Master of the High Court: Deceased Estates

This division of the Master's office supervises the administration of deceased estates. The purpose is to ensure an orderly winding up of the financial affairs of the deceased, and the protection of the financial interests of the heirs.

The origin of a deceased estate

A deceased estate comes into existence when a person dies leaving property or a document which is a will or purports to be a will. Such 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 estate is prescribed by the Administration of Estates Act, 66 of 1965 (as amended).

Which deaths?

- The death of a person who dies within the Republic leaving property or any document being, or purporting to be a will.
- The death of a person who dies outside of the Republic, but who leaves property and/or any document being or purporting to be a will, in the Republic.

To which Master must the estate be reported?

One must distinguish between those instances where the deceased was resident within the Republic and those where he or she was not resident within the Republic.

- Where the deceased was resident in the Republic, the estate must be reported to the Master in whose area of jurisdiction the deceased was resident at the time of his/her death. At present there are Master's Offices in Pretoria, Cape Town, Pietermaritzburg, Grahamstown, Bisho, Umtata, Bloemfontein, Kimberley, Mmabatho/Mafikeng, Johannesburg, Polokwane, Durban, Port Elizabeth and Thohoyandou.
- Where the deceased was not resident 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 to the effect that the letters of executorship have not already been granted by any other Master in the Republic must accompany the reporting documents.
- From the 5th of December 2002 all Magistrate offices are designated service points for the Master and estates can be reported there. However, these Magistrate offices have limited jurisdiction.

The following estates will be transferred to the Master's Office, namely:

- Estates with wills.
- Estates with a value of more than R50 000,00.
- Insolvent estates.
- Estates where one or more of the beneficiaries are minors and is not assisted by a legal guardian and the cash assets in the estate is worth more than R20 000,00.

Therefore it is advisable to report these estates directly to the Master's office. Follow this link to view the relevant forms.

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 being or purporting to be a will, of the deceased. The estate is reported by lodging a completed Death Notice (afr or eng) with the Master. The Death Notice and other reporting documents may be obtained from any Office of the Master of the High Court or Magistrate's Office.

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 R125 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 R125 000,** the Master may dispense with letters of executorship, and issue letters of authority in terms of section 18(3) of Administration of Estates Act, 66 of 1965. From the 5th of December 2002 all Magistrates offices are service points for the Master. These service points will only have jurisdiction in the following instances, namely:

- The deceased did not leave a valid will (died intestate) and;
- The value of the estate (or the best estimate value thereof) is not more than R50 000; and
- The estate is not insolvent (liablities exceed the assests), and
- All the beneficiaries are majors or any one or more of the beneficiaries is a minor and is assisted by his or her legal guardian and the cash assests in the estate is worth R20 000 or less.

Letters of authority entitles the nominated representative to administer the estate without following the full procedure set out in the Administration of Estates Act.

Reporting documents where the value of the estate **exceeds R125 000**

- Completed Death Notice (afr or eng) form - J294 (pdf)
- Original or certified copy of the Death Certificate
- Original or certified copy of Marriage Certificate (if applicable)
- All original wills and codicils or documents purporting to be such (if any)
- Completed Next-of-Kin Affidavit - J192 (if the deceased did not leave a valid will)
- A Declaration of Marriage by the Surviving Spouse indicating how the deceased was married
- Completed Inventory form - J243, showing all the assets of the deceased
- 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 declines the appointment.
- Completed Acceptance of Trust as Executor (afr or eng) forms - J190 in duplicate by the person(s) nominated as executor(s)
- Undertaking and bond of security - J262 (unless the nominated executor has been exempted from furnishing security in the will, or is the parent, spouse or child of the deceased)
- Certified copy of the ID of the person to be appointed as Executor.
- **Note the "Letter of Executorship" must be obtained from the Office of the Master.**

Reporting documents where the value of the estate is **less than R125 000**

- Completed Death Notice (afr or eng) form - J294
- Original or certified copy of the Death Certificate
- Original or certified copy of Marriage Certificate/s (if applicable)
- All original wills and codicils or documents purporting to be such (if any)
- Completed Next-of-Kin Affidavit - J192 (if the deceased did not leave a valid will)
- Completed Inventory (form - J243) showing all the assets of the deceased
- A Declaration of Marriage by the Surviving Spouse indicating how the deceased was married
- 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.
- Declaration confirming that the estate has not already been reported to another Master's office or Service Point of the Master.
- Acceptance of Master's Directions - J155 (eng), completed and signed by the person as nominated above.
- Certified copy of the ID of the person to be appointed as Master's representative.
- **Note the "Letter of Appointment as Master's Representative " must be obtained from the Office of the Master.**

The above-mentioned reporting documents must be posted to, or handed in at the Master's Office. Faxed reporting documents are not acceptable.

Why you need an appraiser?

When property has to be valued in a deceased estate, it is normally done by an appraiser.

Appraisers are appointed for specific areas by the Minister of Justice and Constitutional Development in terms of section 6 of the Administration of Estates Act no. 66 of 1965. Appraisers are entitled to a reasonable remuneration which is determined by a prescribed tariff of fees. When there is a dispute regarding the correctness of the remuneration charged, the appraisers account must be submitted to the Master for taxation.

Master of the High Court: Wills

What is said hereunder is not meant to be a comprehensive guide on wills. A will is a specialized document, which should preferably be drawn up by an expert like an attorney, trust company etc. The information is merely to inform the user of this site about some basic aspects of wills.

