dispense with letters of executorship and issue letters of authority in terms of Section 18(3) of the Administration of Estates Act, (Act 66 of 1965).

The Magistrates' Office service points will only have jurisdiction if the deceased did not leave a valid will and the gross value of the estate is less than R125 000 where there is no PEAS (Paperless Estates Administration System). Letters of authority entitle the nominated representative to administer the estate without following the full procedure set out in the Administration of Estates Act.

## **What documents will be required in the event of the value of the estate exceeding R250 000?**

The following reporting documents are required:

- Completed death notice (form J294)
- Original or certified copy of the death certificate
- Marriage certificate/proof of registration of a customary marriage/minutes of a family meeting where proof of registration of a customary marriage cannot be furnished /proof of religious marriage (Muslim or Hindu)/declaration confirming the existence of a same-sex life partnership (if applicable)
- All original wills and codicils or documents intended as such (if any)
- Next-of-kin affidavit if the deceased did not leave a valid will (form J192)

- Completed inventory form (form J243)
- Nominations by the heirs for the appointment of an executor in the case of an intestate estate, or where no executor has been nominated in the will, or the nominated executor has died or declines the appointment.
- Completed acceptance of trust as executor forms in duplicate by the person(s) nominated as executor(s) (form J190) plus a certified copy of the photo page of the executors ID document
- Undertaking and bond of security, unless the nominated executor has been exempted from providing security in the will, or is the parent, spouse or child of the deceased (form J262)
- If the deceased passed away before 2007: Affidavit by the next-of-kin of a deceased person who has died without leaving a valid will, to the effect that the estate has not already been reported to another Master or service point (if applicable)

## **What documents will be required in the event of the value of the estate being less than R250 000?**

The following reporting documents are required:

- Completed death notice (form J294)
- Original or certified copy of the death certificate
- Marriage certificate/proof of registration of a customary marriage/minutes of a family meeting where proof of registration of a customary marriage cannot be furnished /proof of religious marriage (Muslim or Hindu)/declaration confirming the existence of a same-sex life partnership (if applicable)
- All original wills and codicils or documents intended as such (if any)
- Next-of-kin affidavit if the deceased did not leave a valid will (form J192)
- Completed inventory form (form J243)
- List of creditors of deceased (if applicable)

- Nominations by the heirs for the appointment of a Master's representative in the case of an intestate estate or where no executor has been nominated in the will or the nominated executor declines the appointment.
- Undertaking and acceptance of Master's directions (form J155)
- If the deceased passed away before 2007: Declaration confirming that the estate has not already been reported to another Master's Office or servicepoint of the Master
- Declaration of subsisting marriages

### **What happens if I do not leave a will (intestate succession)?**

If you die without leaving a valid will, your estate will devolve in terms of the rules of intestate succession, as stipulated in the provisions of the Intestate Succession Act, (Act 81 of 1987). In case of a marriage in community of property, one half of the estate belongs to the surviving spouse and, although it forms part of the joint estate, will not devolve according to the rules of intestate succession. For more information on the Intestate Succession Act, please consult the Act or your legal representative.

### **In the event of intestate succession, what happens if the deceased is survived by a spouse or spouses but not by (a) descendant/s?**

The spouse or spouses will be the sole intestate heirs.

### **Who is a spouse for purposes of intestate succession?**

As starting point it can be said that any party to a valid marriage in terms of the Marriage Act, 25 of 1961 (a civil marriage) is regarded as a spouse for purposes of intestate succession.

A party in a subsisting customary marriage which is recognized in terms of section 2 of the Recognition of Customary Marriages Act, 120 of 1998 is also a spouse for intestate succession purposes. These marriages

include customary marriages which were validly concluded before the Act came into operation, and which still existed at the commencement of the Act (15 November 2000) as well as marriages concluded in terms of the provisions of the Act after the commencement of the Act.

Section 3(1) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 11 of 2009, which came into operation on 20 September 2010, has created a further group of women who qualify as spouses for intestate succession purposes. They are the seed-bearing woman in terms of Customary Law.

