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CONTENTS

No. **Page**

ACT

2 Administration of Estates and Inheritance Act, 2024..... 171

GOVERNMENT NOTICE

2 Statement of Objects and Reasons of the 257
Administration of Estates and Inheritance Act, 2024

ACT NO. 2 OF 2024

Administration of Estates and Inheritance Act, 2024

ARRANGEMENT OF SECTIONS

Section

PART I - PRELIMINARY

1. Short title
2. Interpretation
3. Scope of application

PART II - ADMINISTRATION OF THE ACT

4. Office of the Master
5. Powers, duties, and jurisdiction of Master
6. Master to keep register of executors, guardian, curators and sureties
7. Records of the office of the Master
8. Master to forward duplicates to all districts
9. Appointment and removal of appraisers for the valuation of estate and property
10. Oath of appraiser
11. Master's fees

PART III - ESTATES OF DECEASED PERSONS

12. Death notices
13. Executor to furnish further information, if death notice is defective

PART IV - WILLS

14. Competence to make a will
15. Content and form of a will
16. Eligibility to draft a will
17. Persons making a will may disinherit any person without assigning reason
18. Persons excluded from benefiting or inheriting from a will
19. Deposit of wills with the Master

20. Duty of persons in possession of wills at the time of testator's death and thereafter
21. Eligibility to be executor
22. Ineligibility of executor

PART V - INVENTORIES

23. Inventory of estate in community of property by surviving spouse within sixty days of the death
24. Inventory on the death of persons married out of community
25. Transmission of inventory to Master
26. Inventory by order of Court or Master
27. Particulars required as to immovable property
28. Executor to furnish certain returns to registration officers of immovable property

PART VI - CUSTODY OF ESTATE PENDING ISSUE OF LETTERS OF ADMINISTRATION

29. Temporary custody of the estates
30. Temporary custody of estates of persons married in community
31. Liability of persons disposing of property in estates without authority
32. Duty of person in possession of assets of estate of deceased persons
33. Appointment of curator bonis

PART VII - LETTERS OF ADMINISTRATION

34. Letters of administration
35. Letters of administration to executors appointed by will
36. Assumption of executors under power contained in a will
37. Proceedings on failure of nomination of executors or death incapacity or refusal to act
38. Circumstances in which proceedings to be taken for appointment of executor
39. Suspension or removal of executor
40. Revocation of letters of administration by order of Court
41. Security for due administration

PART VIII - DUTIES OF EXECUTOR

42. Executor's duty to make inventory
43. Appraisal of assets
44. Notice to creditors to lodge claims
45. Suspension of execution against estate
46. Executor's duty to pay debts
47. Liability of executor
48. Affidavit in support of claim
49. Sale of property out of hand
50. Sub-division of immovable property where minor or mentally incapacitated is interested
51. Disposal of mentally incapacitated or minor's portion and security bond
52. Re-marriage of surviving spouse
53. Survivor's rights to deal with communal property
54. Bequests of immovable property
55. Endorsement on title deeds
56. Penalty for refusing to deliver title deeds to executor
57. Endorsement of trusts against title deeds
58. Transfer of immovables out of estates
59. Minor's portion if domiciled in country outside Lesotho
60. Summary disposal of estate by Master
61. Lodging of claims and accounts of small value
62. Foreigners' estate consisting only of shares
63. Liquidation and distribution accounts
64. Remuneration of executors
65. Indemnity for administration and officials

PART IX - INTESTATE SUCCESSION

66. Intestate succession
67. Inheritance of adopted children

PART X - APPLICATION OF THIS ACT TO CUSTOMARY LAW

68. Written instructions
69. Heir
70. Appointment of a guardian
71. Inheritance by surviving spouse in a monogamous marriage
72. Inheritance by spouse in a polygamous marriage

- 73. Dispute settlement
- 74. Inheritance of vulnerable persons

PART XI - ESTATES OF MINORS, ABSENT PERSONS, GUARDIANS AND CURATORS

- 75. Appointment of guardian to minors
- 76. Guardian testamentary
- 77. Letters of appointment as guardian testamentary
- 78. Letters of curatorship to curator nominate
- 79. Security by curators and guardian by order of Court
- 80. Appointment of guardian by Master
- 81. Assumption under will by guardian testamentary and curators nominate
- 82. Death, incapacity, resignation or removal of guardians and curators
- 83. Revocation of appointment of guardian testamentary and curators nominate
- 84. Curator dative to absent person having no legal representative
- 85. Curators ad litem and bonis
- 86. Security by curators
- 87. Spouse as guardian or curators
- 88. Removal of insolvent guardian or curator

PART XII - DUTIES OF GUARDIANS AND CURATORS

- 89. Inventories by guardians and curators
- 90. Alienation of property by guardian or curators
- 91. Disposal of moneys not necessary for payment of debts
- 92. Account of administration by guardians and curators
- 93. Remuneration of curators

PART XIII - THE GUARDIAN'S FUND

- 94. Guardian's Fund to continue into existence
- 95. Funds at disposal of Master
- 96. Ordinary payment from Guardian's Fund
- 97. Extra ordinary payment from Guardian's Fund
- 98. Publication of list of unclaimed moneys
- 99. Forfeiture of unclaimed moneys
- 100. Investment of Guardian's Funds moneys
- 101. Provision of automated systems

-
102. Failure to lodge administration account

PART XIV - LEGAL PROCEEDINGS AGAINST EXECUTORS,
GUARDIANS AND CURATORS

103. Failure to make due payments
104. Procedure in civil proceedings taken by Master
105. Reports to the Court by Master
106. Statement of case to Court by Master
107. Reviews of Master's appointments
108. Penalties
109. False inventories

PART XV - OFFENCES AND PENALTIES

110. Theft, falsification, etc, of wills
111. Offence to substitute or surrogate by executor or guardian

PART XVI - GENERAL AND MISCELLANEOUS

112. Appointment of Master by will is void
113. Reduction of security
114. Effect of massing of joint estate
115. Estate banking account
116. Transitional provisions and repeals
117. Regulations

ACT NO. 2 OF 2024

Administration of Estates and Inheritance Act, 2024

An Act to consolidate and review the law relating to inheritance, administration and distribution of estates of persons who are deceased, minors, persons under curatorship, mentally incapacitated persons, certified ill and incapable of managing their own affairs, and persons absent from Lesotho without a lawful representative in Lesotho whose whereabouts are unknown; regulate wills and rights of beneficiaries; and provide for incidental matters.

Enacted by Parliament of Lesotho.

PART I - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Administration of Estates and Inheritance Act, 2024, and shall come into operation on the date of its publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise indicates -

“absentee” means a person whom the Master, after an enquiry, believes his whereabouts are unknown and has no legal representative in Lesotho;

“administrator” means a person nominated by the family of a deceased person to administer the estate of the deceased person and is granted letters of appointment by the Master under section 61(2);

“appraiser” means an appraiser appointed or deemed to have been appointed under section 9;

“Court” means the High Court of Lesotho having jurisdiction over the matter;

“curator” means any person who is authorised to act under letters of curatorship granted or signed and sealed by the Master;

“deed” means a written instrument other than a will that transfers holdings in an estate to another person or organisation after the death of the person who made the deed, and a deed document;

“descendant” means a person who descends directly from another person, such as a child, grandchild, great grandchild and so on;

“executor” means any person who is authorised to act under letters of administration granted by the Master, or under an endorsement made under section 34;

“letters of administration” means a document issued by the Master and includes a copy of such document duly certified by any competent authority in Lesotho under section 34;

“letters of appointment” means a document issued or a copy of any such document duly certified by Master under sections 61;

“letters of curatorship” means a document issued by the Master and copy of any such a document duly certified by any competent public authority in Lesotho by which any person named or designated in the document is authorised to act as curator of any property belonging to a minor or other person;

“letters of guardianship” means a document issued by the Master and includes a copy of any such a document duly certified by any competent public authority in Lesotho by which any person named or designated is authorized to act as guardian of a minor issued under sections 78 and 79;

“marriage with accrual” means a system where each spouse retains his independent estate, and only the growth on each spouse’s estate is shared according to the accrual agreement;

“Master” means the Master of the High Court, and includes a person lawfully acting in that capacity;

“mental incapacity” means a state or degree of mental abnormality by reason of which a person is incapable of managing himself or his affairs;

“Minister” means the Minister responsible for Law and Justice;

“minor” means a person under the age of eighteen whom one or both parents are deceased;

“property” means all property whether movable or immovable and includes rights and any contingent interest in the property;

“unmarried couple” means two people living together who are currently not married to each other or any other person; and

“written instructions” means a legal declaration of a person’s wishes regarding the disposal of his estate after death, under section 70.

Scope of application

3. (1) This Act shall apply to all -
 - (a) estates under customary or civil rites;
 - (b) estates reported after the commencement of the Administration of Estates (Amendment) Act, 2022¹;
 - (c) wills written before the commencement of this Act;
 - (d) estates of the mentally incapacitated in terms of the Mental Health Act, 1964²;
 - (e) estates of persons certified ill and incapable of managing their own affairs;
 - (f) estates of persons certified with intellectual disability and incapable of managing their own affairs; and
 - (g) estates under execution before commencement of this Act.

- (2) The Children Protection and Welfare Act, 2011³ shall apply to this Act to the extent that it is not inconsistent with the provisions of this Act.

PART II - ADMINISTRATION OF THE ACT

Office of the Master

4. (1) Subject to the Administration of the Judiciary Act, 2011⁴, there is continued into existence, the office of the Master which shall consist of such public officers as may be necessary for the administration, and efficiency in the exercise of power and the discharge of the duties and functions of the office of the Master under this Act.

(2) The office of the Master shall be a public office under the judicial service.

(3) In relation to the funds and expenditure of the office of the Master, the Master shall be the Chief Accounting Officer in accordance with the Public Financial Management and Accountability, Act 2011⁵ and any other financial laws.

(4) On matters of policy implementation, the Master shall liaise and coordinate with the Principal Secretaries and all other senior officials.

(5) Subject to subsection (3), in carrying out functions under this or any other law, the Master shall not be subject to the direction or control of any person or institution or authority, except the Chief Justice.

(6) Subject to this Act and the direction the Master may give them, the public officers referred to in subsection (1) shall perform the duties and functions of the office of the Master, as the Master may assign to them.

Powers, duties, and jurisdiction of Master

5. (1) Save as in this Act otherwise provided, all powers and rights exercisable and all duties to be performed by the Master shall continue to be so exercisable and performed by the Master and his successors in office.

(2) From the date of the coming into effect of this Act, all the property and estate of every deceased person, a minor, mentally incapacitated persons, persons permanently absent from Lesotho without a lawful representative in this regard and whose whereabouts are unknown, or persons under curatorship, persons certified ill and incapable of managing their own affairs and per-

sons certified with intellectual disability and incapable of managing their own affairs shall be administered under the supervision of the Master.

Master to keep register of executors, guardians, curators, sureties and administrator

6. The Master shall keep, a register containing the names of every -

- (a) executor to whom letters of administration have been granted;
- (b) surety for any executor;
- (c) guardian and curator to whom any letters of guardianship and curatorship have been granted;
- (d) surety for such guardian or curator; and
- (e) administrator

Records of office of the Master

7. (1) The Master shall preserve a record manually and electronically in his office of all original wills, death notices, inventories, liquidation and distribution accounts lodged at his office under the provisions of this Act or any prior law under which any such documents were lodged or were required to be lodged at the office of the Master, in the district concerned, and any such other documents lodged at his office as the Master may determine.

(2) Any person may, at any time during office hours, inspect any document and make or obtain a copy of a document or an extract there from on payment of a fee prescribed under the Third Schedule except a copy of a will.

(3) Notwithstanding subsection (2) a person holding office in the Government or a public officer may, in the course of his official duties, take a copy of the document or an extract from any such document without payment of any fee.

Master to forward duplicates to all districts

8. (1) The Master shall, as soon as may be practical, transmit a duplicate or copy certified by him of every account lodged with and accepted and filed by him, with the office of the Master in the district in which the person to whose estate the account relates ordinarily resided at the time of his death or where deceased left some properties in different districts, the estate shall be reported where the bulk of the property is located, but copies of inventory and liquidation and distribution accounts shall be filed in all relevant districts.

