



REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Verkoopprys • Selling price
(AVB uitgesluit/GST excluded)
Plaaslik **60c** Local
Buitelands 95c Other countries
Posvry • Post free

Vol. 298

KAAPSTAD, 4 APRIL 1990

CAPE TOWN, 4 APRIL 1990

No. 12390

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 753.

4 April 1990

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 27 van 1990: Wet op Onderhoud van Langslewende Gades, 1990.

No. 753.

4 April 1990

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 27 of 1990: Maintenance of Surviving Spouses Act, 1990.

WET

Om voorsiening te maak vir 'n vordering vir onderhoud aan die langsewende gade teen die boedel van die afgestorwe gade in sekere omstandighede; en om vir bykomstige aangeleenthede voorsiening te maak.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 23 Maart 1990.)*

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - “eie middele” ook enige geld of goed of ander geldelike voordeel wat die langsewende gade ingevolge die huweliksgoederereg of die erfreg of andersins by die dood van die afgestorwe gade toeval;
 - “eksekuteur” ’n eksekuteur soos omskryf in artikel 1 van die Boedelwet, 1965 (Wet No. 66 van 1965), of iemand wat in opdrag van die Meester ’n boedel beredder en verdeel;
 - “hof” ’n hof soos omskryf in artikel 1 van die Boedelwet, 1965;
 - “langsewende” in ’n huwelik wat deur die dood ontbind is die langsewende gade;
 - “Meester” ’n Meester soos omskryf in artikel 1 van die Boedelwet, 1965.

Vordering vir onderhoud teen boedel van afgestorwe gade

2. (1) Indien ’n huwelik na die inwerkingtreding van hierdie Wet deur die dood ontbind word, het die langsewende ’n vordering teen die boedel van die afgestorwe gade vir die voorsiening in sy eie redelike onderhoudsbehoefte tot by sy dood of hertrouwe vir sover hy nie uit eie middele en verdienste daartoe in staat is nie.
- (2) Die langsewende het nie ten opsigte van ’n vordering vir onderhoud ’n verhaalsreg nie teen enigiemand aan wie geld of goed uitbetaal, afgelewer of oorgedra is ingevolge artikel 34 (11) of 35 (12) van die Boedelwet, 1965 (Wet No. 66 van 1965), of ooreenkomstig ’n opdrag van die Meester ingevolge artikel 18 (3) of 25 (1) (a) (ii) van daardie Wet.
- (3) (a) Die bewys van en beskikking oor ’n vordering vir onderhoud van die langsewende geskied, behoudens paragrawe (b), (c) en (d), ooreenkomstig die Boedelwet, 1965 (Wet No. 66 van 1965).
- (b) Die langsewende se vordering vir onderhoud beklee dieselfde rangorde teenoor ander vorderings teen die boedel van die afgestorwe gade as wat ’n vordering vir onderhoud van ’n afhanklike kind van die afgestorwe gade teen die boedel beklee of sou beklee het indien daar so ’n vordering was, en, indien die vordering van die langsewende en dié van ’n afhanklike kind met mekaar meeding, word daardie vorderings, indien nodig, eweredig verminder.
- (c) In die geval van ’n botsing tussen ’n belang van die langsewende in sy hoedanigheid van eiser teen die boedel van die afgestorwe gade en ’n belang in sy hoedanigheid van voog van ’n minderjarige afhanklike kind van die afgestorwe gade, kan die Meester die langsewende se vordering vir onderhoud oorhou tot tyd en wyl die hof oor die vordering beslis het.

ACT

To provide the surviving spouse in certain circumstances with a claim for maintenance against the estate of the deceased spouse; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 23 March 1990.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
- 5 “court” means a court as defined in section 1 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);
- “executor” means an executor as defined in section 1 of the Administration of Estates Act, 1965, or any person who liquidates and distributes an estate on the instructions of the Master;
- 10 “Master” means a Master as defined in section 1 of the Administration of Estates Act, 1965;
- “own means” includes any money or property or other financial benefit accruing to the survivor in terms of the matrimonial property law or the law of succession or otherwise at the death of the deceased spouse;
- 15 “survivor” means the surviving spouse in a marriage dissolved by death.