Persons married in terms of Muslim and Hindu religious rites should be regarded as spouses for purposes of intestate succession and are entitled to inherit from their deceased partner in terms of the Intestate Succession Act, despite the fact that their "marriage" is not recognised as a valid marriage in terms of our current law

Persons who died before 1 December 2006, and were partners in a same-sex life partnership at the time of their death, should be regarded as "spouses" for purposes of intestate succession, while persons in same-sex relationships who died on or after 1 December 2006 should only be regarded as "spouses" if they had entered into a marriage or civil partnership in terms of the Civil Union Act.

### **In the event of intestate succession, what happens if the deceased is survived by a descendant/s, but not by a spouse?**

The descendant will inherit the intestate estate.

### **In the event of intestate succession, what happens if the deceased is survived by a spouse/s as well as (a) descendant/s?**

The spouse or spouses inherit the greater of R250 000 per spouse or a child's share, and the children the balance of the estate. A child's share is determined by dividing the intestate estate by the number of surviving

children of the deceased and deceased children who have left issue, plus the number of surviving spouses.

**Example of the child's share in the event of a polygamous marriage:**

*In this case the value of the intestate estate is R2 000 000. The deceased is survived by two spouses and three children. A child's share amounts to R400 000 (being R2 000 000 divided by five: the three children and the two spouses). The child's share is greater than R250 000. Therefore each spouse will inherit R400 000 and each child will inherit R400 000 (R2 000 000 less R800 000 to the spouses, divided by three).*

**Example of the child's share in the event of a monogamous marriage:**

*In this case, the same calculation will apply as in the previous example, only the child's share is calculated by dividing the value of the intestate estate by four. The surviving spouse and each child will each inherit R500 000.*

**In the event of intestate succession, what happens if the deceased leaves no spouse or descendants, but both parents are still alive?**

His/her parents will inherit the intestate estate in equal shares.

**In the event of intestate succession, what happens if the deceased leaves no spouse and no descendants but leaves one parent, while the deceased parent left descendants (brothers/sisters of the deceased)?**

The surviving parent will inherit one half of the intestate estate and the descendants of the deceased parent the other half.

**In the event of intestate succession, what happens if the deceased leaves no spouse or descendants but leaves one surviving parent, while the deceased parent did not leave any other descendants?**

The surviving parent will inherit the whole estate.

**In the event of intestate succession, what happens if the deceased does not leave a spouse or descendants or parents, but both his parents left descendants?**

The intestate estate will be split into equal parts. One half of the estate is then divided among the descendants related to the deceased through the predeceased mother and the other half among the descendants related to the deceased through the predeceased father.

**In the event of intestate succession, what happens if the deceased does not leave a spouse, descendant or parents, but only one of the predeceased parents left descendants?**

The descendants of the predeceased parent, who left descendants, will inherit the entire intestate estate.

**In the event of intestate succession, what happens if the deceased does not leave a spouse, descendants, parents or descendants of his parents?**

The nearest blood relation inherits the entire intestate estate.

**In the event of intestate succession, what happens if the deceased is not survived by any relative?**

Only in this instance will the proceeds of the estate devolve on the state.

### **What is the position with regard to a child of the deceased born out of wedlock?**

A child born out of wedlock can inherit from both blood relations, the same as a child in wedlock .

### **What is the position with regard to an adopted child of the deceased?**

An adopted child will be deemed to be a descendant of his adoptive parent or parents; and not to be a descendant of his natural parent or parents, except in the case of a natural parent who is also the adoptive parent of that child or was, at the time of the adoption, married to the adoptive parent of the child.

### **What is a will?**

A will is a specialised document, which should preferably be drawn up by an expert like an attorney or trust company.

### **Who is competent to make a will?**

The person who draws up a will is called the testator/testatrix. All persons 16 years and older are competent to make a will in order to determine how their estate should devolve upon their death, unless they were mentally incapable of appreciating the consequence of their actions at the time of making the will.

### **Who is competent to act as a witness to a will?**

All persons of 14 years and over are competent to act as a witness to a will, provided that at the time they witnessed the will they were not incompetent to give evidence in a court of law.