(2) The Master shall file the duplicate or copy in his office, and any person may, at any time during office hours, inspect or obtain a copy of or an extract from the duplicate or copy or any other document filed with the office of the Master.

Appointment and removal of appraisers for the valuation of estate and property

9. (1) The Master may, from time to time, appoint such and so many persons, residing within Lesotho, as he considers fit to be appraisers for the valuation of property, and may revoke any such appointment so made by giving reasons, in writing, and after following due processes as may be prescribed in the regulations.

(2) Every appraiser shall, in respect of an appraisal by him, be entitled to demand and receive a reasonable compensation, which shall be assessed according to a tariff set out under the First Schedule.

Oath of appraiser

10. A person who is appointed as an appraiser under this Act shall take an oath before the Master which shall be in the Form A set out in Second Schedule.

Master's fees

11. (1) The Master is authorised and required to -

(a) charge and demand, receive and retain, or recover in respect of the acts, matters or things done or caused to be

done by him or in his office, the fees specified in the Third Schedule and may charge such a fee as he considers appropriate in the circumstances; and

- (b) collect a fee under paragraph (a) where the Schedule so provides, in any form as may be required to authenticate a legal document.

PART III - ESTATES OF DECEASED PERSONS

Death notice

12. (1) Whenever a person dies, within the country, leaving any property under a will or without a will, the surviving spouse, child, parent, or person who, immediately after death has control of the premises at which the death occurs, shall, within sixty days from the date of death, cause a notice of death to be framed as set out in Form B of the Second Schedule, and shall cause the notice signed by himself, to be delivered or transmitted to the office of the Master, and accompanied by -

- (a) a death certificate;
- (b) a marriage certificate; and
- (c) a birth certificate of the deceased person.

(2) Where a person dies, outside Lesotho, leaving any property in Lesotho under a will or without a will, it shall be the duty of any person in Lesotho having possession or control of any such property or will to report the death to the Master, and the Master shall take such steps as are necessary and practicable to obtain a correct death notice.

(3) A person who fails to comply with the provisions of subsection (1) shall pay a penalty as set out in the Fourth Schedule.

Executor to furnish further information, if death notice is defective

13. If the information in the death notice is defective or insufficient, the Master may put a question to the executor, at any time after appointment, that will enable the Master to obtain the information he requires, and an executor shall,

within a period fixed by the Master, transmit to him, in writing, answers to each question to the best of the executor's ability.

PART IV - WILLS

Competence to make a will

14. (1) A person aged 18 years and above owning property and being mentally capable of appreciating the nature and effect of his act may make a will.

(2) A married or unmarried couple may make a mutual will.

(3) The burden of proof that the testator was mentally incapable at the time of making a will shall rest on the person alleging the incapacity.

Content and form of a will

15. (1) A will shall -

(a) be legibly hand written or typed, and signed -

(i) by a testator;

(ii) at the foot of each leaf of the will;

(iii) in the presence of two competent witnesses who are over the age of 18, and who shall append their signatures in the presence of each other and the testator.

(b) be dated;

(c) have a revocation clause;

(d) give full names, nationality, identity number, addresses and marital status of the testator; and

(e) give full names and identity number of witnesses.

(2) A testator who cannot sign his will can sign by way of a thumb print.

(3) If a thumb print is used, the will shall be certified by a commissioner of oaths indicating that he is satisfied with the identity of the testator and that it is indeed the will of the testator and that it is the testator's left or right thumb print.

Eligibility to draft a will

16. A will shall be drafted by the testator, legal practitioner, an attorney and a notary public.

Persons making a will may disinherit any person without assigning a reason

17. (1) A person competent to make a will shall have a full power to disinherit or omit to mention any child, parent, relative or descendant with or without assigning a reason for such disinheritance or omission, and no such will shall be set aside as invalid, either wholly or in part, by reason of the disinheritance or omission.

(2) Notwithstanding subsection (1) -

(a) vulnerable person under section 74 shall not be disinherited; and

(b) a will shall provide for maintenance of a minor child until the age of majority.

Persons excluded from benefiting or inheriting from a will

18. A person who -

(a) is convicted of having caused the death of a testator;

(b) is a spouse of a person who has witnessed a will;

(c) has drafted, typed or handwritten a testator's will; and

- (d) has signed a will on the testator's behalf, shall not be eligible to inherit from a will.

Deposit of wills with the Master

19. (1) A person may lodge with the Master, either open or enclosed, a will executed by the person, and the Master shall cause to be kept, a register of the name and address of a person so lodging a will and the date when it was so lodged.

(2) A will so lodged shall be accompanied by a duplicate or true copy of the will which, together with the original, shall be registered and the original copy kept in the custody of the Master, until the death of the person executing the will, unless the person lodging the will or his agent demands re-delivery, and when the will is re-delivered the person or agent shall sign a receipt for re-delivery.

(3) Where more than two copies are lodged, an extra copy shall be charged an extra fee as set out in the Third Schedule.

(4) A will shall be registered within the lifetime of the testator.

Duty of persons in possession of wills at the time of testator's death and thereafter

20. (1) A person other than the Master who has a will in his possession at the time of or after the death of the person executing the will shall immediately after the death, transmit or deliver the will to the Master.

(2) A person who drafted a will shall, upon death of testator and when required by the Master, transmit the original minute of any will noted by him to the Master and shall at the same time file a certified copy of the will in his protocol and endorse on it that the will was drafted by him.

Eligibility to be executor

21. The following persons are eligible to be executors:

- (a) surviving spouse;

- (b) an attorney;
- (c) a competent and authorised officer within accredited financial institution;
- (d) an officer who served in the office of the Master or Parliamentary Counsel for over a period of five years;
- (e) a notary public;
- (f) a child or parent with the assistance of an agent of one of persons listed, where the child or parent is not a legal practitioner; and
- (g) a legal practitioner who has served under an Attorney or Notary Public and has successfully wound-up not less than two estates to the satisfaction of the Master and is a person of integrity.

Ineligibility to be an executor

22. The following persons are ineligible to be an executor:

- (a) a minor child;
- (b) a mentally incapacitated person;
- (c) a person under curatorship;
- (d) an unrehabilitated insolvent;
- (e) a partnership;
- (f) Master or an officer in the office of the Master;
- (g) a juristic person; and
- (h) a person who has been charged or convicted of having caused the death of the testator.

PART V - INVENTORIES

Inventory of estate in community of property by surviving spouse within sixty days of the death

23. (1) When one of two spouses who have been married in community of property dies, the surviving spouse shall, within sixty days after the death, cause an inventory, which shall be in Form C as set out in the Second Schedule, of all property which, at the time of the death, formed part of or belonged to the estate possessed in community between the predeceasing and surviving spouses, to be made in the presence of two impartial witnesses being persons of good credit and repute and in the presence of such persons having an interest in the distribution of the joint estate as beneficiaries or legatees of the predeceased spouse.

(2) If any property not included in the inventory has, after the death, been registered in the name of the surviving spouse, the surviving spouse shall, within fourteen days after the date of any such registration, lodge with the Master, a supplementary inventory of all the property.

(3) The inventory shall be subscribed by the surviving spouse, the witnesses to the subscription of the inventory, and the beneficiaries or legatees so attending.

Inventory on the death of persons married out of community

24. (1) On the death of a person, being one of the two spouses married out community of property -

- (a) the wife or husband of the deceased or in the default or absence of the wife or husband;
- (b) the child or children of the deceased or in the default or absence, or minority of the child or children;
- (c) the next-of-kin of the deceased or in the default or absence, or minority of the next-of-kin; or
- (d) the person who, at or immediately after the death, has the control of the premises, where the deceased was liv-

ing or staying at the time of his death,

shall, within sixty days after the death, cause to be made, in the presence of two impartial witnesses being persons of good credit and repute, an inventory of all property known by the person making the inventory to have belonged to the deceased or to have been in his possession upon the said premises at the time of his death.

(2) An inventory shall be subscribed by the person making or causing the inventory to be made and by the witnesses to the inventory being subscribed.

Transmission of inventory to Master

25. A person making or causing an inventory to be made shall, as soon as the inventory has been made, deliver or transmit the inventory to the office of the Master.

Inventory by order of Court or Master

26. Notwithstanding anything to the contrary, the Court or Master may, on sufficient cause appearing and at any time, order that an inventory of any property belonging to a deceased person or to the joint estate of any deceased person and the surviving spouse, be taken by a person named in the order.

Particulars required as to immovable property

27. A person required by law to frame an inventory of the property of a deceased person shall include a specified list of all immovable property, registered in the name of the deceased or in which he knew the deceased had an interest at the date of his death, and shall insert, if possible, a reference to the title under which the deceased held the property, the date of the title, and full particulars concerning the interest.

Executor to furnish certain returns to registration officers of immovable property

28. The executor shall immediately after making inventory furnish to the Registrar of Deeds or other registration officer concerned, a return -

- (a) giving the name of a deceased person who, being married in community of property, had, at the date of death as shown in the inventory filed, an interest in immovable property not registered in the name of the deceased person, the date of the death of the person and a reference to the will; and
- (b) embodying all material information in respect of that immovable property, and the interest of the deceased in the property, contained either in the inventory lodged with the Master, or in the will of the deceased.

PART VI - CUSTODY OF ESTATE PENDING ISSUE OF LETTERS OF ADMINISTRATION

Temporary custody of the estates

29. On the death of a person not being one of the two spouses married in community of property -

- (a) the child or children of the deceased or in the default, absence, or minority of the child or children;
- (b) the next-of-kin of the deceased or in the default, absence, or minority of the next-of-kin; and
- (c) the person who at or immediately after the death has -
 - (i) the control of the premises where the death occurred; and
 - (ii) the person who at or immediately after the death has possession of or control of any goods and effects of the deceased,

shall secure and take charge of all goods and effects of whatever description under his control which belonged to the deceased and shall retain the goods and effects in his custody and possession until their delivery is demanded by the executor of the deceased or by any other person lawfully appointed by the Master or Court to receive delivery for the purpose of the administration of the estate.

Temporary custody of estates of persons married in community

30. Whenever one of the two spouses married in community of property dies, the assets of the joint estate shall remain under the charge of the survivor until the surviving spouse is appointed to administer the assets of such estate.

Liability of persons disposing of property in estates without authority

31. (1) A person who has custody of any property of the deceased person and has been issued a letter of administration shall not dispose of the property of an estate of a deceased person without authority of the Master or the competent Court.

(2) If a person, in any way disposes of any property of an estate of a deceased person under subsection (1), but the property is not contained in an inventory of that estate that is lodged with the Master in accordance with this Act, and as may be necessary for -

- (a) the safe custody or preservation of any part of the estate;
- (b) providing a suitable funeral for the deceased; or
- (c) for the subsistence of the family or household of the deceased, he shall be personally liable to pay the creditors, legatees and heirs of the deceased the full amount of their debts, legacies and inheritances, in so far as the amount received for the disposal of the property is insufficient for the payment of the creditors, legatees, and heirs of the deceased.

Duty of person in possession of assets of the estate of deceased persons

32. A person, not being the executor or curator of the estate of a deceased person duly appointed by the Master, who has in his possession or custody any property belonging to that estate, shall immediately either deliver that property to the executor or curator duly appointed and authorised to administer the estate, or report the particulars of the property to the Master, and if any such person fails to do so or part with any such property to any person not authorized by the Master by letters of administration or other direction to receive the property -

- (a) shall -

-
- (i) be liable to an administrative fee set out in Fourth Schedule; and
 - (ii) reimburse the estate of all the profits made while the property was in his possession; and
- (b) commits an offence and is liable on conviction, to a fine set out in the Fourth Schedule.

Appointment of curator bonis

33. (1) In all cases where the Master considers it expedient, he may appoint a curator bonis and issue letters of curatorship in a Form D set out in the Second Schedule to take the custody and charge of any estate until letters of administration granted for the due administration of the estate.

(2) A curator bonis may collect the debts and may sell or dispose of the perishable property belonging to the estate, wherever situate within the country, as the Master may specially authorise.

PART VII - LETTERS OF ADMINISTRATION

Letters of administration

34. (1) All the estates of all persons dying either testate or intestate shall be administered and distributed, in accordance with this Act, under letters of administration granted by the Master which shall be in Form E set out in the Second Schedule.

