

A BILL

FOR

AN ACT TO PROVIDE FOR INTESTATE SUCCESSION AND FOR OTHER RELATED MATTERS

Sponsored by Senator Mathew Uroghide

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 1.-(1) The devolution of the estate of a person who dies intestate on Application of
 2 or after the commencement of this Act shall be determined in accordance Act
 3 with this Act subject to subsection (3) and the rules of private international
 4 law.

5 (2) This Act applies to matters pending before a court at the time of
 6 its commencement.

7 (3) This Act does not apply to a stool, skin or family property.

8 (1) A person dies intestate under this Act if at the time of death, the
 9 person had not made a will disposing of the estate of that person.

10 (2) A person who dies leaving a will disposing of part of the estate
 11 of that person shall be deemed to have died intestate under this Act in respect
 12 of that part of the estate which is not disposed of in the will and accordingly
 13 this Act shall apply to that part of the estate.

14 2. Where the intestate is survived by a spouse or by a child or both Intestacy and
 15 a spouse and a child, the spouse or the child is or both of them are entitled partial intestacy
 16 absolutely to the household property of the intestate.

17 (1) Subject to sections 8 and 9, where the estate includes only one
 18 house and the surviving spouse has made a contribution to the acquisition of
 19 the house, the surviving spouse is entitled to more than fifty percent of the
 20 estate.

21 (2) Subject to section 8, where the estate includes more than one

1 house, the surviving spouse is entitled to one house and the children are entitled
2 to another.

3 (3) Where there is disagreement as to which of the houses devolves to
4 the surviving spouse or child, the surviving spouse has priority and the
5 exclusive right to choose anyone of the houses.

6 (4) Where the surviving spouse is, or the spouse and child are
7 unwilling or unable to make the choice, the court shall determine which of the
8 houses devolves to the surviving spouse or child on application made to it by
9 the administrator of the estate

Devolution of
household
property

10 3. -(1) Where the intestate is survived by a spouse and by a child, the
11 residue of the estate devolves in the following manner; thirty-five percent to
12 the surviving spouse, forty percent to the surviving child, fifteen percent to the
13 surviving parent, and ten percent in accordance with customary law.

14 (2) Where there is no surviving parent, the residue of the estate shall
15 devolve in the following manner; forty-five percent to the surviving spouse,
16 forty-five percent to the surviving child, and ten percent in accordance with
17 customary law. Where the intestate is survived by more than one spouse, the
18 residue of the estate devolves in the following manner; fifty percent to the
19 surviving spouses, forty percent to the surviving child, five percent to the
20 surviving parent, and five percent in accordance with customary law. Where
21 spouses are estranged and have been separated for a period of three or more
22 years, the Judge shall exercise discretion as to what percentage of the estate to
23 give to the estranged spouse which in any case shall not be less than thirty
24 percent on the death intestate of one of the spouses.

Spouse, child or
both entitled to
one house

25 4.-(1) Subject to sections 8 and 9, where the estate includes only one
26 house and the surviving spouse has made a contribution to the acquisition of the
27 house, the surviving spouse is entitled to more than fifty percent of the estate.

28 (2) Subject to section 8, where the estate includes more than one
29 house, the surviving spouse is entitled to one house and the children are entitled
30 to another.

1 (3) Where there is disagreement as to which of the houses devolves
2 to the surviving spouse or child, the surviving spouse has priority and the
3 exclusive right to choose anyone of the houses.

4 (4) Where the surviving spouse is, or the spouse and child are
5 unwilling or unable to make the choice, the court shall determine which of
6 the houses devolves to the surviving spouse or child on application made to
7 it by the administrator of the estate.

8 5.-(1) Where the intestate is survived by a spouse and by a child, the
9 residue of the estate devolves in the following manner;

Intestate survived
by spouse and
child

- 10 (a) thirty-five percent to the surviving spouse,
11 (b) forty percent to the surviving child,
12 (c) fifteen percent to the surviving parent, and
13 (d) ten percent in accordance with customary law.

14 (2) Where there is no surviving parent, the residue of the estate
15 shall devolve in the following manner:

- 16 (a) forty-five percent to the surviving spouse,
17 (b) forty-five percent to the surviving child, and
18 (c) ten percent in accordance with customary law.

19 6. -(1) Where the intestate is survived by more than one spouse, the
20 residue of the estate devolves in the following manner:

Intestate survived
by more than one
spouse

- 21 (a) fifty percent to the surviving spouse,
22 (b) forty percent to the surviving child,
23 (c) five percent to surviving parent, and
24 (d) five percent in accordance with customary law.

