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LEGAL GUIDE

DEVOLUTION OF ESTATES ACT, 2007

**A Comprehensive Guide to Matrimonial Property Distribution &
Inheritance Law in Sierra Leone**





ACKNOWLEDGEMENT

WE THANK THE UNITED NATIONS DEVELOPMENT PROGRAMME, FOR THEIR TECHNICAL AND FINANCIAL SUPPORT, TO THE CENTRE FOR ACCOUNTABILITY AND RULE OF LAW, FOR SIMPLIFYING THE DEVOLUTION OF ESTATES ACT, 2007. THIS ACT EXAMINES WHAT HAPPENS WHEN A MAN DIES WITHOUT WRITING A WILL (INTESTATE), AND EVEN IN THE EVENT WHERE THERE IS A WILL (TESTATE). BEFORE THE COMING INTO EFFECT OF THIS ACT, WOMEN UNDER THE MUSLIM AND CUSTOMARY MARRIAGE LAWS, WERE LARGELY DISADVANTAGED.

1. WHO DOES THIS ACT APPLY TO?

- The Act applies to **Every Person** who dies leaving property in Sierra Leone regardless of religion or ethnic origin
- The sharing of property of persons dying leaving a will, or without a will, on or after the coming into operation of this Act will be according to this Act
- It will not apply to **family property, chieftaincy property or community property** under the control of customary law

2. WHY WAS THE ACT PASSED?

- The Act was passed to provide for surviving husbands and wives, when a man and woman have lived together for five years continuously, children, parents and other dependent, when a man dies writing a will (testate) or without a will (intestate)

3. WHAT DOES INTESTATE SUCCESSION AND PARTIAL INTESTATE MEAN?

- **INTESTATE SUCCESSION:** Intestate succession means, a person who dies without leaving a will to show how his/her property should be distributed
- **PARTIAL INTESTATE:** Any person, who dies leaving a will giving just part of his property, died intestate in respect of the other part of his/her property which is not in the will and the distribution in the Act will be used.

4. HOW CAN THE PROPERTY OF A PERSON WHO DIES WITHOUT WRITING A WILL BE SHARED?

- The property of a person who dies without leaving a will would, after payment of debts and other expenses, be shared as provided in this Act

5. HOW CAN CHILDREN AND SCHOOL GOING CHILDREN BE MAINTAINED AFTER A PERSON DIES WITHOUT WRITING A WILL?

- Any child whether biological or adopted, will be entitled to be educated and taken care of from the rest of the property until that child reaches the age of eighteen years.

6. WHAT HAPPENS WHEN A PERSON DIES LEAVING A MAN OR A WOMAN ONLY?

- Where a person dies without writing a will and leaves behind a husband or wife but no child, the entire property will go to the surviving husband or wife.
- However, where a person dies without a will is survived by more than one wife but no child, then the property will be distributed by the number of years in which they have been married, and any contribution they have made.



7. WHAT HAPPENS WHEN A PERSON DIES LEAVING ONLY A CHILD BUT NO WIFE OR HUSBAND?

- Where a person dies without writing a will and is Survived by one child but no husband or wife, the whole of the property shall pass on to the surviving child.
- However, where a person dies without writing a will and is survived by two or more children and no wife/husband, parent or grandchild, the hproperty shall pass on to the children in equal shares.

8. WHAT HAPPENS WHEN A PERSON DIES AND IS SURVIVED BY HUSBAND/WIFE, CHILD, AND PARENT?

The property will be distributed as follows:

- Thirty five percent (35%) to the surviving husband/wife, or whoever that have lived together with the person who died
- Thirty five percent (35%) to the surviving child
- Fifteen percent (15%) to the surviving parent
- Fifteen percent (15%) according to Muslim or customary law as applicable.

9. HUSBAND OR WIFE, AND CHILD ENTITLE TO HOUSE, OR HOUSES EQUALLY

- Where the properties include one house only, the surviving wife/husband or both, as the case may be, shall be entitled to that house, and where it is passed on to both wife/Husband and child, they would hold the property equally.
- Where the person who dies without making a will is survived by a wife or husband and two or more children, the surviving wife or husband and children will be entitled to the house equally.

