

INTESTATE SUCCESSION BILL, 2018

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Intestate Succession Bill, 2018

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BILL

ENTITLED
INTESTATE SUCCESSION ACT, 2018

AN ACT to provide for intestate succession and for related matters.

PASSED by Parliament and assented to by the President:

Application of Act

1. (1) The devolution of the estate of a person who dies intestate on or after the commencement of this Act shall be determined in accordance with this Act subject to subsection (2) and the rules of private international law.

(2) This Act does not apply to a stool, skin or family property.

Intestacy and partial intestacy

2. (1) A person dies intestate under this Act if at the time of death, the person had not made a will disposing of the estate of that person.

(2) A person who dies leaving a will disposing of part of the estate of that person shall be deemed to have died intestate under this Act in respect of that part of the estate which is not disposed of in the will and accordingly this Act applies to that part of the estate.

Devolution of household property

3. Where the intestate is survived by a spouse or a child or both a spouse and a child, the spouse or the child is or both of them are entitled absolutely to the household property of the intestate.

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Spouse, child or both entitled to one house

4. (1) Subject to sections 8 and 9, where the estate includes only one house, the surviving spouse is entitled to fifty percent interest in the estate.

(2) Subject to section 8, where the estate includes one house and the surviving spouse partly owns that house, the estate available for distribution shall not include the part owned by the surviving spouse.

(3) Subject to section 8, where the estate includes more than one house, the surviving spouse is entitled to one house and the children are entitled to another.

(4) Where there is disagreement as to which of the houses devolves to the surviving spouse or child, the surviving spouse has priority and the exclusive right to choose any one of the houses.

(5) Where the surviving spouse is, or the spouse and child are unwilling or unable to make the choice, the court shall determine which of the houses devolves to the surviving spouse or child on application made to it by the administrator of the estate.

Intestate survived by spouse and child

5. (1) Where the intestate is survived by a spouse and by a child, the residue of the estate devolves in the following manner:

- (a) thirty-five percent to the surviving spouse;
- (b) forty-five percent to the surviving child;
- (c) fifteen percent to the surviving parent; and
- (d) five percent in accordance with customary law.

(2) Where there is no surviving parent, the residue of the estate shall devolve in the following manner:

- (a) forty-five percent to the surviving spouse;
- (b) forty-five percent to the surviving child; and
- (c) ten percent in accordance with customary law.

Intestate survived by more than one spouse

6. (1) Where the intestate is survived by more than one spouse, the residue of the estate devolves in the following manner:

- (a) fifty percent to the surviving spouses;
- (b) forty percent to the surviving child;
- (c) five percent to the surviving parent; and
- (d) five percent in accordance with customary law.

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(2) Where there is no surviving parent, the residue of the estate shall devolve in the following manner:

- (a) fifty percent to the surviving spouses,
- (b) forty-five percent to the surviving child, and
- (c) five percent in accordance with customary law.

Interest of estranged spouse

7. (1) Where spouses are estranged, the Judge shall exercise a discretion as to what percentage of the estate to give to the estranged spouse which in any case shall not be less than thirty percent on the death intestate of the other spouse.

(2) For the purposes of this Act, an “estranged spouse” means a spouse who has not lived in the same house with the other spouse for a period of not less than five years and who no longer has a normal relationship with the other spouse.

Interest of surviving spouse in matrimonial home

8. (1) Where the intestate is survived by a spouse, the surviving spouse shall have a fifty percent interest or share in the matrimonial home.

(2) Where the surviving spouse partly owns the matrimonial home, the estate available for distribution shall not include the part owned by the surviving spouse.

Option to buy out

9. Where the estate of the intestate consists of only one house and the surviving spouse made a contribution to the acquisition of the house, the surviving spouse shall have the option to buy out the other beneficiaries.

Interest of surviving spouse who is a joint owner

10. Where the deceased owned other property in addition to the matrimonial home and the surviving spouse owns part of that property, only that part of the property owned by the deceased spouse is available for distribution.

Sale or redemption of a mortgaged estate

11. (1) Where the estate includes property which is subject to a mortgage, the surviving spouse or a surviving child, may make an application to the court for the sale or redemption of the property.

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(2) On application to the court, the court shall make an order for the sale or redemption of the property subject to the mortgage.

School-going and other dependants of deceased

12. (1) Before the estate of the intestate is distributed, provision shall be made out of the estate of the deceased for the needs of a child

(a) who is still pursuing an educational course or learning a trade

(i) for the payment of the educational fees up to the tertiary level or its equivalent or for the apprenticeship and other related fees up to the completion of the training in the trade for the child; and

(ii) for the provision of other necessities for the child; and

(b) who is incapacitated and who depends on the intestate.

(2) An administrator of the estate of an intestate who does not make reasonable provision for the educational training and other necessities of a child of the deceased commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than four years or to both and the court shall make any orders that it considers necessary for the re-instatement of the child or reimbursement of the educational fees.

Intestate survived by spouse only

13. (1) Where the intestate is survived by a spouse and not by a child, the residue of the estate devolves in the following manner:

(a) eighty percent to the surviving spouse;

(b) fifteen percent to the surviving parent; and

(c) five percent in accordance with customary law.

(2) Where there is no surviving parent, eighty percent of the residue of the estate devolves to the surviving spouse and twenty percent in accordance with customary law.

Intestate survived by child

14. (1) Where the intestate is survived by a child and not by a spouse, the residue devolves in the following manner:

(a) seventy-five percent to the surviving child;

(b) twenty percent to the surviving parent; and

(c) five percent in accordance with customary law.