

Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009¹²

[ASSENTED TO 19 APRIL 2009]	[DATE OF COMMENCEMENT: 20 SEPTEMBER 2010]
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(English text signed by the President)

published in
GG 32147 of 21 April 2009

commencement
(see s. 9 of this Act)

provisions	date	refer to
whole Act	20 September 2010	Proc R54 in GG 33576 of 17 September 2010

as amended

by	with effect from	refer to
Judicial Matters Amendment Act 42 of 2013	20 September 2010	s. 43 of Act 42 of 2013

ACT

To modify the customary law of succession so as to provide for the devolution of certain property in terms of the law of intestate succession; to clarify certain matters relating to the law of succession and the law of property in relation to persons subject to customary law; and to amend certain laws in this regard; and to provide for matters connected therewith.

Preamble

SINCE a widow in a customary marriage whose husband dies intestate does not enjoy adequate protection and benefit under the customary law of succession;

AND SINCE certain children born out of a customary marriage do not enjoy adequate protection under customary law;

AND SINCE section 9 of the Constitution provides that everyone has the right to equal protection and benefit of the law;

AND SINCE social circumstances have so changed that the customary law of succession no longer provides adequately for the welfare of family members;

AND SINCE the Constitutional Court has declared that the principle of male primogeniture, as applied in the customary law of succession, cannot be reconciled with the current notions of equality and human dignity as contained in the Bill of Rights,

Parliament of the Republic of South Africa therefore enacts as follows:-

¹ This Act has been updated to include all available historical commencement details

² The administration and the powers or functions entrusted by legislation transferred to the Minister of Justice and Constitutional Development (Proc 199 in GG 51368 of 11 October 2024)

1 Definitions

In this Act, unless the context indicates otherwise-

'customary law' means the customs and practices observed among the indigenous African people of South Africa which form part of the culture of those people;

'descendant' means a person who is a descendant in terms of the Intestate Succession Act, and includes-

(a) a person who is not a descendant in terms of the Intestate Succession Act, but who, during the lifetime of the deceased person, was accepted by the deceased person in accordance with customary law as his or her own child; and

(b) a woman referred to in section 2 (2) (b) or (c);

'house' means the family, property, rights and status which arise out of the customary marriage of a woman;

'Intestate Succession Act' means the Intestate Succession Act, 1987 ([Act 81 of 1987](#));

'spouse' includes a partner in a customary marriage that is recognised in terms of [section 2](#) of the Recognition of Customary Marriages Act, 1998 ([Act 120 of 1998](#));

'traditional leader' means a traditional leader as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2004 (Act 41 of 2004);

'this Act' includes any regulation made under section 5; and

'will' means a will to which the provisions of the Wills Act, 1953 ([Act 7 of 1953](#)), apply.

2 Modification of customary law of succession

(1) The estate or part of the estate of any person who is subject to customary law who dies after the commencement of this Act and whose estate does not devolve in terms of that person's will, must devolve in accordance with the law of intestate succession as regulated by the Intestate Succession Act, subject to subsection (2).

(2) In the application of the Intestate Succession Act-

- (a) where the person referred to in subsection (1) is survived by a spouse, as well as a descendant, such a spouse must inherit a child's portion 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 Cabinet member responsible for the administration of justice by notice in the *Gazette*, whichever is the greater;
- (b) a woman, other than the spouse of the deceased, with whom he had entered into a union in accordance with customary law for the purpose of providing children for his spouse's house must, if she survives him, be regarded as a descendant of the deceased;
- (c) if the deceased was a woman who was married to another woman under customary law for the purpose of providing children for the deceased's house, that other woman must, if she survives the deceased, be regarded as a descendant of the deceased.

3 Interpretation of certain provisions of Intestate Succession Act

(1) For the purposes of this Act, any reference in section 1 of the Intestate Succession Act to a spouse who survived the deceased must be construed as including every spouse and every woman referred to in paragraphs (a), (b) and (c) of section 2 (2).

(2) For the purposes of this Act and in the application of section 1 (1) (c) of the Intestate Succession Act, the following subparagraph must be regarded as having been added to that section:

- '(iii) where the intestate estate is not sufficient to provide each surviving spouse and woman referred to in paragraphs (a), (b) and (c) of section 2 (2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, with the amount fixed by the Minister, the estate shall be divided equally between such spouses;'

[Sub-s. (2) amended by [s. 42 of Act 42 of 2013](#) (wef 20 September 2010).]