### **What are the requirements for a valid will?**

Since 1 January 1954 all wills must be in writing. They can be written by hand, typed or printed. The signature of the testator/testatrix must appear at the end of the will. This signature must be made in the presence of two or more competent witnesses. The witnesses must attest and sign the will in the presence of the testator/testatrix and of each other. If the will consists of more than one page, each page other than the page on which

it ends must be signed anywhere on the page by the testator/testatrix. Although the testator/testatrix must sign all the pages of the will, only the last page of the will needs to be signed by the witnesses.

### **What are the requirements for a valid will if the testator/testatrix cannot sign his/her name?**

If the testator/testatrix cannot sign his/her name, he/she may ask someone to sign the will on his/her behalf or he/she can sign the will by making a mark (a thumbprint or a cross). When the will is signed by someone on behalf of the testator/testatrix or by making a mark, a Commissioner of Oaths must certify that he/she has satisfied him/herself as to the identity of the testator/testatrix and that the will so signed is the will of the testator/testatrix. The Commissioner of Oaths must sign his/her certificate and he/she must also sign every other page of the will, anywhere on the page. The Commissioner of Oaths must also be present when the will is signed and must append his/her certificate as soon as possible after the will is signed even if the testator/testatrix dies soon after signing the will.

### **What is a codicil?**

A codicil is a schedule or annexure to an existing will, which is made to supplement or amend an existing will. A codicil must comply with the same requirements for a valid will. A codicil need not be signed by the

same witnesses who signed the original will.

### **What if I want to amend my will?**

Amendments to a will can only be made while executing a will or after the date of execution of the will. Amendments to a will must comply with the same requirements for a valid will and, if a testator/testatrix cannot sign it, with the same requirements that apply for persons who cannot sign a will. When amending a will, the same witnesses who signed the original will need not sign it again.

### **Must I amend my will after a divorce?**

A bequest to your divorced spouse in your will, which was made prior to your divorce, will not necessarily fall away after divorce. The Wills Act stipulates that, except where you expressly provide otherwise, a bequest to your divorced spouse will be deemed revoked if you die within three months of the divorce. This provisions to allow a divorced person a period of three months to amend his/her will, after the trauma of a divorce. Should you, however, fail to amend your will within three months after your divorce, the deemed revocation rule will fall away, and your divorced spouse will benefit as indicated in the will.

### **Who is disqualified from inheriting under a will?**

The following people are disqualified from inheriting under a will: a person or his/her spouse who writes a will or any part thereof on behalf of the testator; and a person or his/her spouse who signs the will on instruction of the testator or as a witness. Consult your legal representative for more information in this regard.

## **CUSTOMARY LAW**

### **What happens in the case of a customary union?**

When a spouse alleges that he or she is a partner in customary union, proof in the form of a certificate of registration must be lodged (see Section 4(5)(b) of the Recognition of Customary Marriages Act 120 of 1998, as amended). Application for a registration certificate can be made to the Department of Home Affairs. The service point of the Master can assist with advice in this regard. When a certificate of registration cannot be lodged, enquiry in terms of section 5 of the Reform of the customary Law of Succession and Resolution of related matters Act 11 of 2011 can be held calling on witnesses from the family of the deceased and the surviving spouse to confirm existence of a customary marriage. The Office of the Master should be contacted to advise on the remedies available. The abovementioned reporting documents must be posted to, or handed in at the Master's Office or service point.

### **How has customary law and the distribution of estates of deceased persons been affected by the decision in the case of Bhe vs The Magistrate Khayelitsha?**

Customary law has been dramatically affected by the decision in the Bhe and others vs. the Magistrate Khayelitsha and another case, which changed the way estates of deceased persons will be distributed. It also changed the way the Department of Justice and Constitutional Development will supervise the administration of deceased estates.

## **What happened in the Bhe decision?**

While he was still alive, the deceased lived with Ms Bhe and one of their two daughters in Khayelitsha. There was some doubt whether Ms Bhe and the deceased were married or not. Their second daughter lived with the father of the deceased in Berlin in the Eastern Cape. The deceased died without a will, and his estate was to be distributed in terms of customary law. This meant that the father of the deceased would have inherited the estate to the exclusion of Ms Bhe and her two daughters. The estate consisted of a shack and the property on which the shack was built. The father wanted to sell the property to pay for his son's funeral.

