

South Africa

Intestate Succession Act, 1987

Act 81 of 1987

Legislation as at 20 September 2010

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Intestate Succession Act, 1987

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South Africa

Intestate Succession Act, 1987

Act 81 of 1987

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Assented to on 30 September 1987

Commenced on 18 March 1988 by Intestate Succession Act, 1987: Commencement

[This is the version of this document as it was from 20 September 2010 to 2 April 2024.]

[Amended by Law of Succession Amendment Act, 1992 (Act 43 of 1992) on 1 October 1992]

[Amended by Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009 (Act 11 of 2009) on 20 September 2010]

(English text signed by the State President.)

ACT

To regulate anew the law relating to intestate succession; and to provide for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: —

1. Intestate succession

- (1) If after the commencement of this Act a person (hereinafter referred to as the "deceased") dies intestate, either wholly or in part, and—
 - (a) is survived by a spouse, but not by a descendant, such spouse shall inherit the intestate estate;
 - (b) is survived by a descendant, but not by a spouse, such descendant shall inherit the intestate estate;
 - (c) is survived by a spouse as well as a descendant—
 - (i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the *Gazette*, whichever is the greater; and
 - (ii) such descendant shall inherit the residue (if any) of the intestate estate;
 - (d) is not survived by a spouse or descendant, but is survived—
 - (i) by both his parents, his parents shall inherit the intestate estate in equal shares; or
 - (ii) by one of his parents, the surviving parent shall inherit one half of the intestate estate and the descendants of the deceased parent the other half, and if there are no such descendants who have survived the deceased, the surviving parent shall inherit the intestate estate; or

- (e) is not survived by a spouse or descendant or parent, but is survived—
 - (i) by—
 - (aa) descendants of his deceased mother who are related to the deceased through her only, as well as by descendants of his deceased father who are related to the deceased through him only; or
 - (bb) descendants of his deceased parents who are related to the deceased through both such parents; or
 - (cc) any of the descendants mentioned in subparagraph (aa), as well as by any of the descendants mentioned in subparagraph (bb),

the intestate estate shall be divided into two equal shares and the descendants related to the deceased through the deceased mother shall inherit one half of the estate and the descendants related to the deceased through the deceased father shall inherit the other half of the estate; or
 - (ii) only by descendants of one of the deceased parents of the deceased who are related to the deceased through such parent alone, such descendants shall inherit the intestate estate;
- (f) is not survived by a spouse, descendant, parent, or a descendant of a parent, the other blood relation or blood relations of the deceased who are related to him nearest in degree shall inherit the intestate estate in equal shares.
- (2) Notwithstanding the provisions of any law or the common or customary law, but subject to the provisions of this Act and sections 40(3) and 297(1)(f) of the Children's Act, 2005 ([Act No. 38 of 2005](#)), having been born out of wedlock shall not affect the capacity of one blood relation to inherit the intestate estate of another blood relation.
- [subsection (2) substituted by section 8 of [Act 11 of 2009](#)]*
- (3) A notice mentioned in subsection (1)(c)(i) shall not apply in respect of the intestate estate of a person who died before the date of that notice.
- (4) In the application of this section—
- (a) in relation to descendants of the deceased and descendants of a parent of the deceased, division of the estate shall take place *per stirpes*, and representation shall be allowed;
 - (b) "intestate estate" includes any part of an estate which does not devolve by virtue of a will;
- [paragraph (b) substituted by section 8 of [Act 11 of 2009](#)]*
- (c) *[paragraph (c) deleted by section 14(a) of [Act 43 of 1992](#)];*
 - (d) the degree of relationship between blood relations of the deceased and the deceased—
 - (i) in the direct line, shall be equal to the number of generations between the ancestor and the deceased or the descendant and the deceased (as the case maybe);
 - (ii) in the collateral line, shall be equal to the number of generations between the blood relations and the nearest common ancestor, plus the number of generations between such ancestor and the deceased;
 - (e) an adopted child shall be deemed—
 - (i) to be a descendant of his adoptive parent or parents;
 - (ii) not to be a descendant of his natural parent or parents, except in the case of a natural parent who is also the adoptive parent of that child or was, at the time of the adoption, married to the adoptive parent of the child; and

(eA) A person referred to in paragraph (a) of the definition of 'descendant' contained in section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, shall be deemed—

- (i) to be a descendant of the deceased person referred to in that paragraph;
- (ii) not to be a descendant of his or her natural parent or parents, except in the case of a natural parent who is also the parent who accepted that person in accordance with customary law as his or her own child, as envisaged in the said definition, or was, at the time when the child was accepted, married to the parent who so accepted the child; and

[paragraph (eA) inserted by section 8 of [Act 11 of 2009](#)]

(f) a child's portion, in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of children of the deceased who have either survived him or have died before him but are survived by their descendants, plus one.

(5) If an adopted child in terms of subsection (4)(e) is deemed to be a descendant of his adoptive parent, or is deemed not to be a descendant of his natural parent, the adoptive parent concerned shall be deemed to be an ancestor of the child, or shall be deemed not to be an ancestor of the child, as the case may be.

(5A) If a person referred to in paragraph (a) of the definition of 'descendant' contained in section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, is deemed to be a descendant of the deceased person referred to in that paragraph, or is deemed not to be a descendant of his or her natural parent, the deceased person shall be deemed to be an ancestor of the person referred to in that paragraph, or shall be deemed not to be an ancestor of that person, as the case may be.

[subsection (5A) inserted by section 8 of [Act 11 of 2009](#)]

(6) If a descendant of a deceased, excluding a minor or mentally ill descendant, who, together with the surviving spouse of the deceased, is entitled to a benefit from an intestate estate renounces his right to receive such a benefit, such benefit shall vest in the surviving spouse.

[subsection (6) added by section 14(b) of [Act 43 of 1992](#)]

(7) If a person is disqualified from being an heir of the intestate estate of the deceased, or renounces his right to be such an heir, any benefit which he would have received if he had not been so disqualified or had not so renounced his right shall, subject to the provisions of subsection (6), devolve as if he had died immediately before the death of the testator and, if applicable, as if he was not so disqualified.

[subsection (7) added by section 14(b) of [Act 43 of 1992](#)]

2. Repeal of laws

The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

3. Short title and commencement

This Act shall be called the Intestate Succession Act, 1987, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule

Laws Repealed

No. and year of law	Title, subject or heading	Extent of repeal
The Political Ordinance of 1 April 1580 ("Groot Placaet-Boek", Part 1)	"Ordonnantie van de Policien binnen Hollandt. "	Sections 19 to 28, inclusive
Interpretation of 13 May 1594 ("Groot Placaet-Boek", Part 1)	"Verklaringe van de Heeren Staten van Hollandt en de Wes-Vrieslandt op de Ordonnantie van de Successien. "	The whole
Octrooi of 10 January 1661 ("Groot Placaet-Boek", Part 2)	"Octroy, by haer Hoogh Mog: Verleent aende Oost-Indische Compagnie deser Landen op't recht van de Successien <i>ab intestato</i> in Oost-Indien, ende op de reyse gints ende herwaerts."	The Whole
Act No. 13 of 1934	Succession Act, 1934	The Whole
Act No. 93 of 1962	General Law Further Amendment Act, 1962	Section 15
Act No. 44 of 1982	Succession Amendment Act, 1982	The Whole
Act No. 88 of 1984	Matrimonial Property Act, 1984	Section 27