

INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

PROVISIONAL NATIONAL DEFENCE COUNCIL DECREE

INTESTATE SUCCESSION LAW, 1985 (PNDCL 111)

As amended

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IN pursuance of the Provisional National Defence Council (Establishment) Proclamation, 1981, this Law is hereby made:

Section 1—Application of Law.

(1) On the commencement of this Law, the devolution of the estate of any person who dies intestate on or after such commencement shall be determined in accordance with the provisions of this Law subject to subsection (2) of this section and the rules of private international law.

(2) This Law shall not apply to any stool, skin or family property.

Section 2—Intestacy and Partial Intestacy.

(1) A person shall be deemed to have died intestate under this Law if at the time of his death he had not made a will disposing of his estate.

(2) Any person who dies leaving a will disposing of part of his estate shall be deemed to have died intestate under this Law in respect of that part of his estate which is not disposed of in the will and accordingly the provisions of this Law shall apply to such part of his estate.

Section 3—Devolution of Household Chattels.

Where the intestate is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled absolutely to the household chattels of the intestate.

Section 4—Spouse or Child or both to be entitled to one House.

Notwithstanding the provisions of this Law:—

(a) where the estate includes only one house the surviving spouse or child or both of them, as the case may be, shall be entitled to that house and where it devolves to both spouse and child, they shall hold it as tenants-in-common;

(b) where the estate includes more than one house, the surviving spouse or child or both of them, as the case may be, shall determine which of those houses shall devolve to such spouse or child or both of them and where it devolves to both spouse and child they shall hold such house as tenants-in-common:

Provided that where there is disagreement as to which of the houses shall devolve to the surviving spouse or child or to both of them, as the case may be, the surviving spouse or child or both of them shall have the exclusive right to choose any one of those houses; except that if for any reason the surviving spouse or child or both of them are unwilling or unable to make such choice the High Court shall, upon application made to it by the administrator of the estate, determine which of those houses shall devolve to the surviving spouse or child or both of them.

Section 5—Intestate Survived by Spouse and Child.

(1) Where the intestate is survived by a spouse and child the residue of the estate shall devolve in the following manner:

- (a) three-sixteenth to the surviving spouse;
- (b) nine-sixteenth to the surviving child;
- (c) one-eighth to the surviving parent;
- (d) one-eighth in accordance with customary law:

Provided that where there is a child who is a minor undergoing educational training, reasonable provision shall be made for the child before distribution. [Repealed and substituted by The Children's Act (Act 560), sch. to s.125].

(2) Where there is no surviving parent one-fourth of the residue of the estate shall devolve in accordance with customary law. [As inserted by The Childrens Act, 1998 (Act 560), sch. to s.125]

Section 6—Intestate Survived by Spouse only.

Where the intestate is survived by a spouse and not a child the residue of the estate shall devolve in the following manner:

- (a) one-half to the surviving spouse;
- (b) one-fourth to the surviving parent;

(c) one-fourth in accordance with customary law:

Provided that where there is no surviving parent one-half of the residue of the estate shall devolve in accordance with customary law.

Section 7—Intestate Survived by Child only.

Where the intestate is survived by a child and not by a spouse the surviving child shall be entitled to three-fourths of the residue and of the remaining one-fourth, one-eighth to the surviving parent and one-eighth shall devolve in accordance with customary law:

Provided that where there is no surviving parent the whole of the one-fourth shall devolve in accordance with customary law.

Section 8—Intestate Survived by Parent only.

Where the intestate is survived by a parent and not by a child or spouse, three-fourths of his estate shall devolve to the surviving parent and the remaining one-fourth shall devolve in accordance with customary law.

Section 9—Devolution of Residue where Customary Law is Inapplicable.

Where no customary law is applicable to the devolution of that part of the residue which by virtue of sections 5, 6, 7 or 8 of this Law shall devolve in accordance with customary law such part of the residue shall devolve in equal shares to those beneficiaries otherwise entitled to share the residue under the relevant provisions of this Law.

Section 10—Where Customary Law provides for Succession by Family.

Where the rules of succession under customary law applicable to any portion of the estate provide that the family of the intestate shall be entitled to a share in the estate:—

(a) that family shall be the family to which the intestate belonged for the purposes of succession in accordance with the customary law of the community of which he was a member;

(b) in the case of an intestate who, being a member of two customary law communities belonged to two families for the purposes of succession, that family shall be the two families;

(c) in the case of an intestate not being a member of any family, that family shall be the family with which the intestate was identified at the time of his death or, failing that, to the families of his parents or failing that to the Republic.

Section 11—Intestate Survived by neither Spouse, Parent nor Child.

- (1) Where the intestate is not survived by a spouse, child or parent his estate shall devolve in accordance with customary law.
- (2) Where there is no customary law applicable to the devolution of the estate of an intestate who is not survived by a spouse, child or parent in the circumstances referred to in subsection (1) of this section the estate shall devolve to the Republic.
- (3) Where the estate of an intestate devolves to the Republic under subsection (2) of this section, if upon an application made to the High Court the Court is satisfied that any person who was maintained by the intestate or with whom the intestate was closely identified, should be maintained out of his estate or that a portion of his estate or the whole of his estate should devolve to him the Court may make an order that such person is maintained out of the estate or that a portion of the estate or the whole estate devolves to him.

Section 12—Small Estates.

