

MINISTRY OF JUSTICE

**MASTER OF THE HIGH
COURT**



**A BRIEF GUIDE TO THE FUNCTIONS OF THE
MASTER OF HIGH COURT I.R.O.:**

DECEASED ESTATES & GUARDIAN FUND



Foreword

The Master of the High Court was created to protect the inheritance rights of beneficiaries, minors and persons incapable of handling their own affairs.

The administration of a deceased estate should be the execution of an estate plan. The Master can only protect the rights of beneficiaries in so far they are protected by law.

The role of proper estate planning is usually underestimated and does it often result in the estate being distributed to beneficiaries that you did not want to inherit or leaving a minor child without a guardian.

We hope that the booklet will assist Namibians to ensure that their loved ones are taken care of the way that they would have done.

Elsie Beukes
Master of the High Court

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Chapter One

Background

1.1 *The role of the Master of the High Court of Namibia*

The Master of the High Court is the protector of the rights of beneficiaries and creditors in deceased estates.

The Master ensures that the executor/ estate representative distribute the estate in a professional and timely manner.

All deceased estates in Namibia fall under the jurisdiction of the Master

1.2 *What is an estate?*

An estate is not the same as a will. Your estate includes all your property and liabilities and will be distributed according to the provisions of your will or in the absence of a will in terms of the rules of intestate succession after your death.

1.3 *What is an executor?*

An Executor is the person appointed by the Master in estates with a value above N\$ 100 000 (or other amount determined in the Government Gazette) to administer the estate of the deceased person.

1.4 *What is a beneficiary/heir?*

A beneficiary or heir is the person that you nominated in your will to benefit from your estate. Make sure that you use their correct names and that it is clear who your beneficiaries are e.g. "I appoint my nieces Aletta Angula and Hermien Angula to be the heirs of my estate".

1.5 *What is an intestate estate?*

If you didn't leave a valid will your estate will be distributed in terms of the rules of intestate succession. It means that these rules are used to determine who will get what.

Chapter two

Wills

2.1 *What is a Will or testament?*

A will or testament is a legal document that contains your wishes as to how and to whom your property must be given after your death.

You can also appoint a guardian for your minor children in your will to make sure that they are looked after by someone you trust.

Your will must always be kept in a safe place. Inform your executor where you keep your will.

2.2 *What will happen if I die without a valid will?*

If you don't leave a valid will your estate will be distributed in terms of the rules of intestate succession which means that someone may benefit from your estate that you didn't want to.

If you didn't appoint a guardian for your minor children, they might suffer because there is no one to care for them.

2.3 *Requirements for a valid will*

You may make a will if you are 16 years or older who and is able to understand the nature and effect of your actions. A will may be drafted in your own handwriting and in any language you prefer.

A Will must comply with the following requirements to be valid:

- The will must be in writing. Oral wills is not acceptable.
- You must sign the will in the presence of at least two competent witnesses or confirm your signature in the presence of at least two competent witnesses.
- Each page of the will must be signed with by you and the witnesses with their full signatures. A will that is only initialled by the testator and/or any of the witnesses will not be valid.

- If you sign the will by making a mark (e.g. a cross or a thumbprint) a notary, peace officer, magistrate or commissioner of oaths must then certify it by signing the will on each page and attach his/her certificate on the last page of the will.
- A witness must sign with his/her full signature and may not witness a will by only making a mark.
- The testator and witnesses must sign each page. The last page must be signed directly underneath the last sentence on the page. There may not be a large space between the signatures and the last sentence.

2.4 *May I change my will?*

You may change your will at any time before your death. A will is a living document and must be reviewed regularly to provide for your changing circumstances e.g. when you get married or divorced.

It is important to revoke your previous will by inserting a revocation clause in your new will.

Chapter 3

Estate planning

3.1 *What is estate planning and why is it important?*

To make sure that your loved ones are financially and otherwise cared for after your death, you need to look at the following issues:

- That your Will make provision for the following:
 - Nomination of an executor

This is a decision that is entirely at the discretion of the testator who will choose a person whom he/she trusts, which decision is usually taken based on previous business associations.

