



21 February 2017

Via E-mail vramaano@parliament.gov.za

Mr. V Ramaano
Committee Secretary
Portfolio Committee on Justice and Correctional Services

Dear Sir

JUDICIAL MATTERS AMENDMENT BILL [B14- 2016]

We refer to your request for comment.

The Law Society of South Africa (LSSA) welcomes the opportunity to provide comment on the Judicial Matters Amendment Bill, B14 of 2016.

The LSSA has serious reservations regarding the proposed amendment of Section 103 of the Administration of Estates Act, 1965 (Clause 6 of the Bill), which will give the Minister the power to make regulations as to who would be competent to administer deceased and insolvent estates.

The administration of deceased estates is done taking into consideration several pieces of legislation, e.g. the Income Tax Act, the Estate Duties Act, the Subdivision of Agricultural Land Act, the Intestate Succession Act, pension laws, the law of contracts, the Road Accident Fund Act, customary law, fire arms laws, water rights, law of trusts, the Deeds Registries Act, the Sectional Titles Act, etc.

It is important that, for the smooth administration of deceased estates and the consequences flowing from actions dealt with by an executor or estate representative, a good knowledge of applicable legislation is within the grasp of such administrator. The executor or estate representative is moreover in a fiduciary position and must carry out his/her fiduciary duties with utmost care, diligence and responsibility.

It is known that in several instances, especially in smaller estates, appointees are often of the view that the assets are theirs to deal with as they please. In larger estates, administrators do not always have the practical experience to deal with specialized issues, e.g. water rights, technical issues concerning transfer of land, and have to refer the matter to someone who does. This causes delays. Delays affect the timeframe that funds of the deceased is available within the economy again.

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

We suggest that, at the least, guidelines should be made as to what the Minister should take into consideration when making regulations regarding persons or categories of persons who may liquidate and distribute deceased estates.

Yours faithfully



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