

**THE DEVOLUTION OF ESTATES ACT,
2007**

A bridged and Simplified Version of the Act

NOVEMBER, 2008

**The Lawyers Centre for Legal Assistance
LAWCLA
Sierra Leone**

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FOREWORD

As a lead Human Right Institution, the **Lawyers Centre for Legal Assistance** firstly thank the **DOEN FOUNDATION** for its support and funds that have significantly contributed in making it possible, for this institution to singularly undertake such a challenging task of producing a handbook in a reader friendly nature.

We also give our appreciation to the people and Government of Sierra Leone for making into law, some of the growing concerns of human rights and the amendments of those laws that were discriminatory, particularly against women.

It is our expectation that this hand book would be used as a quick guide in looking at fundamental issues, on human rights abuses and violations.

We wish you a rewarding reading.

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PREFACE

The purpose of this handbook is to make the law accessible to everyone, in order for everybody to be conscious of their rights and to respect the rights of others.

LAWCLA's main mission is to protect and to promote the development of Human Rights, all over the country, through the law.

Now that the gender reform has been initiated and a new Act on domestic violence has been passed and promulgated, LAWCLA wants it to be accessible to every Sierra Leonean, in order to make the new prescriptions effective.

People have to be aware of their own rights so as to be able to enjoy them.

Similarly, law enforcers, even in the local areas, have to know about their rights as citizens, in order to enforce them.

Therefore, the mission of LAWCLA does not stop after the promulgation of a new law that seeks to improve people's rights, but goes on, by diffusing those new rights throughout the country.

This handbook is a means of disseminating the new prescriptions of the Domestic Violence Act, 2007 with the cooperation of all the addresses of the book, to diffuse its contents to the uneducated persons.

If the addresses need more precisions about the Act, they should directly refer to the text (*The Domestic Violence Act, 2007 Supplement to the Sierra Leone Gazette Vol. CXXXVIII No 48 dated 13 September, 2007*)

GLOSSARY

The words defined in the glossary are written in italics in the document.

Application: a draft request sent to the court to bring an action

To Debar: to exclude

Devolution: the fact of sharing the property of a dead person between the beneficiaries (*heirs*)

Heirs: persons that are entitled to inherit from a deceased person

Immoveable: a good that can not be moved (house, land)

Moveable: a good that can be moved (vehicle, furniture, cattle)

Personal: when the rights are joined to the person

Real: when the rights are attached to the good

PART 1 PRELIMINARY

1. Application

This Act applies to every person who dies leaving property in Sierra Leone, irrespective of religion or ethnic origin, and to the distribution of property of persons dying testate (leaving a will) or intestate (without a will), on or after the coming into operation of this Act.

This Act does not apply to property held under Customary Law and to any claim that is statute-barred, by virtue of the Limitation Act, 1961.

2. Interpretation

The lawmaker has defined the main terms used in the Act, in order to be interpreted by everyone on the same meaning:

Brother or Sister: includes half-brother or half-sister, and a brother or a sister adopted under any enactment or under Customary Law.

Child: includes

- any young person born to the deceased while he was unmarried and recognized by the deceased as his child
- any child born to the deceased while he was married and the other parent of the child was or is the lawful spouse of the deceased
- any child born to a dead person, while he was married and the child in question was accepted by the deceased and his spouse as the child of the deceased
- any child adopted by the deceased/dead person under any applicable law.

Cohabiting Person: a person of the opposite sex who, while not married to the testator or intestate, continuously cohabited/lived together, with the testator or intestator, for a period not below five years, immediately preceding the death of that person.

Community Property: any property/belongings, whether *moveable* or *immoveable*, which belongs to the members of a particular community, or is held for the benefit of such members, and any revenue or proceeds from such property.

Court: the Magistrate or High Court.

Dependant: includes a spouse/Partner, child, parent or any person, who before the death of the testator or intestate was by law required to be maintained by the testator or intestate.

Estate: all interest in land and chattels-*real* and *personal*, choses in action and other property whatsoever, of which the intestate was legally capable to dispose during his lifetime, and in respect of which his interest has not been terminated by or on his death.

Family: includes parents, grandparents, uncles, aunts, nephews, nieces and other such relations.

Family Property: any immovable assets that belong to the members collectively of a particular family, or are held for the benefit of such members, and any funds or proceeds from such property.

Intestate: a person who dies without having made a will and

Includes a person who leaves a will but dies intestate regarding some beneficial interest on his *real* or *personal* estate.

