



**DEPARTMENT: LAND AFFAIRS
REPUBLIC OF SOUTH AFRICA**

Office of the Registrar of Deeds, Private Bag X9073, CAPE TOWN,
Tel (021) 4647600, Fax (021) 4647727

REGISTRAR'S CIRCULAR 5 /2008

A joint meeting between the Deeds Office and the Office of the Master of the High Court and the Cape Town Attorneys Association was recently held and the following has been agreed:

1. MASSING and ADIATION

In situations where massing has taken place an executor of the estate *cannot* adiate. This must be done by the heirs.

2. TRUSTS AND SECTION 40 ENDORSEMENTS

To address the confusion that exists as to when a deed must be endorsed in terms of Section 40 of Act 66/1965 and when a proper transfer must take place the following was confirmed: A formal transfer can only be done when the bequest is made to an already existing trust (in other words an *inter vivos* trust where the Trust has already been registered and the number is prefixed "IT"). If the trust is created in terms of the will it will still be registered by the Master, and be given a name and number, which is prefixed by the letters "MT" (for *mortis causa* trust). In all such cases application in terms of Section 40 of act 66/65 must be made and the existing title deed endorsed accordingly.

3. SALES AND SECTION 18(3) OF ACT 66/1965

The following principle applies: An Executor is charged with the *liquidation of an estate* and a Master's Representative in terms of Section 18(3) to merely *distribute the assets of the estate* where the value is below a determined value, currently at R125 000,00. This means such

representative cannot “liquidate” an estate which in turn means he cannot sell the assets of such an estate. In cases where registration is sought where a Section 18(3) representative sells a property directly from the deceased estate, the matter must be referred to the Master.

MULTIPLE *MORTIS CAUSA* TRUSTS

In situations where a testator elects to create two separate *mortis causa* trusts, they will be regarded as separate legal *personae* and may as such individually be dealt with even though the separate trusts so created will have the same “MT” number (which will be the same number as the relevant estate number to link them (the trust and the estate) with one another). To differentiate between the two trusts, distinctive names will be allocated. See Chief Registrar’s Circular 11/1995 in this regard.

Please also note that there is no substantial difference between the terms “XYZ *Testamentary* Trust” and “XYZ *Will* Trust” as both are the same and should be regarded as such when such discrepancy is encountered.

Any problems which the data section might experience with this arrangement will be investigated and when resolved a supplementary circular will be issued.

REGISTRAR OF DEEDS: CAPE TOWN

Date: 24 October 2008