- However, in a situation where there are two or more surviving wives or children, the surviving wives and children will be entitled to the house equally.
- Note that, the right of a surviving wives/husband in the house will come to an end if that man or woman remarries to another person.

10. WHAT HAPPENS WHERE A PERSON DIES WITHOUT WRITING A WILL, LEAVING PARENTS, BROTHER OR SISTER

- Where a person who dies without making a will is not survived by a husband or wife, or has stayed for five years, but is survived by parent, brother or sister, the property would be distributed as follows:
 - Seventy five percent (75%) of the property will go to the brother or sister in equal shares and the remaining
 - Twenty five percent (25%) would be distributed according to customary or Muslim law if applicable.



11. WHAT HAPPENS TO THE DECEASED'S GRANDCHILD OF A PERSON WHO DIES WITHOUT WRITING A WILL?

- Where the child of a person who dies without making a will, and is survived by a child (being a grandchild) the grandchild will be entitled to the whole or a part of the property which would otherwise have been passed on to his parent, if he had not died before this person who died without making the will.

12. WHAT HAPPENS WHEN A CHILD IS BORN AFTER THE DEATH OF THE PERSON WHO DIES WITHOUT WRITING A WILL?

- Where an intestate predeceases his pregnant wife or partner, that child will benefit as if it was born in the lifetime of the person who dies without leaving a will.

13. WHAT HAPPENS WHEN A PERSON DIES WITHOUT WRITING A WILL, BUT LEAVING BEHIND A BROTHER OR SISTER?

In this situation, a person who dies without writing a will, and who is not survived by a husband or wife or a grandchild, but leaves behind a brother or sister:

- seventy five percent (75%) of the property would go to the brother or sister in equal shares and the remaining
- Twenty five percent (25%) of the property would be distributed according to customary or Muslim law.



14. WHAT HAPPENS WHEN A PERSON DIES AND IS SURVIVED BY PARENT ONLY?

In this situation, a person who dies without writing a will and is not survived by a husband or wife, child or a grandchild, brother or sister but by a parent only:

- Seventy five percent (75%) of his property will go to the parents,
- Twenty five percent (25%) would be distributed according to customary or Muslim law

15. WHAT HAPPENS TO A FAMILY PROPERTY, CHIEFTAINCY PROPERTY OR COMMUNITY PROPERTY?

- Where family property, chieftaincy property or community property or any part is in the hands of the person who died without making a will under customary law, such property will not form part of his property and, the law of succession under customary law will apply.

16. WHAT HAPPENS WHEN A PERSON DIES WITHOUT WRITING A WILL AND IS NOT SURVIVED BY ANY PERSON?

- Where a person who dies without making a will and is not survived by a wife or husband, children, next-of-kin or other persons to whom his property may be passed on, his property would be given to the State.

17. WHAT HAPPENS TO A PERSONAL PROPERTY (EG: CASH, BANK ACCOUNT, CLOTHES, HOUSE)

- Where an intestate is survived by a wife/husband or child or both, surviving wife or husband or child or both of them, as the case may be, would have equal right to the personal property.

18. WHAT HAPPENS WHEN IT IS A SMALL PROPERTY

- Where the value of the property of the person who died without making a will is not above Le.15, 000,000.00, it would pass on to the surviving husband/wife or child of the person who died without making a will and where s/he is survived by a wife/husband and child, property Would pass on to both husband/wife and child.
- Where there is no surviving wife/ husband or child, the property will pass to the Surviving parent

- where there is no surviving wife/husband, child or parent, the property will pass on to the surviving brother or sister, or
- Where there is no surviving wife/husband and child, parent, brother or sister, property goes to the next of kin

19. APPOINTMENT OF A RESPONSIBLE PERSON TO SERVE AS AN OVERSEER OF PROPERTY.

- The court may appoint any person it considers fit to be an overseer of an intestate's property for awaiting the grant of letters of administration. If it appears on the application of any person-
- claiming to have right in the property, or
- someone who is staying or having control of the property at the time of the death of the intestate if there is a danger that the property will deteriorate, be damaged or be destroyed.