Issue: includes children, grandchildren and the descendants of deceased/ dead person according to their stock.

Letters of Administration: any letters of administration granted under Customary Law, or by the court, either generally or with copy of the will annexed or limited in time or otherwise.

Marriage: includes marriage/wedding under the Civil Marriage Act; the Christian Marriage Act; the Mohammedan Marriage Act, or any customary law.

Natural Child: any biological/ true or adopted child.

Next-of-kin: includes any person other than a surviving spouse/partner of a deceased person, who by law would be entitled to letters of administration in preference to a creditor.

Parent: includes a natural mother and father and any person recognised by law, to be the mother or the father of the deceased/ dead person.

Personal Chattels: includes jewellery, clothes, furniture and furnishings, refrigerators, televisions, radiograms, other electrical and electronics appliances, kitchen and laundry equipments, simple agricultural equipment, hunting equipments, books, motor vehicles, but does not include vehicles used wholly for commercial purposes, live stock, money or securities for money.

Residue: all that part of the deceased's/dead person's estate/property that does not devolve according to section 9 or section 22.

Spouse: includes

- a person married to the intestate or the testator,
- an unmarried woman who has cohabited/lived together with an unmarried man, as if she were in law his wife, for a period of not less than five years, immediately preceding the death of the intestate or testate
- an unmarried man who has cohabited/lived together with an unmarried woman as if he were in law her husband for a period of not less than five years immediately preceding the death of the intestate or testate.

Testator: a person who dies leaving a valid will.

Will: any will/document recognized or made under Islamic or Customary Law and a codicil.

PART 2 INTESTATE SUCCESSION

3. Definition of Intestate

A person dies intestate, if at the time of his death he had not made a will disposing of his estate.

Any person, who is survived by a will disposing of part of his estate, dies intestate in respect of his estate/property, which is not disposed of, in the will and the relevant provisions of this Act shall apply to such part of his estate, accordingly.

The spouse/partner of an intestate, or the next-of-kin, if no spouse/partner, is entitled to apply for letters of administration, in respect of the intestate's property. If the intestate had several spouses/partners, the first one is competent, or the next-in-line, if the first one refuses or is unable.

4. Distribution of Estates/Property

The estates/property of an intestate person is distributed, as provided in this Act, after the payment of debts, duties and other lawful expenses.

5. Maintenance of Natural Child

Any natural child of an intestate can be maintained and educated from the rest of the estate of the deceased, until he attains eighteen years, or finishes his studies (secondary school or university).

The amount of the maintenance is determined taking into account the surviving parents' duty to provide guidance, care, assistance and maintenance for the child, and the welfare of other dependants.

6. Intestate Survived by Spouse only

If there is only a surviving spouse/partner but no children, the whole of the estate is given to the surviving spouse/partner.

If there is more than one surviving spouse/partner, but no children, the estate is distributed among the spouses/partners, in proportion to the duration of their respective marriages and other factors, such as their respective contributions to the estate.

7. Intestate Survived by Child only

If the intestate is survived by a child only and no spouse/partner, parent or grandchild, the whole estate is given to the child.

If there are two or more children, the estate is shared among them in equal parts.

8. Intestate Survived by Spouse, Child and Parent

If the intestate is survived by a spouse, child and parent, the estate is distributed as follows:

- 35 % to the spouse/partner
- 35 % to the child
- 15 % to the parent

- 15 % in accordance with the Customary Law or Mohammedan Law, as applicable.

9. Devolution of House

If the estate/property includes a house, the surviving spouse(s)/partner(s) and child or children are entitled to the house, as tenants-in-common.

If the estate includes more than one house, the surviving spouse or spouses and child or children must determine which house is given to whom, and if a house is given to several spouses/partners and/or children, they hold the house as tenants-in-common.

The spouse has the right to make the first choice and the child will choose thereafter.

In case of several spouses/partners, if they are unwilling or unable to agree on the sharing out of the houses, the court will determine which of the houses should be devolved to whom.

If there is only a surviving child and no spouse, the child is entitled to the house absolutely, but any surviving parent has the right to live in that house, for his lifetime.

If the estate includes only a house, the surviving spouse has the right to live in the house during his lifetime.

If there are several houses, in the estate/property, the surviving spouse/partner can choose in which of the houses he/she may live.

