

# **CHIEF REGISTRAR'S CIRCULAR NO. 10 OF 2008**

## **MENTAL HEALTH CARE ACT, 2002 (ACT NO. 17 OF 2002)**

### **1. COMMENCEMENT OF THE ACT**

The Mental Health Care Act, 2002 (Act No. 17 of 2002), herein after referred to as the Act, came into operation on 15 December 2004 (see Proclamation No. R.61, 2004 in Government Gazette Number 27116 dated 15 December 2004).

### **2. PURPOSE OF THE ACT**

The purpose of the Act, among other things, is to provide for the care and administration of the property of mentally ill persons (preamble of the Act.)

### **3. APPLICATION OF THIS CIRCULAR AND REPEAL OF CRC 1/2005**

This Circular provides for compliance with the provisions of section 63(4)(a) of the Act in respect of the alienation or mortgage of immovable property of a mentally ill person. Chief Registrar's Circular No. 1 of 2005 is hereby repealed and substituted with this Circular.

### **4. THE IMPACT OF THE ACT ON THE REGISTRATION PROCEDURES**

#### **4.1 THE APPOINTMENT OF AN ADMINISTRATOR**

Section 59(1) of the Act empowers the Master of the High Court to appoint an administrator for the care and administration of property of a mentally ill person or a person with severe or profound intellectual disability on the basis of an application contemplated in section 60 of the Act or on the basis of a Court order contemplated in section 61 of the Act.

#### **4.2. ALLIENATION OR MORTGAGE OF IMMOVABLE PROPERTY**

In terms of section 63(4)(a) of the Act an administrator may not alienate or mortgage any immovable property of the person for whom he or she is appointed unless authorised to do so by a court order or with the consent of the relevant Master of the High Court.

### 4.3 THE APPLICABILITY OF CERTAIN PROVISIONS OF THE ADMINISTRATION OF ESTATES ACT, 1965 (ACT NO. 66 OF 1965)

4.3.1. Section 65 of the Act provides for the applicability of sections 75,78,79,83,84 and 85 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), subject to the necessary changes, to any administrator appointed in terms of the Act. The sections of Act 66 of 1965 that concern the Deeds Office and which will be herein discussed are sections 79 and 85:

#### 4.3.1.1. Ad section 79 of Act 66 of 1965

Section 79 of Act 66 of 1965 is, for the sake of completeness, reproduced below.

***“79. Returns by Masters to registration officers of immovable property included in inventory. —***

*(1) The Master shall forthwith after receipt by him of an inventory under section seventy-eight in which immovable property has been included, furnish to the registration officer concerned a return specifying the name of the minor or other person concerned and of the tutor or curator, and particulars of such property.*

*(2) No registration officer who has been furnished with such a return, shall register any transaction in respect of such property entered into by the tutor or curator concerned, except in pursuance of any will or written instrument by which that tutor or curator has been nominated or in pursuance of any authority granted under section eighty.”*

The practical effect of this section, in relation to an administrator appointed in terms of the Act, is that the Registrar of Deeds must note the return referred to in section 79(1) as a caveat against the name and property of the mentally ill person mentioned therein.

It stands to reason, however, that this procedure should not be applied in respect of mentally ill persons only, but should be applied in respect of all persons in respect of whom tutors or curators have been appointed. The effect of noting the caveat is, naturally, to ensure the application of the relevant legislation.

It is important to note that section 79(2), quoted above, makes reference to section 80 of the same Act. However, the provisions of section 63(4)(a) of the Act must be complied with in respect of the alienation or mortgage of immovable property of a mentally ill person (see paragraph 4.2. above).

#### 4.3.1.2. Ad section 85 of Act 66 of 1965

Section 85 of Act 66 of 1965 is, for the sake of completeness, reproduced below.

***“85. Application of certain sections to tutors and curators. —***

*Sections 24, 26, 28 and 36, subsection (2) of section 42, sections 46 and 48, subsection (2) of section 49 and sections 52, 53, 54 and 56 shall mutatis mutandis apply with reference to tutors and curators: Provided that any reference in any of the said sections to a will shall, for the purposes of its application under this section, include a reference to any written instrument by which the tutor or curator concerned has been nominated."*

The only section of Act 66 of 1965 mentioned in the above quoted section that concerns the Deeds Office and which will be herein discussed is section 42(2).

Whenever an executor desires to effect transfer of any immovable property in pursuance of a sale, the said section 42(2) provides for the lodgement of a Master's certificate to the effect that no objection to such transfer exists.

The practical effect of this, in relation to immovable property registered in the name of a mentally ill person, is that a section 42(2) certificate must be lodged whenever the administrator of such property wishes to effect transfer of the same in pursuance of a sale.



**CHIEF REGISTRAR OF DEEDS  
DATE: 17 NOVEMBER 2008**

REFERENCE: A 6/2/P and A1/3/1/188  
RINGBINDER 44

CHIEF REGISTRAR OF DEEDS  
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