

**P.N.D.C.L. 111**  
**INTESTATE SUCCESSION ACT, 1985**  
 ARRANGEMENT OF SECTIONS

**SECTION**

1. Application of Act.
2. Intestacy and partial intestacy.
3. Devolution of household chattels.
4. Spouse, child or both entitled to one house.
5. Intestate survived by spouse and child.
6. Intestate survived by spouse only.
7. Intestate survived by child only.
8. Intestate survived by parent only.
9. Devolution of residue where customary law is inapplicable.
10. Customary law provisions for succession by family.
11. Intestate survived by neither spouse, parent nor child.
12. Small estates.
13. Variation value of residue.
14. Sharing of portion of residue by two or more persons.
15. Presumption against survivorship.
16. Grandchildren of intestate.
- 16A. Prohibition of ejection of spouses.
17. Offences against spouse and entitled persons.
18. Interpretation.
19. Repeals.
20. Statutes and laws ceasing to apply.

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**P.N.D.C.L. 111**

**INTESTATE SUCCESSION ACT, 1985<sup>1</sup>**

**AN ACT to provide for intestate succession and for related matters.**

**1. Application of Act**

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

(2) This Act does not apply to a Stool, Skin or family property.

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1. This Act was issued as the Intestate Succession Law, 1985 (P.N.D.C.L. 111) made on the 14th June, 1985 and notified in the *Gazette* on 5th July, 1985.

## **2. Intestacy and partial intestacy**

(1) A person dies intestate under this Act if at the time of death that person had not made a will disposing of the estate of that person.

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

## **3. Devolution of household chattels**

Where the intestate is survived by a spouse or by a child or both a spouse and a child, the spouse or the child or both of them, is or are entitled absolutely to the household chattels of the intestate.

## **4. Spouse, child or both entitled to one house**

(1) Despite this Act,

- (a) where the estate includes only one house, the surviving spouse or the child or both of them is or are entitled to that house and where it devolves to both the spouse and the 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, shall determine which of those houses shall devolve to the spouse or the child or both of them and where it devolves to both the spouse and the child they shall hold the house as tenants in common.

(2) Where there is disagreement as to which of the houses devolves to the surviving spouse or child, or to both of them, the surviving spouse or child has, or both of them have, the exclusive right to choose any one of those houses.

(3) Where the surviving spouse or child or both of them is or are unwilling or unable to make the choice the High Court shall, on application made to it by the administrator of the estate, determine which of those houses shall devolve to the surviving spouse or child or to both of them.

## **5. Intestate survived by spouse and child**

(1) Where the intestate is survived by a spouse and by a 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.

(2) Where there is no surviving parent one-fourth of the residue of the estate shall devolve in accordance with customary law.

**6. Intestate survived by spouse only**

(1) Where the intestate is survived by a spouse and not by 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.

(2) Where there is no surviving parent one-half of the residue of the estate shall devolve in accordance with customary law.

**7. Intestate survived by child only**

(1) Where the intestate is survived by a child and not by a spouse the surviving child is 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.

(2) Where there is no surviving parent the whole of the one-fourth shall devolve in accordance with customary law.

**8. Intestate survived by parent only**

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

**9. Devolution of residue where customary law is inapplicable**

Where a customary law is not applicable to the devolution of that part of the residue which by virtue of sections 5, 6, 7 or 8, shall devolve in accordance with customary law that part of the residue shall devolve in equal shares to those beneficiaries otherwise entitled to share the residue under the relevant provisions of this Act.

**10. Customary law provisions for succession by family**

Where the rules of succession under customary law applicable to a portion of the estate provide that the family of the intestate is entitled to a share in the estate

- (a) that family is the family to which the intestate belonged for the purposes of succession in accordance with the customary law of the community of which the intestate was a member;
- (b) in the case of an intestate who, being a member of two customary communities belonged to two families for the purposes of succession, the family shall be the two families;
- (c) in the case of an intestate who is not a member of a family, that family shall be the family with which the intestate was identified at the time of death or failing that, to the families of the parents of the intestate or failing that, the Republic.

**11. Intestate survived by neither spouse, parent nor child**

(1) Where the intestate is not survived by a spouse, a child or a parent the estate shall devolve in accordance with customary law.

