



Administration of Justice

MASTER'S OFFICE

WHO IS THE MASTER?

The Master is a judicial officer appointed under section 4 of the Administration of Estates Act, [Cap 31:01] for purposes of supervising the administration of estates of deceased persons. Administration of an estate involves the gathering of the property of an estate and distributing it to the rightful beneficiaries. The Master also controls the Guardian's Fund and is also responsible for overseeing the liquidation of companies and sequestration of insolvent persons estates.

WHAT ARE THE FUNCTIONS OF THE MASTER?

The Master:

- Controls the guardian's fund;
- Oversees the administration of deceased persons estates;
- Supervises the winding up of company liquidations and
- oversees judicial management of companies and
- Supervises the sequestration of insolvent estates.

The functions of the Master are defined in the following statutes;

1. Administration of Estates Act, Cap 31:01

- Supervises the administration of estates of deceased persons, i.e overseeing the management of property of a person who has passed away
- Controls the Guardian's Fund, i.e management of benefits of minor beneficiaries, incapacitated persons or persons whose whereabouts are unknown.
- Chairs next of kin meetings. These are meetings of close relatives convened to nominate an executor dative to administer the estate of the person who passed away without a will (intestate) or deceased's persons whose valid will did not appoint an executor to administer the estate.
- Examines and liquidation and distribution accounts submitted by the Appointed Execution

2. Companies Act, Cap 42:01

- Supervises the winding up of companies placed under liquidation;
- Appoints liquidators;
- Appoints judicial managers;
- Presides over creditors meetings;
- Approves liquidation and distribution accounts;
- Taxes bills of liquidators and judicial managers.

3. *Insolvency Act Cap 42:02*

- Supervises sequestration of insolvent persons;
- Appoints trustees to estates;
- Presides over creditors meetings;
- Approves liquidation and distribution accounts;
- Taxes bills of trustees.

4. *Marriage Act Cap 29:01*

- Considers, confirms and certifies the adequate securing of inheritances of minor children, for widows/widowers intending to remarry.

WHAT ARE DECEASED PERSONS ESTATES

This is the orderly devolution of the estate according to the deceased's last will and testament or where there is no will then according to the laws of intestate succession.

HOW DO I OBTAIN SUCH A SERVICE?

Whenever any person dies within Botswana leaving therein any property or a will, the nearest relative or connection of the deceased at or near the place of death or the person who immediately after the death has the control of the premises at which the death occurs, shall, within 14 days after the death of that person, report the death at the Master's Office by delivering the deceased's death certificate and fill in the death notice and provisional inventory of the property in the estate. If a will exists, it must also be lodged together with the other documents.

The Master will examine the documents received and establish whether the Master's Office has jurisdiction to oversee the administration of the deceased's estate in accordance with the applicable laws. The estates of all foreigners are required to be registered with the Master's Office. The estate of a deceased person who is a citizen of Botswana is subject to jurisdictional considerations by the Master.

If there is no valid will filed (or such valid will has not made any provision for the appointment of an executor) and the Master has jurisdiction to administer the estate then a Next of Kin meeting will be set down. Notification of the date of the Next of Kin meeting is made to the reporter of the estate in writing and also advertised in the Government Gazette and local newspaper/s.

The purpose of the Next of Kin meeting will be to appoint an executor to administer the deceased's estate. The appointment of an executor is made by nomination from the next of kin present at the meeting. The appointment is then confirmed by the Master in accordance with **section 31 & 32 of the Administration of Estates Act [Cap 31:01]**.

WHAT IS THE ROLE OF AN EXECUTOR?

An executor's role is to work under the control and supervision of the Master of the High Court, who has a duty to see that the terms of the will, if any, are complied with, together with the provisions of the ***Administration of Estates act [Cap 31:01]***.

WHAT ARE THE EXECUTOR'S DUTIES?

The executor's duties are to:

- Take control of and safeguard the deceased's assets;
- Prepare and file a list of all the property of the deceased;
- Advertise a debtors and creditors notice in the Government Gazette and any local newspaper circulating in the area where the deceased used to reside. The adverts must give a time frame of 30 days from the date of publication of the adverts to enable those with claims against the estate to lodge their claims with the executor who will then assess the claims; Identify the heirs and legatees and divide the estate in accordance with the instructions of the will or Laws of intestate succession amongst the intestate heirs of the deceased.
- Prepare and file a list of how debts of proven creditors are going to be paid.
- Prepare a liquidation & distribution account of how the deceased's assets will be distributed which will then be examined by the Master. • Advertise a notice that the liquidation & distribution account has been filed and is laying open in the Master's Office to receive any objections within 21 days of the date of publication of the advert.
- Receive and file responses to objections within 14 days of receipt of objections. Where there are no objections, write to the Master seeking permission to allocate property and pay debts according to the account.
- Distribute the assets in accordance with the approved liquidation & distribution account after the executor has received authority from the Master to do so.
- File receipts and other documents showing how assets have been distributed and request permission to be released by the Master.