(2) The letters of administration shall be submitted to the executor testamentary duly appointed by a person so dying or to such persons as, in default of executors testamentary, are appointed as executors dative to the person so dying.

(3) Letters of administration shall authorise the executor or administrator to administer the estate wherever it is situated.

Letters of administration to executors appointed by will

35. (1) In all cases in which any deceased person has by will duly nom-

inated a person to be his executor the Master shall, upon the written application of the person so nominated, grant letters of administration to him as soon as the estate has been reported in the office of the Master.

(2) If it appears to the Master or if any person, in writing, lodged with the Master, objects that the will by virtue whereof any person claims to be the executor testamentary of any person deceased is not in law sufficient to warrant and support the claim, the Master may refuse to grant the letters of administration until -

- (a) the validity and legal effect of that will has been determined by the judgment of the Court;
- (b) the objection has been withdrawn by the person by whom it was made; or
- (c) the person objecting has had sufficient time to apply to the Court for an order restraining the issue of letters of administration.

Assumption of executors under power contained in a will

36. (1) Nothing in this Act shall prevent any executor testamentary from assuming any other person as executor of the testator under and by virtue of any power for that purpose to him committed by the testator by his will.

(2) A person shall not be entitled or qualified to act as assumed executor, unless letters of administration have, during the lifetime of the executor testamentary, been granted to him by the Master.

(3) Subject to the provisions of this Act in respect of security, the Master shall reissue letters of administration on production of -

- (a) the original letters of administration granted to the executor testamentary;
- (b) the will by which the assumption of the executor is authorized; and
- (c) the deed by which such executor testamentary has as-

sumed that person as an executor.

(4) Any provision of this Act and of any other law applicable or relating to or affecting executors shall apply and relate to such executor so assumed.

Proceedings on failure of nomination of executors or death, incapacity or resignation or refusal to act

37. (1) Where a person -

- (a) has died without having, by valid will, nominated a person to be his executor; and
- (b) duly nominated to be the executor of any deceased person has predeceased him or refuses or resigns or becomes incapacitated to act as an executor or within such reasonable time as the Master may consider sufficient or refusal to act, fails to obtain letters of administration,

the Master shall cause to be published in the Gazette, and in such other manner as he thinks fit, a notice calling upon the surviving spouse, the heirs, legatees, and creditors of the deceased to attend before him, at a time and place to be specified in the notice, for the purpose of proposing a person to be appointed by the Master as an executor dative.

(2) The Master shall appoint a person as he considers fit and proper to be an executor dative of the estate of the deceased person, and shall grant letters of administration accordingly, unless it appears to him necessary or expedient to postpone the appointment and to publish another notice under subsection (1), where a person -

- (a) has died without having by any valid will nominated any person to be his executor; and
- (b) duly nominated to be the executor of any deceased person has predeceased him or refuses or becomes incapacitated to act as executor or within such reasonable time as the Master may consider sufficient, fails to obtain letters of administration.

Circumstances in which proceedings to be taken for appointment of executors

38. Where there is no executor to administer an estate, the Master shall take proceedings in a manner provided by section 37 for the appointment of an executor dative.

Suspension or removal of executor

39. (1) An executor may be suspended or removed from office by the Master, if it is proven that -

- (a) he was appointed through an invalid will; or
- (b) he is guilty of a misconduct resulting in a conviction for an offence like forgery, theft or fraud with the subsequent imprisonment or a fine.

(2) An executor may be suspended or removed from his office by the Master, if the Master is satisfied that by -

- (a) reason of his absence from Lesotho;
- (b) other avocations;
- (c) failing health; or
- (d) any other sufficient cause,

the interest of the estate under his care would be furthered by his suspension or removal.

Revocation of letters of administration by Master or order of Court

40. (1) Letters of administration granted to a person as executor testamentary may be revoked and annulled by the -

- (a) Master, upon production to him of a will of a later date than the will in respect of which those letters were granted, if an application is made by an executor nomi-

nated in that later will, who is then legally capable, and qualified, and consents so to act; and

- (b) Court, on proof to its satisfaction that the will, in respect of which those letters had been granted to the person, is null and void or has been revoked wholly or in so far as it relates to nomination of that executor, or that such person is not legally qualified for the appointment.

(2) Letters of administration granted to a person as executor dative may be revoked and annulled by the Master on production to him of a valid will by which any other person who is legally capable, and qualified, and consents to act as an executor has been legally nominated as testamentary executor to the estate which the executor dative has been appointed to administer.

Security for due administration

41. (1) An executor dative, assumed executor, or curator dative shall, before he is permitted to commence the administration of the estate, and thereafter as the Master may require, find security to the satisfaction of the Master for the due and faithful administration of the estate to which he has been appointed.

(2) Subsection (1) shall apply to an executor testamentary, unless he -

- (a) is the parent, child, or surviving spouse of the deceased testator; or
- (b) has been nominated by will executed -
 - (i) before the commencement of this Act and has not been directed by will to find security; or
 - (ii) after the commencement of this Act, and the testator has in the will directed the Master to dispense with such security,

or as the Court may otherwise direct.

(3) The security shall be for such an amount as in the circumstances of each particular case as it appears to the Master reasonable.

(4) If any default is made in the administration of the estate, the Master may proceed to enforce the security and recover, from the person in default or from his sureties the actual loss to the estate.

(5) A certificate under the hand of the Master shall be *prima facie* evidence of the amount of any such loss.

PART VIII - DUTIES OF EXECUTOR

Executor's duty to make inventory

42. An executor shall, within 14 days of receiving letters of administration, make, subscribe and transmit to the Master, an inventory showing the value of all property belonging to the estate and, if he comes to know thereafter of any property which is not contained in any inventory lodged by him with the Master, he shall make, subscribe, and transmit to the Master an additional inventory showing the value of all the property belonging to the estate and shall find such further security as the Master may direct under section 41.

Appraisal of assets

43. If an executor fails, within such reasonable time as the Master may prescribe, to place a value upon the assets or any portion of the assets or place such a value on the assets as does not meet with the approval of the Master, the Master may cause the value of those assets to be appraised by an impartial person or persons and the value so ascertained shall be taken to be the true value of those assets for the purpose of this Act.

Notice to creditors to lodge claims

44. (1) An executor shall, within a week of being in the office of the executor cause a notice to be published -

- (a) in the Gazette;
- (b) in a newspaper circulating in the district in which the deceased ordinarily resided, and if he is not resident in the

district at the time of his death, in a newspaper circulating in the district where the deceased owned property;
or

(c) on the website of the judiciary or Master,

calling upon all persons having claims against the deceased or his estate to lodge the claim with that executor within such period from the date of the latest publication of the notice not being less than thirty days or more than three months, as the executor considers it proper in the particular circumstances of each case, except as provided for in section 61.

(2) All claims which would be capable of proof in case of the insolvency of the deceased's estate shall be deemed to be claims of creditors for the purpose of this Act.

Suspension of execution against estate

45. A person who has obtained a judgment of any Court against a deceased person in his lifetime or against his executor, shall not sue or obtain any process in execution of that judgment before the expiration of the period notified in the Gazette in manner provided in section 44, and a person shall not, within six months after the grant of letters of administration, obtain any process in execution of the judgment without first obtaining an order of the Court.

Executor's duty to pay debts

46. (1) On the expiry of the period of seven days set out in section 44, the executor shall satisfy himself as to the solvency of the estate before paying any debts of the deceased other than the reasonable expenses of the funeral and last illness.

(2) If the estate is solvent, the executor shall pay the creditors as soon as the funds sufficient for that purpose have been realized out of the estate, but subject always to the provisions of section 63.

(3) If the estate is insolvent, the executor shall administer and distribute the estate in such a manner as the Master may direct, with due regard being had to the rights of creditors.

ments of moneys out of an account, the Master may suspend the payments out of the account, and in such a case, only payments into the account may be made.

(7) If, upon the prosecution of an executor, trustee or curator for the theft or conversion of any property subject to his administration, it be proved that such property was in the possession of the executor, trustee or curator since his appointment as such, the onus shall lie upon him to prove, if the said property was a sum of money, that the money was duly deposited in an account as required and, if he fails to do so, he shall be liable, if he is convicted on the charge of theft or conversion, to a fine not exceeding double the amount of such sum or, in default of payment, to imprisonment for a period not exceeding five years, but such fine or such imprisonment shall not prevent the imposition of the penalty provided by this section.

Transitional provisions savings and repeals

116. (1) Any law that contravenes provisions of this Act.
- (2) The following laws are repealed:
- (a) the Wills Ordinance 1843⁸;
 - (b) the Law of Inheritance Act, 1873⁹;
 - (c) the Administration of Estate Act, 1935¹⁰;
 - (d) the Renumeration of Executors, 1946¹¹; and
 - (e) the Intestate Succession Act, 1953¹².

Regulations

117. (1) The Minister responsible for administration of estate and inheritance law in consultation with the Minister responsible for finance and on the recommendations of the Master, may make regulations not inconsistent with this Act -

- (a) for the custody and preservation of the records, securities and valuable effects in the office of the Master;

(2) A creditor, whose claim was not lodged with the executor before the expiry of the period set out in the notice published in the Gazette or before a distribution of the funds of the estate, shall not be entitled, in respect of his claim, to demand restitution from any other creditor of any moneys paid to such other creditor after the expiry of that period and in the course of such distribution on account of a valid claim against the estate.

Affidavit in support of claim

48. (1) An executor may, if he thinks fit, require a person preferring a claim as a creditor against the estate to substantiate the claim by an affidavit setting out the details of the claim with such particulars as the executor may reasonably require, or, with the consent of the Master, by examination on oath by or before him.

(2) An executor may refuse to recognize any such claim until the provisions of this section have been complied with.

(3) A Court by which a claim is adjudged in favour of a claimant may decline to grant the claimant his costs against the estate, if the Court considers that the information given by the claimant to the executor was insufficient and that the executor acted with prudence and discretion in contesting the claim.

Sale of property out of hand

49. If the Master, after due enquiry, is of opinion that it will be to the advantage of persons interested in an estate to sell out of hand instead of by public auction, any property belonging to that estate, and if no provision is made in the will of the deceased to the contrary, the Master may grant the necessary authority to the executor so to act.

Sub-division of immovable property where minor or mentally incapacitated is interested

50. If, in the opinion of the Master, it is expedient to sub-divide, or to make a division of any immovable property which is registered in the name of a minor or mentally incapacitated or in which a minor or mentally incapacitated is interested, the Master, on being satisfied after due enquiry and after inspection of the property by him or by some suitable person appointed by him that the proposed sub-division or division is fair and equitable, may, upon such terms as to costs

as he thinks fit, consent to the division or subdivision on behalf of the minor or mentally incapacitated and interested person.

Disposal of mentally incapacitated or minor's portion and security bond

51. (1) The surviving spouse shall, in the absence of a provision to the contrary contained in the will of the first dying spouse, be entitled as a natural guardian to cause the executor to pay into the minor's bank account any sum of money due to that child from the estate of the deceased spouse.

(2) Every sum under subsection (1) shall be paid into the minor's account or into the Guardian's Fund by the executor.

(3) Subject to the provisions of subsection (1), an executor shall pay into the Guardian's Fund, any money which has become due from the estate to a -

- (a) minor;
- (b) mentally incapacitated;
- (c) person whose address he is unable to ascertain and who has no lawful representative known to the executor within Lesotho; or
- (d) person certified with intellectual disability and incapable of managing his own affairs.

(4) It shall be lawful for the Master upon consideration of a report by the executor on the matter and of the terms of the will of the deceased, to make such order exempting the executor from compliance with the provisions of this section as it may consider right.

(5) Nothing contained in this section shall limit any power possessed by the Master to order any such money to be paid by the executor to a person or institution for the benefit of persons mention in subsection (3).