(2) Where a customary law is not applicable to the devolution of the estate of an intestate who is not survived by a spouse, a child or a parent in the circumstances referred to in subsection (1) the estate shall devolve to the Republic.

(3) Where the estate of an intestate devolves to the Republic under subsection (2), and an application is made to the High Court, and the Court is satisfied that a person who was maintained by the intestate or with whom the intestate was closely identified, should be maintained out of the estate or that a portion of the estate or the whole of the estate should devolve to that person, the Court may make an order for the maintenance of that person out of the estate or that a portion of the estate or the whole estate devolves to that person.

**12. Small estates**

Despite sections 4, 5, 6, 7 and 8,

- (a) where the total value of the residue does not exceed fifty thousand cedis, the residue shall devolve to a surviving spouse or child of the intestate or where both the spouse and the 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 fifty thousand cedis the estate shall devolve to the surviving parent.

**13. Variation value of residue**

The Minister responsible for Justice may by legislative instrument vary the maximum value of the residue or estate prescribed under section 12.

**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 Act they shall divide it among themselves in equal shares.

**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 Act, be presumed to have predeceased the younger.

**16. Grandchildren of intestate**

Where a child of the intestate who has predeceased the intestate is survived by a child who is the grandchild of the intestate, the grandchild is entitled, if that child is dependent on the intestate at the time of death, to the whole or a portion of the estate which would otherwise have devolved to the parent if that child had not predeceased the intestate.

**16A. Prohibition of ejection of spouses**

(1) A person shall not, 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 twelve months has expired from the date of the death of the deceased.

(2) For the purposes of subsection (1), “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 of them, 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.<sup>2</sup>

**17. Offences against spouse and entitled persons**

A 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 section 16A,
- (b) unlawfully deprives the entitled person of the use of
  - (i) a part of the property of the entitled person,
  - (ii) a property shared by the entitled person with the deceased to which this Act applies, 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 two hundred and fifty penalty units and not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year, and the Court or tribunal shall make any orders that it considers necessary for the re-instatement of or reimbursement to the person thus ejected or deprived.<sup>3</sup>

**18. Interpretation**

In this Act, unless the context otherwise requires,

“child” includes a natural child, a person adopted under an enactment or under customary law relating to adoption and a person recognised by the person in question as the child of that person or recognised by law as the child of the person;

2. Inserted by section 1 of the Intestate Succession (Amendment) Law, 1991 (P.N.D.C.L. 264).

3. Substituted by section 2 of the Intestate Succession (Amendment) Law, 1991 (P.N.D.C.L. 264).

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

“**household chattels**” includes jewellery, clothes, furniture and furnishings, refrigerator, television, radiogram, any 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 a person recognised by law as the mother or father of the intestate;

“**residue**” means that part of the intestate's estate that does not devolve according to sections 3 and 4;

“**rules of private international law**” include the customary law rules of private international law;

“**will**” includes samansiw and any other form of will recognised at customary law.

## 19. Repeals

*Spent.*<sup>4</sup>

## 20. Statutes and laws ceasing to apply

*Spent.*<sup>5</sup>

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# INTESTATE SUCCESSION ACT, 1985<sup>6</sup>

## MEMORANDUM

This Act is aimed at removing the anomalies in the present law relating to intestate succession and to provide a uniform intestate succession law that will be applicable throughout the country irrespective of the class of the intestate and the type of marriage contracted by him or her.

The present law on intestate succession appears to be overtaken by changes in the Ghanaian family system. The nuclear family (i.e. husband, wife and children) is gaining an importance which is not reflected in the current laws of succession. There is a tension

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4. The section provides that,

“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).”

5. The section provides that,

“(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.”

6. It was a Law, P.N.D.C.L. 111.

between this smaller group and the traditional family unit as to the appropriate lineal devolution of property upon the death intestate of a member of both units. At customary law, there is very little protection for a surviving spouse. Neither spouse has a right to the property of the other. Children in a matrilineal system have no more than a right to maintenance by their father's customary successor and a right to reside in their father's home subject to good behaviour.

The growing importance of the nuclear family brings with it its own logic of distributive justice. Simply put, this argues that a surviving spouse be compensated for his or her services to the deceased spouse; that a spouse is more likely to look after the children on the death of the other partner than anybody else; and that expectation of the spouses is probably best satisfied by giving the property of one to the other on the former's death.

