

CHAPTER 6:02

DECEASED ESTATES SUCCESSION ACT

Acts 26/1873, 23/1874, 14/1929, 26/1954, 18/1977, 13/1987; 6/1997

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AN ACT to amend the law relating to estates of deceased persons.

[Date of commencement: 21st June, 1929 (Part II)
10th June, 1891 (Part III)]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Deceased Estates Succession Act [*Chapter 6:02*].

PART II

ASPECTS OF INTESTATE SUCCESSION

2 Interpretation in Part II

In this Part—

“specified amount” means the appropriate amount specified by the Minister of Justice, Legal and Parliamentary Affairs in terms of section *six*.

3 Entitlement of spouse of deceased who dies intestate

Subject to section *four*, the surviving spouse of every person who, on or after the 1st April, 1977, dies either wholly or partly intestate is hereby declared to be an intestate heir of the deceased spouse according to the following rules—

- (a) if the spouses were married in community of property and if the deceased spouse leaves any descendant who is entitled to succeed *ab intestato*, the surviving spouse shall—
 - (i) be entitled to receive from the free residue of the joint estate, as his or her sole property, the household goods and effects in such estate;
 - (ii) succeed in respect of the remaining free residue of the deceased spouse’s share of the joint estate to the extent of a child’s share or to so much as, together with the surviving spouse’s share in the joint estate, does not exceed the specified amount, whichever is the greater;
- (b) if the spouses were married out of community of property and the deceased spouse leaves any descendant who is entitled to succeed *ab intestato*, the surviving spouse of such person shall—
 - (i) be entitled to receive from the free residue of the deceased spouse’s estate, as his or her sole property, the household goods and effects in such estate;

- (ii) succeed in respect of the remaining free residue of the deceased spouse's estate to the extent of a child's share or to so much as does not exceed the specified amount, whichever is the greater;
- (c) if the spouses were married in or out of community of property and the deceased spouse leaves no descendant who is entitled to succeed *ab intestato* but leaves a parent or a brother or sister, whether of the full or half blood, who is entitled so to succeed, the surviving spouse shall—
 - (i) be entitled to receive from the free residue of the joint estate or the deceased spouse's estate, as the case may be, as his or her sole property, the household goods and effects in such estate;
 - (ii) succeed in respect of the remaining free residue of the deceased spouse's share of the joint estate or the deceased spouse's estate, as the case may be, to the extent of a half share or to so much as does not exceed the specified amount, whichever is the greater;
- (d) in any case not covered by paragraph (a), (b) or (c), the surviving spouse shall be the sole intestate heir.

3A Inheritance of matrimonial home and household effects

The surviving spouse of every person who, on or after the 1st November, 1997, dies wholly or partly intestate shall be entitled to receive from the free residue of the estate—

- (a) the house or other domestic premises in which the spouses or the surviving spouse, as the case may be, lived immediately before the person's death; and
- (b) the household goods and effects which, immediately before the person's death, were used in relation to the house or domestic premises referred to in paragraph (a);

where such house, premises, goods and effects form part of the deceased person's estate.

4 Articles of peculiar sentimental value

The entitlement of the surviving spouse in terms of section *three* to the household goods and effects of his or her deceased spouse shall not apply in relation to any property which devolved upon the deceased spouse by inheritance from the estate of an ancestor and which has peculiar sentimental value to any other person or persons who, but for section *three*, would have been entitled upon intestacy of the deceased spouse to some interest in such property.

5 Agreement on alternative division or direction to sell property devolving in undivided shares

(1) Where as a result of a distribution in intestacy any property devolves upon any heirs in undivided shares—

- (a) the heirs may agree upon an alternative division of the property, and such agreement shall be binding on the executor;
- (b) any one or more or all of them may direct in writing that he wishes or they wish, as the case may be, the property to be sold and the proceeds divided amongst the heirs, and such direction shall be binding on the executor and all the heirs.

(2) Where any heir referred to in subsection (1) is a minor or a person under curatorship, the Master may, after consultation with the guardian, tutor or curator of the heir concerned—

- (a) consent on behalf of that heir to any agreement referred to in paragraph (a) of subsection (1);
- (b) give a direction in writing on behalf of that heir in terms of paragraph (b) of subsection (1).

6 Specified amount

The Minister of Justice, Legal and Parliamentary Affairs shall, by notice in a statutory instrument, specify an amount for the purposes of section *three* and—

- (a) in so doing, may specify different amounts for different paragraphs;
- (b) may at any time, by notice in a statutory instrument, amend or replace any such notice.

PART III

MISCELLANEOUS

7 No legitimate portion to be claimed of right

No legitimate portion shall be claimable of right by any one out of the estate of any person.

8 Heir not entitled to deduct any portion under Falcidian and Trebellianic Laws

In no case shall any heir of any deceased person be entitled to deduct out of the estate of the deceased person any portion under or by virtue of the laws known respectively as the Falcidian and the Trebellianic Laws, which, but for such laws respectively, such heir would not be entitled to claim or deduct.

9 Lex Hac Edictali repealed

The sixth law of the ninth title of the fifth book of the Codes of Justinian, commencing with the words "Hac Edictali", and commonly called or known as the Law or Lex Hac Edictali, is hereby declared to be of no force or effect in Zimbabwe.

10 Inheritance *ab intestato* unaffected

Nothing in this Part shall affect or alter the laws of Zimbabwe regarding inheritance *ab intestato*.

11 Community of property unaffected

Nothing in this Part shall extend to or alter or affect the laws of Zimbabwe regarding community of property between spouses.