Who is competent to make a will?

All persons of 16 years and over, unless at the time of making the will he/she is mentally incapable of appreciating the consequence of his/her action.

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

All persons of 14 years and over and who at the time he/she witnesses a will are not incompetent to give evidence in a court of law.

A beneficiary to a will should not sign as a witness, because he/she will then be disqualified from receiving any benefit from that will. There are some exceptions to this rule. Consult your legal representative for more information in this regard.

What are the requirements for a valid will?

1. Since 1 January 1954 all wills must be in writing. It can be written by hand, typed or printed.
2. The testator/testatrix must sign the will at the end thereof.
3. The signature of the testator/testatrix must be made in the presence of two or more competent witnesses.
4. The witnesses must attest and sign the will in the presence of the testator/testatrix and of each other.
5. If the will consists of more than one page, each page other than the page on which it ends must be signed by the testator/testatrix anywhere on the page. (Although the testator / testatrix must sign all the pages of the will it is only the page on which the will ends, that needs to be signed by them at the end of the will).

What are the requirements for a valid will if I cannot sign my name?

You may then ask someone to sign the will on your behalf or you can sign the will by the making of a mark (a thumbprint or the making of a cross). When the will is signed by someone on your behalf or by the making of a mark the requirements for a valid will are as follow:

1. Since 1 January 1954 all wills must be in writing. It can be written by hand, typed or printed.
2. The testator/testatrix must sign the will at the end thereof by the making of a mark, or the will must be signed by some other person in the presence and by the direction of the testator/testatrix.
3. The mark or the signature of the other person signing on behalf of the testator/testatrix must be made in the presence of two or more competent witnesses and a commissioner of oaths.
4. The witnesses must attest and sign the will in the presence of the testator/testatrix and of each other and if the will is signed by the other person, also in the presence of such other person and a commissioner of oaths.
5. If the will consists of more than one page, each page other than the page on which it ends must be signed by the testator/testatrix or by such other person anywhere on the page. (Although the testator / testatrix must sign all the pages of the will it is only the page on which the will ends, that needs to be signed at the end of the will).
6. A commissioner of oaths must certify that he/she has satisfied himself/herself as to the identity of the testator and that the will so signed is the will of the testator.
7. The commissioner of oaths must sign his/her certificate and he/she must also sign each other page of the will, anywhere on the page.

What is a codicil?

A codicil is a schedule or annexure to an existing will, which is made to supplement or to 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 you cannot write, with the same requirements listed under that heading.

When amending a will, the same witnesses who signed the original will need not sign it.

Must I amend my will after 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 provision is 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.

What will happen if I do not leave a will?

If you die without leaving a will or a valid will, your estate will devolve according to the Intestate Succession Act, 1987 (Act 81 of 1987).

The estates of Black persons who die intestate, and whose estates are governed by the principles of customary law, must be reported to the Magistrate for the area in which the person was resident at the time of his or her death. The local magistrate should be consulted on how an estate that is subject to customary law will devolve.

Master of the High Court: Intestate Succession

IF YOU DO NOT LEAVE A WILL

Any person of 16 years and over is free to make a will in order to determine how his/her estate should devolve upon his/her death.

If you die without a will, your estate will devolve in terms of the rules of intestate succession (your assets will, contrary to general belief, not go to the state).

What is said hereunder is not meant to replace the provisions of the Intestate Succession Act, no. 81 of 1987. The information is merely to inform the user of this site about some of the basic questions asked about intestate succession. Click on the topics below for more information as to how the intestate estate will devolve.

- **Deceased is survived by a spouse or spouses, but not by a descendant/s**.
  The spouse or spouses will inherit the intestate estate. In the case where the deceased was a husband in a polygamous marriage the surviving spouses will inherit in equal shares.

- **Deceased is survived by a descendant/s, but not by a spouse.**
  The descendant or descendants will inherit the intestate estate.
- **Deceased is survived by a spouse or spouses, as well as a descendant/s.**
  Each spouse will inherit R125 000,00 or a child's share, whichever is the greater and the children the balance of the estate. A child share is determined by dividing the intestate estate through the number of surviving children of the deceased and deceased children who have left issue, plus the number of spouses who have survived such deceased.

  NOTE: In case of a marriage in community of property, one half of the estate belongs to the surviving spouse or spouses 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, no. 81 of 1987 please consult the act or your legal representative.
The following two examples will illustrate what is said above about the child's share:

Example 1:
Value of intestate estate is R425 000,00
The deceased is survived by a spouse and 3 children
A child's share amounts to R106 250,00 (R425 000,00 divided by 4 (3 children plus spouse)).
The child's share is less than R125 000,00. Therefore the spouse will inherit R125 000,00 and each child will inherit R100 000,00. (R425 000,00 less R125 000,00 to spouse, divided by 3).

Example 2:
Value of intestate estate is R800 000,00.

The deceased is survived by a spouse and 3 children.

A child's share amounts to R200 000,00 (R800 000,00 divided by 4 (3 children plus spouse)).

The child's share is greater than R125 000,00. Therefore the spouse will inherit R200 000,00 and each child will also inherit R200 000,00 (R800 000,00 less R200 000,00 to spouse, divided by 3).

- **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 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 an illegitimate child of the deceased.**
  An illegitimate child can inherit from both blood relations, the same as a legitimate child.
- **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.