GUARDIAN'S FUND

The Guardian's Fund is a trust account held and controlled by the Master of the High Court on behalf of minor beneficiaries. It also consists of monies received by the Master in trust for unknown persons and people who are not capable of controlling their own affairs. The fund is controlled by the Master of the High Court and administered by the Accountant General.

HOW DO I OBTAIN THE SERVICE?

Once you receive a notice that payment of funds has been made to the Master, approach the office of the Master for assistance. The request for disbursement of funds for minor beneficiaries can be for claims for the welfare of the beneficiary including school fees, general maintenance and for providing shelter. The Master's Office deals with the guardian in the case of a minor beneficiary or the owner of the money who must identify himself to the satisfaction of the Master.

HOW DO I APPLY FOR THE SERVICE?

Application to claim money from the Guardian's Fund is made by the guardian through a letter or verbally. The guardian is also required to fill in an application form. The application must state what the money is required for and if it is for school fees, food or clothing there must be attachments of invoices from the school or shop(s) furnished. If the beneficiary has attained the age of majority then he must attach a certified copy of his identity document to the application letter. If the person whose whereabouts were unknown resurfaces, he must prove his identity to the satisfaction of the Master.

LIQUIDATION OF COMPANIES

Generally a company is liquidated for the benefit of all creditors and members of the company.

After a company has been placed under liquidation the Master must as soon as possible appoint a provisional liquidator and summon a meeting of creditors. Such meetings can be held in the Master's office or in the Magistrates courts before a magistrate. Two such meetings, described as first and second meetings are held at different times. Where any of the creditors wants another meeting to be called, such a meeting will be held at his expense. All claims that creditors may have against the company must be proved at these meetings.

The **agenda of the first meeting deals with the following; generally,**

- (a) consideration of the statement of affairs of the company;
- (b) proof of claims against the company;
- (c) nomination of a person or persons to be appointed as liquidator or liquidators.

The second creditors meeting which must be appointed soon after the first creditors meeting would deal with; generally,

- (a) Report of the liquidator;
- (b) Proof of claims against the company;

(c) Directions to the liquidators relating to the liquidation of the company.

Following the proof of claims the liquidator will then prepare and file a liquidation and distribution account. Once approved by the Master and advertised, the liquidator will then distribute the assets in accordance with the approved liquidation & distribution account. Thereafter the liquidator will apply for his release and advertise such request in the Government Gazette. If there are no objections the Master will release the liquidator.

If the company has been placed under judicial management an application must be made to the Master for a certificate authorising the provisional judicial manager to take up that office. Creditors meetings are then held similar to those explained in liquidation matters.

SEQUESTRATION OF INSOLVENT PERSONS ESTATES

This is the orderly and equitable distribution of a debtor's assets where they are insufficient to meet the claims of all his creditors through the appointment of trustees.

HOW DO I OBTAIN THE SERVICE?

As soon as a debtor's estate has been sequestrated by an order of the court which is granted either voluntarily by the debtor or compulsorily by the debtor's creditor/s, the order is then transmitted to the Master who will, if it seems necessary or expedient, appoint a curator bonis to take control of and have custody of the debtor's estate under sequestration until the appointment of a trustee. A first creditor's meeting will then be convened by the Master for the purpose of electing a trustee and for creditors to prove their claims in accordance with the Insolvency Act [Cap 42:02].

Once a curator bonis or trustee has been appointed they take over the administration of the estate and all enquiries must be forwarded to them. Creditors will be notified of scheduled meeting concerning the insolvent through adverts in the Government Gazette.

REQUIREMENT OF MASTER'S AUTHORISATION IN RESPECT OF WIDOWS/ WIDOWERS WHO WISH TO REMARRY

The Master is also responsible for the issuance of a certificate confirming the adequate protection of inheritances of children born of marriages in which one of the spouses has passed away. This certificate is issued where a widow/ widower intends to remarry.

In terms of the Marriage Act [Cap 29:01], no banns or special licence shall be issued to any person who wants to remarry with respect to or for the marriage of any widower or widow having minor children of a former marriage, or any children, whether minor or otherwise, of a marriage unless such person produces a certificate signed by the Master of the High Court to the effect that he is satisfied that the inheritances or other properties which have devolved upon such children have been adequately secured. The certificate is sought from the master prior to the issuance of banns.

CONTACT DETAILS

For further information you may contact
the Master's Office:

HIGH COURT
Gaborone Division
+267 3718000

HIGH COURT
Francistown Division
+267 2412125

Website: www.justice.gov.bw

Tollfree Number:
High Court – Francistown Division
0800 600 947

Tollfree Number:
High Court – Gaborone Division
0800 601 027

Tollfree Number:
High Court – Lobatse Division
0800 600 922