

Deceased Estates Succession Act

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Deceased Estates Succession Act Chapter 6:02 of [Zimbabwe](#) is an act that regulates the distribution of a deceased person's estate within the confines of the law.

Deceased Estates Succession Act



The Administration of Estates Act (Chapter 6:01) governs deceased estates. Even though the focus of the act is the estates of dead people, the Act also governs the estates of minors, mentally disordered or defective persons and persons absent from Zimbabwe.

The Act also provides for the control of money belonging to persons whose whereabouts are unknown that is missing persons.

The Act sets the rules and guidelines for running the affairs of people, who for the mentioned circumstances, are unable to handle their own affairs or are limited for some reason.

The Act aims at protecting the estates of people, who are unable or unavailable to protect their own estates and run their own affairs.

Background

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Prior to the 1st of November 1997, women in unregistered customary law unions did not inherit from the estates of their customary law husbands unless provided for in a will. The preferred heir was the eldest son who inherited property in his personal capacity. Although he had a duty to look after the family left behind, he could actually sell the property as long as he provided that family with alternative accommodation, even a home in the rural areas. The Administration of Estates Amendment Act Number 6/1997 introduced radical changes to the law of inheritance especially under customary law such that the major beneficiaries of a deceased estate are the surviving spouse and children. More poignantly the act recognizes both registered and unregistered customary law union (UCLU) as a full marriage for purposes of inheritance.

Administration of estates

Administration of an estate of a deceased person is the registering of the estate and the distribution of the property thereof. When a person dies leaving behind property, the nearest relative or connection of the deceased must, within 14 days register the estate of the deceased.

Where does one register a deceased person's estate?

An estate is registered either at the [Master of the High Court](#) or at the Magistrates Court. Where an estate is registered is determined by the following:

- When a deceased person leaves behind a will, the estate is registered at the High Court.
- Non Africans and Africans married under the Marriage Act [Chapter 5:11] (popularly known as [Chapter 37]) should have their estates registered at the High Court.
- If a person is a single African and his or her parents are married under the Marriage Act [Chapter 5:11], that person's estate should be registered at the High Court.
- Africans married under the Customary Marriages Act [Chapter 5:07] (popularly known as Chapter 238) or living under unregistered customary law unions, should have their estate registered at the Magistrate Court.
- If a person is a single African and his or her parents have a registered customary marriage or living under an unregistered customary law union then the estate should be registered at the Magistrates Court.

If one is not sure of where to go then he should approach the nearest Magistrate Court for assistance as to where to register an estate.

Custody and use of estate property pending its distribution

The law provides that upon the death of a person his/her family, namely his wife/husband and children, shall have the right of use of the immovable property household goods and effects, vehicles, animals and crops, which they were using immediately before the death of the deceased until the estate has been wound up.



The law prefers the deceased's spouse as a custodian of the estate's property pending the appointment of an executor.

Intestate Succession Under General Law

General Law applies to those estates that are registered at the High Court.

Appointment of an executor

An executor is a person appointed to carry out the obligation of the deceased. Upon the death of the deceased, the Master will call upon the surviving spouse, if the person was married, and five relatives of the deceased to an edict meeting where they can choose an executor. If they fail to do so then the master may appoint someone to be an executor.

Duties of an executor

The executor has the following duties:

- List the property of the deceased in an inventory.
- Publishes the estate in the Government Gazette and newspaper circulating in the district where the deceased resided at the time of his death to inform debtors and creditors so as to enable him to pay creditors and collect debts for estate;
- Prepares an account, which shows what the deceased had and what he owed to creditors; and distributes the estate property to the beneficiaries.

Removal of the executor

If the beneficiaries are not satisfied with the way the executor is performing his duties they can lodge a complaint with the Master of High Court who has the authority to remove him.

Distribution of the estate property

If the deceased had a spouse and children, then the spouse is entitled to the house and household goods and effects. In addition the spouse is entitled to \$200 000.00 or a child's share whichever is greater. All legitimate children of the deceased will get an equal share each from the residue of the estate after the spouse has been given her entitlements.

Intestate Succession Under Customary Law

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This is regulated by the Administration of Estates Amendment Act No. 6 of 1997, which applies to people to whom customary law applied at the time of their death.

Mixed marriages

- All customary law marriages whether registered or unregistered, are valid for the purpose of inheritance except that if a person contracts a registered or unregistered customary law marriage when he is already married to someone else under the Marriage Act [Chapter 5:11] the customary marriage will not be valid.
- If a woman marries under the Marriage Act [Chapter 5:11] a man who is already married under customary law to someone else, then the last marriage will be treated as a customary law marriage for purposes of inheritance.

Appointment of an executor

When a person dies, the Master of High Court will call his family to appoint an executor of the deceased's estate at an edict meeting. If the family does not agree to an executor, the Master will appoint a neutral executor.

Duties of an executor

The executor has duties similar to those of an executor under general law. The only difference is that under customary law the executor has to draw up an inheritance plan, which should address the following issues:

- Distribution of the estate amongst the beneficiaries
- Conservation or application of the net estate for the benefit of the beneficiaries;
- Disposal or sale of any property of the net estate, and for the benefit of the beneficiaries; and

Maintenance of any beneficiaries

The executor does this in consultation with the family of the deceased and intended beneficiaries and he should try to obtain the beneficiaries' agreement to the plan. The executor should then submit the inheritance plan to the Master. If the Master is satisfied that the inheritance plan has been drawn in terms of the law then he may approve it and authorize the executor to distribute the estate in accordance with it. If the Master is not satisfied that the plan has been done in consultation with the family and beneficiaries and that all the beneficiaries' consent has been obtained, he shall refuse to approve the plan until the requirements of the law have been complied with.

Removal of the executor

If an executor does not carry out his duties properly then the beneficiaries may report to the Master's office for the executor's removal. This should be done only when an executor is not administering the estate in the interests of everyone concerned.



How is property distributed

If the deceased is survived by more than one wife and had more than one child then one third of his net estate is shared among his wives of which the first wife gets two shares and the other wives get the remainder of the one third in equal shares. The remaining two thirds of the net estate are shared equally amongst the deceased's children or their descendants if any.

If the wives were living in different houses owned by the deceased person at the time of his death, then they each get ownership of the house and all household goods in the house in which they so lived or if ownership of the particular house is not possible the wife should get a usufruct over that house. If they all lived in one house and if it is impossible to get ownership then they will retain the right to use the house.

In case where the deceased is survived by one wife and one or more children, the surviving spouse should get ownership of or, if that is impracticable, a usufruct over the house in which the spouse lived at the time of the deceased person's death together with all household goods in that house and \$200 000.00 or a child's share whichever is greater. The children will each get an equal share from the remainder of the net of the estate.

If the deceased person is a woman who is survived by a husband with more than one wife and she had one or more children, the husband is entitled to a third of the net estate and the remainder goes to the children in equal shares.

Where the deceased person is not survived by a spouse but by a child or children, then the net estate should devolve upon that child or those children in equal shares.

Under customary law an heir is only entitled to inherit the name, tsvimbo or intonga or any traditional items of the deceased, which under customary law pass to his heir.