Re-marriage of surviving spouse

52. (1) Where a person who is a widower or widow and the parent of a minor child entitled to claim from the person any inheritance from the estate of

that person's deceased spouse intends to marry again, the person shall obtain a certificate in Form F set out in the Second Schedule under the hand of the Master to the effect that, if -

- (a) the estate of the deceased spouse or the joint estate of the deceased spouse and is of the value set out in the Fifth Schedule, a certificate shall state that the inheritance due to the minor beneficiaries of the deceased spouse from his estate has been paid to the Master or secured, or that there is no such inheritance due or payable; and
- (b) any such estate is of less value than amount set out in the Fifth Schedule, a certificate shall state that fact.

(2) The certificate shall be delivered to the marriage officer or minister of religion before whom the marriage is intended to be solemnized.

(3) Where the Master discovers that a widow or widower failed to obtain a certificate to remarry under subsections (1) and (2), the Master shall cause the widow or widower to forfeit his child's share from the estate of the deceased spouse and remain only with his share as a surviving spouse.

(4) The forfeited child's share under subsection (3), shall be divided among the children in equal shares.

(5) A marriage officer or any other person who by virtue of his religious inclination has a right to solemnize a marriage, shall, unless there has first been delivered to him the certificate required by this section in respect of the parties to the marriage, in addition to any other liability, be liable to such a fine or, in default of payment, to such imprisonment as set out in the Fourth Schedule.

Survivor's rights to deal with communal property

53. A spouse married in community of property who survives the other spouse and is not an executor to whom letters of administration are duly granted by the Master, shall not transfer or mortgage any immovable property belonging to the joint estate, even if the property is registered in the name of the surviving spouse.

Bequests of immovable property

54. (1) Subject to the terms of the will, it shall be the duty of an executor to transfer property to the person to whom it is bequeathed, but if a usufructuary interest or other like limited interest in such property has been bequeathed to any person with a direction that, after the expiry of such an interest in the property in order that the terms of the will or a reference to the will may, subject to the payment of transfer duty, if any, be endorsed against that title deeds, the executor shall, instead of transferring the property to the person to whom it is bequeathed, transmit the title deeds to the Registrar of Deeds or other registration officer concerned for compliance with the direction.

(2) Where the Master is satisfied that it is impossible to transfer property under subsection (1) without causing undue hardship, he may authorise the executor to transmit the titles to the registrar of deeds or other registration officer concerned in order that a note may be made on the said titles that the property has been bequeathed.

(3) An executor who fails to use due diligence in complying with the provisions of this section, shall forfeit all claim to fees in respect of his administration of the estate.

Endorsement on title deeds

55. The Registrar of Deeds or other registration officer to whom the titles have been transmitted under section 55 shall make all endorsements and do all things necessary to give effect to the provisions of that section.

Penalty for refusing to deliver title deeds to executor

56. (1) A person in possession of a title deed required by an executor to comply with the provisions of section 55, who refuses to deliver or unreasonably delays the delivery of the title deed to the executor, shall be liable -

- (a) to pay all reasonable costs to which the executor may incur in obtaining the order of a competent Court declaring him entitled to the possession of the deed; and
- (b) such a penalty as the Court may impose, but the legal rights or position of the person shall not be affected by

his delivery of the deed in terms of this section.

(2) An executor shall, as soon as the title deed is no longer required for the purposes of complying with the provisions of section 55, return it to the person from whom it was received, if, but for this section, the person would be entitled to possession of the title deed.

Endorsement of trusts against title deeds

57. (1) Where the deceased person by his will directs that any of his property instead of being distributed amongst beneficiaries shall be administered by some other person on their behalf, the executor shall, after payment of debts -

- (a) deliver the property to the trustee;
- (b) lodge the trustee's acceptance of the property with the Master;
- (c) cause the terms of the will, or a reference, in so far as those terms relate to the administration, to be endorsed by the Registrar of Deeds or other registration officer concerned against the title deeds of such immovable property; and
- (d) shall lodge, with the Master, the receipt of the administrator of the trustee for the titles and a certificate from the Registrar of Deeds or other registration officer that the title deeds have been endorsed as required,

the trustee shall have full power to deal, in terms of that will, with any of the deceased person's property.

(2) The Registrar of Deeds or other registration officer shall do all things necessary to enable an executor to comply with the provisions of this section.

(3) The provisions of section 41 (2), (3), (4) and (5) shall apply to a trustee.

Transfer of immovables out of estates

58. (1) An executor who desires to effect transfer of any immovable property out of an estate in pursuance of the terms of a will, shall lodge, with the Registrar of Deeds, a copy of the will of the deceased duly certified by the Master.

(2) If a copy of the will has already been lodged, a reference to such a will is sufficient compliance with this section.

(3) An executor who desires to effect transfer of any immovable property in pursuance of a sale whether by public auction or private treaty shall lodge with such a transfer a certificate under the hand of the Master to the effect that no objection to such transfer exists.

Minor's portion if domiciled in country outside Lesotho

59. (1) If, upon the distribution of an estate under this Act, it appears that any person who is a minor is entitled to inherit an amount of money -

- (a) the executor with the concurrence of the Master; or
- (b) the Master, if this amount has been paid into the Guardian's Fund,

may, if satisfied that it will be in the best interest of the minor or where the minor is domiciled outside Lesotho, to remit the amount due to the minor, to the minor's account in that country.

(2) The executor shall produce proof, in due course, to the satisfaction of the Master, that he has remitted any amount in accordance with this section.

(3) Where any amount has been remitted under this section, the Master shall not be subject to any claims in respect of amount by any heir.

Summary disposal of estate by Master

60. (1) The Master may dispense with the appointment of an executor in respect of an estate of a value set out in the Fifth Schedule and may, by regu-

lations, give directions as to the manner in which the estate shall be administered and distributed.

(2) In all cases in which it appears, from the death notice or inventory lodged in respect of the estate of a deceased person and from such other information as the Master may demand, that the value of the assets of the estate does not exceed the amount set out in the Fifth Schedule, the Master may, in the case of an intestate or testate estate, issue letters of appointment which shall be in Form D set out in Second Schedule.

Lodging of claims and accounts of small value

61. In any case in which it appears that an estate does not exceed the amount in value set out in the Fifth Schedule, the Master may, with due regard to the terms of the will, direct that the -

- (a) estate be administered within a time not exceeding six months;
- (b) advertisement calling upon creditors to lodge their claims be published once -
 - (i) in the Gazette, state owned and community radio and in a newspaper circulating in the district in which the deceased was ordinarily resident at the time of his death, or;
 - (ii) if not resident in the Country the Master shall cause to be published in the country where the deceased was resident at the time of his death or;
 - (iii) in a state owned and community radio, newspaper circulating in a district where the deceased owned property and that all claims be lodged within a period not being less than thirty days or more than three months fixed by the Master and notified in the advertisement.

Foreigners' estate consisting only of shares

62. Upon the death of any person who is not resident in Lesotho, and who does not own any property in Lesotho, other than shares in a company, the Master

may dispense with provisions of this Act on the duties of executors under section 42 and direct the manner in which the estate shall be administered.

Liquidation and distribution accounts

63. (1) An executor shall administer and distribute the estate in respect of which he is appointed, according to law and the provisions of any valid will relating to that estate.

(2) As soon as may be, after the expiration of the period notified in the Gazette in manner provided, and not later than six months from the day on which the letters of administration were issued to him, or within such further time as the Master may, upon sufficient cause being shown, allow, the executor to lodge with the Master an account showing the liquidation and distribution of the estate up to the date when the account was lodged, together with a true copy of that account.

(3) If the account is not the final account, the executor shall set out all debts to the estate and outstanding, and all property unrealized and the reasons why the debts have not been collected or realized.

(4) The executor shall, from time to time as the Master may direct, render periodical accounts of his administration until the estate finally wound-up.

(5) An executor's account shall lie open at the office of the Master, and where the deceased resided or carried on his principal business and in any district for inspection for not less than three weeks by any person interested in the estate.

(6) The executor shall give due notice that the account lies open for inspection by advertisement in the Gazette, state owned and community radio electronic platforms and in a newspaper circulating in the district where the deceased resided or carried on his principal business and shall state in that notice the period during which and the place at which the account will lie open for inspection.

(7) A person interested in the estate may, at any time before the expiration of the period allowed for inspection, lodge with the Master, in writing, any objection with the reasons of the objection, to that account.

(8) If the Master is of the opinion that any such objection ought to be sustained, he shall direct the executor to amend the account or shall give such other directions as he may consider fit.

(9) A person aggrieved by a direction of the Master under subsection (8) may, within thirty days after the date of the Master's direction and after giving notice to the executor and to any person affected by the direction, apply by motion to the Court, for an order to set aside the direction, and the Court may make such order as it may consider fit.

(10) Where the direction affects the interests of a person who has not lodged such an objection, the account so amended shall again lie open for inspection in the manner and with the notice under subsection (9), unless the person so affected consents in writing to the account being acted upon.

(11) When an account has been open to inspection and no objection has been lodged, or if any objection has been lodged and has not been sustained or has been withdrawn or the person objecting has not applied to the Court within the time prescribed, the executor shall proceed to pay out the creditors and heirs and shall lodge, with the Master, the vouchers in support of the account.

(12) An executor shall by notice published in the Gazette, state owned and community radio advertisement in a newspaper with wide circulation and on the website of the judiciary call an exit meeting of the beneficiaries to be held before the Master.

(13) Upon the final winding up of the estate to the satisfaction of the Master, the executor shall be entitled to obtain his discharge from the Master as the executor.

Remuneration of executors

64. (1) An executor shall, in respect of his administration, distribution, and final settlement of any estate be entitled to receive out of the assets of the estate, or from any person who, as heir, legatee or creditor is entitled to the whole or any part of the estate, such remuneration as may have been fixed by the deceased person by will or deed.

(2) If no remuneration has been fixed, the executor shall receive compensation which shall be assessed according to a tariff set out in the First

Schedule.

(3) If any executor fails to lodge the account of his administration and distribution of the estate as and when required by this Act so to do and can give no lawful and sufficient excuse for his failure, the Master may disallow the whole or any portion of the remuneration which the executor might otherwise have been entitled to receive in respect of his administration of the estate.

Indemnity for administration and officials

65. (1) The Government, Master or Registrar of Deeds or other registration officer shall not be liable for any damage sustained by person in consequence of the omission, return, transfer, mortgage acceptance, release or cancellation.

(2) If any of the officers has not acted *bona fide* or have not exercised reasonable care and diligence, the Government shall be liable for the damage sustained under subsection (1).

(3) Notwithstanding subsection (2), if any of the officers has acted negligently, maliciously and intentionally, he shall be held personally liable.

PART IX - INTESTATE SUCCESSION

Intestate succession

66. (1) The surviving spouse of every person who after the commencement of this Act dies, either wholly or partly, intestate is to be an intestate heir of the deceased spouse according to the following:

- (a) if the spouses were married -
 - (i) in community of property and the deceased spouse leaves any descendant who is entitled to succeed, the surviving spouse shall after division of the joint estate succeed to the extent of a child's share;
 - (ii) out of community of property without accrual, and the deceased spouse leaves any descendant

-
- who is entitled to succeed the surviving spouse shall succeed to the extent of a child's share;
- (iii) out of community of property with accrual, either spouse will keep his own property but when the marriage is dissolved either through death the other spouse shall be entitled to claim half the difference between the growths of the two estates;
 - (iv) either in or out of community of property and the deceased spouse leaves no descendant, the surviving spouse shall be the sole heir;
- (b) where the deceased is survived by descendant but not the spouse, the descendants inherit equally to the deceased estate;
 - (c) where a biological descendant or offspring has been legitimised by his biological father or paternal family he shall be eligible to inherit;
 - (d) where a spouse marries or remarries with children from previous marriage or born out of wedlock and not adopted by the spouse such children are eligible to inherit from their biological parents;
 - (e) where the deceased leaves neither a spouse nor descendant but is survived by -
 - (i) both parents, they inherit the estate in equal shares;
 - (ii) one parent, the surviving parent inherits one half of the estate and descendants of the deceased parent inherit the other half of the estate, unless there are no such descendants, in which case the surviving parents inherit the entire estate;
 - (f) where the deceased leaves no spouse, no descendants, no parent -

- (i) but both parents have left descendants, the estate is divided into halves, one half goes to the descendants of the deceased father by representation and the other half goes to the deceased mother by representation;
- (ii) no descendants of the parents the other blood relations of the deceased in the nearest degree inherit the estate in equal shares;
- (g) where the deceased leaves no spouse or living relative, the Master shall appoint a *curator bonis* to look after the property, and the state shall be entitled to the estate after lapse of ten years; and
- (h) notwithstanding the provisions of the Marriage Act 1974⁶, a marriage out of community of property shall be with accrual.

