

MEMORANDUM

To: All Development Management Officials

From: Director: Development Management

Date: 18 January 2017

Subject: Staff Circular 003/2017: Procedure to obtain deceased estate information from the Master's Office for enforcement purposes

INTRODUCTION

Both the Municipal Planning By-Law, 2015 ("MPBL") and the National Building Regulations and Building Standards Act, No. 103 of 1977 ("the NBR Act") require certain notices to be served on the owner of land when unauthorised land use and/or building work takes place on a property. If a registered owner of a property has died, both the MPBL and the NBR Act permit notices to be served on the executor of the estate. In this regard, see the definitions of "owner" in both laws.

MPBL

Section 1

"owner" includes their successor-in-title and means-

- d) the legal representative of the owner or their estate where the registered owner lacks legal capacity for any reason including age, mental health, mental disability, **death** or insolvency;

See below for cases where an executor has not been appointed.

NBR Act

"owner", in relation to a building or land, means the person in whose name the land on which such building was or is erected or such land, as the case may be, is registered in the deeds office in question: Provided that if-

- a) **such person, in the case of a natural person, is deceased... the executor** or curator concerned, as the case may be;

The details of the executor of the estate, if one has been appointed, are held at the Master's Office.

FUNCTION OF THE MASTER'S OFFICE IN ADMINISTERING DECEASED ESTATES

There are currently 14 Master's Offices in South Africa and they are located in the following cities: Bisho, Bloemfontein, **Cape Town**, Durban, Grahamstown, Johannesburg, Kimberley, Mafikeng, Pietermaritzburg, Polokwane, Port Elizabeth, Pretoria, Thohoyandou and Umtata.

Jurisdiction is a relevant consideration in determining to which Master's Office a deceased estate must be reported and from which office such information can be requested. This relies upon the deceased's residence in the 12 months prior to their death. Thus, property owned by the deceased and their last place of residence over the 12-month period may not be the same.

For example, a property located in the City of Cape Town could vest in the ownership of a person who lived in Port Elizabeth for the last 12 months of their life and who has died. Their estate would therefore be administered at the Master's Office in Port Elizabeth, and staff would need to request information on the deceased estate from this office.

1) DECEASED ESTATES, EXECUTORS AND THEIR RELEVANCE TO IMMOVABLE PROPERTY

The management and execution of deceased estates is guided by the Administration of Estates Act, No. 66 of 1965 (as amended) ("Administration of Estates Act").

The existence of a deceased estate is dependent on the existence of a will that outlines how the deceased wishes for their assets, which can include immovable property, to be distributed. An executor will be appointed to give effect to the will and wind up the estate. Part of the executor's role is to take control of the deceased's property, such as land and buildings, once the Master's Office has granted letters of executorship. Essentially, the executor of the deceased estate takes on the role of "owner" until such time as the property is transferred.

If the deceased died without a will, then the estate is dealt with in terms of the Intestate Succession Act No 81 of 1987.

If a deceased estate is not reported to the Master's Office, then none of the above will apply.

2) OBTAINING INFORMATION ON A DECEASED ESTATE

In cases where the registered owner is deceased, staff will have to find out who the executor of the deceased estate is. Letters of executorship will give staff the information they require in order to issue and serve notices. Additionally, you will need to request the particulars of the executor(s) of the deceased estate i.e. their names, addresses and phone numbers.

This section will focus on two ways that this information can be obtained, i.e through the [ICMS Master Web Portal](#), or by making a formal written request to the Master's Office.

Please note that you will need the deceased's first name, surname and ID number in order to search the ICMS Master Web Portal or to formally request the information from the Master's Office. You may access the relevant property records via DAMS or the Development Management department's land use and building plan archives. Alternatively, you may do a Windeed search to obtain these details.

a) [ICMS Master Web Portal](#)

The ICMS Master Web Portal, which records deaths after the year 2008, allows a user to query deceased estates. The deceased's birth date, date of death, type of estate, letters of executorship, and the relevant Master's Office are available on this portal. Once you have identified the executor(s) of the deceased estate you can prepare and serve the relevant enforcement notices on the executor.

Attached to this circular is the process to query the ICMS Master Web Portal ([Annexure A](#)) which can be accessed via the following link:

<https://icmsweb.justice.gov.za/mastersinformation/Account/Login?ReturnUrl=%2fmastersinformation>

Using the ICMS Master Web Portal may eliminate the need to formally request the information from the Master's Office, unless civil litigation or criminal prosecution is likely to take place.

Deaths prior to 2008 are recorded in the Master's Office "MASETI project". However, this database comprises hundreds of MS Excel spreadsheets and is difficult for unfamiliar users to navigate. Therefore, it is advised that a formal written request is made to the Master's Office should the death precede the year 2008.

b) Formal written request at the Master's Office

If you are unsuccessful in obtaining deceased estate information by way of the [ICMS Master Web Portal](#), or a certified copy of the letter of executorship is required, you will need to make a formal request to the Master's Office in writing. The general process to follow when requesting this information is set out below.

