

## What happens if I die without a will (intestate succession)?

If you die without leaving a valid will, your estate will devolve according to the [Intestate Succession Act, 1987 \(Act 81 of 1987\)](#). This means that your estate will be divided amongst your surviving spouse, children, parents or siblings according to a set formula.

### Intestate Succession

#### IF YOU DO NOT LEAVE A WILL

Any person of 16 years and over is free to make a will in order to determine how his/her estate should devolve upon his/her death.

If you die without leaving a valid will, your estate will devolve in terms of the rules of intestate succession, as stipulated in the provisions of the Intestate Succession Act, (Act 81 of 1987).

In case of a marriage in community of property, one half of the estate belongs to the surviving spouse and, although it forms part of the joint estate, will not devolve according to the rules of intestate succession. For more information on the Intestate Succession Act, please consult the Act or your legal representative.

**All deceased estates will be distributed in terms of the Intestate Succession Act. This means that the beneficiaries in order of preference are:**

- The spouse of the deceased
- The descendants of the deceased
- The parents of the deceased (Only if the deceased died without surviving spouse or descendants)
- The siblings of the deceased (Only if one or both parents are predeceased). The Intestate Succession Act should be read in such a way that it can accommodate cases where the deceased was a husband in polygamous customary union:
  - When the deceased left only spouses and no descendants, the wives will inherit the estate in equal shares.
  - When the deceased left spouses and descendants, the spouses and descendants will inherit the estate in equal shares, but
  - Each wife should inherit at least R 250 000
  - When the estate is not large enough to allow each wife to inherit R250 000, the spouses will inherit the estate in equal shares while the descendants will not receive anything.

Deceased estates will all be administered in terms of the Administration of Estates Act. [Act 66 of 196(as amended)]. This implies the following changes to current practice:

- Magistrates will no longer supervise and administer deceased estates; only the Master of the High Court will do so.
- The Master of the High Court does not have the power to administer estates on behalf of beneficiaries. The Master will appoint a suitable person to administer the estate

**HAS THE CUSTOMARY LAW OF SUCCESSION BEEN ABOLISHED? NO.**

- When planning his or her estate, a person may still arrange that his or her estate be distributed in terms of customary law. This should be done by making a will. The Master of the High Court has a constitutional obligation to ensure the development of customary law. This should be done by allowing the family of deceased to agree on the way the estate should be distributed. The Master of the High Court may not, however, allow vulnerable groups like women and children to be exploited as a result of a family agreement.
- The Bhe decision fundamentally changed the way deceased estates will be administered and distributed. All estates will now be administered in terms of the Administration of Estates Act [Act 66 of 1965 (as amended)] and will be distributed in terms of the Intestate Succession Act. [Act 81 of 1987 (as amended)].
- It is important that all South Africans be made aware of these changes, so that they can plan their estates accordingly. The Chief Master of the High Court has established a help line (Tel: 012 406 4805, Email: [chiefmaster@justice.gov.za](mailto:chiefmaster@justice.gov.za)) where more information can be obtained.

#### **In the event of intestate succession, what happens if the:**

- **Deceased is survived by a spouse or spouses, but not by (a) descendant/s.**  
The spouse or spouses will be the sole intestate heirs.

##### **Who is a spouse for purposes of intestate succession?**

As starting point it can be said that any party to a valid marriage in terms of the Marriage Act, 25 of 1961 (a civil marriage) is regarded as a spouse for purposes of intestate succession.

A party in a subsisting customary marriage which is recognized in terms of section 2 of the Recognition of Customary Marriages Act, 120 of 1998 is also a spouse for intestate succession purposes. These marriages include customary marriages which were validly concluded before the Act came into operation, and which still existed at the commencement of the Act (15 November 2000) as well as marriages concluded in terms of the provisions of the Act after the commencement of the Act. Section 3(1) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 11 of 2009, which came into operation on 20 September 2010, has created a further group of women who qualify as spouses for intestate succession purposes. They are the seed-bearing woman in terms of Customary Law.

Persons married in terms of Muslim and Hindu religious rites should be regarded as spouses for purposes of intestate succession and are entitled to inherit from their deceased partner in terms of the Intestate Succession Act, despite the fact that their "marriage" is not recognised as a valid marriage in terms of our current law. Persons who died before 1 December 2006, and were partners in a same-sex life partnership at the time of their death, should be regarded as "spouses" for purposes of intestate succession, while persons in same-sex relationships who died on or after 1 December 2006 should only be regarded as "spouses" if they had entered into a marriage or civil partnership in terms of the Civil Union Act.

- **Deceased is survived by a descendant/s, but not by a spouse.**  
The descendant will inherit the intestate estate.

- **Deceased is survived by a spouse or spouses, as well as a descendant/s.**

The spouse or spouses inherit the greater of R250 000 per spouse or a child's share, and the children the balance of the estate. A child's share is determined by dividing the intestate estate by the number of surviving children of the deceased and deceased children who have left issue, plus the number of surviving spouses.

Example of the child's share in the event of a polygamous marriage:

In this case the value of the intestate estate is R2 000 000. The deceased is survived by two spouses and three children. A child's share amounts to R400 000 (being R2 000 000 divided by five: the three children and the two spouses). The child's share is greater than R250 000. Therefore each spouse will inherit R400 000 and each child will inherit R400 000 (R2 000 000 less R800 000 to the spouses, divided by three).

Example of the child's share in the event of a monogamous marriage:

In this case, the same calculation will apply as in the previous example, only the child's share is calculated by dividing the value of the intestate estate by four. The surviving spouse and each child will each inherit R500 000.

- **Deceased leaves no spouse or descendants, but both parents who are alive.**  
His/her parents will inherit the intestate estate in equal shares.
- **Deceased leaves no spouse and no descendants but leaves one parent, while the deceased parent left descendants (brothers/sisters of the deceased).**  
The surviving parent will inherit one half of the intestate estate and the descendants of the deceased parent the other half.
- **Deceased leaves no spouse or descendants but leaves one surviving parent, while the deceased parent did not leave any other descendants.**  
The surviving parent will inherit the whole estate.
- **Deceased does not leave a spouse or descendants or parents, but both his parents left descendants.**  
The intestate estate will be split into equal parts. One half of the estate is then divided among the descendants related to the deceased through the predeceased mother and the other half among the descendants related to the deceased through the predeceased father.
- **Deceased does not leave a spouse, descendant or parents, but only one of the predeceased parents left descendants**  
The descendants of the predeceased parent who left descendants, will inherit the entire intestate estate.
- **The deceased does not leave a spouse or descendants or parents or descendants of his parents.**  
The nearest blood relation inherits the entire intestate estate.
- **The deceased is not survived by any relative.**  
Only in this instance will the proceeds of the estate devolve on the state.
- **What is the position with regard to a child of the deceased born out of wedlock?**  
A child born out of wedlock can inherit from both blood relations, the same as a child in wedlock.

- **What is the position with regard to an adopted child of the deceased.**

An adopted child will be deemed to be a descendant of his adoptive parent or parents; and not to be a descendant of his natural parent or parents, except in the case of a natural parent who is also the adoptive parent of that child or was, at the time of the adoption, married to the adoptive parent of the child.