

PART IIIA
ESTATES OF PERSONS SUBJECT TO CUSTOMARY LAW (sections 68-68K)

[Part IIIA (sections 68 to 68K inclusive) inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68 Interpretation in Part IIIA

(1) In this Part-

'beneficiary', in relation to a deceased person's estate, means-

(a) a surviving spouse or child of the deceased person; or

(b) where the deceased person left no surviving spouse or child, any person who is entitled to inherit any property in the estate in terms of this Part;

'estate' includes any immovable property forming part of the estate;

'executor' means a person appointed as executor of an estate in terms of section *sixty-eight B*;

'family', in relation to a deceased person referred to in subsection (1) of section *sixty-eight A*, means the persons who are recognized under customary law as constituting the deceased person's family;

'heir', in relation to a deceased person referred to in subsection (1) of section *sixty-eight A*, means his heir at customary law;

'**Master**' includes a magistrate or other person designated by the Minister in terms of section *sixty-eight I*;

'**net estate**' means the residue of an estate remaining after the discharge or settlement of the claims of creditors.

(2) Any reference in this Part to a share or a fraction of an estate shall be construed as a share or fraction, as the case may be, determined according to value.

(3) A marriage contracted according to customary law shall be regarded as a valid marriage for the purposes of this Part notwithstanding that it has not been solemnized in terms of the Customary Marriages Act [[Chapter 5:07](#)], and any reference in this Part to a spouse shall be construed accordingly:

Provided that such a marriage shall not be regarded as valid for the purposes of this Part if, when it was contracted, either of the parties was married to someone else in accordance with the Marriage Act [[Chapter 5:11](#)] or the law of a foreign country under which persons are not permitted to have more than one spouse.

(4) A marriage contracted according to the Marriage Act [[Chapter 5:11](#)] or the law of a foreign country under which persons are not permitted to have more than one spouse shall be regarded as a valid marriage for the purposes of this Part even if, when it was contracted, either of the parties was married to someone else in accordance with customary law, whether or not that customary-law marriage was solemnized in terms of the Customary Marriages Act [[Chapter 5:07](#)]:

Provided that, for the purposes of this Part, the first-mentioned marriage shall be regarded as a customary-law marriage.

[Section 68 repealed from Part III and inserted in Part IIIA by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68A Application of Part IIIA

(1) Subject to subsection (2), this Part shall apply to the estate of any person to whom customary law applied at the date of his death.

(2) This Part, other than section *sixty-eight C*, shall not apply to any part of an estate that is disposed of by will.

[Section 68A inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68B Appointment of executor

(1) Upon the death of a person referred to in subsection (1) of section *sixty-eight A*, the Master shall summon the deceased person's family, or such members of the family as are readily available, for the purpose of appointing a person to be the executor of the deceased person's estate.

(2) The Master, with the concurrence of the relatives present at a meeting summoned in terms of subsection (1), shall appoint a person to be the executor of the estate of the deceased person referred to in that subsection:

Provided that-

(i) if the relatives are unable to agree upon a person to be appointed as executor, the Master shall appoint a person as provided in section *twenty-six*, which section shall apply, *mutatis mutandis*, in relation to any such appointment;

(ii) no person shall be appointed as executor under this subsection unless he is-

(a) registered under the Estate Administrators Act [[Chapter 27:20](#)]; or



(b) a member of the deceased person's family.

[Paragraph (ii) added by section 68(f) of Act 16 of 1998 with effect from 1 March 2000.]

(3) The heir of the deceased person concerned shall be eligible for appointment as executor in terms of subsection (2), if the deceased person's relatives present at a meeting summoned in terms of subsection (1) agree on his appointment.

(4) Subject to this Part, an executor appointed in terms of subsection (2) shall be responsible for-

(a) discharging the claims of creditors against the estate of the deceased person concerned; and

(b) administering and safeguarding the estate of the deceased person concerned, pending its distribution in terms of this Part.