25 7. Where spouses are estranged and have been separated for a
26 period of three or more years, the Judge shall exercise discretion as to what
27 percentage of the estate to give to the estranged spouse which in any case
28 shall not be less than thirty percent on the death intestate of one of the
29 spouses.

Interest of
estranged spouses

Interest of surviving spouse in matrimonial home	1	8. -(1) Where the intestate is survived by a spouse, the surviving
	2	spouse shall have a fifty percent interest or share in the matrimonial home.
	3	(2) Where the surviving spouse made a contribution to the acquisition
	4	of the matrimonial home, the surviving spouse shall have more than a fifty
	5	percent share in the matrimonial home.
Option to buyout	6	9. Where the estate of the intestate consists of only one house and the
	7	surviving spouse made a contribution to the acquisition of the house, the
	8	surviving spouse shall have the option to buyout the other beneficiaries.
Interest of surviving spouse who is a joint owner	9	10. A surviving spouse who owns property jointly with the deceased
	10	other than the matrimonial home shall have an additional twenty-five percent
	11	share of that property by virtue of being a spouse in addition to the fifty percent
	12	share acquired in the property jointly owned.
Sale or redemption of a mortgaged estate	13	11. -(1) Where the estate includes property which is subject to a
	14	mortgage, the surviving spouse or a surviving child, may make an application
	15	to the court for the sale or redemption of the property.
	16	(2) On application to the court, the court shall make an order for the
	17	sale or redemption of the property subject to the mortgage.
School-going dependants of deceased	18	12. -(1) Before the estate of the intestate is distributed, provision shall
	19	be made for the needs of dependent children of the intestate.
	20	(2) Where the intestate is survived by children who are still pursuing
	21	education courses, provision shall be made for the payment of the educational
	22	fees for the children, and for the provision of other necessities for the children
	23	out of the deceased's estate before the distribution of the estate.
	24	(3) For the purpose of this section, a dependant child is:
	25	(a) a child who depends on the intestate for the payment of education
	26	fees and provision of other necessities, or
	27	(b) a child who is incapacitated and who depends on the intestate.
	28	(4) A person who does not make reasonable provision for the
	29	educational training and other necessities of children of the deceased commits
	30	an offence and is liable on summary conviction to a fine of one hundred

1 thousand naira or to a term of imprisonment of not more than four years or to
2 both and the court shall make any orders that it considers necessary for the
3 re-instatement of the child or reimbursement of the education fees.

4 **13.**-(1) Where the intestate is survived by a spouse and not by a
5 child, the residue of the estate devolves in the following manner:

Intestate survived
by spouse only

- 6 (a) seventy percent to the surviving spouse,
7 (b) twenty-five percent to the surviving parent, and
8 (c) five percent in accordance with customary law.

9 (2) Where there is no surviving child and parent, eighty percent of
10 the residue of the estate devolves to the surviving spouse and twenty percent
11 in accordance with customary law.

12 **14.**-(1) Where the intestate is survived by a child and not by a
13 spouse, the estate devolves in the following manner:

Intestate survived
by child only

- 14 (a) seventy-five percent to the surviving child;
15 (b) twenty percent to the surviving parent; and
16 (c) five percent in accordance with customary law.

17 (2) Where there is no surviving parent, ninety percent devolves to
18 the children and ten percent in accordance with customary law.

19 **15.** Where the intestate is survived by a spouse and children who
20 are the children of another woman, the estate shall devolve in the following
21 manner:

Intestate survived
by spouse and
children of
another woman

- 22 (a) fifty percent to the surviving spouse;
23 (b) thirty-five percent to the surviving children; Where the intestate
24 is survived by a parent but not by a child and a spouse, ninety percent of the
25 estate devolves to the surviving parent and the remaining ten percent
26 devolves in accordance with customary law

- 27 (c) ten percent to the surviving parent; and
28 (d) five percent in accordance with customary law.

29 **16.** Where the intestate is survived by a parent but not by a child
30 and a spouse, ninety percent of the estate devolves to the surviving parent