(3) In the determination of a child's portion for the purposes of dividing the estate of a deceased in terms of the Intestate Succession Act, paragraph (f) of section 1 (4) of that Act must be regarded to read as follows:

- '(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 the deceased or have died before the deceased but are survived by their descendants, plus the number of spouses and women referred to in paragraphs (a), (b) and (c) of section 2 (2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009.'

[Sub-s. (3) amended by [s. 42 of Act 42 of 2013](#) (wef 20 September 2010).]

4 Disposition of property allotted or accruing to woman in customary marriage

(1) Property allotted or accruing to a woman or her house under customary law by virtue of her customary marriage may be disposed of in terms of a will of such a woman.

(2) Any reference in the will of a woman referred to in subsection (1) to her child or children and any reference in section 1 of the Intestate Succession Act to a descendant, in relation to such a woman, must be construed as including any child-

- (a) born of a union between the husband of such a woman and another woman entered into in accordance with customary law for the purpose of providing children for the first-mentioned woman's house; or
- (b) born to a woman to whom the first-mentioned woman was married under customary law for the purpose of providing children for the first-mentioned woman's house.

(3) Nothing in this section is to be construed as preventing any person subject to customary law, other than the woman referred to in subsection (1), from disposing assets in terms of a will.

5 Dispute or uncertainty in consequence of nature of customary law

(1) If any dispute or uncertainty arises in connection with-

- (a) the status of or any claim by any person in relation to a person whose estate or part thereof must, in terms of this Act, devolve in terms of the Intestate Succession Act;
- (b) the nature or content of any asset in such estate; or
- (c) the devolution of family property involved in such estate,

the Master of the High Court having jurisdiction under the Administration of Estates Act, 1965 ([Act 66 of 1965](#)), may, subject to subsection (2), make such a determination as may be just and equitable in order to resolve the dispute or remove the uncertainty.

(2) Before making a determination under subsection (1), the Master may direct that an inquiry into the matter be held by a magistrate or a traditional leader in the area in which the Master has jurisdiction.

(3) After the inquiry referred to in subsection (2), the magistrate or a traditional leader, as the case may be, must make a recommendation to the Master who directed that an inquiry be held.

(4) The Master, in making a determination, or the magistrate or a traditional leader, as the case may be, in making a recommendation referred to in this section, must have due regard to the best interests of the deceased's family members and the equality of spouses in customary and civil marriages.

(5) The Cabinet member responsible for the administration of justice may make regulations regarding any aspect of the inquiry referred to in this section.

6 Disposal of property held by traditional leader in official capacity

Nothing in this Act is to be construed as amending any rule of customary law which regulates the disposal of the property which a traditional leader who has died held in his or her official capacity on behalf of a traditional community referred to in the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003).

7 Property rights in relation to certain customary marriages

(1) A marriage under the Marriage Act, 1961 ([Act 25 of 1961](#)), does not affect the proprietary rights of any spouse of a

customary marriage or any issue thereof if the marriage under the Marriage Act, 1961, was entered into-

- (a) on or after 1 January 1929 (the date of commencement of [sections 22 and 23](#) of the Black Administration Act, 1927 ([Act 38 of 1927](#))), but before 2 December 1988 (the date of commencement of the Marriage and Matrimonial Property Law Amendment Act, 1988 ([Act 3 of 1988](#))); and
- (b) during the subsistence of any customary marriage between the husband and any woman other than the spouse of the marriage under the Marriage Act, 1961 ([Act 25 of 1961](#)).

(2) The widow of the marriage under the Marriage Act, 1961, referred to in subsection (1), and the issue thereof have no greater rights in respect of the estate of the deceased spouse than she or they would have had if the marriage under the Marriage Act, 1961, had been a customary marriage.

8 Amendment of laws

The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column of that Schedule.

9 Short title and commencement

This Act is called the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**Schedule
AMENDMENT OF LAWS**

(Section 8)

No. and year of law	Short title	Extent of amendment
Act 66 of 1965	Administration of Estates Act, 1965	1 Amends section 4, as follows: paragraph (a) substitutes in subsection (1) the words preceding paragraph (a); paragraph (b) deletes subsection (1A). 2 Amends section 7 (1) by substituting paragraph (a). 3 Amends section 9 by substituting in subsection (1) the words preceding paragraph (a).
Act 81 of 1987	Intestate Succession Act, 1987	1 Amends section 1, as follows: paragraph (a) substitutes subsection (2); paragraph (b) substitutes subsection (4) (b); paragraph (c) inserts subsection (4) (eA); and paragraph (d) inserts subsection (5A).
Act 27 of 1990	Maintenance of Surviving Spouses Act, 1990	1 Amends section 1 by substituting the definition of 'survivor'.