



REPUBLIC OF KENYA



CLAIMING INHERITANCE DUES THROUGH THE OFFICE OF THE PUBLIC TRUSTEE

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The Judiciary

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A. Introduction

When a family loses a loved one, they are thrown into disarray. And when times comes to settle down, the dependents of the deceased and especially orphaned children and persons with mental disability, risk losing their inheritance.

This happens when they are excluded from important documents such as the beneficiary letter, which recognises all dependents and relatives of the deceased to be considered in matters of inheritance and administration of the estate. This booklet on 'claiming inheritance dues through the Office of the Public Trustee' is aimed at providing guidance on specific steps be taken, to claim inheritance rights, when faced by similar circumstances.



B. What is the function of the office of the Public Trustee?

The Office of the Public Trustee was created to ensure the administration (supervision) of the property of the deceased especially in situations where all the beneficiaries are children or persons with mental disability.

C. **What is an estate?**

An estate of a deceased person is all the property registered in his or her name and comprises the following:

- Land/plots
- Money in the bank
- Employment benefits
- Shares in limited liability companies
- Shares with land buying companies
- Motor vehicles
- Insurance proceeds
- Sacco shares and dividends
- Money held by debtors

The office can administer the property of the deceased person under the following circumstances:

- Beneficiaries (widow, widower, children or relatives) referring the estate to the Public Trustee;
- Reference by the chief, Assistant County Commissioner, Deputy County Commissioner and anyone with a legitimate interest in the estate such as creditors;
- Where a deceased person makes a will and does not appoint an executor or the executor is unable or unwilling to take up administration of the estate;
- Where the Public Trustee is appointed as the administrator in the deceased persons' will;
- By a court order due to disputes among beneficiaries;
- Where property of the deceased remains un-administered because nobody has applied to court for grants of administration;
- In case the appointed administrator of an estate dies, is seriously ill, or has become mentally unstable after appointment or cannot be traced.



- D. **Who may refer an estate to the Public Trustee for administration?**
- Courts;
 - Creditors (people who are owed by the deceased);
 - Deputy County Commissioner , usually after receiving a report from the chiefs; and
 - Anybody with a legitimate interest in the property of the deceased, he or she may verbally inform the Public Trustee of the matter or write a letter to the office.
- E. **What is the procedure for securing the deceased's estate by the Public Trustee ?**

Step 1

Report of death to the office of the Public Trustee

The first step towards referring an estate to the Public Trustee for administration is the completion of the report of death form (PT form 1). The Form should have information on the deceased's personal details including his or her assets and liabilities and is issued free of charge by the Public Trustee.

A widow, widower, child, creditor or any other person with a legitimate interest in the estate can complete the Form. The form should be witnessed by a magistrate or commissioner for oaths.

The Form should be submitted together with the following:

- Three certified copies of the death certificate;
- Certified copies of national identity cards for adult beneficiaries and birth certificates for minors;
- Copies of documents of proof of ownership of assets e.g. title deeds, share certificates, bank plates and log books;
- Administration deposit where the Public Trustee is not holding any funds.

The Public Trustee then opens a file in respect of the estate.



Step 2 Identification of legal beneficiaries

Using the details in the Report of Death Form, the Public Trustee writes a letter to the Deputy County Commissioner of the sub-county where the deceased lived before his or her death, requesting for a list of all the legal beneficiaries of the deceased's estate.

The Deputy County Commissioner ascertains the beneficiaries through the area Chief who carries out the necessary investigations.

After confirmation of the lawful beneficiaries, the Deputy County Commissioner forwards a list of heirs indicating names, age and details of the beneficiaries.



Step 3

Consent by adult beneficiaries to the public trustee to administer an estate

All the beneficiaries listed by the Deputy County Commissioner who have attained majority age (18 years) are required to give consent to the Public Trustee by completing a consent form issued by the Public Trustee and witnessed by the area chief or an advocate.



Step 4

Realization of the assets of a deceased person

After receiving the consent to administer an estate, the Public Trustee embarks on realization of all the assets disclosed by the beneficiaries.

Realization of assets entails the following:

- Obtaining certificates of the balance in the bank accounts;
- Obtaining valuation of all immovable properties;
- Valuation of all immovable properties;
- Conducting official searches on immovable properties;
- Ascertaining debts and liabilities;
- Ascertaining value and number of shares.

Step 5 **Gazettement of the notice**

In all estates whose gross value does not exceed Kenya shillings three million (Kshs.3,000,000/-) the Office of the Public Trustee places a notice in the Kenya Gazette to inform the public that the person is deceased and the Public Trustee intends to administer his or her estate. Any person who has an interest in the estate should register it with the Public Trustee within 30 days.