Inheritance of adopted children

67. (1) Notwithstanding the provisions of the Children's Protection and Welfare Act, 2011, an adopted child shall not inherit from its natural parents, unless specifically bequeathed by will.

(2) For the purposes of this Act, a relationship by adoption under the provisions of the Children's Protection and Welfare Act, 2011, shall be equivalent to a blood relationship.

PART X - APPLICATION OF THIS ACT TO CUSTOMARY LAW

Written instructions

68. (1) A person aged 18 years and above owning property and being mentally capable of appreciating the nature and effect of his act may make written instructions in Form H.

(2) Written instructions are signed by the owner and two witnesses before the chief who shall endorse with a stamp.

(3) Written instructions are made for an estate value as set out in Fifth Schedule.

(4) An administrator appointed under written instructions shall be issued letters of appointment in Form G set out in the Second Schedule.

(5) For the purposes of this Act, an administrator shall be nominated by three members of the family of the deceased person and granted letters of appointment by the Master under section 61.

Heir

69. (1) The customary law on inheritance, and allocation of property to an heir shall not be applicable to an estate of a deceased person.

(2) Subject to subsection (1), all the children of the deceased person under civil or customary marriage, male or female, regardless of age shall be beneficiaries in equal shares to the estate of their deceased parents, except where there is a will or written instructions in Form H set out in the Second Schedule.

(3) In a polygamous marriage, all the children in each house male or female regardless of age, shall inherit in equal shares, where there is no will or written instructions.

(4) When a parent dies leaving a beneficiary who is a minor, the person appointed as a guardian of the beneficiary and administrator of the estate shall keep a written record of the administration of the estate, and this record shall be open to inspection by the office of the Master and the relatives.

(5) A surviving parent, guardian, closest relative or any member of the community shall seek the permission of the Master before alienating, disposing of or selling a minor's property.

(6) A person who contravenes this section commits an offence and is liable, on conviction, to a penalty set out in the Fourth Schedule.

(7) Notwithstanding a provision of the Land Act 2010⁷, in matters of inheritance, siblings shall have co-ownership of land, and the inherited arable land shall not be subjected to subdivision.

Appointment of a guardian

70. If the beneficiary in any house is a minor, the guardian shall be appointed by -

- (a) a will or any another deed made by a parent of the minor;
- (b) an order of the children's court;
- (c) a family resolution; or
- (d) the Master.

Inheritance by surviving spouse in a monogamous marriage

71. (1) If the surviving spouse who has minor children remarries, the property of the previous marriage shall not form part of community of property in the subsequent marriage.

(2) In every case where a widow or widower remarries, a certificate to remarry shall be applied for irrespective of the type of the marriage.

Inheritance by surviving spouse in a polygamous marriage

72. (1) In a polygamous marriage, where a surviving spouse is the husband, he shall use the property of each house to maintain the children of the same house.

(2) In a polygamous marriage, where the surviving spouse is the wife, she shall use the inherited property to maintain the children of that house.

Dispute settlement

73. Any dispute arising from an inheritance shall be taken to the court by the aggrieved party.

Inheritance of vulnerable persons

74. (1) Notwithstanding any law to the contrary, a child whose deceased parents' estate is inherited by paternal uncles on intestacy under customary law before the commencement of this Act shall be entitled to the property of its par-

ents on the coming into operation of this Act.

(2) Where the paternal uncle dies leaving a surviving spouse, the children of the deceased parent shall be eligible to inherit from the property of the paternal uncle to the extent of child share.

(3) Where paternal uncles on intestacy under customary law inherited the property, the children of the deceased parent, shall be eligible to inherit from the property of the paternal uncle an equal share with the paternal uncle's children.

PART XI - ESTATES OF MINORS, ABSENT PERSONS, GUARDIANS AND CURATORS

Appointment of guardian to minors

75. (1) It shall not be lawful for any person, except -

- (a) the father of a minor; or
- (b) the mother of a minor,

to nominate any guardian or guardians to administer and manage the estate or to take care of the property of that minor.

(2) This section shall not prevent any person who gives or bequeaths any property to any person, from nominating a curator or curators to administer and manage the property during the minority or during the insanity of the donee or legatee, in a like manner and as fully in all respects as might lawfully have been done prior to the commencement of this Act.

Guardian testamentary

76. (1) A guardian nominated by a father or mother in a manner provided for under section 75(1) to a minor child shall be called a guardian testamentary, whether that guardian has been nominated by will or any other deed duly executed by the father or mother.

(2) No guardian testamentary shall assume or enter upon the administration or management of estate or property of minor, except in so far as it may

be necessary for the preservation and safe custody of the property, until letters of guardianship have been granted to him by the Master in Form I set out in the Second Schedule.

(3) No guardian of the minor child shall administer the estate of the minor child without the physical custody of such a minor.

(4) Notwithstanding subsection (4), the Master may appoint both a custodian and guardian for a minor child, where exceptional circumstances so permit or exist.

Letters of appointment as guardian testamentary

77. (1) The Master shall, on application, in writing made to him, grant letters of appointment as guardian testamentary to a person who has, by a valid will or deed, been lawfully nominated and appointed guardian testamentary to a minor.

(2) Where it comes to the knowledge of the Master that a person who has, by a valid will or deed, been nominated guardian testamentary to a minor possessed of property has not applied for letters of appointment, the Master shall, require that person to inform him whether he is willing to act as a guardian testamentary and, if he consents so to act, the Master shall grant him letters of appointment accordingly.

(3) Where it appears to the Master that the guardian has neglected or used the property of the minor not for the benefit of the minor, the Master shall cause the guardian to repay or restore the value of the minor's property.

(4) Letters of guardianship granted to a guardian testamentary shall authorise him to administer the entire estate of the minor wherever situate within the country.

(5) A letter of guardianship as a guardian testamentary shall not be granted to a person who is, at the time, incapacitated or disqualified by law from holding the office of the guardian.

(6) The provisions of section 33 in respect of the appointment of a curator bonis shall apply to the appointment a guardian testamentary, subject to modification.

(7) The Master shall cause the guardian under subsection (3) to repay or restore the value of the minor's property, if the property was neglected and was not used for the best interest of the minor.

(8) The surviving parent of a minor child who has an estate or is due to receive an inheritance, shall apply for letters of guardianship or curatorship after the death of another parent.

Letters of curatorship to curator nominate

78. (1) No curator nominate shall assume or enter upon the administration or management of property or estate, except in so far as may be necessary for the preservation and safe custody of the administration or management of property or estate of persons certified -

- (a) ill and incapable of managing their own affairs;
- (b) mentally incapacitated; and
- (c) intellectually disabled and incapable of managing their own affairs,

until letters of curatorship have been granted to him by the Master.

(2) Letters of curatorship granted to a curator nominate shall authorise him to administer all property included in the deed pursuant to which he is appointed and committed to his care, wherever within the country any such property is situate.

Security by curators and guardian by order of Court

79. The Court may, on the application of the Master or a relative of a person having an interest in the administration of the property of a minor, make an order in a case in which, prior to the commencement of this Act, any guardian testamentary might by law have been required to file security, that the letters of curatorship shall not be granted to any guardian testamentary or curator nominate until he has found security to the satisfaction of the Master.

Appointment of guardian by Master

80. (1) Where it comes to the knowledge of the Master that an estate or property within the country has devolved upon or come to any minor within the country, who is not at the time under the natural guardianship of his father or mother or under the guardianship of a guardian testamentary duly confirmed, or whose property is not under the care of a curator nominate or dative duly appointed by the Master, the Master shall, unless he grants letters of curatorship as provided by section 80, cause to be published in the Gazette and in such other manner as he considers fit, a notice calling upon the relatives of the minor to attend at his office at a time specified in the notice to see letters of curatorship granted to the person or persons appointed by him as a guardian or guardians dative of the minor.

(2) The Master may, if he considers it expedient, call upon the relatives of the minor to attend before a social worker in the office of Master, at a time and place appointed, and state the objections to any of the next-of-kin or other person being appointed guardian dative or to propose a person to be appointed by the social worker recommended to the Master as a fit and proper for appointment by him as a guardian, and the Master shall, in either event, or if there be no attendance appoint such a person as he thinks fit and proper to be the guardian or guardian dative of the minor, and shall grant to the person appointed, letters of curatorship in the Form F set out in the Second Schedule, unless the Master considers it necessary or expedient to postpone the appointment and to call another meeting.

(3) If any such minor is not in possession of or have no claim to any property whatever or to any property, except that which he has been given or bequeathed to him by a person who has duly appointed a curator or curator nominate to administer and manage it during his minority or except money paid over to and in the hands of the Master under section 51, the Master need not, but may, take proceedings for the appointment of a guardian dative.

(4) If the property of a minor which is not already being administered by a person having authority in that behalf do not exceed the value set out in the fifth schedule, the Master, may appoint a guardian summarily and without observing the formalities prescribed by this section.

(5) Letters of curatorship granted to a curator dative shall authorise him to administer the property of the minor wherever situate within the country.

Assumption under will by guardian testamentary and curators nominate

81. (1) Nothing in this Act contained shall prevent any guardian testamentary of any minor or curator nominate of any estate from assuming any other person as guardian of that minor or curator of that estate as the case may be by virtue of any power for that purpose committed to him by the will of, or any other deed duly executed by the person by whom the guardian testamentary or curator nominate was appointed.

(2) Subject to the provisions of this Act as to security, the Master shall grant the letters of curatorship production to him of the will or other deed by which the assumption of that guardian or curator is authorised and of the deed by which such guardian testamentary or curator nominate has assumed that person as guardian or curator, and where possible, the original letters of appointment granted to that guardian or curator.

(3) A provision of this Act and of other law applicable or relating to or affecting guardians or curators dative shall apply to such guardian or curator so assumed.

Death, incapacity, resignation or removal of guardians and curators

82. If -

- (a) a guardian of any minor either testamentary or assumed or the curator of any estate either nominate or assumed, to whom letters of appointment have been granted has died or becomes incapacitated to act as such, or resigns or has been removed from his office by any competent authority, and for the guardianship of that minor or for the administration or management of that estate, no guardian or curator remains; or
- (b) any guardian, after letters of appointment have been granted to him dies or become incapacitated or be removed,

then and in such a case, proceedings for the appointment of a guardian in place of the person who died or became incapacitated or removed shall be taken by the Master in a manner provided under section 80.

Revocation of appointment of guardian testamentary and curator nominate

83. (1) Letters of appointment granted to a person as a guardian testamentary or curator nominate may, at any time, be revoked and annulled -

- (a) by the Children's Court on proof to its satisfaction that the will or deed in respect of which those letters have been granted to the person is null and void or has been revoked either wholly or in so far as related to the appointment of the person as a guardian or curator or that the person was not legally qualified for the appointment; or
- (b) the Master on production to him of -
 - (i) a will or deed of a later date than the will or deed in respect of which those letters were granted, if applicable, be made by a guardian or curator nominated in that later will or deed who is capable and qualified to act; or
 - (ii) a valid will or deed, by which any other person who is then legally capable and qualified, and who consents to act as a guardian has been legally nominated guardian testamentary of the minor concerned, but if the will or deed was not produced prior to the grant of letters of appointment to the guardian owing to the fault or negligence of the person appointed guardian testamentary, that person shall be personally liable for and may be compelled by the Master or any person related to the minor to pay to the minor's estate, all expenses which have been incurred in respect of and with reference to the appointment of the curator dative.

Curator dative to absent person having no legal representative

84. (1) If it comes to the knowledge of the Master that there is within the country any estate or property belonging to any person whose whereabouts

are unknown and whom he believes to be permanently absent from Lesotho without having a legal representative in the country, the Master may cause to be published in the Gazette and in such other manner as he may think fit, a notice calling on all whom it may concern to attend before him, at the time and place specified in the notice, to see letters of confirmation granted to some person to be appointed by him as curator dative of the property of the absent person and the Master shall, at the time and place so specified, appoint a fit and proper person to be the curator dative by letters of appointment which shall be in Form H set out in the Second Schedule.