Claim for maintenance against estate of deceased spouse

2. (1) If a marriage is dissolved by death after the commencement of this Act the survivor shall have a claim against the estate of the deceased spouse for the provision of his reasonable maintenance needs until his death or remarriage in so far as he
- 20 is not able to provide therefor from his own means and earnings.
- (2) The survivor shall, in respect of a claim for maintenance, not have a right of recourse against any person to whom money or property has been paid, delivered or transferred in terms of section 34 (11) or 35 (12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or pursuant to an instruction of the Master in terms
- 25 of section 18 (3) or 25 (1) (a) (ii) of that Act.
- (3) (a) The proof and disposal of a claim for maintenance of the survivor shall, subject to paragraphs (b), (c) and (d), be dealt with in accordance with the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965).
- 30 (b) The claim for maintenance of the survivor shall have the same order of preference in respect of other claims against the estate of the deceased spouse as a claim for maintenance of a dependent child of the deceased spouse has or would have against the estate if there were such a claim, and, if the claim of the survivor and that of a dependent child compete with each other, those claims shall, if necessary, be reduced proportionately.
- 35 (c) In the event of a conflict between the interests of the survivor in his capacity as claimant against the estate of the deceased spouse and the interests in his capacity as guardian of a minor dependent child of the deceased spouse, the Master may defer the claim for maintenance until such time as the court has decided on the claim.

Wet No. 27, 1990

WET OP ONDERHOUD VAN LANGSLEWENDE GADES, 1990

- (d) Die eksekuteur van 'n afgestorwe gade se boedel het die bevoegdheid om 'n ooreenkoms met die langsewende, erfgename en legatarisse aan te gaan, met inbegrip van die totstandbringings van 'n trust, en ingevolge die ooreenkoms bates van die bestorwe boedel, of 'n reg op die bates, aan die langsewende of die trust oor te dra, of 'n verpligting op 'n erfgenaam of 'n legataris te lê, ter voldoening van die langsewende se vordering of 'n gedeelte daarvan. 5

Bepaling van redelike onderhoudsbehoefes

3. By die bepaling van die redelike onderhoudsbehoefes van die langsewende word, benewens enige ander faktor wat in aanmerking geneem behoort te word, die volgende faktore in ag geneem: 10

- (a) Die bedrag in die boedel van die afgestorwe gade beskikbaar vir verdeling aan erfgename en legatarisse;
- (b) die bestaande en verwagte vermoëns, verdienvermoë, geldelike behoeftes en verpligtinge van die langsewende en die duur van die huwelik; en 15
- (c) die lewenspeil van die langsewende tydens die duur van die huwelik en sy ouderdom by die dood van die afgestorwe gade.

Kort titel en inwerkingtreding

4. Hierdie Wet heet die Wet op Onderhoud van Langsewende Gades, 1990, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die 20 *Staatskoerant* bepaal.

MAINTENANCE OF SURVIVING SPOUSES ACT, 1990

Act No. 27, 1990

- 5 (d) The executor of the estate of a deceased spouse shall have the power to enter into an agreement with the survivor, heirs and legatees, including the creation of a trust, and in terms of the agreement to transfer assets of the deceased estate, or a right in the assets, to the survivor or the trust, or to impose an obligation on an heir or legatee, in settlement of the claim of the survivor or part thereof.

Determination of reasonable maintenance needs

3. In the determination of the reasonable maintenance needs of the survivor, the following factors shall be taken into account in addition to any other factor which
10 should be taken into account:

- (a) The amount in the estate of the deceased spouse available for distribution to heirs and legatees;
(b) the existing and expected means, earning capacity, financial needs and obligations of the survivor and the subsistence of the marriage; and
15 (c) the standard of living of the survivor during the subsistence of the marriage and his age at the death of the deceased spouse.

Short title and commencement

4. This Act shall be called the Maintenance of Surviving Spouses Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in
20 the *Gazette*.

1