

SUCCESSION OF A DECEASED ESTATE

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Succession forms part of private law, which creates rules that govern administration of a deceased persons estate. The general rule for succession, is that the person must have passed away. When a person passes away, he leaves behind an estate that devolves on his legatees or heirs. First vesting in the Master of the High Court having jurisdiction, the residential address 12 months prior to death determines the jurisdiction, secondary the executor appointed by the Master having jurisdiction.

There are three ways in which succession can take place, namely:

1. **Testate succession:**

In accordance with a valid will. A will is a document concluded in a prescribed way, set out by law, by an individual, either called a testator (male) / testatrix (female), directing the disposition of his or her property and other relevant matters to take place after his or her death after settlements of administration costs and accepted creditors' claims.

To execute a valid will, the following requirements must be complied with:

- Person must be 16 years or older.
- Person must be mentally capable (*compus mentus*).
- The will must comply with certain formalities of the Wills Act No 7 of 1953 (as amended).
- Person must have true intention free of any duress.

Execution formalities in terms of section 2 (1) (a) of the Wills Act, 7 of 1953 (as amended) are summarised as follows:

- Will must be signed at the end by Testator/Testatrix, or by some other person on behalf of Testator/Testatrix.
- If will consists of more than one page, every page other than last page must be signed anywhere on page by Testator/Testatrix or by some other person.
- Signature of Testator/Testatrix or some other person must be made / acknowledged, in the presence of two or more competent witnesses.

- Witnesses must attest and sign will in the presence of Testator/Testatrix as well as each other, and where applicable of some other person.
- Where Testator/Testatrix signs with a mark or some other person signs for Testator/Testatrix, a Commissioner of Oaths must be present to which certification formalities must apply.

2. Intestate succession:

Without a valid will. The rules of intestate succession in terms of the Intestate Succession Act, 81 of 1987, are as follows:

Rule 1

When a person dies intestate and is survived by his or her spouse, without a descendant, such spouse inherits the entire intestate estate. S1 (1) (a), plus her half share if married in community of property.

Rule 2

When a person dies intestate and is survived by a descendant(s), without being survived by his or her spouse, such descendant(s) inherits the entire intestate estate. S 1(1) (b).

Rule 3

When a person dies intestate and is survived by a spouse, including descendant(s), the surviving spouse inherits an amount allowed by law, currently R250 000 plus her half share if married in community of property or a calculation of a child's share, whichever is the greater of the two, and descendant(s) inherits the residue, should there be any, of the intestate estate. S 1 (1) (c). A child share is determined by including the spouse as child when the division is made.

Rule 4

When a person dies intestate and is not survived by a spouse or descendant(s), however by both parents, parents will inherit, in equal shares, the entire intestate estate. S 1 (1) (d) (i).

Rule 5

When a person dies intestate and is not survived by a spouse or descendant(s), however by one parent and descendant(s) of deceased parent, the surviving parent inherits half the intestate estate and the descendant(s) of deceased parent the other half. If no such descendant(s), surviving parent inherits the entire intestate estate. S 1 (1) (d) (ii).

Rule 6

When a person dies intestate and is not survived by a spouse, descendant(s) or parents, however survived by descendant(s) of deceased parents (half siblings / full siblings), the intestate estate is divided into two equal shares. S 1 (1) (e) (ii).

Rule 7

When a person is survived by only descendant(s) of one of deceased parents, who is related through such parent alone, descendant(s) inherit the intestate estate. S 1 (1) (e) (ii).

Rule 8

When a person is not survived by a spouse, descendant(s), parent or descendant of a parent, nearest blood relation(s) inherits the intestate estate in equal shares. S 1 (1) (f).

What will happen if a person dies without leaving any intestate heirs?

It sometimes happens that a person may die without a will in terms of which the intestate succession will apply and that person leaves behind no person capable of inheriting from his intestate estate.

In terms of the Administration of Estates Act, the executor will convert the entire intestate estate into money and after all payments of the deceased's debts, deposits all proceeds into the Guardian's Fund and after 30 years, after payment was made, has lapsed, and nobody has made any valid claim to the intestate estate as an intestate heir of deceased, the intestate estate accrues to the state.

3. Pactum successorium:

In terms of a contract, this will be a valid antenuptial contract, which has complied with all required formalities.

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