(2) If the only property known by the Master to belong to the person believed to be absent in Lesotho consists of money payable to him by the executor of a deceased person or trustee of an insolvent estate, the Master shall not take any proceedings as set out in subsection (1).

(3) Letters of appointment granted under this section to a curator dative shall authorise him to take custody and charge of all the person's property wherever situate within the country.

Curator ad litem and bonis

85. (1) Nothing in this section contained shall prevent the Court from appointing a curator *ad litem* to a person whenever and in the same manner in all respects as such an appointment might by law have been made by the Court if this Act had not commenced.

(2) Where expedient the Master may appoint a curator *bonis* to take custody and charge of any property wherever situate within the country, for the due administration and management of the same letters of appointment have been granted to some person as guardian testamentary or dative, or as curator nominate or dative.

Security by curators

86. (1) A curator dative or curator *bonis* shall, before he enters upon the administration of the estate or property concerned and thereafter as the Master may require, find security for the due and faithful administration and management of the estate or property, to the satisfaction of the Master and to such an amount as in the circumstances of each particular case appears to him reasonable.

(2) A curator nominate shall be under the like obligation of finding security provided for under subsection (1), unless the curator nominate -

- (a) is the natural or adoptive parent of the minor; or
- (b) was nominated by will executed before the commencement of this Act and has not been directed by the will to find security;
- (c) he has been nominated by the will executed after the commencement of this Act, and the testator has in such will directed the Master to dispense with the security; or
- (d) the Court has otherwise directed.

(3) The provisions of section 41 (3), (4) and (5) in respect of security for due administration shall apply to this section.

Spouse as guardians or curators

87. The provisions of this Act regarding the election and appointment of guardianship and curatorship shall not apply to the other spouse, unless specifically stated in the letters of guardianship and curatorship.

Removal of insolvent guardian or curator

88. A guardian, either testamentary or dative, and a curator, either nominate or dative, whose estate has been placed under liquidation as insolvent or assigned under any law shall cease to exercise or hold office as guardian or curator unless, before the final liquidation or the assignment of such estate guardian or curator has found security to the satisfaction of the Master for due and faithful performance of the duties, and if no such security has been found such guardian or curator shall, as soon as the final order for the liquidation or assignment has been made, *ipso facto* be removed from office.

PART XII - DUTIES OF GUARDIANS AND CURATORS

Inventories by guardians and curators

89. A guardian and curator shall make, sign, and transmit, to the Master -

-
- (a) within 30 days after assuming his office, an inventory of all property within the country belonging to the person under his guardianship or subject to his administration; and
 - (b) as soon as he has knowledge that there is any other property so owned or subject to his administration, an additional inventory of such other property, and he shall find such further security as the Master may under sections 41 and 79 require of him.

Alienation of property by guardian or curators

90. (1) No guardian and curator other than a guardian testamentary or a curator nominate duly authorised by the will or deed under which he has been appointed shall alienate or mortgage any immovable property belonging to a minor, unless the Court or Master having been satisfied that the immovable property does not exceed the value set out in the Fifth Schedule, has authorised the alienation or mortgage of such property.

(2) The Master may authorise the mortgage of immovable property belonging to a minor to an extent not exceeding the amount stated in the Fifth Schedule, if satisfied that the mortgage is necessary for the preservation or improvement of the property or for payment of expenses necessarily incurred in connection with the property, or for the maintenance or education of the minor.

Disposal of moneys not necessary for payment of debts

91. A guardian dative, a curator dative, and a curator *bonis* and, subject to the terms of the will or deed by which he was appointed a guardian testamentary and a curator nominee shall immediately on appointment pay over to the Master all moneys subject to his administration and not required for the immediate payment of the debts of the estate or the immediate maintenance of the person to whom the money belongs.

Account of administration by guardians and curators

92. (1) A guardian and curator shall, on or before the fifteenth day of February in every year, lodge with the Master a just, true, and exact account of his administration up to the thirty-first day of December last preceding, sup-

ported by vouchers, together with a true copy of that account.

(2) If a guardian or curator fails to lodge such an account in manner provided for under subsection (1) and has no lawful and sufficient excuse for his failure, the Master may disallow the whole or any portion of the remuneration which the defaulting guardian or curator would otherwise have been entitled to receive in respect of his administration of the estate concerned during the year ending the thirty-first day of December.

(3) A surviving spouse to whom the predeceasing spouse has by will or other lawful instrument entrusted the administration of their joint estate during the minority of their children, shall be required to lodge the annual account in a manner provided for under subsection (1) notwithstanding anything to the contrary contained in this section.

Remuneration of curators

93. (1) A curator, either nominate or dative shall, in respect of his administration and management of any estate, be entitled to claim, receive, or retain out of the assets of that estate remuneration for his care and diligence in the administration and management.

(2) All such remuneration shall be assessed according to a tariff set out in the First Schedule and authorised by the Master.

PART XIII - THE GUARDIAN'S FUND

Guardian's Fund to continue into existence

94. (1) The Minister responsible for finance in consultation with the Minister responsible for administration of estates and inheritance law shall regulate or align the Guardian's Fund, by regulations, with the Public Financial Management and accountability Act, 2011.

(2) The Fund established by section 91 of the Administration of Estates Act, 1935 shall continue to exist and shall consist of moneys -

- (a) in the Fund at the commencement of this Act;
- (b) to be paid to the Master under -

-
- (i) the Administration of the Estate Act, 1935;
 - (ii) this Act or any other law or in pursuance of an order of Court; or
 - (c) accepted by the Master from a lawful source in trust for any person or persons known or unknown.

(3) Where any money is received and accepted by the Master, he shall open in the books of the Guardian's Fund an account in the name of a person to whom money or the estate to which that money forms part of, and if it be not known to whom any such money belongs, or if, in the case of minor heirs, it is more convenient, the account may be opened in the name of the person from whom that money is received, or of the estate from which that money is derived.

(4) The Guardian Fund shall be audited by the Auditor General annually.

(5) The Minister responsible for finance shall, by regulations and in consultation with the Minister responsible for administration of estates and inheritance law, make further provisions as are necessary for the effective management and operation of the Guardian Fund.

Funds at disposal of Master

95. The Master may withdraw any part of the working balances which are retained at his disposal under this Act for the purpose of paying out any money amounts due and payable out of the Guardian's Fund.

Ordinary payment from Guardian's Fund

96. (1) The Master shall pay any sum of money standing to the credit of any person or estate in the books of the Guardian's Fund to the person by law entitled to receive the amount of money due.

(2) A parent of a minor child having money deposited in the Guardian's Fund shall not be entitled to receive a greater amount of the interest due in respect of the money deposited than in the opinion of the Master is reasonably necessary for the support to and advancement in the life of the minor, regard being had to the minor's circumstances and conditions in life.

Extra ordinary payment from Guardian's Fund

97. (1) If after careful enquiry, it appears to the Master to be in the interest of a minor, the Master may, apply an amount which may be standing to his credit for the maintenance, education or other benefit of the minor.

(2) Where it appears to the Master that the interest upon an amount standing in the Guardian's Fund to the credit of a mentally incapacitated beneficiary is not sufficient to provide for the maintenance and treatment of the mentally incapacitated beneficiary, the Master may apply for those purposes so much of the capital, as, regard being had to the circumstances of the mentally incapacitated beneficiary and of the persons dependent on him, it appears to the Master to be just and reasonable.

(3) The Master may, after consulting the guardian, withdraw from the Guardian Fund, working balances any sum of money belonging to a minor for the purchase of immovable property, if he is satisfied that such a purchase will be to the benefit of the minor.

(4) Nothing in this section shall authorise the Master to disregard the terms of any valid will or other deed.

Publication of list of unclaimed moneys

98. (1) The Master shall, in the month of July in each year, cause to be drawn up a list of all persons with unclaimed moneys in the books of the Guardian's Fund which are claimable and are unclaimed, and shall cause the list to be published -

- (a) by notice published in the Gazette;
- (b) for a period of one year on the Judiciary website;
- (c) in a local newspaper with a broad circulation or national radio for a consecutive period of one month;
- (d) in a Government circular and submit copies of the circular to the District Administrators and Councilors in all the districts of Lesotho, to be displayed at a conspicuous place on their respective offices, for a period of one year;

and

- (e) in such manner as he considers most expedient, in any country or countries to which any person or person interested may be supposed to belong.
- (1) -
- (2) The Master shall, in the publication of the lists under subsection (1) -
 - (a) include sufficient information in respect of all persons with unclaimed moneys; and
 - (b) invite all persons to appear before the Master and no amount set out in the Fifth Schedule shall be advertised more often than once every five years.
 - (3) The Master shall track down all beneficiaries of unclaimed moneys.

Forfeiture of unclaimed moneys

99. When any money which has been placed to the credit of any person or estate in the Guardian's Fund remains unclaimed by any person having a just and lawful right to the unclaimed money for a period of twenty years from the date when the money was so placed to credit or in the case of a minor, from the date when he attains his majority, the claim shall lapse and the moneys shall be paid over to and appropriated as part of the general revenue of Lesotho.

Investment of Guardian's Funds moneys

100. (1) The Master may, subject to the regulations made under this Act in respect of the Guardian Fund, invest in any stock, debentures or other securities which may be issued by the Government of Lesotho or any other country which may be specified in the regulations, and be charged upon the public revenue of either Government, all such moneys standing to the credit of the Guardian's Fund as shall not be required to meet the current expenditure of the Fund, in such a manner as the Minister responsible for finance may set out in the regulations.

- (2) The Master shall not make an investment without the authority

of the Minister responsible for administration of estates and inheritance law in consultation with the Minister responsible for finance and approval by Cabinet.

(3) A person who is aggrieved with the decision made under this section may apply to Court for a remedy.

Provision of automated systems

101. (1) The Minister responsible for finance shall provide the Master with all systems necessary for the smooth administration of the Guardian's Fund, including automated systems suitable -

- (a) for calculation of balances after deductions and balances after deposits; and
- (b) to calculate interest on every balance in the Fund.

PART XIV - LEGAL PROCEEDINGS AGAINST EXECUTORS, GUARDIANS AND CURATORS

Failure to lodge administration account

102. (1) If an executor, guardian or curator fails to lodge his administration account with the Master as and when required by this Act, any person having an interest in the administration may apply to the Court for an order directing the executor, guardian or curator to lodge his account, but before so applying, shall give to the executor, guardian or curator one month's notice, in writing, of his intention so to apply.

(2) An executor, guardian or curator who receives such a notice may apply to the Master for an extension of time to lodge his account, and the Master may grant such extension as in the circumstances of the case he may think reasonable.

(3) If the Master refuses any such extension of time, and an application under subsection (1) is made to the Court, and if upon that application the Court is of opinion that an extension of time ought to have been granted by the Master, the person by whom the application was made shall nevertheless be entitled to his costs, if there was sufficient time before the notice of the application for the executor, guardian or curator in default to bring in review by the

Court the refusal of the Master to extend the time.

(4) The costs adjudged to person under this section shall, unless otherwise ordered by the Court, be payable by the executor, guardian or curator in default, from his pocket, and he shall not be entitled, unless so authorised by the Court, to charge the costs to the estate under his administration.

Failure to make due payments

103. An executor, guardian or curator who, without sufficient excuse retains, and fails as and when required by this Act to pay over any moneys to the Master or for the benefit of a minor to any other person, shall be liable to forfeit, at the instance of the Master or such other person for the benefit of the estate or for the person to whom the money belongs, interest upon the amount of the default at the rate of 18.5 percent per annum as from the commencement of the default.

Procedure in civil proceedings taken by Master

104. (1) Where in this Act the Master is required or authorised to take civil proceedings against an executor, a guardian or curator, he may proceed by way of application or motion and may, when so proceeding, report to the Court, in writing, the facts upon which he relies instead of stating them in an affidavit, notwithstanding any law or rules of Court to the contrary.

(2) An executor, a guardian or curator, if resident in Lesotho, is obliged to answer the Master in any proceedings instituted under this Act in the Court.