The customary law conception of marriage did not regard a wife as part of the husband's economic unit. Therefore the wife's claim on the husband's property was limited. As part of the increasing importance of the nuclear family, there is a movement towards involving the wife in the husband's economic activity. There is a corresponding weakening of the extended family. That group is therefore less likely to be able to support widows who are members of the family. It is right that the husband with whom a woman has lived and whom she has probably served, is the person on whose property she must depend after his death.

The provisions of the Marriage Ordinance, Cap. 127, provide some protection for the wife and children of an intestate beyond the customary law. In apportioning fractions of his estate however, it creates a source of insecurity by not identifying any specific item of the estate as definitely going to one group or the other. In addition the rules of succession under the Ordinance are discriminatory. A widow gets more of her deceased husband's property than does a widow in respect of her husband's property. Besides, the rules that apply are archaic and frequently inaccessible and need to be reformed.

The Marriage of Mohammedans Ordinance, Cap. 129, on the other hand is hardly ever enforced. Its registration provisions are probably not known to many Muslims, the existence and situation of the registers is even less common knowledge either to Muslims or to the legal profession. So that the condition precedent for the application of Islamic rules of succession is not often satisfied.

Besides, the rules are quite complicated, and it should be possible to simplify them, particularly in the course of an effort to unify the rules of succession prevailing in the country.

The provisions of this Act are therefore aimed at giving a larger portion of the estate of the deceased to his spouse and children than is normally the case at present. They remove the discrimination between succession by widows and widowers which exists under both the Marriage Ordinance, (Cap. 127) and the Marriage of Mohammedans Ordinance, (Cap. 129); the same scheme of distribution will apply whether the deceased is a man or woman. Parents are more directly identified as beneficiaries than is the case ordinarily under the present law.

*Section 1:* This section states that subject to the rules of private international law which determine in certain circumstances when the Ghanaian law of succession would apply, this Act will be applicable to any person who dies intestate after it has come into force.

Subsection (2) makes it clear that this Act will apply to the self-acquired property of the intestate and not to property held by him as a chief on behalf of his community or as a family head on behalf of his family.

*Section 2:* This section provides that a person dies intestate if he dies without making a valid will at all, or if his will does not devise all his property. In the latter case the person is said to have died partially intestate, and this Act will apply to that part of his property which is not affected by the will.

*Section 3* stipulates that the spouse and children are entitled absolutely to the household chattels of the intestate.

*Section 4:* This section provides that where the intestate died leaving a house, the spouse and children will be entitled to the house. If however, there is more than one house, the spouse and children are entitled to one, but in the event of disagreement as to which of the houses to choose they will have the exclusive right of choice and the court will only intervene upon application made to it by the administrator of the estate if for any reason the surviving spouse or children are unwilling or unable to exercise their right of choice. Where the house devolves to both the surviving spouse and children they will hold it as tenants-in-common.

*Section 5* provides that where the intestate is survived by a spouse and child, three-sixteenth of his property (not taking into account the household chattels and other property devolving under sections 3 or 4) will devolve to his spouse, nine-sixteenth to his child, one-eighth to his surviving parent, while the remaining one-eighth will devolve to the persons who according to customary law rules applicable to the disposition of his property are entitled to that share. But where there is no surviving parent, one-fourth of the residue will pass in accordance with customary law, with the greater portion of the residue devolving to the surviving spouse and children it is expected that a greater part of the responsibility for the maintenance, care and education of the surviving spouse and children which under customary law fall on the family of the intestate represented by the customary successor will now be borne by the surviving spouse and children. This Act however intends to keep the unity of the family inviolate. It is therefore expected that the legal and moral responsibilities of members of the family towards the welfare of the children will not be remitted.

*Section 6:* Where the intestate is survived by a spouse and not by a child, the spouse will be entitled to one-half of the residue of the property with one fourth of it devolving to the surviving parent, and the remaining one-fourth will devolve in accordance with customary law; provided that where there is no surviving parent one-half of the residue will devolve in accordance with customary law.

*Section 7:* This section provides that where the intestate is survived by a child and not by a spouse the child is entitled to three-fourths of the residue and of the remaining one-fourth, one-eighth will devolve to the surviving parent while the other one-eighth will devolve in accordance with customary law. But where there is no surviving parent the whole of the one-fourth will pass in accordance with customary law.