Intestate survived
by parent only

	1	and the remaining ten percent devolves in accordance with customary law
Devolution of residue where customary law is inapplicable	2	17. Where customary law is not applicable to the devolution of that
	3	part of the residue which by virtue of sections 5, 13, 14 or 16, devolves in
	4	accordance with customary law, that part of the residue devolves in equal
	5	shares to those beneficiaries otherwise entitled to share the residue under the
	6	relevant provisions of this Act.
Customary law provisions for succession by family	7	18. Where the rules of succession under customary law applicable to a
	8	portion of the estate provide that the family of the intestate is entitled to a share
	9	in the estate:
	10	(a) that family is the family to which the intestate belonged for the
	11	purpose of succession in accordance with the customary law of the community
	12	of which the intestate was a member;
	13	(b) in the case of an intestate who, being a member of two customary
	14	law communities belonged to two families for the purposes of succession, that
	15	family shall be the two families;
	16	(c) in the case of an intestate who is not a member of a family, that
	17	family is the family with which the intestate was identified at the time of death
	18	or, failing that, to the families of the parents of the intestate or failing that to the
	19	Nation:
Intestate survived by neither spouse, parent nor child	20	19.-(1) Where the intestate is not survived by a spouse, a child or a
	21	parent the estate devolves in accordance with customary law.
	22	(2) Where customary law is not applicable to the devolution of the
	23	estate of an intestate who is not survived by a spouse, child or a parent in the
	24	circumstances referred to in subsection (1), the estate devolves to the Nation.
	25	(3) Where the estate of an intestate devolves to the Republic and an
	26	application is made to the court, and the court is satisfied that a person who was
	27	maintained by the intestate or with whom the intestate was closely identified,
	28	should be maintained out of the estate or that a portion.
Small estates	29	20. Despite sections 4, 5, 13, 14 and 16:
	30	(a) where the total value of the residue does not exceed one Hundred

1 thousand Naira, the residue shall devolve to a surviving spouse or child of
2 the intestate or both where the spouse and the child survive the intestate;

3 (b) where the intestate is survived only by a parent and the total
4 value of the estate does not exceed one hundred thousand Ghana naira the
5 estate shall devolve to the surviving parent.

6 **21.** The Minister responsible for Justice may by legislative
7 instrument vary the maximum value of the estate specified under section 20

Variation of
value of residue

8 **22.** Where two or more persons are entitled to share a portion of an
9 estate under this Act, they shall divide it among themselves in equal shares
10 subject to the rules of customary law related to a member's interest in
11 communal property.

Sharing of portion
of residue by two
or more persons

12 **23.** Where spouses die in circumstances:

13 (a) in which it appears that their deaths were simultaneous, or

14 (b) rendering it uncertain as to which of them survived the other,
15 the older shall, for the purposes of this Act, be presumed to have predeceased
16 the younger.

Presumption on
survivorship

17 **24.** Where a child of the intestate who has predeceased the intestate
18 is survived by a child who is the grandchild of the intestate, the grandchild is
19 entitled to the whole or a portion of the estate which would otherwise have
20 devolved to the parent if that child had not predeceased the intestate if that
21 child is dependent on the intestate at the time of death.

Grand children
of intestate

22 **25.**-(1) A person shall not eject a surviving spouse or child from the
23 matrimonial home before the distribution of the estate of a deceased person
24 whether testate or intestate

Prohibition of
ejection of
spouses

25 (a) where the matrimonial home is the self-acquired property of the
26 deceased;

27 (b) where the matrimonial home is rented property, unless the
28 ejection is pursuant to a court order;

29 (c) where the matrimonial home is the family house of the
30 deceased, unless a period of six months has expired from the date of the

1 thousand Naira, the residue shall devolve to a surviving spouse or child of
2 the intestate or both where the spouse and the child survive the intestate;

3 (b) where the intestate is survived only by a parent and the total
4 value of the estate does not exceed one hundred thousand Ghana naira the
5 estate shall devolve to the surviving parent.

6 **21.** The Minister responsible for Justice may by legislative
7 instrument vary the maximum value of the estate specified under section 20

Variation of
value of residue

8 **22.** Where two or more persons are entitled to share a portion of an
9 estate under this Act, they shall divide it among themselves in equal shares
10 subject to the rules of customary law related to a member's interest in
11 communal property.

Sharing of portion
of residue by two
or more persons

12 **23.** Where spouses die in circumstances:

Presumption on
survivorship

13 (a) in which it appears that their deaths were simultaneous, or

14 (b) rendering it uncertain as to which of them survived the other,
15 the older shall, for the purposes of this Act, be presumed to have predeceased
16 the younger.

17 **24.** Where a child of the intestate who has predeceased the intestate
18 is survived by a child who is the grandchild of the intestate, the grandchild is
19 entitled to the whole or a portion of the estate which would otherwise have
20 devolved to the parent if that child had not predeceased the intestate if that
21 child is dependent on the intestate at the time of death.