Reports to the Court by Master

105. (1) Where in the course of his duties the Master finds it necessary to lay any facts before the Court, otherwise than upon an application made under section 104, the Master may lay those facts before the Court by a report, in writing, transmitted through the Registrar of the Court, and the Court may make such order as it considers fit.

(2) The Court may, where it considers necessary under subsection (1), refer the report back to the Master and require the report to be presented upon formal application in Court under section 104.

Statement of case to Court by Master

106. Where any difference of opinion upon a question of law arises between the executor and the Master in the distribution of an estate and a minor is interested in the decision of that question, the Master and executor may state a case, in writing, for determination by the Court or a Judge in chambers, and the determination of the Court or Judge shall be binding upon the Master and the executor, without prejudice to the rights of other persons interested in the distribution.

Review of Master's appointments

107. An appointment by the Master of an executor, a guardian or curator, and an order or decision of or taxation by the Master under this Act shall be subject to appeal to or review by the Court upon motion at the instance of any person aggrieved by the appointment, order, decision or taxation and the Court may confirm, set aside, or vary the appointment, order, decision or taxation.

PART XV - OFFENCES AND PENALTIES**Penalties**

108. A person who fails to comply with a provision of which no penalty is specifically provided for under this Act is liable, on conviction, to a fine as set out in the Fourth Schedule, and such punishment shall be in addition to any other punishment or penalty or forfeiture to which he may otherwise be liable, whether under this Act, any other law or under the common law.

False inventories

109. A person required by this Act to make or cause to be made an inventory of any estate, goods or effects, who willfully makes a false inventory commits an offence and is liable, on conviction, to a penalty set out in the Fourth Schedule.

Theft, falsification, etc. of wills

110. A person who steals, willfully destroys, conceals, falsifies or mutilates any will commits an offence and is liable on conviction to a penalty set out in the Fourth Schedule, and it shall not in any indictment or other form of charge

of the offence be necessary to allege that the will is the property of another person or is of no value.

Offence to substitute or surrogate by executor or guardian

111. A person appointed as an executor of an estate or guardian to a minor, who substitutes or surrogates another person to act in his place commits an offence and is liable, on conviction, to a penalty set out in the Fourth Schedule.

PART XVI - GENERAL AND MISCELLANEOUS

Appointment of Master by will is void

112. If a person by will or deed has nominated the Master to be -

- (a) an executor or administrator of an estate; or
- (b) a guardian testamentary of a minor; or
- (c) a curator nominate of any estate or property given or bequeathed by that person to a minor or mentally incapacitated, the nomination shall have no effect, and proceedings shall be taken for the appointment of an executor dative, guardian dative or curator dative as if no such nomination of the Master had been made.

Reduction of security

113. When an executor, guardian or curator, having given security to the Master, has accounted to the Master by means of an account supported by vouchers, as required under this Act, for any assets the value of which was taken into consideration by the Master when the security was assessed, the Master, upon his accepting and filing that account, may, if he is satisfied that the remaining security will be sufficient to cover the value of the assets remaining to be accounted for, reduce the amount of the security by any sum not exceeding the value as it appeared to him when the security was assessed of the assets so brought to account.

Effect of massing of joint estate

114. Where two spouses, married in community of property, have by their mutual will massed the whole or any specific portion of their joint estate, and disposed of it after the death of the survivor, conferring upon the latter a fiduciary, usufructuary or other limited interest in the joint estate, then upon the death of either of such spouses, adiation and the acceptance by the survivor of benefits under the will shall have effect of conferring upon the heirs entitled to the said property after the expiry of the said limited interest the same rights in respect of the survivor's half share of such property as they may by law possess in respect of the half share which belonged to the spouse who has first died.

Estate banking account

115. (1) Unless exempted by the Master, a curator and executor shall, as soon as he has funds of the estate over and above an amount of One Thousand Maloti in hand, open an account with a bank within Lesotho or, with the written consent of the Master, with a bank within Lesotho, in the name of the estate and shall pay those funds and all other funds of the estate received by him into the said account not later than one day after the first day upon which it was reasonably possible for him to pay in the amount.

(2) An executor and a curator who fails to comply with the provisions of this section shall, at the instance of the Master or any person having an interest in the estate, pay, to the estate, interest at the rate of 18.5 percent per annum on the amount so retained by him as from the commencement of the default.

(3) All receipts or orders for the payment of moneys out of an account under subsection (1) shall truly express the cause of payment and the names of the persons in whose favour they are drawn.

(4) The Master may, at all times, require an executor or curator to furnish him with a bank statement or other sufficient evidence of the position of the account.

(5) Any executor or curator who fails to comply with the provisions of this section may be removed from office by the Master.

(6) Where, in the opinion of the Master, there are suspicious pay-

ments of moneys out of an account, the Master may suspend the payments out of the account, and in such a case, only payments into the account may be made.

(7) If, upon the prosecution of an executor, trustee or curator for the theft or conversion of any property subject to his administration, it be proved that such property was in the possession of the executor, trustee or curator since his appointment as such, the onus shall lie upon him to prove, if the said property was a sum of money, that the money was duly deposited in an account as required and, if he fails to do so, he shall be liable, if he is convicted on the charge of theft or conversion, to a fine not exceeding double the amount of such sum or, in default of payment, to imprisonment for a period not exceeding five years, but such fine or such imprisonment shall not prevent the imposition of the penalty provided by this section.

Transitional provisions savings and repeals

116. (1) Any law that contravenes provisions of this Act.
- (2) The following laws are repealed:
- (a) the Wills Ordinance 1843⁸;
 - (b) the Law of Inheritance Act, 1873⁹;
 - (c) the Administration of Estate Act, 1935¹⁰;
 - (d) the Renumeration of Executors, 1946¹¹; and
 - (e) the Intestate Succession Act, 1953¹².

Regulations

117. (1) The Minister responsible for administration of estate and inheritance law in consultation with the Minister responsible for finance and on the recommendations of the Master, may make regulations not inconsistent with this Act -

- (a) for the custody and preservation of the records, securities and valuable effects in the office of the Master;

- (b) as to the payment of money out of the working balances of the Guardian's Fund;
- (c) for the management and good conduct of the business off and the practice and procedure to be observed in the Master's office;
- (d) as to the remuneration to be paid to executors, curators, guardian and sworn appraisers, and generally for the better carrying out of the objects and purposes of this Act;
- (e) amend the fees set out in the Schedule; and
- (f) for giving effect to any other provision of this Act.

NOTE

- 1. Act No. 11 of 2022
- 2. Act No. 7 of 1964
- 3. Act No. 7 of 2011
- 4. Act No. 16 of 2011
- 5. Act No. 12 of 2011
- 6. Act No. 10 of 1974
- 7. Act No. 8 of 2010
- 8. Act No. 4 of 1843
- 9. Act No. 26 of 1873
- 10. Act No. 19 of 1935
- 11. Act No. 163 of 1946
- 12. Act No. 2 of 1953

FIRST SCHEDULE
TARIFF OF FEES

Tariff or Remuneration of Sworn Appraisers, Executors and Curators

(Sections 9, 64, 93)

1. Ad Valorem tariffs

| | Value of Property (Maloti) | Basic Tariff (Maloti) | Additional to basic tariff (Maloti) | Maximum Fee (Maloti) |
|-----|--|----------------------------------|--|---------------------------------|
| (a) | Valuation up to M50,000 | 500 | | |
| (b) | Valuation from 50,000 to 150,000 | 500 | 1% for every 1,000 above 50. 000 (1,000) | 1, 500 |
| (c) | Valuation from 150,000 to 350, 000 | 1, 500 | 1% for every 1,000 above 150. 000 (1,800) | 3,500 |
| (d) | Valuation from 350, 000 to 500,000 | 3, 500 | 1% for every 1,000 above 350. 000 (1,200) | 5, 000 |
| (e) | Valuation From 500,000 to 750,000 | 5, 000 | 0.9% for every 1,000 above 500. 000 (1,250) | 6, 250 |
| (f) | Valuation From 750, 000 to 1,000 000 | 6, 250 | 0.8% for every 1,000 above 750. 000 (1,250) | 7, 500 |

| | | | | |
|-----|---------------------------------------|--------|--|---------|
| (g) | Valuation from 1,000 000 and above | 7, 500 | 0.5% for every 1,000 above 1, 000. 000 (20,000) | 27, 500 |
|-----|---------------------------------------|--------|--|---------|

2. Subsistence and Transport

In addition to the fees for appraisalment, as set out above, the following shall be allowed in all cases in which appraisalment is made at a place more than three kilometers from the place of business of the appraiser:

- (a) When own conveyance is used.....M3.00 per kilometer;
- (b) When public transport is used.....the actual fare paid;
- (c) When a journey undertaken for the purpose of appraising property belonging to several owners, the expenses of one journey may be charged, and should be apportioned to the several owner's pro rata; and
- (d) When client provides suitable transport, no travelling fees may be charged by the appraiser.

3. Remuneration of executors and curators

The remuneration of executors and curators will be assessed and taxed by the Master according to the following tariff, and the Master may, in his discretion, authorize a variation from this tariff in special cases if he shall see fit:

- (a) Upon the proceeds of movables sold, promissory notes, book debts,
interest and house rent collected or other income.....5%;
- (b) Upon the proceeds of immovables sold, life policies and bonds and recovered, movables taken over at a valuation or specially bequeathed:.....
10%;
- (c) Upon the immovable taken over at a valuation

or specially bequeathed: 3.5 percent (three and half percent.....
.....3.5%; and

(d) Upon cash found in the estate.....
...1%

SECOND SCHEDULE

FORM A

OATH OF APPRAISERS

(Section 10)

I.....
.....ID No.....
Of
.....
.....

Hereby swear/ solemnly declare that I am appointed, I

- (1) will appraise all such estates or properties as may be submitted for my valuation according to the true valuation thereof and to the best of my skill and knowledge.
- (2) Will not do valuations for the purposes of the Act outside my appointed district unless I have been appointed in such district as ad hoc appraiser by the Office of the Master of the High Court.
- (3) Shall not act in connection with any property in which or in the valuation of which -
 - (a) I or my spouse or partner has any pecuniary interest other than my remuneration as appraiser; or
 - (b) my principal or employer or any person related to me within the third degree has any pecuniary interest.
- (4) Shall inform the Office of the Chief Master -
 - (a) if I no longer reside or pursue a career or carry on a business in the district I have been appointed; and
 - (b) of any other reasons (such as resignation, poor health etc.) which necessitates the termination of my appointment

.....
Signature of Appraiser

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(1) Do you know and understand the contents of the declaration?
Answer _____

(2) Do you have any objections to taking the prescribed oath?
Answer _____

(3) Do you consider the prescribed oath to be binding on your conscience?
Answer _____

I certify that the deponent has acknowledged that he/she knows and understands the contents of the declaration which was sworn to/affirmed before me on this _____ day of _____ 20__ and the deponent's signature was placed thereon in my presence.

Commissioner of Oaths

Full Names:

Designation: _____

Area of

Jurisdiction: _____

FORM B

DEATH NOTICE

(Section 12)

1. Name of the deceased.....
2. Date of birth of the deceased.....
3. Birthplace and nationality of the deceased.....

4. ID number of the deceased.....
5. Names and addresses of the parents of the deceased:
Father.....
.....
Mother.....
.....
6. Age of the deceased.....years.....months
7. Occupation in life of the deceased.....
8. Ordinary place of residence of the deceased.....
9. Married or unmarried, widower or widow, divorcee.....
 - (a) Name of surviving spouse (if any), and whether married in community of property or not.....
 - (b) Name or names, and approximate date of death of pre-deceased spouse or spouses.....
.....
.....
 - (c) Place of last marriage.....
10. The day of the decease.....20.....
11. Where the person died, House.....Town or Place.....
12. Name of children of deceased, and whether major or minors. State separately the children born of different marriages and give the date of birth of each. Names must be written out in full. If there are no children and either or both par-

ents are dead, then give the names and addresses of the brothers and sisters of the deceased.

.....
.....
.....
.....
.....
.....
.....
.....

13. Has the deceased left any movable property?.....

14. Has the deceased left any immovable property?.....

15. Is the deceased's estate estimated at M250,000 in value or

16. Has the deceased left a will?.....

Dated atthe.....day of.....20.....

Name

SignatureCapacity.....

