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The Registrar  
Deeds Office  
CAPE TOWN  
8001

## **BY HAND**

OUR REF  
JC/sb

YOUR REF

DATE  
6 November 2008

Dear Sir

### **RE: REGISTRAR'S CIRCULAR 5/2008**

I refer to your Registrar's Circular 5/2008 and have the following comments:

1. Massing and Adiation.

As only an heir has the right to adiate and if that heir is deceased he is represented by his executor. It is the executor who must sign the adiation and not that deceased estate's heirs.

There is no nexus between the original estate and the heirs of the adiating deceased.

I agree however, that it is desirable that any adiation signed by the executor of a deceased heir should be supported in some way by the consents of the ultimate heirs.

2. I agree with item 2-Trusts and Section 40 Endorsements.

2./ 3. Re 3 .....

You may telephone the writer on his direct line 441 – 9966 or his assistants Sharon Bain on 441 – 9811 or Anne Heneke on 441-9989.

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3. Re paragraph 3 Sales and Section 18(3) of Act 66/1965

With respect Section 18(3) reads "if the value of any estate does not exceed the amount determined by the Minister by notice in the Gazette, the Master may dispense with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated and distributed".

It is quite clear therefore that the act contemplates liquidation under Section 18(3).

The Master is however given the power to determine how the estate shall be liquidated and distributed.

The power given in letters of authority is presently "..... to take control of the assets of the estate of the late — as indicated on this letters (sic) of authority, to pay the debts, and to transfer the residue of the estate to the heir/heirs entitled thereto by law."

The meaning of the word "control" is in the opinion of the writer wide, and if the representative is to pay the debts of the estate it must include power to realise assets as otherwise how can the debts be paid?

The instruction is to ".....transfer the residue of the estate to the heir/heirs entitled thereto by law." This also implies that the representative has the power to realise the assets.

Furthermore what would be the point of issuing letters of authority if the representative could not discharge his duties in accordance with the wishes of the heirs i.e. to realise?

Kindly reconsider.

Yours faithfully

**BISSET BOEHMKE McBLAIN**

**JKW CROWHURST**

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