Grand children
of intestate

22 **25.-(1)** A person shall not eject a surviving spouse or child from the
23 matrimonial home before the distribution of the estate of a deceased person
24 whether testate or intestate

Prohibition of
ejection of
spouses

25 (a) where the matrimonial home is the self-acquired property of the
26 deceased;

27 (b) where the matrimonial home is rented property, unless the
28 ejection is pursuant to a court order;

29 (c) where the matrimonial home is the family house of the
30 deceased, unless a period of six months has expired from the date of the

1 death of the deceased; or
2 (d) where the matrimonial home is public property, unless a period of
3 three months has expired from the date of death of the deceased.

4 (2) For the purposes of subsection (1), "matrimonial home" means:

5 (a) the house or premises occupied by the deceased and the surviving
6 spouse, or the deceased and a surviving child or all of them at the time of the
7 death of the deceased; or

8 (b) any other self-acquired house of the deceased occupied by the
9 surviving spouse or child or both at the time of the death of the deceased.

Offences against
spouse and
entitled persons

10 **26.** A person who before the distribution of the estate of a deceased
11 person whether testate or intestate unlawfully ejects a surviving spouse or child
12 from the matrimonial home contrary to section 25; unlawfully deprives the
13 entitled person of the use of:

14 (i) a part of the property;

15 (ii) property to which this Act applies, and which is, shared by the
16 entitled person with the deceased, or

17 (iii) removes, destroys or otherwise unlawfully interferes with the
18 property of the deceased person, commits an offence and is liable on summary
19 conviction to a fine of not more than five hundred penalty units or to a term of
20 imprisonment of not more than four years or to both and the court shall make
21 any orders that it considers necessary for the reinstatement of or
22 reimbursement of the person who was ejected or deprived.

Other offences

23 **27.** A person who before the distribution of the estate of a deceased
24 person whether testate or intestate locks up the property of the deceased, or
25 takes possession of household property within the matrimonial home commits
26 an offence and is liable on summary conviction to a fine of not more than five
27 hundred penalty units or to a term of imprisonment of not more than four years,
28 and the court shall make any other order that it considers necessary for the re-
29 instatement or reimbursement of the spouse or child.

1 **28.** The Minister may by legislative instrument make regulations Regulations
2 on:

- 3 (a) the maximum value of a small estate;
4 (b) any other matter necessary for the effective implementation of
5 this Act.

6 **29.** In this Act, unless the context otherwise requires, Interpretation

7 "child" includes a natural child, whether or not born in wedlock, a person
8 adopted under the Child's Right Act, 2003 or under customary law and a
9 person recognised by the person in question as the child of that person or
10 recognised by law as the child of the person;

11 "contribution" includes the payment of money or rendering of service for the
12 acquisition of property; care of a child, the aged, infirm, a relative or
13 dependant of a spouse;

14 giving up a higher standard of living than would otherwise have been
15 available; giving material assistance, support or otherwise by one spouse to
16 the other which:

- 17 (i) enables the other spouse to acquire a qualification, or
18 (ii) aids the other spouse to carry on that spouse's occupation or
19 business; the management of the household and the discharge of household
20 duties; the payment of money or rendering of service to maintain or increase
21 the value of property; and

22 (g) work on a spouse's farm or business;

23 "court" means a court of competent jurisdiction;

24 "estate" means the self-acquired property which the intestate was legally
25 competent to dispose of during the lifetime of the intestate and in respect of
26 which the interest of the intestate has not been terminated by or on death;

27 "household property" includes jewellery, clothes, furniture and furnishings,
28 cash and moneys in bank accounts, fridge, television, radio, any other
29 electrical and electronic appliances, kitchen and laundry equipment, simple
30 agricultural equipment, hunting equipment, books, motor vehicles, other

- 1 than vehicles used wholly for commercial purposes, and household livestock;
2 "jointly owned property" means property in which each of the parties made a
3 substantial contribution towards its acquisition;
4 "material assistance" includes health care, shelter, counselling and nutritional
5 requirements;
6 "Minister" means the Minister responsible for Justice;
7 "necessaries" includes essentials for the health, reasonable shelter and
8 development of a child;
9 "parent" includes natural mother and father and a person recognised by law as
10 the mother or father of the intestate;
11 "residue" means that part of the intestate's estate that does not devolve
12 according to sections 3 and 4;
13 "rules of private international law" include the customary law rules of private
14 international law;
15 "spouses" includes multiple spouses in a polygamous marriage and a cohabitee
16 where a man and a woman hold themselves out to the public to be man and wife
17 and
18 "will" includes any form of will recognised at customary law.

Citation

19 **30.** This Bill may be cited as the Intestate Succession Bill, 2015.

EXPLANATORY MEMORANDUM

This Bill seeks to make provisions for the devolution of the estate of a person who dies without making a will.