It is necessary to ensure that a suitably qualified person is appointed as the executor to see to the administration of the estate.

Discussing the matter beforehand with the designated executor will ensure that he/she is aware of your wish to have him/her appointed as executor, thereby minimising the risk of the executor not wanting to accept the appointment.

An executor should be appointed in the will. The executor is responsible for seeing to it that the estate is properly administered and that the heirs receive their correct share of the assets in accordance with the will, after payment of the deceased's debts.

- Appointment of a guardian for minor children
- Safeguarding of minor's inheritances
 - It is advisable to establish a trust and appoint a trustee if there are heirs who are younger than 21 years of age. The trustee will administer the trust and make payments to these heirs for their maintenance or education.
- Provision for estate administration cost and debts
- Provision for the financial needs of your dependants until the estate is finalized

Chapter 4

Administration process of a deceased estate

4.1 *Appointment, duties and remuneration of an executor*

The duties of the Executor are to collect all the assets, pay the creditors and to distribute the balance to the heir(s) in terms of the intestate succession rules applicable in the specific estate or the provisions of the will of the deceased.

4.2 *Basic process of administration of estates*

The administration of estates is a complicated and technical field of expertise and requires a sound knowledge of the underlying legal principles from the estate administrator. Again without going into the finer details, the basic process of administration of an estate looks as follows:

- First consultation with the next-of-kin of the deceased to get necessary information and to sign the necessary documents;
- Reporting of the estate by filing a death notice, inventory, original will and acceptance of trust as executor with the Master of the High Court;
- The opening of a main file and sub files for the estate; Writing of letters to debtors and creditors of the estate;
- Obtaining valuations for estate assets;
- Completion and lodging of income tax assessments;
- Receipt of letters of executorship;
- Placing of advertisement to debtors and creditors in the Government Gazette and a local newspaper;
- Opening of an estate cheque account;
- Deciding on a suitable administration process together with beneficiaries;
- The collection of sufficient cash and the payment of debts; Drafting and lodging of the Liquidation and Distribution account;
- Placing of advertisement in the Government Gazette and local newspaper that the Liquidation and Distribution account is lying for inspection;
- Payment of any outstanding debts as well as the payment transfer of

legacies and inheritances to heirs;

- Paying of Master's fees;
- Complying with Master's final requirements; Receipt of the Master's filing slip.

PART II GUARDIAN FUND

Chapter 5

5.1. Background

The Guardians Fund is a statutory trust established in terms of Chapter V of the Administration Act 66 of 1965 (as amended). It is a Trust account and the accounting books, records, control accounts and bookkeeping must be done accordingly.

The Guardian Fund is a section of the Master's office where moneys are administered and controlled by the Master for minors, mental patients, unknown and absent heirs and certain untraceable persons. The guardians fund is also there to safeguard the minor's and other's interest.

5.2. The purpose and functions of the Guardian Fund

The purpose of the Guardian Fund is to protect the moneys of persons lacking legal competence and capacity, undetermined and absent heirs and certain untraceable persons.

The functions of the Guardian's Fund are as follows:

- The receipt, bookkeeping and disbursement of money.
- Investment of funds.
- Calculation of interest.
- The safekeeping of and control over hypothecation and security deeds for money accruing to minors.
- The compiling and publishing of annual lists of unclaimed sums exceeding R500.00

5.3. Where do the monies come from?

- Pension Funds
- Salary offices
- Insurance companies
- Inheritances
- Insolvencies
- MVA
- Curatorships

5.4. Calculation of interest

Interest is calculated at a fixed rate determined every year taking into consideration the interest earned for the book year.

Interest is calculated both on the capital amount and all interest already earned by the minor.

Interest is calculated on a monthly basis and capitalised every year on 31 March.

