

MAINTENANCE OF SURVIVING SPOUSES ACT NO. 27 OF 1990

[ASSENTED TO 23 MARCH, 1990]
[DATE OF COMMENCEMENT: 1 JULY, 1990]
(Afrikaans text signed by the State President)

This Act was published in *Government Gazette* 33576 dated 17 September, 2010.

as amended by

Estate Affairs Amendment Act, No. 1 of 1992

Reform of Customary Law of Succession and Regulation of Related Matters Act, No. 11 of 2009
[with effect from 20 September, 2010]

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.

ARRANGEMENT OF SECTIONS

1. Definitions
2. Claim for maintenance against estate of deceased spouse
3. Determination of reasonable maintenance needs
4. Short title and commencement

1. Definitions.—In this Act, unless the context otherwise indicates—

“**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;

“**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;

“**survivor**” means the surviving spouse in a marriage dissolved by death, and includes a spouse of a customary marriage which was dissolved by a civil marriage contracted by her husband in the customary marriage to another woman on or after 1 January 1929 (the date of commencement of sections 22 and 23 of the Black Administration Act, 1927 (Act No. 38 of 1927)), but before 2 December 1988 (the date of commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988 (Act No. 3 of 1988));

[Definition of “survivor” substituted by s. 8 of Act No. 11 of 2009.]

2. Claim for maintenance against estate of deceased spouse.—(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 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 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).

(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.

(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.

(d) The executor of the estate of a deceased spouse shall have the power to enter into an agreement with the survivor and the heirs and legatees having an interest in the agreement, 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.

[Para. (d) substituted by s. 2 of Act No. 1 of 1992.]

3. Determination of reasonable maintenance needs.—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 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
- (c) the standard of living of the survivor during the subsistence of the marriage and his age at the death of the deceased spouse.

4. Short title and commencement.—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 the *Gazette*.