If he proceeded, Ms Bhe and her children would have been destitute. Ms Bhe applied to Court to have her two daughters declared the only beneficiaries of her husband's estate. The Constitutional Court held that the customary law of succession was constrained by Section 23 of the Black Administration Act, and was not allowed to develop to meet the changes in the society that it was meant to serve. As a result it stagnated and became out of touch with the realities of urbanization and changing family relationships.

In its current guise it is unconstitutional since it discriminates on the basis of gender and birth.

## **How did the Bhe decision change the way estates will be distributed?**

All deceased estates will be distributed in terms of the Intestate Succession Act. This means that the beneficiaries in order of preference are: the spouse of the deceased; the descendants of the deceased; the parents of the deceased (only if the deceased died without a surviving spouse or descendants); and the siblings of the deceased (only if one or both parents are predeceased). The Intestate Succession Act should be read in such a way that it could accommodate cases where the deceased was a husband in a polygamous customary union. When

the deceased leaves only spouses and no descendants, the wives will inherit the estate in equal shares. When the deceased leaves spouses and descendants the spouses and descendants will inherit the estate in equal shares but each wife shall inherit at least R250 000. When the estate is not large enough to allow each wife to inherit the R250 000, the spouses will inherit the estate in equal shares while the descendants will not receive anything.

## **How did the Bhe decision change the way the administration of estates will be supervised?**

After the Bhe decision, deceased estates will all be administered in terms of the Administration of Estates Act (Act 66 of 1965, as amended). This implies that Magistrates will no longer supervise and administer deceased estates; only the Master of the High Court will do so. It also implies that the Master of the High Court does not have the power to administer estates on behalf of beneficiaries. The Master will appoint a suitable person to administer the estate.

## **Has the customary law of succession been abolished?**

No, when planning his/her estate, a person may still arrange that his/her estate be distributed in terms of customary law. This should be done by making a will. The Master of the High Court has a constitutional obligation to ensure the development of customary law. This should be done by allowing the family of a deceased to agree on the way the estate should be distributed. The Master of the High Court may not, however, allow vulnerable groups like women and children to be exploited as a result of a family agreement.

## **How are deceased estates now administered and distributed?**

The Bhe decision fundamentally changed the way deceased estates will be administered and distributed. All estates will not be administered in

terms of the Administration of Estates Act (Act 66 of 1965, as amended) and will be distributed in terms of the intestate Succession Act (Act 81 of 1987, as amended). It is important that all South Africans be made aware of these changes, so that they can plan their estates accordingly. The Chief Master of the High Court has established a helpline where more information can be obtained. The number of this helpline is 012 406 4805 or e-mails can be directed to [chiefmaster@justice.gov.za](mailto:chiefmaster@justice.gov.za)

## TRUSTS

### How are trusts administered?

The administration of trusts is governed by the provisions of the Trust Property Control Act, Act 57 of 1988. There are two types of trusts, inter-vivos and testamentary trusts. An inter-vivos trust is created between living persons. A testamentary trust derives from the valid will of a deceased.

### What documents must be lodged in order to enable the Master of the High Court to register an inter-vivos trust and to issue letters of authority to the nominated trustee(s)?

The following documents must be lodged:

- The original trust deed or notarial certified copy thereof
- Due to the abolition of stamp duty Masters fees a registration fee of R100 must be paid into the Department of Justice's bank account.
- Application form (J401),
- Acceptance of Trusteeship by Trustee (J417),
- Undertaking and Auditor/Accountant (inter-vivos Trust) (J405),
- Beneficiary Declaration (J450).

- Trustee(s) Identification – Certified copies of ID / Passport / Organization Proof of Registration (CK1),
- Trustee(s) Representative Identification – Certified copies of ID or Passport (Mandatory for Organization Trustee(s)),
- Beneficiaries Identification – Certified Copies of ID or Birth Certificates / Passport /Organization (CKI),
- Bond of Security - form J344 or Proof of Exemption (If applicable),
- Final Certified Court Order (if applicable).

The inter-vivos trust must be registered with the Master in whose area of jurisdiction the greatest portion of the trust assets are situated. If more than one Master has jurisdiction over the trust assets, the Master in whose office the trust was first registered will continue to have jurisdiction.

