



EXECTRUST

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Please send us your comments/queries to info@exectrust.com

The Laws of Intestate Succession Amended

Covered in this issue

Amendment to the Laws of Intestate Succession	1
Master's Offices	1
Association of Trust Companies	2
Life Assurance and Common Law	2
Trusts versus Curatorships	2
News from Us	3

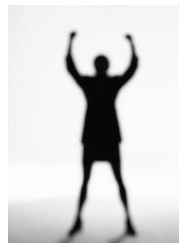
What are the Laws of Intestate Succession?

In short, these Laws will apply when one dies without leaving a valid Will. This Act had not provided for partners in same-sex unions in the past. You will recall in a previous Newsletter that we had discussed a judgment of Court where the Judge had ordered the reversal of actions by the Executor and also ordered the subsequent amendment to the Laws of Intestate Succession. Well, the amendment has now been promulgated. The amendment reads that the words **'or a partner in a permanent same-sex partnership have undertaken reciprocal duties of support'** are to be inserted next to

the word **'spouse'**. In short, where in the past the surviving spouse (in a monogamous marriage) would be the **spouse**, now the Act provides for a partner in same-sex, marriage. This is great news for our gay societies. At last their spouses are now recognized in terms of our Laws. Still this does not mean that you do not need a Will, it is merely an indication that at least the spouses are also recognized in terms of Law. The current interpretation of the Law is that should one die without leaving a valid Will, then the spouse is entitled to the first R125000 or a child's portion whichever the greater. Nowadays, the partner in a same-sex per-

manent relationship will be recognized as the spouse.

Please be made aware



This Act had not provided for partners in same-sex...

that it is always good to have your Will up to date so that your estate devolves upon your heirs according to your wishes.

When last have you reviewed your Will?

Call us on 0860etrust (0860387878) to ensure that your affairs are up to date.

Matters in our next issue :

- * Progress in Master's Offices
- * Life policies in deceased estates and Estate Duty
- * Properly appraised valuables for estate purposes, e.g. Artworks
- * Estate Planning & your Will

Masters of the High Court

Yet a further notice was published about the Master's offices recently in one of our Sunday Newspapers. We have personally had some serious run-ins with the Master's Offices that have been a cause of serious delays in deceased estates, so much so, that

property transfers have been delayed, merely because of court certified copies not being made available timeously. This has, in some cases, caused delays of up to 7 months. In the meantime purchasers of properties are paying occupational rental

and so on. We have been put into contact with senior personnel at Judicial level, so hopefully we can now take steps forward and no longer backward.

Association of Trust Companies

Trust Companies, such as ourselves, subscribe to the Association of Trust Companies (ATC). The ATC was established by major role players in the industry in order to set up an ETHOS and certain benchmarks. Our recent Annual General Meeting in Cape Town led to a decision to convert the association to an Institute. Now known as the Fiduciary Institute of South Africa, the said institute has a better say in the industry and also has a more pertinent role. The object of the change is not only to give the institute "more bite" as it were, but to create an ombudsman for the industry, as currently,

complaints are dealt with the Banking Ombudsman. Obviously the Banking Ombudsman is not *au fait* with the workings of our industry and he/she cannot be expected to know of latest developments in the Fiduciary Industry. So, a big YES from us insofar as this is concerned. However, it remains to be seen/experienced whether the institute can deliver the "bite", as it were, as our industry is rife with difficulties,

but we remain positive. Whilst you ponder this aspect, perhaps some thought should go into the education of our society. With the scrapping of the Black Administration Act for example, volumes have naturally increased at the Master's Office nationally, yet the same number of staff attend to the administrative paper tiger that chases the Fiduciary Industry. Please forward us your comments for onward transmission to the Institute.



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Life assurance and Common Law

A recent judgment has highlighted once again, our Common Law ruling. "Den bloedige hand erft niet". This means that a person that has been proven to be the cause of a person's death or had murdered the deceased, cannot benefit from that deceased's estate. The short story is that the spouse of a deceased was found to be guilty of entering into an arrangement with a third party to have her husband meet with an accident. It

follows that her husband died from the injuries sustained and therefore she was charged. The judge had found her guilty of being the cause of her husband's death. Therefore, she could not inherit from his will. She then proceeded to court to claim upon the life policies that were taken out on her husband's life. The judge had again ruled that she was the cause of his death and could therefore not inherit. Furthermore, the

claims against the life assurer had prescribed by the time the claim was lodged with the life assurer.

"She then proceeded to court to claim upon the life policies that were taken out on her husband's life."

Trusts versus Curatorships

We were recently requested to voice opinion for the purposes of a High Court decision. The basics of a trust is that it is to preserve assets/wealth for future generations, where a Curatorship is where a Court appoints someone to attend to the finances of an individual not capable of attending to his/her finances. One encounters a Curatorship appointment in one of 2



categories:

- 1) Curator *Bonis*—this is where the Curator acts as an administrator.
- 2) Curator *Bonis Persona* - this is where the Curator will not only see to the needs of the

patient, but will be required to personally assist the patient.

Trusts, in general, are a very expensive route to follow for mere administration of assets as the services of a Chartered Accountant are required to audit the financial statements prior to rendition to SARS. Curatorships, on the other hand, are less costly. Needless to say, the judge had ordered for curatorship appointment due to the costs involved.

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We render the usual Fiduciary Services to our communities nationally, but the difference is, we regard these services as Essential Services to Society. No job too big or too small and we endeavour to assist our clients where we can.

News Headlines

Our Website

The major changes have been made and sincere thanx go to our website developers, 3rd Millenium Solutions.

Keep a watch our site, as the Legal Update section reflects judgments as they happen and there are many more to come. The one we are all waiting for, the Amended Administration of Estates Act, will hopefully be ready next year.

Apology

We hereby extend our sincere apologies to our clients for any inconvenience that they may have experienced with emailing us or telephoning us. You will note that we have auto-response added to our mailbox as we have experienced some serious power outages and also download issues from our Service Provider. We have been assured that these problems have been sorted.

Toll Free Number

Our special number has now been allocated, thanx to Telkom. Our is 0860etrust, i.e. you dial 0860387878.

An Industry First

An update for you regarding the sms service—we now await our service provider to confirm certain details, but we will keep you updated.



"Jason, the website looks great, thanx!!!!"