



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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N\$2.00

WINDHOEK - 29 December 2005

No. 3566

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 186

2005

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 15 of 2005: Estates and Succession Amendment Act, 2005.

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**Act No. 15, 2005****ESTATES AND SUCCESSION AMENDMENT ACT, 2005****EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[ ] Words in bold type in square brackets indicate omissions from existing provisions.

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**ACT**

**To repeal certain provisions of the Native Administration Proclamation, 1928 and the whole of the Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 the effect of which are to provide in an unfair discriminatory manner for different systems of dealing with the administration of estates of certain deceased persons based on race or ethnic origin; to make provision that the Administration of Estates Act, 1965 governs the administration of the liquidation and distribution of all deceased estates, whether testate or intestate; and to provide for matters connected therewith.**

*(Signed by the President on 23 December 2005)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-

**Repeal of section 18 of the Native Administration Proclamation, 1928 (Proclamation No. 15 of 1928)**

**1.** (1) Section 18 of the Native Administration Proclamation, 1928 is amended by the repeal of subsections (1), (2), (9) and (10).

(2) Despite the repeal of the provisions referred to in subsection (1), the rules of intestate succession that applied by virtue of those provisions before the date of their repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said provisions not been repealed.

**Repeal of Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 (Proclamation No. 36 of 1941)**

**2.** (1) The Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 is repealed.

(2) Despite the repeal of the Proclamation referred to in subsection (1), the rules of intestate succession that applied by virtue of Schedule 2 of that Proclamation before the date of its repeal continue to be of force in relation to persons to whom the relevant rules would have been applicable had the said Proclamation not been repealed.

(3) The repeal of the Proclamation referred to in subsection (1) does not affect the validity of a will which but for such repeal would be valid.

**Application of Administration of Estates Act, 1965 and transitional provisions**

**3.** (1) Subject to subsection (2), the administration of the liquidation and distribution of all deceased estates, whether testate or intestate, of persons who died on

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or after the date of commencement of this Act, are governed by the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(2) The estate of a person who died before the date of commencement of this Act which was administered, immediately before that date, in terms of the Native Administration Proclamation, 1928 or the Administration of Estates (Rehoboth Gebiet) Proclamation, 1941, must be liquidated and distributed and any matter relating to the liquidation and distribution of such estate must be dealt with as if this Act had not been passed.

(3) Despite subsection (2), if, in the case of an estate referred to in that subsection the liquidation and distribution of which immediately before the commencement of this Act was being administered in terms of the Native Administration Proclamation, 1928 or the Administration of Estates (Rehoboth Gebiet) Proclamation, 1941 and which has not been completed by the date of such commencement, any person having an interest in the estate in writing requests the Master of the High Court to administer the estate in question in terms of the Administration of Estates Act, 1965, the Master must -

- (a) in writing request the magistrate in charge of the supervision of the estate in question to transfer such estate to the Master's supervision and control; and
- (b) upon receipt of the relevant documents and information pertaining to the estate in question exercise jurisdiction in respect of the estate in terms of the Administration of Estates Act, 1965.

(4) Upon receipt of a request of the Master in terms of subsection (3)(a), the magistrate concerned must forthwith provide the Master with all documents pertaining to the estate in question which have been lodged with the magistrate or which are under his or her control as well as a written report in relation to any matter concerning the estate of which the magistrate has knowledge and which is reasonably required for assisting the Master in the performance of any function under the Administration of Estates Act, 1965 in relation to the estate.

**Amendment of Administration of Estates Act, 1965**

**4.** The Administration of Estates Act, 1965 (Act No. 66 of 1965) is amended by the insertion after section 4 of the following section:

**“Minister may assign functions of Master to magistrates**

**4A.** (1) The Minister, after consultation with the Master and the Chief of lower courts, may by notice in the *Gazette* -

- (a) determine that any powers or functions vested in or assigned to the Master by this Act, as are specified in the notice, be vested in and assigned also to a magistrate for the purpose of assisting in the performance of the Master's functions under the Act in relation to estates contemplated in section 18(3); and
- (b) determine conditions or restrictions in relation to the exercise of any powers or performance of any functions by magistrates referred to in paragraph (a) and prescribe procedures to be followed in connection therewith.

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- (2) A magistrate must -
  - (a) exercise the powers and perform the functions referred to in subsection (1) subject to any conditions and restrictions and in accordance with any procedures as may be prescribed under that subsection and with due regard to any guidelines as the Master may issue; and
  - (b) provide the Master with any information as the Master may require from the magistrate in relation to any estate the administration of which is being supervised by the magistrate.
- (3) The Master is not divested of or discharged from any power or duty in terms of this Act in relation to an estate the administration of which is being supervised by a magistrate by virtue of this section and may at any time require from any magistrate to transfer any such estate to the Master's supervision and control.
- (4) A magistrate must -
  - (a) comply with a request for information by the Master in terms of subsection (2)(b); and
  - (b) upon receipt of a request from the Master to transfer any estate to the supervision and control of the Master, provide the Master with all documents pertaining to the estate which have been lodged with the magistrate or are under his or her control as well as a written report in relation to any matter concerning the estate of which the magistrate has knowledge and which is reasonably required for assisting the Master in the performance of any function under this Act in relation to the estate."

**Short title**

5. This Act is called the Estates and Succession Amendment Act, 2005.
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