

A party in a subsisting customary marriage which is recognized in terms of section 2 of the Recognition of Customary Marriages Act, 1998 (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, 2009 (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.

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The Master of the High Court



DYING WITHOUT A WILL

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WHAT WILL HAPPEN IF I DO NOT LEAVE A WILL?

If you die without leaving a will or a valid will, your estate will devolve according to the **Intestate Succession Act, 1987** (Act 81 of 1987).

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 a will, your estate will devolve in terms of the rules of intestate succession.

What is said hereunder is not meant to replace the provisions of the Intestate Succession Act, Act 81 of 1987. The information is merely to inform the reader about some of the basic questions asked about intestate succession.

The rules of Intestate Succession can be summarized as follows:

Deceased survived by a spouse or spouses but not by a descendant/s.

The spouse or spouses are the sole intestate heirs.

Deceased survived by a descendant/s, but not by a spouse.

The descendant or descendants will inherit the intestate estate.

Deceased survived by a spouse/s as well as a descendant/s.

The spouse or spouses inherit the greater of R125 000 per spouse or a child's share, and the children the balance of the estate. A child share is determined by dividing the intestate estate through the number of surviving children of the deceased and deceased children who have left issue, plus the number of surviving spouses.

NOTE: 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, 1987 (Act 81 of 1987) please consult the Act or your legal representative.

The following two examples will illustrate what is said above about the child's share:

Example 1 - Polygamous Marriage

Value of intestate estate is R1 000 000.

The deceased is survived by 2 spouses and 3 children. A child's share amounts to R200 000 [R1 000 000 divided by 5 (3 children plus 2 spouses)].

The child's share is greater than R125 000. Therefore each spouse will inherit R200 000 and each child will also inherit R200 000 (R1 000 000 less R400 000 to the spouses, divided by 3).

Example 2 - Monogamous Marriage

Same as in example 1 only the child share is calculated by dividing by 4. The surviving spouse and each child will inherit R250 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 an illegitimate child of the deceased.

An illegitimate child can inherit from both blood relations, the same as a legitimate child.

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.
- 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.

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, 1961 (Act 25 of 1961) (a civil marriage) is regarded as a spouse for purposes of intestate succession.