Short notes on:

WHO INHERITS IF THERE IS NO WILL?

Introduction

Drafting a will is one of the most important things a person can do in his or her lifetime. When a person dies without a valid will, the distribution of his or her estate will be dealt with in terms of the Intestate Succession Act 81 of 1987, which means that the law dictates how your estate will devolve.

The deceased loses the opportunity to appoint an executor, (the person who administers the estate), a trustee (if a testamentary trust is created), and a guardian for his or her children.

The process of intestate succession can be quite lengthy and the most important rules will be summarized and shortly explained in this article.

The rules for intestate succession

Rule 1

The spouse or spouses (if the deceased was a husband in one or more customary marriages) of the deceased will each inherit either an amount of R 125 000.00 or a child’s share (the equal portion the descendant/child of the deceased would’ve inherited), whichever amount is greater. The residue will be inherited by the descendants per stirpes and with representation allowed. Per stirpes means that when a beneficiary dies before the person whose estate is being divided, his or her descendants will inherit his or her share as a group. For example; if a father is a beneficiary and is predeceased, but has three children, each of the children will inherit a third of the assets that was supposed to go to their dad.

If the value of the estate is less than R125 000, the surviving spouse or spouses will inherit the whole estate and the children or descendants will not inherit at all.
Rule 2

If a deceased does not have any descendants, the spouse(s) are the sole heirs of the estate and will in the case of more than one spouse, inherit the estate in equal shares. In Gory v Kolver\(^1\) the Constitutional Court held that partners in a permanent same-sex life partnership should also be regarded as “spouses” for the purposes of intestate succession.

It is important to note that when there is no will, the matrimonial property regime will still have an effect on the distribution of the estate. The surviving spouse of a marriage in community of property, will first receive his or her undivided half share of the joint estate before the estate is divided and the other half will devolve according to the rules of intestate succession.

Rule 3

If the deceased’s spouse(s) has already passed away, the descendants will inherit the estate in equal share again per stirpes and with representation. Adopted children are also entitled to inherit. Section 1(2) of the Act also states that illegitimacy does not affect the capacity of a blood relation to inherit intestate from another blood relation. Children born out of wedlock are thus also entitled to inherit.

Rules 4, 5 and 6

If the deceased has no spouse or descendants but leaves behind both parents who are still alive, the parents will inherit in equal shares. If only one parent is alive but the already deceased parent still has descendants who are alive, the surviving parent inherits one half of the estate and the descendants of the deceased parent inherits the other half per stirpes. Otherwise the surviving parent is the sole heir of the estate.

Rule 7 and 8

In the case where the deceased does not leave a spouse or descendants or parents behind but both parents have descendants that are still alive, those descendants will inherit the half shares that would have been inherited by the respective parents, per stirpes with representation as explained.

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\(^1\) CCT 28/06
above. If only one of his predeceased parents have descendants, they are the sole heirs of the estate.

Rule 9

If the deceased does not leave behind a spouse or descendants or parents or descendants of the parents, the deceased's nearest blood relation will be the sole heir of the estate.

No intestate heirs

If all of these rules are exhausted and the deceased left behind no-one eligible to inherit his or her estate, sections 35(13) and 92 of the Administration of Estates Act\(^2\) sets out the procedure. The executor converts the intestate estate into cash and pays the deceased's debts. The residue is paid into the Guardian's Fund. If no-one can prove that they have a claim to the estate as an intestate heir, the money will accrue to the state after 30 years have elapsed.

Conclusion

Whilst there are basic law principles that apply even if there is a will, the deceased could have ensured that his or her intentions are made clear in his or her will as to how they require their estate to devolve upon their death. The deceased could also have appointed an executor, trustee and guardian for their children. Passing away without a valid will could have dire consequences for your loved ones and should you have no illegible heirs you could still leave your estate to a charity of your choice. Make an appointment with one of our attorneys at SchoemanLaw Inc today to ensure your wishes will be adhered to in full.

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\(^2\) 66 of 1965

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