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THE PRESIDENCY

No. 433

21 April 2009

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

**No. 11 of 2009: Reform of Customary Law
of Succession and Regulation of Related Matters Act , 2009.**



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Act No. 11, 2009 REFORM OF CUSTOMARY LAW OF SUCCESSION AND
REGULATION OF RELATED MATTERS ACT, 2009

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 19 April 2009.)

ACT

To modify the customary law of succession so as to provide for the devolution of certain property in terms of the law of intestate succession; to clarify certain matters relating to the law of succession and the law of property in relation to persons subject to customary law; and to amend certain laws in this regard; and to provide for matters connected therewith.

PREAMBLE

SINCE a widow in a customary marriage whose husband dies intestate does not enjoy adequate protection and benefit under the customary law of succession;

AND SINCE certain children born out of a customary marriage do not enjoy adequate protection under customary law;

AND SINCE section 9 of the Constitution provides that everyone has the right to equal protection and benefit of the law;

AND SINCE social circumstances have so changed that the customary law of succession no longer provides adequately for the welfare of family members;

AND SINCE the Constitutional Court has declared that the principle of male primogeniture, as applied in the customary law of succession, cannot be reconciled with the current notions of equality and human dignity as contained in the Bill of Rights,

Parliament of the Republic of South Africa therefore enacts as follows:—

Definitions

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

“**customary law**” means the customs and practices observed among the indigenous African people of South Africa which form part of the culture of those people; 5

“**descendant**” means a person who is a descendant in terms of the Intestate Succession Act, and includes—

- (a) a person who is not a descendant in terms of the Intestate Succession Act, but who, during the lifetime of the deceased person, was accepted by the deceased person in accordance with customary law as his or her own child; and
- (b) a woman referred to in section 2(2)(b) or (c);
- “**house**” means the family, property, rights and status which arise out of the customary marriage of a woman; 5
- “**Intestate Succession Act**” means the Intestate Succession Act, 1987 (Act No. 81 of 1987);
- “**spouse**” includes a partner in a customary marriage that is recognised in terms of section 2 of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); 10
- “**traditional leader**” means a traditional leader as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2004 (Act No. 41 of 2004);
- “**this Act**” includes any regulation made under section 5; and 15
- “**will**” means a will to which the provisions of the Wills Act, 1953 (Act No. 7 of 1953), apply.

Modification of customary law of succession

2. (1) The estate or part of the estate of any person who is subject to customary law who dies after the commencement of this Act and whose estate does not devolve in terms of that person’s will, must devolve in accordance with the law of intestate succession as regulated by the Intestate Succession Act, subject to subsection (2). 20

(2) In the application of the Intestate Succession Act—

- (a) where the person referred to in subsection (1) is survived by a spouse, as well as a descendant, such a spouse must inherit a child’s portion of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Cabinet member responsible for the administration of justice by notice in the *Gazette*, whichever is the greater; 25
- (b) a woman, other than the spouse of the deceased, with whom he had entered into a union in accordance with customary law for the purpose of providing children for his spouse’s house must, if she survives him, be regarded as a descendant of the deceased; 30
- (c) if the deceased was a woman who was married to another woman under customary law for the purpose of providing children for the deceased’s house, that other woman must, if she survives the deceased, be regarded as a descendant of the deceased. 35

Interpretation of certain provisions of Intestate Succession Act

3. (1) For the purposes of this Act, any reference in section 1 of the Intestate Succession Act to a spouse who survived the deceased must be construed as including every spouse and every woman referred to in paragraphs (a), (b) and (c) of section 2(2). 40

(2) For the purposes of this Act and in the application of section 1(1)(c) of the Intestate Succession Act, the following subparagraph must be regarded as having been added to that section:

- “(iii) where the intestate estate is not sufficient to provide each surviving spouse and woman referred to in paragraphs (a), (b) and (c) of section 2(2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2008, with the amount fixed by the Minister, the estate shall be divided equally between such spouses;”.

(3) In the determination of a child’s portion for the purposes of dividing the estate of a deceased in terms of the Intestate Succession Act, paragraph (f) of section 1(4) of that Act must be regarded to read as follows: 50

- “(f) a child’s portion, in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of children of the deceased who have either survived the deceased or have died before the deceased but are survived by their descendants, plus the number of spouses and women referred to in paragraphs (a), (b) and (c) of section 2(2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2008.”.