Notwithstanding the provisions of sections 4 and 5 to 8 of this Law—

- (a) where the total value of the residue does not exceed ₦10 million the residue shall devolve to any surviving spouse or child of the intestate or where both the spouse and child survive the intestate to both of them;
- (b) where the intestate is survived only by a parent and the total value of the estate does not exceed ₦10 million the estate shall devolve to the surviving parent.[As amended by The Children's Act (Act 560), sch. to s.125]

Section 13—Secretary may Alter Value of Residue, Etc.

The Provisional National Defence Council Secretary responsible for Justice may by legislative instrument vary the maximum value of the residue or estate prescribed under section 12 of this Law.

Section 14—Sharing of Portion of Residue by Two or more Persons.

Subject to the rules of customary law relating to a member's interest in communal property, where two or more persons are entitled to share a portion of an estate under this Law they shall divide it among themselves in equal shares.

Section 15—Presumption against Survivorship.

Where spouses die in circumstances—

- (a) in which it appears that their deaths were simultaneous; or
- (b) rendering it uncertain which of them survived the other,

the older shall, for the purposes of this Law, be presumed to have predeceased the younger.

Section 16—Grandchildren of Intestate.

Where a child of the intestate who has predeceased him is survived by a child (being of the grandchild of the intestate) the grandchild shall, if he is dependent upon the intestate at the time of his death be entitled to the whole or a portion of the estate which would otherwise have devolved to his parent if he had not predeceased the intestate.

Section 16A—Prohibition of Ejection of Spouses Under Certain Circumstances.

(1) No person shall before the distribution of the estate of a deceased person whether testate or intestate eject a surviving spouse or child from the matrimonial home—

- (a) where the matrimonial home is the self-acquired property of the deceased;
- (b) where the matrimonial home is rented property, unless the ejection is pursuant to a court order;
- (c) where the matrimonial home is the family house of the deceased, unless a period of six months has expired from the date of the death of the deceased; or
- (d) where the matrimonial home is public property unless a period of three months has expired from the date of the death of the deceased.

(2) For the purposes of this section "matrimonial house" means—

- (a) the house or premises occupied by the deceased and the surviving spouse, or the deceased and a surviving child or all as the case may be, at the time of the death of the deceased; or
- (b) any other self-acquired house of the deceased occupied by the surviving spouse or child or both at the time of the death of the deceased. [As inserted by the Interstate Succession (Amendment) Law, 1991 (PNDCL 264), s.1]

Section 17—Offences Against Spouse and Entitled Persons.

Any person who before the distribution of the estate of a deceased person whether testate or intestate—

- (a) unlawfully ejects a surviving spouse or child from the matrimonial home contrary to the section 16A of this Law;
- (b) unlawfully deprives the entitled person of the use of—

- (i) any part of the property of the entitled person;
- (ii) any property shared by the entitled person with the deceased to which the provisions of this Law apply; or
- (iii) removes, destroys or otherwise unlawfully interferes with the property of the deceased person,

commits an offence and is liable on summary conviction to a minimum fine of ₦50,000.00 and not exceeding ₦500,000.00 or to a term of imprisonment not exceeding one year and the court or tribunal shall make such other orders as it considers necessary for the re-instatement of or reimbursement to the person thus ejected or deprived. [As substituted by the Intestate Succession (Amendment) Law, 1991 (PNDCL 264), s. 2]

Section 18—Interpretation

In this Law, except where the context otherwise requires—

"child" includes a natural child, a person adopted under any enactment for the time being in force or under customary law relating to adoption and any person recognised by the person in question as his child or recognised by law to be the child of such person;

"estate" means self-acquired property which the intestate was legally competent to dispose of during his lifetime and in respect of which his interest has not been terminated by or on his death;

"household chattels" include jewellery, clothes, furniture and furnishings, refrigerator, television, radiogram, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, books, motor vehicles other than vehicles used wholly for commercial purposes, and household livestock;

"parent" includes natural mother and father and any person recognised by law to be the mother or father of the intestate;

"residue" means all that part of the intestate's estate that does not devolve according to sections 3 and 4 of this Law;

"rules of private international law" include such customary law rules of private international law for the time being in force;

"will" includes samansiw and any other form of will recognised at customary law.

Section 19—Repeals.

The following enactments are hereby repealed—

- (a) section 48 of the Marriage Ordinance (Cap. 127); and
- (b) section 10 of the Marriage of Mohammedans Ordinance (Cap. 129).

Section 20—Statutes and Laws ceasing to apply.

- (1) The Statutes of England relating to intestate succession applicable in Ghana immediately before the coming into force of this Law shall cease to apply.
- (2) Notwithstanding subsection (1) of this section and subject to section 21 the provisions of this Law shall not affect the validity of any act done under any law in force in Ghana relating to intestate succession immediately before this Law comes into force.

Section 21—Traditional Provisions.

- (1) Notwithstanding the provisions of section 1 of this Law or any other enactment the provisions of this Law shall be applicable in the settlement of any claim or adjudication pending before the Court or a Chief or Head of Family under customary law at the commencement of this Law in respect of the administration or distribution of the estate of an intestate who died before such commencement, and for the purposes of this section the provisions of the Customary Marriage and Divorce (Registration) Law, 1985 (PNDCL 112) and the Administration of Estates Act, 1961 (Act 63) as amended by the Administration of Estates (Amendment) Law, 1985 (PNDCL 113) shall be deemed to be applicable to such claim or adjudication.
- (2) For the avoidance of doubt the provisions of subsection (1) of this section shall not apply to any claim that is statute-barred by virtue of the Limitations Decree, 1972 (NRCD 54).

Made this 14th day of June, 1985.

FLT.-LT. JERRY JOHN RAWLINGS

Chairman of the Provisional National Defence Council