

Zenas Digest



INTESTATE PROPERTY SUCCESSION IN ZIMBABWE



Plaxedes Tavirai
Legal Intern
E: plaxedes@zenaslegalpractice.com
T: +263 771 661 728

Distribution of the deceased estate where there is no will (Intestate Succession)

The law of succession refers to the area of law which determines the distribution of a person's assets and liabilities also known as the estate after their death.

When a loved one dies without leaving a valid will, the method of distribution of his or her estate is based on customary law if they lived their lives governed by customary law or governed by general law, that is legislation or common law, if they did not live according to customary law.

The Deceased Estates Succession Act is applicable to those who were governed by general law during their lifetime, particularly those married under the Marriages Act [Chapter 5:11]. The person who was governed by customary law during his lifetime, their property is distributed in terms of the

Administration of Estates Act [Chapter 6:01].

To determine whether customary law applies to the Deceased person, regard is made to the nature of the case and the surrounding circumstances, if it appears just and proper that it should apply. The surrounding circumstances should include among other things the mode of life of the deceased.

Distribution of property under the Deceased Estates Succession Act

It is very important to note that distribution upon the death of a person unlike distribution upon divorce has absolutely nothing to do with the contribution of a person to the estate of the deceased. One is entitled to what they are entitled to according to the law whether they contributed to the acquisition of the deceased estate or not.

Surviving spouse

According to the Deceased Estates Succession Act, if the spouses were married out of community of property and the deceased spouse has children, the surviving spouse is entitled to receive from the free residue of the estate as his or her sole property, the household goods and effects in such estate and a child's share or to so much as does not exceed the specified amount, whichever is the

greater. In certain instances where there is a matrimonial home, the surviving spouse of every deceased person shall be entitled to receive from the free residue of the estate, the house or other domestic premises in which the spouses lived immediately before the person's death, and the household goods and effects which, immediately before the person's death, were used in relation to the house or domestic premises.

Distribution of property under the Administration of Deceased Estates Act.

This Act applies generally to the estate of the person that was married under the unregistered customary law union (hereinafter referred to as an UCLU). An UCLU is a potentially polygamous marriage which allows a husband to have many wives. Under Customary law, the surviving spouse receive the immovable property in which there were living in and one-third of the net estate. In instances where the deceased had more than one wife, one third of the net- estate is shared between the two wives with the two-thirds being shared equally amongst the children. The 1st wife is entitled to the two-thirds of the one third of the estate with the second wife being entitled to the one-third of the one third of the net estate. If the wives lived in separate

houses, each wife gets ownership of the house she lived in at the time of the deceased person's death together with all the household goods. In instances where the wives lived together in the same house at the time of the deceased's death, both of the wives get joint ownership of the house or a joint usufruct over the house.

However in instances whereby a man had an unregistered customary law union and entered into a civil marriage with another woman, the UCLU is recognized as a valid marriage for the purposes of inheritance. On the other hand if a man enters into an unregistered customary law union but has a subsisting civil union, that UCLU is invalid and cannot be recognized as a valid marriage for purposes of inheritance.

If deceased person was a woman, whose husband at the time of her death had more than one wife, and she is survived by her husband and had one or more children one-third of her net estate devolve upon her husband and the remainder of her estate should devolve upon her child or her children in equal shares, as the case may be, and any of their descendants per stirpes.

Further, if deceased person is not survived by a spouse or child, the net estate is passed on to his surviving parents,

Zenas Digest



brothers and sisters in equal shares.

Where the deceased person is survived by one spouse but no children, the surviving spouse gets ownership of the house in which the spouse lived at the time of the deceased person's death, together with all the household goods in that house and half the remainder of the net estate, then the balance of the net estate will be shared between the deceased person's surviving parents, brothers and sisters in equal shares.

In instances where the deceased person is not survived by a spouse and had one or more children, the net estate should devolve upon, that child or those children in equal shares, and any of their descendants per stirpes, so far as possible, the net estate should be applied to meeting the basic needs of beneficiaries who have no other means of support. This is a brief summary of the law of succession.

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