(5) In the exercise of his responsibilities in terms of subsection (4), an executor shall have such of an executor's powers under this Act, and shall be subject to such of an executor's duties, as may be prescribed or as the Master may confer or impose on him.

[Section 68B inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68C Inheritance of customary articles by heir

Upon the death of a person referred to in subsection (1) of section *sixty-eight A*, his heir shall inherit the person's name and *tsvimbo* or *intonga* and any traditional articles which, under customary law, pass to his heir on the person's death.

[Section 68C inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68D Inheritance plan

(1) As soon as possible after the death of a person referred to in subsection (1) of section *sixty-eight A* and the discharge or settlement of any legitimate claims against his estate, his executor shall draw up a plan providing for such of the following matters as may be appropriate-

(a) the conservation and application of the net estate for the benefit of the beneficiaries;

(b) the distribution of all or any part of the net estate to the beneficiaries;

(c) the sale or disposal of any property of the net estate for the benefit of the beneficiaries;

(d) the maintenance of any beneficiary.

(2) When drawing up a plan in terms of subsection (1), an executor shall-

(a) pay due regard to the principles set out in subsection (2) of section *sixty-eight F*, to the extent that they are applicable; and

(b) so far as is practicable, consult the deceased person's family and the beneficiaries and endeavour to obtain the beneficiaries' agreement to it.

[Section 68D inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68E Consideration and approval of inheritance plan

(1) As soon as possible after drawing up a plan in terms of section *sixty-eight*, an executor shall submit it to the Master for approval.

(2) On receipt of a plan drawn up in terms of section *sixty-eight D*, the Master shall take such steps as he considers necessary or appropriate to satisfy himself that-

(a) the executor has consulted all the members of the deceased's family and beneficiaries whom he could with reasonable diligence have consulted, and has obtained the beneficiaries' agreement to the plan; and

(b) the beneficiaries who have agreed to the plan have done so with full knowledge and understanding of their rights.

(3) If the Master-

(a) is satisfied that a plan submitted to him in terms of subsection (1) has been agreed to by all the beneficiaries concerned or by such of them as the executor could with reasonable diligence have consulted, the Master shall approve the plan

and authorize the executor to distribute or administer the estate in accordance with it;

(b) has reason to believe that the executor has failed to consult a member of the deceased's family or a beneficiary whom he could with reasonable diligence have consulted, the Master shall refuse to approve the plan until that family member or beneficiary has been consulted and, in the case of a beneficiary, his agreement to the plan has been obtained;

(c) has reason to believe that one or more of the beneficiaries concerned have not agreed to a plan submitted to him in terms of subsection (1), the Master shall proceed to determine, in accordance with section *sixty-eight F*, any issues in dispute between the executor and the beneficiary or beneficiaries, and shall direct the executor to distribute or administer the estate in accordance with his determination.



Section 68E inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68F Resolution of dispute over inheritance plan

(1) In determining any issue between an executor and a beneficiary in terms of paragraph (c) of subsection (3) of section *sixty-eight E*, the Master shall-

(a) adopt such procedure as, in his opinion, will resolve the issue in the speediest and least expensive manner consistent with real and substantial justice; and

(b) ensure that the executor and the beneficiary concerned are afforded a reasonable opportunity to state their respective cases.

(2) The Master shall be guided by the following principles, to the extent that they are applicable, when determining any issue between an executor and a beneficiary in terms of paragraph (c) of subsection (3) of section *sixty-eight E*-

(a) any personal articles which, under customary law, devolve upon a member of the deceased person's family should be given to that family member, and their value excluded from the net estate for the purposes of paragraphs (b) to (j);

(b) where the deceased person was a man and is survived by two or more wives and had one or more children-

(i) one-third of the net estate should be divided between the surviving wives in the proportions two shares to the first or senior wife and one share to the other wife or each of the other wives, as the case may be; and

(ii) the remainder of the estate should devolve upon-

A. his child; or

B. his children in equal shares;

as the case may be, and any of their descendants *per stirpes*;

