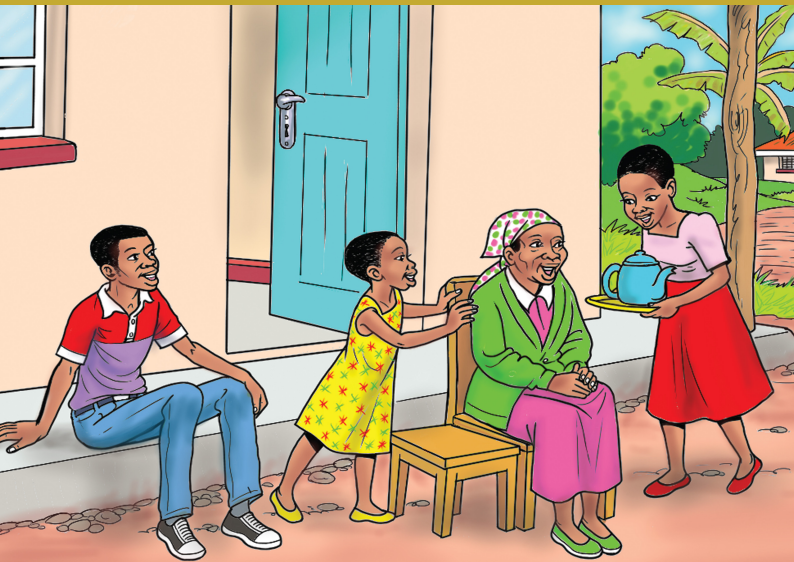


Succession Steps

WHERE THERE IS NO VALID WILL
(INTESTACY)



REPUBLIC OF KENYA



The *Succession Steps* booklet is a guide to help you know and understand how to safeguard your land and property when you are faced with the tragedy of losing a loved one. This booklet will also guide you on how to prepare the required documents.

The main objective is to help those who should inherit such properties understand their rights, and to ensure that every eligible person is taken care of, according to the law.

An institutional capacity strengthening initiative by KELIN Kenya.

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1 WHERE THERE IS NO VALID WILL (INTESTACY)

Application for letters of Administration

This arises when either a person dies without a will or the will left by the deceased is held to be invalid by the probate court. An applicant in such cases petitions the court for grant of letters of administration intestate.

The following documents are lodged in the registry (depending on the age of the persons surviving the deceased).

The following documents are filed:

i) Widow or widower (with minor children) as survivors

- *P&A 80-Petition*
- *P&A 5-Affidavit*
- *P&A 11-Affidavit of justification (Proposed sureties)*
- *P&A 12-Affidavit of justification (Proposed administrator)*
- *P&A 57-Guarantee of personal sureties*
- *Certified copy of the death certificate*
- *At least two applicants needed because of continuing trust for minors*
- *Applicants' identity card*
- *A letter from the area chief listing all the beneficiaries to the property, their ages and relationship with the deceased*
- *Identity cards of all sureties (those who have taken responsibility for what you say)*
- *Proof of ownership of the property of the deceased e.g. Title deeds, logbooks, share certificates etc.*



2

WHERE THERE IS NO VALID WILL (INTESTACY)

ii) Widow or widower (with adult children) as survivors

- P&A 80-Petition
- P&A 5-Affidavit
- P&A 12-Affidavit of justification (Proposed administrator)
- P&A 38-Consent form
- A letter from the area chief listing all the beneficiaries to the property, their ages and relationship to the deceased
- Certified copy of the death certificate
- Applicant's identity card
- Identity cards of the beneficiaries (those entitled to the property of the deceased)

iii) Minors as beneficiaries

The application for letters of administration shall be made by not more than two adult relatives appointed by court to hold the property on behalf of the minors until they become adults. Unless the administrator is the public trustee who is legally allowed to be a sole administrator.

Important points to note:

1. The number of persons applying for letters of administration should not exceed four.
2. After an application has been filed, with or without a will annexed, one must publish a notice in the Kenya Gazette; and wait for 30 days to allow for any objections.
3. Any person with an objection must clearly state them in court for determination.



3

Document filing:

File all the documents above at the nearest court for approval and assessment of fees.



4

Payment:

Once an invoice is issued by the deputy registrar, make two separate payments for the court fee and gazette fee at the specified banks.

Present the bank slips at registration to obtain receipts.



5

Gazette:

Once the notice is published in the Kenya Gazette, wait for 30 days to allow for any objections.

If a person had been left out of the list of beneficiaries, he/she can apply to the court to be included.



6

Letters of administration:

30 days after gazette, if there is no objection, the court will issue grant of letters of administration.

Errors in names, descriptions, place and time of death may be rectified before or after the confirmation of grant.

If the error is fundamental and likely to interfere with the rights of parties then the parties should apply for the grant to be cancelled after which the court will direct the parties to re-apply.

N/B Rectification is for correcting errors only not redistribution

APPLICATION FOR A LIMITED GRANT

This is an application made to enable transactions for a specific reason as one waits for the full grant (such as payment of school fees, selling farm produce and other acts necessary in collecting and preserving the estate)

Who is entitled to apply for a limited grant?

- a. A person appointed in the will as the one to manage the property of the deceased (executor)*
- b. An adult who is not bankrupt and is of sound mind*
- c. Any person can apply for a limited grant. However, priority is given to the spouse, children and parents, according to the degree of closeness.*

Required documents

- 1. A letter from the area chief listing all the beneficiaries to the property, their ages and relationship to the deceased*
- 2. Certified copy of the death certificate*
- 3. Applicant's identity card*
- 4. Identity cards of the beneficiaries (those entitled to the property of the deceased)*
- 5. Form P&A 85-Petition*
- 6. Form P&A 19-Affidavit*

CONFIRMATION OF GRANT

Six months after gazettelement, if there is no objection, an application to confirm the grant of letters of administration and distribution of estate must be applied for (issued).

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TYPES OF GRANTS

There are different types of grants which are dependent on the manner in which a person died, some write out wishes as to how they would like their affairs to be conducted (testate) while others do not make any written or oral specifications (intestate).

Below are the different types of grants;

Grant of Probate: The deceased died having written a will and named the person to be in charge of his affairs (executrix/executor). The said person named is to apply for the grant of probate unless he refuses or declines to do so.

Grant of letters of Administration with will annexed:

The person died having left behind a valid will but has not named any person in charge of property management (executor/executrix)

Grant of Probate of proof of oral will:

Person gives oral will and dies within 3 months of leaving a valid will, the beneficiaries can apply for grant of probate for proof of the oral will.

Grant of letters of administration intestate:

Person dies having no written or oral will. Any person can apply for grant of letters of administration but priority is given to beneficiaries in the order of consanguinity (i.e. wife/husband, then children, then grandparents etc.).

Limited Grant – ad colligenda bona defuncti : In order to ensure that an estate does not go to waste or that there is a pending case that requires a representative an applicant can apply for Limited Grant.

Limited Grant – Grants for special purposes e.g. suing on behalf of the deceased estate, to ensure estate does not go to waste payment of school fees etc.