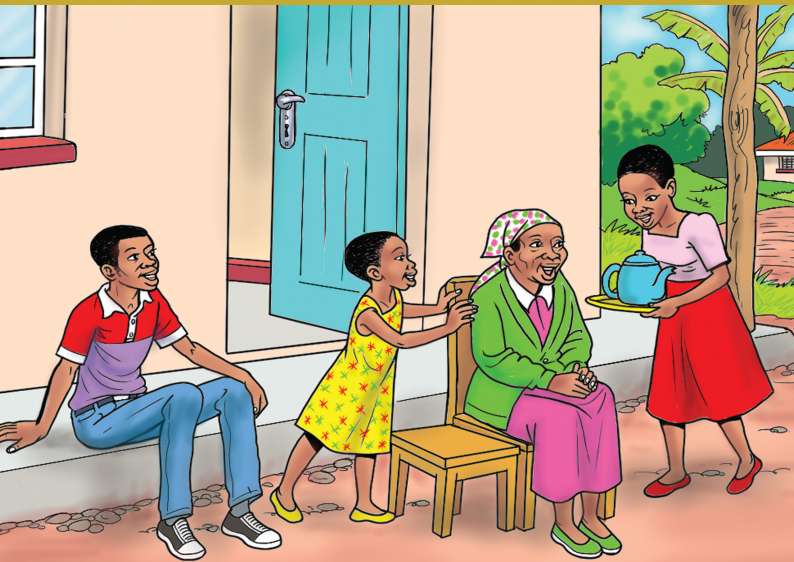


# Succession Steps

WHERE THERE IS A VALID WILL  
(TESTATE SUCCESSION)



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 A VALID WILL (TESTATE SUCCESSION)

### Application for grant of probate

#### Preliminary steps

1. Obtain the original will plus two photocopies (of the will)
2. The deceased's death certificate. Where there is a valid will, an application to determine the validity of the will (grant of probate) can be filed by:
  - a) *Persons named as executors to the will*
  - b) *Persons other than the executor(s) provided they can demonstrate special circumstances such as death of the executor(s), authority from the executor etc.*

#### The following documents are filed:

- *P&A 78-Petition*
- *P&A 3-Affidavit*
- *Original will (annexed)*
- *Two photocopies of the will*
- *Certified copy of the death certificate*

If the will is held to be valid, inheritance is done in accordance with the wishes of the deceased.

#### Important points to note:

1. *The will could either be oral or written.*
2. *The number of persons applying for grant of probate should not exceed four.*
3. *If the value of the deceased person's property is greater than 20 million shillings these documents should be filed at the High court.*
4. *If the value of the deceased person's property is less than 20 million shillings then these documents should be filed at the Magistrate's court.*

## 5. Every application for grant should include the following;

- i. The full names of the deceased*
- ii. The date and place of his death*
- iii. Last known place of residence*
- iv. Relationship of the applicant(s) to the deceased*
- v. A full inventory of the properties of the deceased*
- vi. Any such matters that might be described*

### **Remember:**

Any person who in the process of applying for grant, makes a false statement is guilty of an offence that attracts a fine not exceeding ten thousand Kenya shillings or a term of imprisonment for up-to one year.

If a codicil (an addition that modifies or complements the contents of the will) is discovered after the grant of probate, a separate grant shall be granted to the executor in relation to the codicil so long as it does not repeal the appointment of the executor in the will.

If a new executor is appointed in the codicil, then a new grant shall be applied for the will and the codicil together. Once a person has been appointed under the will as executor and he or she has not renounced the executorship, the grant shall not be issued to any other person until a mention has been issued calling upon him to surrender his or her executorship or apply for grant probate of the will.



2

### Document filing:

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



3

### Payment:

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

Present the bank slips at registration to obtain receipts.



4

### Gazettement:

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.



5

### Issuance of Grant of Probate:

30 days after gazettement, if there is no objection, the court will issue grant of probate.

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).

## 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 to do 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 e.tc).

**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 e.tc

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