10. Intestate Survived by Parent, Brother or Sister

If the intestate is only survived by parent, or brother or sister

and no spouse/partner, child or grandchild, the estate/property is distributed as follows:

- 75 % to the parent, brother and sister in equal shares
- 25 % is distributed in accordance with Customary or Mohammedan Law.

11. Grandchild of Intestate

If the intestate is survived by a grandchild, the grandchild must receive a portion or the whole of the estate/property that would have been devolved to his parent (the child of the deceased), if he had not already died.

12. Birth after the Intestate's Death

If a child or grandchild has been conceived before the death of the intestate, but was born after his death, he must inherit/benefit as if he was born during the lifetime of the intestate.

13. Intestate Survived by Brother and Sister only

If the intestate is only survived by brother or sister, and no spouse/partner, child, grandchild or parent, the estate/property will be distributed as follows:

- 75 % to the brother and sister in equal shares
- 25 % is distributed in accordance with Customary or Mohammedan Law.

14. Intestate Survived by Parent only

If the intestate is only survived by a parent and no spouse, child, grandchild or brother and sister, the estate is distributed as follows:

- 75 % to the parent
- 25 % is distributed in accordance with Customary or Mohammedan Law.

15. Property Excluded of the Estate

If under Customary Law, family property, chieftaincy property or community property or any part of it is vested in the intestate under Customary Law, such property is excluded of his estate and the rules of succession under Customary Law prevails in respect of such property.

A surviving spouse/partner has the right to reside/live during his/her lifetime in any family, chieftaincy or community property, in which he cohabited with the deceased as their matrimonial home.

16. No Survivor

If the intestate deceased is not survived by any person, to whom his estate may devolve, his estate should be given to the state.

17. Personal Chattel

If the intestate deceased is survived by a spouse/partner or spouses/partners, child or children, his personal chattel is equally divided between or among them.

18. Small Estates

If the total value of the estate does not exceed 15 million Leones, it is distributed as follows:

- to the surviving spouse/partner or child or both
 - to the surviving parent, if no spouse/partner or child
 - to the surviving brother and sister, if no spouse/partner or child or parent
 - to the next-of-kin, if there is no surviving spouse, child, parent, brother or sister.

19. Appointment of Receiver

A person may be designed by the court, as a receiver of the intestate's property, to manage his letters of administration, if it appears that there is a danger that, the property may be wasted, damaged or destroyed.

20. Sale Decided by the Court

A court can order the sale of the whole or any part of the intestate's property, when it is asked by the receiver or any interested person if it appears to be in the interest of the heirs.

17. Personal Chattel

If the intestate deceased is survived by a spouse/partner or spouses/partners, child or children, his personal chattel is equally divided between or among them.

18. Small Estates

PART 3 TESTATE SUCCESSION

22. *Unreasonable Provisions in Will*

An aggrieved dependant may apply to the court, to contest the dispositions made in a will, relying on equitable principles. If the court agrees that the provisions or absence of provisions have caused or will cause hardship to the dependant, the court can make an order for the maintenance of the dependant.

The order may include the payment of a lump sum, the grant of a series of payment, or the grant of an interest in *immoveable* property (the rent of a house).

23. *Criteria for the Maintenance Order*

While making a maintenance order, the court takes into consideration the testator's reasons for making such provisions, in his will and any other relevant facts, such as the dependant's financial means, the financial means of other beneficiaries, the relation between the dependant and the testator, or the size and the nature of the estate.

If the estate consists of only one house that has been devised to the surviving spouse/partner and child, the dependant may not ask the court for maintenance order.

24. *End of Periodic Payments*

If an order provides for periodic payments, the payments come to an end at:

- the remarriage of the surviving spouse
- the eighteenth birthday or the end of the studies of the dependant, if he is a child
- the cesser of disability of a disable child
- the death of the dependant.

25. Period to make an Application

The *application* for a provision of maintenance order must be made not later than 6 months, after the grant of probate, but the court can extend this period, if it is asked.

26. Effect and Form of Order

The provision of maintenance order is included in the will, as if it was a provision of the will itself, since the testator's death.

If the income of the estate is sufficient to produce the amount of the provision, no larger part of the estate should be set aside.

A certified copy of the order is sent to the Probate Registry and is annexed to the will.

27. Modification of Orders

After the 6 months period to apply for maintenance, the court can make an order to change the provisions of a previous maintenance order, if a material fact was unknown when the first order was made, or if an important change has taken place in the situation of the dependant, or a person interested in the property under the will.