20. POWER OF THE COURT TO GIVE ORDER FOR THE SALE OF A PROPERTY

- The court may, on application by an overseer, or any other person who has interest in the property, order the sale of the whole or any part of the property, where it considers that the sale will be beneficial to the property.

21. PROTECTION OF OVERSEER FROM ANY LEGAL ACTION:

- No court action would be brought against an overseer for anything done by him/her in respect of the property under his/her control.
- However, a person who is not satisfied with the conduct of an overseer could apply to the court for an order that would be fair, and equitable to all interested parties.

22. WHAT HAPPENS WHERE THE PROVISIONS IN A WILL ARE UNREASONABLE?

- Where a ward/dependant is not happy with the provisions in a will he/she may apply to the court to challenge the will.
- If the court is of the opinion that the person who made a will before his /her death has not made any provision whether during his life-time or by his will. for the maintenance of the ward/dependant and that hardship would be caused. The court may order that reasonable provision be made out of the testator's property for the care of the ward/dependant.

23. WHAT IS TESTATE SUCCESSION?

- Testate succession is where a person dies leaving a will. Testate succession refers to those survivors who have been provided for in a will.

34. WHAT CONSIDERATIONS WILL A COURT TAKE INTO ACCOUNT WHEN DECIDING ON THE REASONABLENESS OF A WILL?

- The court may receive any evidence as it considers sufficient, including any statement in writing, signed and dated by the writer of the will, but in such statement, the court will have regard to the following:
- Any past, present or future capital or income from any source, of the dependant to whom the application relates;
- The conduct of the dependant or ward in relation to the writer of the will, and
- Any other thing which the court may consider important in relation to the dependant or ward and to the beneficiaries under the will.

35. WHERE A COURT ORDER PROVIDES FOR PERIODIC PAYMENTS TO AN AGGRIEVED DEPENDANT / WARD SUCH AN ORDER WILL END UPON:

- The remarriage of the surviving man or woman,
- the child reaching the age of eighteen years (18), leaves school or graduates from university
- the death of the dependant or ward
- if a disability come to an end

36. WHEN SHOULD AN APPLICATION CHALLENGING A WILL BE MADE?

- An application should be made not later than six months after the granting of probate in respect of the property of the testator.
- This timeframe of six months may be extended by the court, if the court sees it necessary

37. WHAT IS THE EFFECT OF AN ORDER OF THE COURT?

- After an order of the court, the Will would for all purposes be considered to have had effect, as from the testator's death, as if the order of the court had been part of what the testator intended to do.
- The court would give important directions which it believes is proper
- A certified Copy of every order made by the court would be sent to the Probate Registry for entry and filing, and would form part o of the will of the testator.

38. WHEN WILL THE COURT VARY ITS ORDER?

- The court would only act on an application made after the expiration of the Six months Period if is in respect of property, the income of which would be used to look after the dependant of the testator

- An application to the court for an order challenging a will may be made by a dependant of the testator, the caretaker of the property, or by or on behalf of a person who has right to that property under the will

39. MISCELLANEOUS OR OTHER IMPORTANT PROVISIONS

- Where no customary law or Muslim law is applicable to the transfer of the remainder of property as prescribed by this Act, such part of the property would pass in equal shares to the people who are entitled to the property

40. WHAT HAPPENS IF THE COURT PROVES A WILL IS TRUE OR FALSE?

- On application by an interested person, the court would have the power to determine if a document claiming to be a will is indeed a valid will or, to examine if the man died without writing a will
- Where the court proves that a document claiming to be a will is false, the property of the Individual who died without writing a Will, will be distributed according to this Act.
- A person who successfully challenges the validity of a will, or the way the property should be shared, would not because of the challenge be excluded from benefiting from the property.

