



# FOSTERS

Barristers-at-law, Solicitors, Notaries Royal

## *Article*

### **Who is entitled to inherit when someone dies without a will? – July, 2018**

When a loved family member dies, it is always a trying period for the relatives. This process is even more stressful when that relative dies without a will or a trust, legally known as dying “intestate”.

It is an unfortunate reality that in circumstances such as these, there will be a degree of uncertainty, anxiety and sometimes even conflict when relatives try to determine who should inherit from a relative that dies intestate. The order of entitlement of an estate is also known as the succession.

#### **Succession**

The **Civil Code of Saint Lucia Cap 4.01 of the Revised Laws of Saint Lucia, 2001** (“the Civil Code”) outlines the different orders of succession. The provisions are however largely complex and confusing.

In order to lend some clarity to the issues I will outline a few of the variations on the rules of successions as follows:

1. Where there is a surviving wife or a husband of the deceased, but the deceased has no surviving issue (legitimate child or children), parent, sibling, niece or nephew in the first degree, the husband or wife inherits the estate absolutely. This is provided for in Article 567A of the Civil Code.

2. Where there is only a surviving husband or wife, and surviving issue of the deceased, the husband or wife will inherit one third (1/3) of the estate and the remaining two thirds 2/3 will be inherited by the child, or if there are children, by the children in equal shares. This is provided for in Article 567B (1) of the Civil Code.
3. Where there is only a surviving husband or wife, and a surviving parent or parents but no children, then the husband or wife shall inherit half (1/2) of the estate, with the other half going to the parent or parents in equal shares. This is provided for in Article 567B (3) of the Civil Code.

Please note however, that pursuant to Article 567C of the Civil Code, in order for a spouse to inherit from their deceased spouse under 2 and 3 above, they must first abandon their rights in any community of property that may have existed between them and the deceased while the other was alive, as well as all rights of survivorship accruing to them under the marriage contract or by law.

4. If the deceased was a single man, or a single woman, who has left children, then the estate shall be inherited by the children of the deceased in equal



shares. This is provided for in Article 579(1) of the Civil Code.

5. If the deceased was a single man or a single woman born out of wedlock, and dies without any children, but leaves a mother, then the estate will be inherited by the mother absolutely. This is provided for in Article 579(2) of the Civil Code.

These scenarios are non-exhaustive and there is a myriad of other possibilities which are covered by the laws of intestacy of Saint Lucia.

It is very important to note that the laws of Saint Lucia define a single man as a man who has **never** been married. Therefore, divorced men are not single men for the purposes of succession in Saint Lucia. However, a “single woman” includes a widow, a married woman living apart and separated from her husband and also a divorced woman.

It is also critical to note that the term “issue” refers only to children who are legitimate. Therefore, the only children who are capable of inheriting from their fathers under the law of intestacy in Saint Lucia are legitimate children, or children who are born to a man who has never been married.

These requirements have the effect of excluding children who are born, illegitimate, to fathers who are married or become married after the birth of the child.

It is clear that the social realities of Saint Lucia are such that many children may find themselves unable to inherit from their father’s estate under the laws of intestacy.

## **Intestacy Procedure**

In order to inherit from a relative that dies intestate, the deceased’s estate must be administered. This is only achievable when the Court grants what is known as “Letters of Administration”. Letters of Administration entitle the person who applied for and was granted same, the power to divide and share the deceased’s estate according to the established rules of intestacy outlined in the Civil Code of Saint Lucia.

The procedure for applying for Letters of Administration is largely governed by the *Eastern Caribbean Supreme Court (Non-Contentious Probate and Administration of Estates) Rules 2017* (“the Probate Rules”). The Probate Rules came in to force in Saint Lucia in October, 2017.

Rule 6 of the Probate Rules provides that an application for Letters of Administration may be made through an attorney-at-law or by a proposed administrator in person.

There is a ranking priority of persons entitled to apply for Letters of Administration pursuant to Rule 14(3) of the Probate Rules. The ranking is as follows:

- i. to the persons within the heritable degree in order of their right to succeed the deceased; or
- ii. to the surviving wife or husband of the deceased, as the case may be; or
- iii. to the person nominated by the Crown to apply for administration.

Rule 13(1) of the Probate Rules provides that an applicant for Letters of Administration must file the following documents:



- i. an application for a grant of letters of administration
- ii. a certificate of search
- iii. an oath of Administrator
- iv. a certified copy of the death certificate; or in the absence of the death certificate, an affidavit together with the burial certificate or other relevant document to the satisfaction of the Court
- v. a declaration and account of the estate of the deceased
- vi. a certificate from the Comptroller of Inland Revenue that the duty has been paid or a letter stating that satisfactory arrangements have been made for the payment of duty
- vii. a certified copy of the birth certificate and marriage certificate of the applicant

Rule 13(2) of the Probate Rules further indicates that a person applying for a grant of Letters of Administration —

- must set out his or her entitlement to the grant;
- must in his or her oath account for all persons entitled to a grant in priority to him or her; and
- must file with the application the consent of all persons so entitled, unless a good reason is shown for dispensing with such consent.

Applying for Letters of Administration can be a lengthy and involved process and as such it is a process that may be best carried out by a legal practitioner.

## Wills

Given all of the aforesaid, it is perhaps in the best interests of all persons to make a Will or to form a Trust to provide for the administration of their Estate upon their death. In the interests of brevity we will concisely outline the different forms a will may take in St. Lucia.

Wills may be undertaken in Saint Lucia in three (3) forms:

- 1) A Notarial Will – this is a Will where instructions for the Will are given to a Notary Royal (Attorney-at-Law in Saint Lucia) and is executed either before two Notary Royals or one Notary Royal and two witnesses who are not beneficiaries and who have no relation to the Testator and is not in the service of the Notary Royal. This is provided for in Article 781 of the Civil Code;
- 2) A Holograph Will – this is a Will written under the hand of the Testator (a person that makes a will) and signed by him. This Will is not undertaken before Witnesses or Notaries Royal and remains private to the Testator. This is provided for in Article 788 of the Civil Code;
- 3) An English Will – this is a Will, in writing and signed at the end with the signature or mark of the testator, which is then subsequently acknowledged by the Testator in front of two competent witnesses, one of whom must be a Justice of the Peace. The Witnesses will then attest the will and sign it in the presence of the Testator and each other. The Testator



may also, if he or she chooses, have another person sign or mark the will on his or her behalf, and in their presence, and under their express direction. This signature or mark is then witnessed in the same manner as the Testator's would have been. This is provided for in Article 789 of the Code.

### **Conclusion**

It is therefore clear that making a Will allows the testator to dispose of their estate in precisely the way that they intend, nullifying the uncertainty, anguish and confusion that often accompanies the process of dealing with the estate of a deceased person who dies intestate.

As such, making a Will would allow the deceased to truly rest in peace, knowing that they have provided for their children, legitimate or illegitimate, or any other person that they so please, after their passing.

In my humble view, given the unpredictable nature of life and the many issues associated with administering an estate of a person who dies intestate, every person, of any age, should make a will or form a trust.

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