The court can also make a provision for the maintenance of another dependant of the testator.

An *application* for a new order may be made by a dependant, by the receiver of the property, or by a person beneficially interested in the property.

PART 4 MISCELLANEOUS

28. *Devolution of Residue*

When no Customary or Mohammedan Law is applicable to the *devolution* of the residue (15 or 25% of the estate), which should be devolved in accordance with Customary or Mohammedan Law, it must be shared in equal parts, among the beneficiaries entitled to share the residue, under the relevant provision of this Act.

29. *Challenge of a Will*

When it is asked by an interested person, a court may determine if a will is valid or not.

If it is decided that the document is not a valid will, the testator is treated as an intestate and his estate is divided under Part 2. The person who successfully challenged the validity of the will must not be excluded from the beneficiaries on this ground.

30. *Beneficiary Causing Death of Testator or Intestate*

A person who intentionally kills the testator or intestate has no right to inherit of the estate.

31. *Simultaneous Deaths*

When two (2) or more persons die simultaneously, and it is

impossible to know which of them survived the other, it is presumed that the younger survived the older, in order to determine the order of the deaths and yet, the *devolution* of estates.

32. *Undermining the Estate*

When a person dies leaving property in Sierra Leone, any person who undermines his property, without any authorisation commits a crime and may pay a fine not exceeding 5 million Leones or sentenced to a term of imprisonment not exceeding one year or to both; except if the person proves that his action was necessary for the preservation of the property.

33. *Sharing of the Estate*

The administrator (executor) of the estate must distribute the estate within 3 years, after obtaining a grant, unless it is necessary to ensure the maintenance of any child under eighteen or vulnerable parent of the estate.

No person can eject a surviving spouse/partner or child from the matrimonial home, before the distribution of the estate of the deceased:

- if the home is the property of the deceased
- if it is rented property, unless the ejection is the execution of a court order
- if it is a family house, unless a period of one year has expired after the death of the deceased

- if it is a public property, unless a period of 6 months has expired after the death of the deceased.

Any person who, before the distribution of the estate/property,

- ejects a surviving spouse/partner or child from the matrimonial home
- deprives the entitled person of the use of any part of the property shared with the deceased
- removes, destroys or otherwise unlawfully interferes with the property of the deceased person

commits a crime and may be sentenced to a fine not exceeding 5 million Leones, or to a term of imprisonment not exceeding 2 years; and the court may order any necessary provision for the reinstatement or reimbursement of the victim.

34. Additional Order of Court

In addition to a penalty imposed under section 32, the court may order the restoration of the property, or if it is not possible, the payment of a compensation of an amount that may not exceed twice the value of the property.

A court that has already dealt with an *application* relating to a property may nevertheless try an offence under section 33.

35. Letters of Administration by Fraud

Any person that obtains letters of administration by fraud commits a crime and may be sentenced to a fine not exceeding

10 million Leones or to a term of imprisonment not exceeding 5 years or to both.

36. *Savings*

Except if it is expressly provided, no provision of this Act may affect the estate/property of a testate, or intestate, who died before the commencement of this Act.

Every proceeding related to the *devolution* of estate which was pending immediately before the commencement of this Act must be continued and enforced under the former law, as if this Act had not been enacted.

37. *Regulations*

The minister of social welfare has to make any necessary regulations to give effect to the Act.

38. *Repeals*

The following laws are hereby repealed:

- the Christian Marriage Act, section 26
- the Muslim Marriage Act, section 9, subsection (1)
- the Administration of Estate Act, Second Schedule.

Paragraph (d) of section 1 of the Administration of Estates Act is hereby amended by the deletion and replacement of the words "Second Schedule" appearing therein by the words "the Devolution of Estates Act, 2007".

MAIN PROVISIONS OF THE DEVOLUTION OF ESTATES ACT, 2007

If the deceased dies **intestate**, the order of the beneficiaries in the *devolution* of his estate is as follows:

- the surviving spouse/ partner and/ or children
- the parents
- the brothers and sisters
- the next-of-kin

If the deceased has written a **will** before (testator), the *devolution* of his estate/property is as prescribed in the will, except if a dependant has been unfairly avoided on the devolution. In such a case, the court can order provisions for his maintenance.

The **surviving spouse/partner** of an intestate deceased person has the right to stay in the matrimonial home during his life time.

The **children** of the deceased person can stay in the matrimonial home and are maintained until 18years, or when they have finished their studies.