On receipt of all the required documents, the Master may issue the nominated trustees with letters of authority to administer the trust. No trustee may act as such without the written authority of the Master.

Trustees should keep accurate financial statements to comply with their fiduciary obligations to the beneficiaries. The Master may request the trustees to account for the administration of the trust.

For the testamentary trust the completed acceptance of trusteeship and the photopage of the trustees ID document by each trustee and all the requirements listed on form JM21 have to be lodged. There are no fees involved and the deceased's last will serves as the trust document.

The mentioned forms can all be obtained directly from the Master's Office or from the website by using the following link:

<http://www.justice.gov.za/master/forms.html>

## **GUARDIAN'S FUND**

### **What is the Guardian's Fund?**

The Guardian's Fund falls under the administration of the Master of the High Court. It is a fund created to hold and administer funds that are paid to the Master on behalf of various persons, known or unknown (for example, minors, persons incapable of managing their own affairs, unborn heirs, missing or absent persons or persons having an interest in the moneys of a usufructuary, fiduciary or fidei-commissary nature).

### **What happens with the moneys when deposited in the Guardian's Fund?**

When the Master receives or accepts any money he/she must open an account in the books of the Guardian's Fund in the name of the person to whom the money belongs or the estate of which that money forms part. If it is not known to whom such money belongs, the account may be opened in the name of the person from whom the money is derived, as the estate from which the money has been received, or the estate from which the money is derived, as the case may be. Money in the Guardian's Fund is invested with the Public Investment Commission and audited annually.

### **What is the position with the payment of interest?**

Interest is payable on amounts paid into the Guardian's Fund on behalf of any minor, persons incapable of managing their own affairs, unborn heirs and persons having an interest in the moneys of a usufructuary, fiduciary or fideicommissary nature. The interest is calculated on a monthly basis at a rate per annum determined from time to time by the Minister

of Finance. The interest is compounded monthly. Interest is paid for a period from a month after receipt up to five years after it has become claimable, unless it is legally claimed before such expiration.

### **Can I claim any maintenance/allowance from the Guardian's Fund, and if so, how?**

An applicant can claim maintenance/allowance from the Guardian's Fund. The Master may pay from interest, as well as up to R250 000 from the invested capital for maintenance, like school and university fees, clothes, medical fees, boarding and lodging and any other needs that can be fully motivated. Maintenance can be claimed by the guardian/tutor/curator/person looking after the person of the account holder by way of an application on form J341, supported by quotations and accounts. Payments can be made directly to the service provider, like schools, universities and bookshops.

### **When can a beneficiary claim the invested money, and how?**

A minor can claim the invested money, as well as the accrued interest on reaching the age of majority (on his/her eighteenth birthday, marriage or declaration of majority by the High Court). However, a Testator/Testatrix can stipulate another age when a beneficiary is entitled to the invested capital in their Will. Money can be claimed by the beneficiary when entitled by way of an application on form J251, supported by a certified copy of the account holder's identity document/passport/ marriage certificate/order of court and verification of fingerprints of applicant. In the case of usufructuaries/fideicommissaries, those entitled to the interest can claim the accrued interest on a monthly basis by way of a written application (J341) giving full particulars of the instrument, which created the usufructuary/fideicommissary interest.

The owner can claim the invested capital when entitled thereto (usually after the death of the usufructuary/fideicommissary) by way of an application on form J251, supported by a certified copy of the death certificate and beneficiaries identity document/passport, banking details and verification of fingerprints of applicant. In the case of untraced or undetermined beneficiaries, money can be claimed by the beneficiary when the account comes to his/her attention. The application must be made on form J251, supported by a certified copy of the account holder's identity document/passport and verification of fingerprints of applicant. (The latter can be done at any Master's Office as well as various Magistrate Courts).

### **How do payments take place?**

Money/interest/maintenance is paid by EFT deposit in the payee's banking account.

### **What happens with the money if not claimed in time?**

After the lapse of a period of 30 years after the money has become claimable, the money is forfeited to the state. Every year during September the Master advertises accounts that have been unclaimed in the Government Gazette.