5.5. Payments made from Interest bearing monies (minors and persons incapable of handling their own affairs)

In terms of section 90 read with section 82 (c) of the Estates Act moneys deposited in the Guardians Fund may be paid out for the following purposes:

- for the maintenance or education or other benefit of the minor or his/her dependents,
- for the preservation or safe custody of any property of the minor,
- If the minor is resident outside Namibia, the Master may remit the inheritance due to the minor to the relevant authorities in the country where he/she is resident.

In terms of the proviso to section 90, the amount paid out of the capital of the minor may not exceed N\$50 000.00 without the authority of the court.

5.6 Payment for maintenance

These payments can be divided into:

- payment of a quarterly allowance, or
- payment of accounts for school fees, medical expenses etc.

5.7 Payment and determination of a quarterly allowance

A quarterly allowance is an allowance paid by the Guardian Fund to the person in whose care the child is, from the account of that child for his/her maintenance.

The quarterly allowance includes all the expenses for the maintenance of the child such as food, clothing, transport, stationery and accommodation.

5.8 Forms to be submitted for an application of an approved quarterly allowance

After the amount of the allowance has been determined by the Guardian Fund the following form and document must be submitted on application for a quarterly allowance:

- Application for allowance – Form GF 5 (form can be obtained at the Guardian Fund)
- Certified copy of an identification document of the guardian (ID or passport)

Allowances are paid on application only and will not be paid automatically to the guardian each quarter.

5.9 How and when will the allowance be paid?

Payment of an allowance will be made at the end of each quarter:

- First quarter – end of March
- Second quarter – end of June
- Third quarter – end of September
- Fourth quarter – end of December

Allowances will be paid only by electronic transfer directly into the bank account of the guardian. Cheques will be issued only in exceptional cases.

5.10 Payment of other expenses

Other expenses that will be considered separately from the quarterly allowances are:

- Medical expenses
- School/study fees
- Hostel fees
- Clothing and accessories for matric farewell

5.11 Forms to be submitted on application of such other expenses

The following form and documents must be submitted on application for the above expenses:

- Application for expenses – Form GF 6 (form can be obtained at the Guardian Fund)
- Certified copy of an identification document of the guardian (ID or passport).
- Accounts from the school, doctor, hostel or quotation from the supplier.

Prior approval for the payment of these expenses must be obtained from the Guardian Fund.

These applications are considered on merit taking into consideration the age of the minor and the available funds.

5.12 How and when will the accounts be paid?

Payments will be made on the first payment date determined by the Guardian Fund.

Cheques for payment of accounts are made out in favour of the creditor and posted to the guardian.

5.13 *Payment of inheritance and when will the inheritance be paid?*

When a minor turns 21 or marries, he/she is entitled to the funds standing to his/her credit in the Guardians fund, unless the will under which these moneys were inherited provides otherwise, for example that the minor must only receive his/her inheritance on attaining 25 years.

Inheritance can only be paid after the minor becomes entitled to the funds e.g. turns 21 or marries.

Inheritances will be paid only by electronic transfer directly into the bank account of the beneficiary. Cheques will be issued only in exceptional cases.

5.14 *Forms to be submitted on application of inheritance*

The following form and documents must be submitted on application for payment of an inheritance:

- Application for inheritance - Form GF 7 (form can be obtained at the Guardian Fund)
- Certified copy of an identification document of the child (ID or passport).

Contact details

You can contact the Master's office at any time from 8:30 until 16:00 from Monday to Friday for advice or information regarding the administration of deceased estates or any matters relating to the guardian fund.

The contact details are as follows:

Windhoek

Tel. nr. 061 – 2921111

Fax nr. 061 - 236802

Postal address:

Master of the High Court

Private Bag 13190

Windhoek

or visit us at the Master's office at Master's Building, John Meinert street, Windhoek.

Oshakati

Tel. nr. 065 – 223 6700

Fax nr. 065 - 220048

Postal address:

Master of the High Court

Private Bag 5563

Oshakati

or visit us at the Master's office at the High Court, 2nd floor, Sam Nujoma street, Oshakati.

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