(State in what capacity and whether at the time at or near the place of death)
This notice must be filled up and signed by the nearest relative or connection of the deceased who shall at the time be at or near the place of death – or in the absence of such near relative or connection, by the person who at or immediately after the death shall have the chief charge of the house in or place in which the death occurred and must be sent to the Master within thirty days of the death.

FORM C
INVENTORY

(Section 23, 24, 25, 26, 42)

The following is a list of all the property movable and immovable, belonging to the estate of the late (Name).....

.....

(Date of Death).....

.....

and surviving spouse.....

.....

of.....

.....

IMMOVABLE PROPERTY

N.B Dates and Registered numbers of titles to be specified, and in the case of portions, the area of the piece or pieces of land to be started.

| | | |
|-------|---|---|
| | M | L |
| TOTAL | | |

MOVABLE PROPERTY

M

L

M

L

Cash found in the Estate

TOTAL

Claims in favour of the Estate

TOTAL

RECAPITULATION

M

L

FORM D
LETTERS OF CURATORSHIP

(sections 33, 78, 84)

Estate No.

These are to certify that:

.....
.....

Of.....
.....Cell No.....

Has/have been duly appointed and authorized as such to act as the curator.....
.....

Of the estate of.....
.....

Who is.....
.....

Signed at.....THIS.....DAY OF
.....20.....

.....
Assistant Master of the High Court

FORM E
LETTERS OF ADMINISTRATION

(Section 34, 35, 36, 37)

No. E.....

These are to certify that:

.....

of.....

..... Cell No:.....

has/have been duly appointed as

.....

.....

And is/are hereby authorized as such to administer the Estate of the Late;

.....

.....

ID No.....

Who Died:.....

By the Office of the Master of the High Court of Lesotho, in the

..... District.

Dated.....

.....

Assistant Master of High Court

Note: The Law requires every Executor:-

- (a) Within 14 days of receiving Letters of Administration, to make, subscribe and transmit to the Master and inventory showing the value of all property belonging to the Estate (Section 42);
 - (b) To cause notices to creditors and debtors to be published (Section 44);
 - (c) To lodge with the Master a Liquidation and Distribution Account within six months after the date of his appointment. Every Executor who shall fail to do so without lawful and sufficient excuse shall forfeit all claims to any fees to which he may otherwise have been entitled, and may be summoned before the High Court to answer for his default; and
 - (d) To open a special banking account as soon as he has funds of the Estate in hand over and above the amount of M1,000.00 (Section 110).
- This serves to inform you that the above provisions of the law will be strictly enforced

FORM F
CERTIFICATE TO REMARRY

(Section 52)

Certificate No.

These are to certify that

.....

.....

ID No.

Cell No.

Of.

.....

Has appeared before the Master of the High Court pursuant to section..... of the Administration of Estates and Inheritance Bill, 2024.

(Tick applicable one)

1. It appears the property from the previous marriage has been secured for the minor children of the previous marriage.

or

2. There is no inheritance due or payable that has to be secured for their minor children.

I RECOMMEND THAT SHE SHOULD BE ALLOWED TO RE-MARRY.

Signed at on the
day of, Year.....

.....
Assistant Master of the High Court

FORM G
LETTERS OF APPOINTMENT

(Section 60)

Estate No:

THIS IS TO CERTIFY that:

.....
.....
.....
Of.....
.....
.....

Telephone No.....

Has been duly authorized to take control of the assets of the Estate of the late
.....
.....
.....

Identity No:

Who died on:

As reflected in the inventory filed with me, to pay the debts, and to transfer the residue of the estate to the beneficiaries entitled thereto by law.

ASSETS

AMOUNT

1. IMMOVABLE PROPERTY

2. MOVABLE PROPERTY

3. CASH FOUND IN ESTATE

4. CLAIMS IN FAVOUR OF ESTATE

TOTAL

.....
ASST. MASTER OF THE HIGH COURT

.....
DATE STAMP

PS: In cases involving immovable property, it must be borne in mind that transfer thereof must be registered in the relevant council or the Land Administration Authority, firearms must be property licensed.

FORM H

WRITTEN INSTRUCTIONS (LITAELO TSA MOFU)

(sections 68)

1. Names and ID of the author (Mabitso le boitsebiso ba monga thepa).....
2. Residential address (Aterese ea bolulo).....
3. Marital status (Boemo ba lenyalo).....
4. Nature of marriage (Mofuta of lenyalo).....
4. List of property and who it is bequeathed to: (describe property and names of beneficiaries in full)(Lethathamo la thepa le mabitso a batho ba abeloang ka botlalo (hlalosa thepa le batho ba abeloang ka botlalo)
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)

I declare that the gross value does not exceed the amount set out in Fifth Schedule (Ke hlapanya hore boleng ba thepa eaka bo ka tlase ho M125,000.00)

Signed at (e tekennoe sebakeng sa).....on the (ka la).....day of (Khoeling ea).....year (selemong sa).....

.....
Author (Mongoli)
Witnesses (Lipaki):

.....
Author (Mongoli)

1.
(Names in full, ID number and signature)
(Mabitso ka botlalo, boitsibiso le motekeno)

2.
(Names in full, ID number and signature)
(Mabitso ka botlalo, boitsibiso le motekeno)

.....
Chief Stamp
and
Signature

FORM I
LETTERS OF GUARDIANSHIP

(sections 76 & 77)

Estate No.

These are to certify that:

.....

.....ID No.....

Of.....

.....Cell No.....

Has/Have been duly appointed and authorized as such to act as the guardian...

.....

Of.....

.....

the minor child/children of the late

.....

.....

Signed atthis.....

day ofYEAR.....

.....

Assistant Master of the High Court

THIRD SCHEDULE

MASTER'S FEES OF OFFICE

(Section 7, 11, 19(3))

On all estates of deceased persons or estates under curatorship (except estates under the charge of the curator bonis pending the appointment of an executor) the gross value of which according to executor's, or curator's account Master's fees shall be calculated as -

1. Master's fees for estates of deceased persons and estates under curatorship shall be calculated in the following manner. Where according to the executor's or curator's account, gross value:

(a) Exceeds M125, 000.00 but less than
M150, 000.00.....
M500.00;

(b) Exceeds M150, 000.00 for every further M5, 000.00 or
Part thereof a further fee of
M30.00; and

2. The following fees shall be payable in respect of the documents or services mentioned:

(a) Taxing the remuneration of executors, curators and sworn appraisers upon every M10.00 or fraction of the taxed amountM0.50;

(b) For every certificate under the hand of the Master.....
.....M50.00;

(c) For every report submitted by the Master, an amount of.....M50.00;

(d) For Master's reports under High Court Rule 8(19).....
M200.00;

(e) For binding documents in each estate according to the size

-
- of the estate, a fee in the discretion of the Master from
M100.00;
- (f) For extracts or copies of documents made or certified
in the office of the Master for every page.....
...M5.00;
- (g) For every letters of administration, guardianship
and curatorship
.M50.00;
- (h) For a certificate to remarry.....
.M100.00;
- (i) For every certificate under the hand of the Master in respect
of which no other fee is specially provided in this tariff.....
M50.00;
- (j) For the custody of any Will during the testator's life time.....
.....M 200.00;
- (k) For an extra copy of a Will.....
M50.00; and
- (l) For the inspection of the records of or information
concerning any one estate except in the case of the
executor or curator of such estate or the lawful agent.....
...M20.00;

FOURTH SCHEDULE**FEES AND PENALTIES****(Section 12(3), 53(5))**

1. Penalties for the late reporting of a deceased person's estate-
 - (a) For estate value of M1,000.00 to M10,000.00M50.00;
 - (b) For estate value of M10, 000.00 to M50,000.00.....M150.00;
 - (c) For estate value of M50, 000.00 to M100,000.00M250.00;
 - (d) For estate value of M100, 000.00 to M125,000.00M500.00; and
 - (e) For estates above M125, 000.00.M1,000.00 for the first year and M500 for each subsequent year.
2. Penalties for non-compliance with provisions of this Act -
 - (a) A person who fails to comply with provisions of sections 24, 25, 27, 42 and 91 commits an offence and is liable on conviction to a fine not exceeding M50,000.00 or to imprisonment of a period not less than 2 years or both;
 - (b) A person who fails to comply with section 32(b) commits an offence and is liable on conviction to a fine not exceeding M1,000.00 or to imprisonment of a period of not less than six months or both;
 - (c) A person who willfully makes false inventory, is liable on conviction to a fine not exceeding M50,000.00 or to imprisonment of a period not less than 2 years or both;

- (d) A person who commits an offence provided for in section 102 is liable on conviction to a fine not exceeding M50,000.00 or to imprisonment of a period not exceeding 2 years or both;
- (e) A person who commits offence under clause 110 is liable on conviction, to a fine not exceeding M7,000.00 or to imprisonment of a period not less than three years or both;
- (f) A person who commits an offence under section 103 is liable on conviction to a fine not less than M50,000.00 or to imprisonment of a period not less than 2 years or both.

3. Administrative fees -

A person who fails to comply with section 32(a) is liable to an additional administrative fee of M5,000.00.

FIFTH SCHEDULE**CATEGORIES AND MONETARY CEILING****(Section 61, 92, 100)****1. Categories**

- (a) Estates of which the gross value of assets is M125 000.00 and below may be summarily disposed and shall be administered in terms of section 70 and 80(4);
- (b) Estates of which the gross value of assets is above M125 000.00 - M250 000.00 an executor shall be persons as provided for under section 21(f);
- (c) Estates of which the gross value of assets above M250 000.00, an executor shall be persons as provided for under section 21 (a), (b), (c), (d) and (e); and

Monetary Ceilings

- (a) Value of Property to be mortgaged by Master's authority shall not exceed M50, 000.00;
- (b) Minor's property to be mortgaged to an amount not exceeding M125, 000.00; and
- (c) An amount less than M5,000.00 shall not be advertised more often than once every five years.

GOVERNMENT NOTICE NO. 2 OF 2024

The Parliament of Lesotho

Statement of Objects and Reasons of the Administration of Estates and Inheritance Act, 2024

(Circulated by the Authority of the Minister responsible for Law and Justice, Honourable Richard Ramoetsi)

The main purpose of the Administration of Estates and Inheritance Act, 2024 is to consolidate, renew and reform the laws governing inheritance, succession, administration and distribution of deceased estates in Lesotho both under civil and customary rites, which are outdated, fragmented and scattered in various statutes. Thus resulting in poor implementation and enforcement. Therefore, the Act repeals the following Laws:

- (a) Wills Ordinance Act No. 4 of 1843;
- (b) Law of Inheritance Act No. 26 of 1873;
- (c) Administration of Estate Act No. 19 of 1935;
- (d) Renumeration of Executors No. 163 of 1946; and
- (e) Intestate Succession Act No. 2 of 1953.

The Act seeks to expand the rights of children to inheritance by advocating that the children should have equal inheritance rights to property when parents are married under either civil or customary rites. It extends the duties of the Master of the High Court to administer intestate estates under both systems, all children have equal rights to the deceased estate regardless of whether they are female or male.

The Act prescribes conditions that qualify beneficiaries to inherit from the deceased estate and regulate the procedures to be followed when bequeathing and passing on deceased estate.

The Act takes into consideration the current marriage regimes and cater for more diverse and often complex family structures that are caused by marriage and re-

marriage between families that result in blended families, which makes estate planning for such families a challenge.

The Act proposes a property regime based on accrual system which ringfence rights of inheritance that arise in former and subsequent marriages for descendants of the deceased in blended family settings.

The Act defines the rules for the drafting of wills, establishes and proposes in place, procedures to be followed to register wills, to regulate and monitor the operations of wills as well as eligibility and capacity to produce wills. Currently, there is an inconsistency in the manner in which they are registered due to lack of provisions that clearly regulate them.

The Act further develops the inheritance regime by providing for the classification of estates according to their monetary value in line with the terms and conditions that are proposed in the Act.

The Act further recognises and creates more equal and just system on the administration of estates of vulnerable people, the mentally ill, the critically ill and the intellectually incapacitated people who are unable to manage their own affairs. The Act provides for a clear line of succession under intestate customary inheritance, and further ensures equal protection of women and men in customary marriages.