## GLOSSARY OF TERMS

**affidavit:** a sworn statement

**beneficiary:** person who benefits from a will

**bequest:** something that is passed on to someone, as stipulated in a will, at the request of the testator/testatrix

**codicil:** a schedule or annexure to an existing will, which is made to supplement or amend an existing will

**community of property:** marriage whereby all property is shared equally by two spouses

**deceased estate:** property and other possessions that are bequeathed in a will upon the death of the testator/testatrix or devolve in terms of the Intestate Succession Act

**descendant:** one's children, who will inherit one's possessions upon one's death in a manner as stipulated in a will

**estate:** all the property and other possessions that one owns that is to be disposed of after one's death

**executor:** person who administers an estate

**heir:** a person who receives property from a deceased by way of a will or the Intestate Succession Act.

**intestate succession:** if you die without leaving a will

**monogamy:** being married to a single spouse

**polygamy:** having more than one spouse

**spouse:** husband or wife

**testator/testatrix:** the person who draws up a will

**trustee:** person who controls money or property that has been put in a trust

**will:** a legal document in which one states how one wants one's property and other possessions to be disposed of after one's death

## GUARDIAN'S FUND CONTACT DETAILS

### Bloemfontein

(051) 411 5500 Switchboard

(051) 411 5507 Customer Care

(051) 411 5578 Customer Care

### Cape Town

(021) 832 300 Switchboard

(021) 832 3014 Customer Care

### Grahamstown

(046) 603 4000 Switchboard

(046) 603 4080 Customer Care

### Pietermaritzburg

(033) (033) 264 7000 Switchboard

(033) 264 7015 Customer Care

(033) 264 7046 Customer Care

### Pretoria

(012) 339 7000 Switchboard

(012) 339 7713 Customer Care

(012) 339 7830 Customer Care

### Kimberley

(053) 831 1942



## FOR COMPLAINTS OR QUERIES, CONTACT ANY OF THE OFFICES LISTED BELOW:

### **Master of the Free State High Court, Bloemfontein**

Tel: (051) 411 5500 • Fax: (051) 448 6182 / (051) 447 6575 (GF)

### **Master of the Northern Cape High Court, Kimberley**

Tel: (053) 831 1942 • Fax: (053) 833 1586 (GF)

### **Master of the North West High Court, Mafikeng**

Tel: (018) 381 8585 / 0005 • Fax: (018) 381 3617

### **Master of the North Gauteng High Court, Pretoria**

Tel: (012) 339 7700 / 7808 / 7999 • Fax: (012) 326 1977

### **Master of the South Gauteng High Court, Johannesburg**

Tel: (011) 429 8000 / 8004 • Fax: (086) 679 6362 (GF)

### **Master of the Limpopo High Court, Thohoyandou**

Tel: (015) 962 1027 • Fax: (015) 962 1033

### **Master of the High Court, Polokwane**

Tel: (015) 230 6000 • Fax: (015) 230 6100

### **Master of the High Court, Nelspruit**

Tel: (013) 752 2755 • Fax: (086) 680 5795

### **Master of the Eastern Cape High Court, Bhisho**

Tel: (040) 608 2079/87 • Fax: (040) 608 6600

### **Master of the Western Cape High Court, Cape Town**

Tel: (021) 832 3000 • Fax: (086) 507 0631

### **Master of the Eastern Cape High Court, Grahamstown**

Tel: (046) 603 4000 • Fax: (046) 622 9990

### **Master of the kwaZulu- Natal High Court, Pietermaritzburg**

Tel: (033) 264 7000 / 7006 • Fax: (033) 264 7063

### **Master of the Eastern Cape High Court, Mthatha**

Tel: (047) 532 3432 / (047) 532 3564 / (047) 531 2120

Fax: (047) 531 0980 / (047) 532 2040

### **Master of the kwaZulu- Natal High Court, Durban**

Tel: (031) 327 0600 • Fax: (031) 306 0126

### **Master of the Eastern Cape High Court, Port Elizabeth**

Tel: (041) 403 5100 • Fax: (041) 403 5117

Tel: (012) 315 1111

Department of Justice and Constitutional Development.

Private Bag X81, Pretoria, 0001

Momentum Centre, 329 Pretorius Street, Pretoria

[www.justice.gov.za](http://www.justice.gov.za)