Step 6

Petition for a grant of letters of administration and summary administration

The Public Trustee petitions the court for a grant of letters of administration/ probate to the estate of the deceased for all estate whose gross value exceeds Kenya shillings three million (Kshs. 3,000,000/-



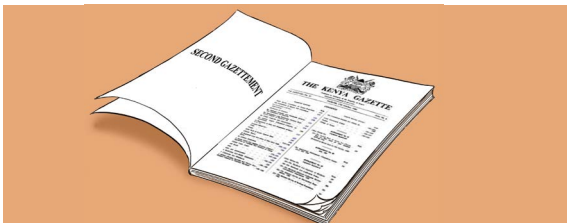
Important points to note: the Public Trustee can summarily administer estates whose value does not exceed three million (3,000,000/=). Refer to; Special Gazette Supplement No. 61, Act No. 6 dated 24th May 2018.

For all estates with a gross value of Kenya shillings three million (Kshs. 3,000,000/-) and below, the Public Trustee issues a certificate of Summary Administration to which is equivalent to a grant of letters of administration.

In areas where there are no Public Trustee Offices, Deputy County Commissioners have jurisdiction to administer estates whose gross value falls below one hundred thousand Kenya shillings (100,000/-) in their capacity as ex officio agents of the Public Trustee.

Step 7

Notice for objections by the court



After the Public Trustee files the petition, the court advertises the estate in the Kenya Gazette inviting any objections to the issuance of a grant to the public Trustee. If no objection is raised within 30 days, the court issues the grant of letters of administration to the Public Trustee.

Step 8

Confirmation of Grant of letters of administration

After six months, an application for confirmation of grant of letters of administration is filed in court upon receipt of consent to confirmation of grant and consent on the mode of distribution of the estate.

The court will confirm the Grant and issue a Certificate of Confirmation of Grant which enables the Public Trustee to transfer all the assets to the beneficiaries in accordance with the orders of the court.

Important points to note: *In the course of administering the estate, the Public Trustee can make payments to beneficiaries for school fees and other urgent financial obligations of the estate under the Trustee Act subject to availability of the funds. maintenance and other basic financial needs necessary for the wellbeing of the beneficiary.*



Also, what goes to the beneficiaries is the remainder of the estate after settlement of the funeral expenses, the Public Trustee's fees, money owed to creditors, among other proved expenses.

Step 9

Finalization of an estate

After transfer of the assets, the Public Trustee prepares a distribution account which indicates the share of each beneficiary in line with the Certificate of Confirmation of Grant or Certificate of Summary Administration. It also outlines the disbursements and the amount payable to each beneficiary. Any proved debts are settled by the Public Trustee before final payment is made to the beneficiaries.

The account is presented to the beneficiaries for perusal and approval to pave way for final payment. When the payment process is complete, the Public Trustee presents the account to court for examination and discharge.

Step 10

Who is a beneficiary

The Law of Succession Act outlines beneficiaries in the following order of priority:

- Surviving spouse and the children of the deceased;
- father; or if dead
- mother; or if dead
- brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares.



Important points to note:

- In cases where the beneficiaries cannot be traced, the property is forwarded to the consolidated fund after seven (7) years.
- Where a person has been missing for a period of seven years, an application is made to court which issues an order of presumption of death.
- This order is equivalent to a death certificate.
- A person who is found guilty of murdering another person shall not be entitled directly or indirectly to any share in the estate of the person they have murdered.
- The Public Trustee may also act as Registrar of wills.

F. What happens where all the beneficiaries are minors (below 18 years)?



F. G. What are the requirements for opening trust files

- Two certified copies of Birth Certificate;
- Report from a Government Medical Practitioner for Trusts for Persons Living with Mental Disability;
- Court order;
- Trust Funds from institutions;
- Written instructions from a testator.

Where there is no surviving parent, it is important for persons exercising parental responsibility over the minors to apply to court for a guardianship order. The Public Trustee invests the trust funds for the minor and can make advance payments for school fees, medical expenses and other urgent financial needs.

A trust is terminated when the minor's attainment of 18 years and the trust funds released to the beneficiary upon presentation of a national identity card.

For more information, please contact the Office of the Public Trustee at any of the following addresses :

Public Trustee - Headquarters Sheria House, Harambee Avenue P.O. Box 4967, Nairobi Tel: +254-020-227461 Fax: 020-213902	Public Trustee – Kisumu Haki House P.O. Box 993 Kisumu Tel: +254-057-2025731	Public Trustee – Mombasa NSSF Building P.O. Box 80366 Mombasa Tel: +254-041-2225582
Public Trustee – Machakos Attorney General's Building P.O. Box 1744 Machakos Tel: +254-044-21646 Fax: 041-2225582	Public Trustee – Nyeri Provincial Commissioners's Office P.O. Box 1774 Nyeri Tel: +254-061 2032163/2030612	Public Trustee – Nakuru Provincial Commissioners's Office P.O. Box 14797 Nakuru Tel: +254-051-221307 Fax: 051-221307
Public Trustee – Kakamega Provincial Commission- ers's Office P.O. Box 2684 Kakamega Tel: +254-056-30569	Public Trustee – Kisii Attorney General's Building P.O. Box 3316 Kisii Tel: +254-058- 31349/21080/20315	Public Trustee – Embu Ministry of Labour Building P.O. Box 1379 Embu Tel: +254-068-31918



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