1. Obtain the deceased land owner's first name, surname and ID number. Check SAP (LUM), DAMS and other City records or perform a Windeed search to generate a report showing the property's ownership details.
2. Once you have this information, download and complete the "[Application for copies or certified copies](#)" form (titled Annexure C on the Department of Justice and Constitutional Development website and listed as Annexure B to this circular) via the following link: http://www.justice.gov.za/master/m_forms/JM46-annex-c.pdf (note that you are required to provide the name of the relevant Master's Office and the Estate number. The form is needed to request copies of letters of executorship and records on the estate file such as ID numbers, physical addresses and contact numbers of the executor/s).
3. If you have not identified the relevant Master's Office and the estate number, request this information from the Master's Office information desk. Cape Town's Master's Office is located at the Dullah Omar Building, 45 Castle Street, Cape Town and the information desk is located on the ground floor to the right of the entrance.
4. Provide the official on duty at the information desk with the deceased's ID number. The official should provide you with the information thereafter so that you can complete the form.
5. List the documents that you require the Master's Office to provide on the application form. Specifically indicate that you require certified copies of the Letters of Executorship and the Acceptance of Trust as Executor form. The Acceptance of Trust as Executor form should indicate the executor's physical address.
6. Address a letter (template attached as Annexure C to this circular) to the Master's Office and complete the relevant details. You must emphasise that since the City of Cape Town is a government body, it is exempt from the payment of fees, as stipulated by Directive 1 of 2012 (Annexure D). Attach Annexure D to your letter.
7. The letter must then be signed by either the Section Head: Customer Interface, Section Head: Building Development Management or the Regional Enforcement Coordinator. Remember to keep a copy of the signed letter.
8. Submit the request to the Master's Office by hand if the deceased estate is registered in Cape Town. Make sure to take your copy of the signed letter with you and ask the Master's Office to stamp it.
9. The Master's Office will notify you once the request for copies has been finalised. You will be notified by way of the post.
10. If the deceased estate is administered at a Master's Office outside the Western Cape and you require the details of the estate, you can email the offices to obtain the required forms. Attached to this circular is the list of addresses and areas of jurisdiction of the 14 Master's Offices in South Africa

(Annexure E). (Note: If you do not receive a reply within a month, you may refer the matter to the Head: Legislation & Enforcement for further action).

c) Cases where an executor has not been appointed yet or the heir cannot be found or the deceased estate has not been reported to the Master's office.

Land Use

Please note that in terms of the expanded definition of owner as provided for in section 123 of the MPBL, if the owner is deceased and if an executor has not yet been appointed, the heir is deemed to be the owner; and if there is no heir or the City is unable to determine the identity of the heir- the person who is entitled to the benefit of the use of the land or building or who enjoys such benefit is deemed to be the owner.

Building Development

The definition of "owner" in section 1 of the NBR Act provides in paragraph (d), that where the local authority is unable to determine the identity of such person, any person who is entitled to the benefit of the use or such building or land or who enjoys such benefit.

To give effect to these provisions, and after ensuring that no executor exists, one can make the following enquiries to assist in determining who is entitled to the use of the building or land or who actually enjoys the benefit:

- check where the rates account is being sent to on SAP ISU
- who is paying the services accounts?
- is a person renting the property, and if so, who collects the rent?
- ask the neighbours for the name of the person who comes round to look after the house/property.

Be sure to record this information as it will be required for the purpose of establishing that it was legally correct to rely on this provision.

Once you have this information, you can proceed to draft a notice. If you are unable to ascertain the identity of the person who enjoys the benefit, then draft a request to Head Office for legal assistance. Attach to your request documentation of all attempts made to locate an executor and the identity of the person who enjoys the benefit of the property. Head Office will then request that a tracing agent be appointed. A tracing agent needs information in order to carry out a successful investigation.

CONCLUDING REMARKS

A request for copies of information on a deceased estate has a turnaround time of 14 days. The Master's Office does employ a "fast tracking process" for urgent requests which has a one-week turnaround time. However, if the fast-tracked process is required it must be motivated i.e. give reasons to support the urgent request.

The Administration of Estates Act allows anyone to view a deceased estate, except during the lifetime of the person. While you may view the file and take notes on its contents, you may not take photographs of the content.

Below are the contact details of the Master of the High Court: Cape Town.

Master: Ms Z. Agulhas

Tel: 021 832 3000

Fax: 086 507 0631

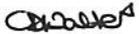
Email: MasterCapeTown@justice.gov.za

Postal address: Private Bag X9018, Cape Town, 8000

Physical address: Dullah Omar Building, 45 Castle Street, Cape Town

Office hours for the public: 08:00 to 13:00

Yours faithfully



Cheryl Walters

Director: Development Management