

"Standard Operating Procedure" for return of original movable / immovable property documents to the legal heirs where contingent event of demise of the sole borrower or joint borrowers occurs.

The legal position is quite clear in the matter of deceased claims. However return of the original documents in the custody of the Bank to the Legal Heirs/one of the legal heirs duly mandated by the others in the case of contingent event of demise of sole or joint borrowers occurs is not the same as settlement of deceased claims. This is because no title changes hands / title in the property is not transferred by the mere handing over of the property documents.

While settling the deceased claims, we traditionally used to look for legal representation in the form of a succession certificate, letter of administration or probate, etc. to establish identity of the claimant. But even though the return of original movable/immovable property documents is not the same as settling a deceased claim, some procedures will be common and some level of precaution should be taken by the Department/Branch returning the original documents.

While releasing property documents in the event of deceased borrowers, following practices to be followed

- Where there are Joint Borrowers who also hold property jointly, in the event of unfortunate demise of one of them, the property documents should be returned to the surviving borrower who held property jointly with the Deceased.
- On receipt of notice of death in case of a Sole Borrower, Bank should exercise due care and caution in ascertaining the identity of legal heir/s and the fact of death of the account holder through appropriate documentary evidence. If necessary, any official of the banks shall visit the place of the deceased borrower/s to enquire about the genuineness of such claims.
- Property documents should be delivered to the legal heir/s or a person mandated by the legal heir/s on establishing his / her / their identification and verification of proof of death of the deceased borrower in the presence of guarantor/s or two independent witnesses.
- Following documents are required to be submitted by claimant along with the request letter for possession / release of documents and indemnity-
 - i. Proof of death of deceased borrower/s
 - ii. Proof of identification of legal heir/s or a person mandated by the legal heir/s.
- It should be made abundantly clear that, such handover of documents constitute a full discharge of the bank's liability and the recipient of the document should also be categorically informed and sensitized that such handing over of the original documents will not constitute a transfer of title and should not be treated as such.
- Documents should be released within a period not exceeding 30 days from the date of receipt of application subject to suitable identification of the claimant/s to the bank's satisfaction.
- Based on custody / availability of the documents, in-charge documentation-Credit department and Branch Managers are authorized to release the documents under this window.

Provisions of Law regarding Legal heirs for ready reference

The Indian Law, like most laws worldwide recognizes the concept of an heir. Heirs include those persons who are legally entitled to inherit property from their ancestors. The concept of an Heir differs from religion to religion. For example the Hindu Succession Act (HSA) applies to Hindus, Buddhist, Jains and Sikhs, and those who have converted to any of these religions or are born out of wedlock.

Hindu-

If the deceased is a male Hindu, dying intestate (meaning without making a will), it must be ascertained whether there are one or more Class-I legal heirs, the following are called **Class-I legal heirs:**

Mother, widow, son, daughter, son of a predeceased son, son/daughter of a predeceased daughter, son or daughter or widow of a predeceased son of a predeceased son, widow of a predeceased son, son / daughter of predeceased daughter of predeceased daughter, daughter of predeceased son of a predeceased daughter, daughter of predeceased daughter of predeceased son also.

All Class-I legal heirs take share in the property simultaneously and equally to the exclusion of any other legal heir and no one takes precedence over the other.

The Class-II legal heirs are classified in different Entries and legal heirs belonging to Entry-I will be preferred to the second entry and so on in succession. But there is no preference among these falling in the same entry and they take their share simultaneously to the exclusion of the others.

Entry-I – Father

Entry-II - (a) Son's daughter's son
(b) Son's daughter's daughter
(c) Daughter's Daughter's son,
(d) Daughter's daughter's daughter
(e) brother and sister

Entry-III- Son/ daughter of daughter's son and son /daughter of daughter's daughter

Entry -IV - Gives son/daughter of brother or sister as the heirs and many more

In case, the deceased is a married female Hindu, who died intestate (without making a will), the following are her legal heirs-

- (a) Sons & daughters (including the children of any predeceased son) & the Husband
- (b) Heirs of husband
- (c) Mother & Father
- (d) Heirs of father
- (e) Heirs of Mother

If a female Hindu who dies intestate does not have son/daughter, the property inherited from her parents goes to heirs of father whereas if the same is inherited from husband or parents-in-law, heirs of husband will inherit the property.

Christian-

- Where the deceased is a Christian, Indian Succession Act governs the intestate succession.
- As per the provision of this Act, the widow of the male intestate is entitled to one-third of the property while the remaining two-third goes to lineal descendants (i.e. sons & daughters) in equal shares. If he has none, whole property passes to his widow.
- If the male intestate has left no lineal descendant, one half goes to the widow and other half to the kindred (i.e., father, mother, brother, sister).
- In case a Christian female dies intestate, husband has the same right.

Mohammedan-

Inheritance in the case of Muslims is governed by the Sunni or shia law depending upon the sect in which they belong to.

According to **Sunni law** the classes of heirs are Sharers - Heirs by consanguinity

1. Ascendants : Father, True grandfather, Mother, True grandmother
 2. Descendants : Daughter, Son's daughter
 3. Collateral : Full/consanguine sister, uterine brother/sister
- Heirs by affinity : husband, wife

But these 12 sharers will inherit fixed shares subject to conditions. A sharer may be excluded by many reasons such as nearer in blood will exclude remote one in one class. Sometimes sharer may be converted as residuary or otherwise one sharer may be partly sharer and partly residuary.

According to **Shia law** the heirs are Heirs by consanguinity

- A. (i) Parents
(ii) Children & descendants
- B. (i) Grand parents
(ii) Brother or sister and descendants
- C. Paternal or maternal uncle of him or his parents and grandparents

Heirs by Marriage: Husband, wife

Heirs by consanguinity and heirs by affinity succeed simultaneously. Among heirs by consanguinity those in class I exclude those in class II. The heirs in two sections of class I succeed together. In each section nearer in degree exclude the remote. The son always takes as a residuary.

A certificate from Muslim Jama-I-eth in the letterhead signed by the head of the institution to which the deceased was affiliated should be obtained giving details of legal heirs with their age. In case of male deceased, a categorical certificate to the effect that the deceased had not married any woman other than the one named in the list is to be insisted upon.