41. WHAT HAPPENS TO A BENEFICIARY TO A WILL WHO KILLS INTENTIONALLY TO BENEFIT FROM A WILL?

- A person who intentionally kills or causes the death of a person who has written a will, will be deprived of the right to benefit from the property of the testator

42. THE LAW WOULD ASSUME THAT THE OLDEST DIED FIRST

- In a situation where two or more persons die, and it is difficult to determine who dies first, the court would conclude that the older person(s) died first.
- The youngest would be considered to be the last to die

43. WHAT HAPPENS TO A PERSON WHO INTERFERES WITH THE PROPERTY WITHOUT ANY LAWFUL EXCUSE?

- It is an offence to interfere with the property of a person who died leaving a Will, or without a Will without any lawful authority,
- A person who is found guilty by the court will pay a fine of Five Million Leones (Le.5, 000,000) or be imprisoned for a year,
- The court could also order that a person who is found guilty be sent to prison and also pay the fine of Five Million Leones (Le.5, 000,000)

44. WHAT IS THE TIME FRAME FOR DISTRIBUTION OF PROPERTY?

- The property of a testator would be distributed not later than three years after obtaining permission from the court and in distributing the property, the person who is responsible for the distribution should ensure that children under eighteen and older parent are adequately protected.
- No survivor should be removed from property regardless of whether the deceased wrote a Will or not.

The following should also be considered by the overseer in distributing property:

- where the matrimonial home is the property of the deceased
- where the matrimonial home is a rented property
- where the matrimonial home is family house of the deceased
- Where the matrimonial home is a public property

45. WHAT IS THE PENALTY FOR THOSE WHO ATTEMPT TO DRIVE A SURVIVING MAN, WOMAN OR CHILD FROM PROPERTY?

- It is an offence for a person, prior to the distribution of property, to throw out a surviving man or woman, or child from the matrimonial home of Testate or Intestate, without permission

- The court may on finding the person guilty, fine that person a sum not above Five Million Leones (Le.5, 000,000), or to a term of imprisonment not above two Years.
- The court may order that the person thrown out be reinstated, and also ask that, that person be compensated

46. WHAT IS THE PENALTY FOR TAKING OUT LETTERS OF ADMINISTRATION WITHOUT AUTHORITY?

- It is an offence for a person to take out Letter of Administration without authority.
- The court may on finding the person guilty, fine that person a sum not above Ten Million Leones (LE.10,000,000), or to a term of imprisonment not above five years
- The court could also impose a fine and a term of imprisonment.

47. THIS ACT WILL NOT AFFECT THE FOLLOWING:

- Laws that give right to administrators and executors before the passing of this Act
- The rights, duties and obligations of beneficiaries under a Will before the passing of this law
- All legal actions before the passing of this law, will continue as if this law was in place.

48. STATUTORY INSTRUMENT (ROLE OF THE MINISTER)

- A regulation has been put in place by the Minister of Social Welfare, Gender and Children's Affairs, to provide for the full implementation of this Act

49. THE FOLLOWING LAWS HAVE BEEN REMOVED

- Section 26 of the Christian Marriage Act, which states that, a marriage celebrated in which one of the parties is a native will not have any effect on the property of the native.

- Subsection (1) of section 9 of the Muslim Marriage Act, which states that, when the woman dies intestate, the man takes the whole, while the woman is not entitled to benefit if the man dies intestate.
- The Second Schedule to the Administration of Estates Act Cap.45, which states that, if a woman dies intestate, leaving a husband, the whole of the estate shall go to him, whereas if a man dies intestate leaving a widow, only one third will go to the wife.

50. ALWAYS REMEMBER THAT...

- Intestate means, a person who dies without leaving a will
- Testate means, a person who dies leaving a valid will showing how his/her property should be distributed
- Partial intestate, shows how part of the property of the person who died should be distributed and the remaining with no document to show
- A will means, a written declaration signed and witnessed by the dead person showing how his property should be distributed
- A codicil is an addition to a will which is normally at the back.
- A will only come in to effect after the death of the person who writes it, and it can be cancelled at any time by the person who writes it before his death.
- Devolution of estates means, how property passes from one person to another
- Letters of Administration means a letter given to somebody by the court, normally a next of kin, granting him authority to share the property to those who are entitled
- Next of Kin means a person nearest to the person who dies (it can be the child, wife, husband or even the parent in the absence of the three)
- Probate means an authority normally given to an overseer by the court to distribute the property
- This Act applies to all persons who die in Sierra Leone leaving property behind, regardless of tribe or religion