(c) where the deceased person was a man and is survived by two or more wives, whether or not there are any surviving children, the wives should receive the following property, in addition to anything they are entitled to under paragraph (b)-

(i) where they live in separate houses, each wife should get ownership of or, if that is impracticable, a usufruct over, the house she lived in at the time of

the deceased person's death, together with all the household goods in that house;

(ii) where the wives live together in one house at the time of the deceased person's death, they should get joint ownership of or, if that is impracticable, a joint usufruct over, the house and the household goods in that house;

(d) where the deceased person is survived by one spouse and one or more children, the surviving spouse should get-

(i) ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person's death, together with all the household goods in that house; and

(ii) a share in the remainder of the net estate determined in accordance with the Deceased Estates Succession Act [[Chapter 6:02](#)];

(e) where the deceased person was a woman whose husband at the time of her death had more than one wife, and she is survived by her husband and had one or more children-

(i) one-third of her net estate should devolve upon her husband; and

(ii) the remainder of her estate should devolve upon-

A. her child; or

B. her children in equal shares;

as the case may be, and any of their descendants *per stirpes*;

(f) where the deceased person is not survived by a spouse or child, the net estate should devolve upon his surviving parents, brothers and sisters, if any, in equal shares;

(g) where the deceased person is survived by one spouse but no children-

(i) the surviving spouse should get-

A. ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person's death, together with all the household goods in that house; and

B. half the remainder of the net estate;



ii) the balance of the net estate should devolve upon the deceased person's surviving parents, brothers and sisters, if any, in equal shares;

(h) where the deceased person is not survived by a spouse and had one or more children, the net estate should devolve upon-

(i) that child; or

(ii) those children in equal shares;

as the case may be, and any of their descendants *per stirpes*;

(i) so far as possible, the net estate should be applied to meeting the basic needs of beneficiaries who have no other means of support;

(j) subject to paragraphs (a) to (i), the net estate should devolve according to customary law.

[Section 68F inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68G Determination of whether customary law applied to deceased person

(1) Section 3 of the Customary Law and Local Courts Act [[Chapter 7:05](#)] shall apply in determining the question whether or not customary law applied to a deceased person for the purposes of this Part:

Provided that it shall be presumed, unless the contrary is shown, that-

(a) customary law applied to a person who, at the date of his death, was married in accordance with customary law; and

(b) the general law of Zimbabwe applied to a person who, at the date of his death, was married in accordance with the Marriage Act [[Chapter 5:11](#)] or the law of a foreign country, even if he was also married to the same person under customary law.

(2) Where there is a dispute among the beneficiaries of an estate as to whether or not customary law applied to the deceased person for the purposes of this Part, the question shall be referred to the Master, who shall determine it in the speediest and least

expensive manner consistent with real and substantial justice.

[Section 68G inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68H Exemption of small estates from provisions of this Part

Without derogation from section *sixty-five*, if the Master is satisfied that the net value of any estate does not exceed such amount as may be prescribed, he may exempt the estate concerned from all or any of the provisions of this Part.

[Section 68H inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68I Designation of persons to perform functions of Master

The Minister may, by notice in the *Gazette*, designate-

- (a) any magistrate or class of magistrates; or
- (b) any other person or class of persons;

as persons entitled to perform, subject to such conditions as may be specified in the notice, all or any of the functions of the Master in terms of this Part.

[Section 68I inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68J Appeals against decisions of Master

Any person who is aggrieved by any decision of the Master in terms of this Part may appeal against the decision to the High Court within the time and in the manner prescribed in rules of court.

[Section 68J inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

68K No derogation from Cap. 6:03

This Part shall not be construed as limiting the right of any person to apply for, receive or enjoy any benefit under the Deceased Persons Family Maintenance Act [[Chapter 6:03](#)].

[Section 68K inserted by section 3 of Act 6 of 1997 with effect from 1 November 1997.]