*Section 8* provides that if the intestate is survived by neither spouse nor child, his parent will be entitled to three-fourths of the residue while the remaining one-fourth will pass in accordance with customary law.

*Section 9:* Where a foreigner has made Ghana his home, the rules of private international law may require that Ghanaian law be applied to the distribution of his property if he dies intestate. In that case this Act will be applicable to him. However domestic customary law rules may not apply to him because he may not have identified himself with any ethnic group. This section nevertheless provides that if customary law is not applicable to the distribution of the estate of the intestate the portion which should devolve according to customary law will go to those beneficiaries who are entitled to share the residue. So for instance, if the foreigner dies survived by a wife and children, the named beneficiaries will also take the part of the property which would ordinarily have been passed according to customary law.

*Section 10* provides rules for determining which is the family for the purpose of devolution of the property of an intestate. If the intestate clearly belonged to only one community then the law of that community determines who constitutes his family. If he belonged to two communities, then the families according to the law of both communities will take the share that should go to the family. If he does not belong to any family according to customary law, the family with which he was closely identified at his death, or, the families of his parents, will take the family's portion or failing that, the Republic.

*Section 11:* This section deals with the situation where the intestate is not survived by a spouse, child or parent. There are rules of customary law which identify the relatives of the deceased who will take his property if he is not survived by a spouse, child or parent. In some communities, it is a group of persons which will take, i.e. the family. In other communities there is a hierarchy of persons who will benefit from an intestacy if certain relatives do not also survive the deceased.

However, in the unlikely event that there is no customary law rule governing the devolution of the property of the intestate who is not survived by a spouse, child or parent the property will devolve upon the Republic but any person maintained by the intestate with whom the intestate was closely identified may apply to the High Court to be maintained out of that estate.

*Section 12:* In order to limit fragmentation and to ensure that the beneficiaries under an intestacy received something substantial this section makes special provision for small estates. If the intestate is survived by a spouse or child or both and the residue of his estate is worth less than ₵50,000.00 the spouse and child will be entitled to the whole estate. If there is only a parent he shall be entitled to the whole estate.

*Section 13:* This section gives the Minister responsible for Justice,<sup>7</sup> power to alter the value of small estates under section 12.

*Section 14:* This section provides that subject to the rules of customary law relating to a member's interest in communal property, when two or more persons are entitled to share a portion of an estate of an intestate they will divide it among themselves in equal shares.

*Section 15* provides for the situation where spouses die more or less at the same time.

*Section 16:* This section provides for the maintenance of a grandchild of the intestate who is a dependant of the intestate. Such a grandchild may be given the whole or part of the portion that his parent would have been entitled to if he had survived the intestate.

7. The Minister responsible for Justice has been substituted for the then Council.

*Section 17:* This section makes it an offence to unlawfully deprive the spouse and child of a deceased person of the use of any part of the property of the deceased, before the distribution of the estate of the deceased or interfere with the use by the spouse and children of the property of the deceased. Even if the property does not belong to the deceased, it is an offence to take it away from the spouse and children before the estate of the deceased is lawfully distributed. The idea is to protect the often relatively defenceless spouse and children, at the time when they are probably in mourning, from the harassment of those who, claiming entitlement to the property, use self-help against them. The offence is equally committed even if the person died testate.

*Section 18:* This section contains definitions of various expressions used in the Act. It must however be emphasised that a reference to a child, parent or spouse includes a reference to children, parents or where appropriate spouses.

*Section 19* repeals section 48 and 10 of the Marriage Ordinance (Cap. 127) and Marriage of Mohammedans Ordinance (Cap. 129) respectively which lay down special rules of succession for persons marrying under their provisions.

*Section 20* also renders inapplicable various other English Statutes, customary and religious laws on intestate succession which are at present applicable in this country.

*Section 21:* This section makes it possible for the Courts or a Chief or Head of family to apply the provisions of the Act in the settlement of a claim or dispute in respect of the administration and distribution of the estate of an intestate pending before it or him at the commencement of the Act. The object of this section is to give expression to the concerns of the Courts which have constantly lamented their impotence to remedy the customary law which they have often considered to be unjust. It is worth emphasising that this section precludes cases which are Statute-barred.

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