

CONSOLIDATION OF INTESTATE SUCCESSION ACT
R.S.N.W.T. 1988,c.I-10

(Current to: June 2, 2006)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

R.S.N.W.T. 1988,c.8(Supp.)

In force July 19, 1993: SI-008-93

S.N.W.T. 1998,c.17

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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INTESTATE SUCCESSION ACT

Definitions

1. (1) In this Act,

"cohabit" means to live together in a conjugal relationship, whether within or outside marriage; (*cohabiter*)

"estate" includes both real and personal property; (*succession*)

"issue" includes all lineal descendants of the ancestor; (*descendant*)

"spouse" means a man, where the person who died intestate was a woman, and a woman, where the person who died intestate was a man, who, immediately before the death,

- (a) was married to the person who died intestate,
 - (b) was married to the person who died intestate in a marriage that was voidable or void, and had entered that marriage in good faith, or
 - (c) was cohabiting, outside marriage, with the person who died intestate, if they
 - (i) had cohabited for a period of at least two years, or
 - (ii) had cohabited in a relationship of some permanence and were together the natural or adoptive parents of a child.
- (*conjoint*)

Application of "cohabit" and "spouse"

(2) The definitions "cohabit" and "spouse" in subsection (1) do not apply in respect of a person who dies intestate before the day this subsection comes into force. S.N.W.T. 1998,c.17,s.16(2),(3).

Definitions

2. (1) In this section,

"home" means a dwelling owned and occupied as the principal residence at the date of death of the intestate by the intestate and includes any land appurtenant to the dwelling and all household goods and furnishings of the dwelling; (*maison*)

"net value" means the value of the estate wherever situated, both within and outside the Territories, after payment of charges on the estate and the debts, funeral expenses, expenses of administration, estate tax and duty. (*valeur nette*)

Value of home

(2) The value of the home is the fair market value less any charges attaching to it.

Distribution of estate to surviving spouse

(3) The estate of a person who dies intestate leaving a spouse and issue shall go to the surviving spouse where the net value of the estate does not exceed \$50,000.

Where estate exceeds \$50,000

(4) The surviving spouse is entitled to \$50,000 and has a charge on the estate for that sum with legal interest from the date of the death of the intestate where the net value of the estate exceeds \$50,000.

Election respecting home

(5) Where the surviving spouse is entitled to \$50,000 under subsection (4), he or she may elect to receive the home

- (a) instead of the \$50,000 where the value of the home exceeds \$50,000; or
- (b) as part of the \$50,000 where the value of the home does not exceed \$50,000.

Residue of estate where children

(6) The residue of the estate shall be divided among the surviving spouse and children as follows:

- (a) where the intestate dies leaving a surviving spouse and one child, 1/2 shall go to the surviving spouse;
- (b) where the intestate dies leaving a surviving spouse and more than one child, 1/3 shall go to the surviving spouse.

Children of intestate

(7) Where a child of the intestate dies during the lifetime of the intestate leaving issue one or more of whom are alive at the date of the death of the intestate, the surviving spouse shall take the same share of the estate of the intestate as if the child had been living at that date.

Distribution to issue of intestate

3. The estate of a person who dies intestate leaving issue shall be distributed *per stirpes* among the issue, subject to the rights of the surviving spouse, if any.

Distribution to surviving spouse where only survivor

4. The whole estate of a person who dies intestate leaving a surviving spouse but no issue shall go to the surviving spouse.

Distribution to father and mother

5. The estate of a person who dies intestate leaving no surviving spouse or issue, shall go to his or her father and mother in equal shares if both are living, but if either of them is dead, the estate shall go to the survivor.

Distribution to brothers, sisters

6. (1) The estate of a person who dies intestate leaving no surviving spouse or issue or father or mother shall go to his or her brothers and sisters in equal shares.

Distribution to children of brothers and sisters

(2) If any brother or sister referred to in subsection (1) is dead, the children of the deceased brother or sister shall take the share their parent would have taken, if living, but where the only persons entitled are children of deceased brothers and sisters, they shall take in equal shares.

Distribution to next of kin

7. The estate of a person who dies intestate leaving no surviving spouse, issue, father, mother, brother or sister and no children of any deceased brother or sister shall go to his or her next of kin.

Distribution among next of kin

8. Where the estate goes to the next of kin, it shall be distributed equally among the next of kin of equal degree of consanguinity to the intestate and those who legally represent them but in no case shall representation be admitted among after the children of brothers and sisters.

Degrees of kindred

9. (1) For the purposes of this Act, degrees of kindred shall be computed by counting upward from the intestate to the nearest common ancestor and then downward to the relative.

Kindred of half-blood

(2) The kindred of the half-blood shall inherit equally with those of the whole-blood in the same degree.

Descendants and relatives born after death of intestate

10. Descendants and relatives of the intestate who are conceived before the death of the intestate but born after the death of the intestate shall inherit as if they had been born in the lifetime of the intestate and had survived the intestate.

Where child advanced by portion

11. (1) Where a child of a person who has died wholly intestate has been advanced by the intestate by portion, the portion shall be reckoned, for the purposes of this section only, as part of the estate of the intestate distributable according to law.

Where advancement equal to share of estate

(2) A child and his or her descendants shall be excluded from any share in the estate where the advancement referred to in subsection (1) is equal to or greater than the share of the estate that the child would be entitled to receive as reckoned in subsection (1).

Where advancement not equal to share of estate

(3) A child and his or her descendants shall be entitled to receive so much only of the estate of the intestate as is sufficient to make all the shares of the children in the estate and advancement referred to in subsection (1) equal as nearly as can be estimated where the advancement is not equal to the share of the estate that the child would be entitled to receive as reckoned in subsection (1).

Value of portion

(4) The value of any portion advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in writing, and otherwise, the value is the value of the portion when advanced.

Burden of proof

(5) The burden of proving that a child has been maintained or educated, or has been given money, with a view to a portion, shall be on the person asserting it, unless the advancement has been expressed by the intestate, or acknowledged by the child, in writing.

Estate not disposed of by will

12. All of the estate that is not disposed of by will shall be distributed as if the testator had died intestate and had left no other estate.

Where spouse not entitled to take part in estate

- 13.** (1) A spouse shall take no part of the estate of his or her spouse where,
- (a) before the death of the intestate, either spouse had commenced a divorce proceeding and the spouses had not reconciled;
 - (b) before the death of the intestate, the spouses were separated and
 - (i) either spouse had made an application to determine his or her entitlement under subsection 36(1) or (3) of the *Family Law Act*, or
 - (ii) had entered into a domestic contract respecting the division of property;
 - (c) immediately before the death of the intestate, the surviving spouse was cohabiting with another person; or
 - (d) immediately before the death of the intestate, the spouses were separated and the intestate had entered into a spousal relationship with another person.

Application of subsection (1)

(2) Subsection (1) does not apply in respect of a person who dies intestate before the day this section comes into force. S.N.W.T. 1998,c.17,s.16(4).

Regulations

14. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the requirements of an election by a surviving spouse under subsection 2(5); and
 - (b) determining what forms or documentation is required to evidence an election under subsection 2(5) and the requirements of recording the election in any court of probate or land titles office.
- R.S.N.W.T. 1988,c.8(Supp.),s.214.