

CHAPTER 108

PROBATE AND ADMINISTRATION OF ESTATES

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CHAPTER 108

PROBATE AND ADMINISTRATION OF ESTATES

An Act to consolidate the law on the procedures for obtaining a grant of representation in respect of the estate of a deceased person and for the administration of a deceased person’s property and for other matters related thereto.

1 of 2011

[Assent 8th February, 2011]

[Commencement 1st June, 2011]

PART I - PRELIMINARY

1. This Act may be cited as the Probate and Administration of Estates Act.

Short title.

2. In this Act —

Interpretation.

“administration” means with reference to the real and personal estate of a deceased person, letters of administration, whether general or limited, or with the will annexed or otherwise;

“administrator” means a person to whom administration of an estate is granted;

“contentious or solemn form probate proceedings” means an action for —

- (a) the grant of probate of a will, or letters of administration of the estate of a deceased person;
- (b) the revocation of such a grant; or
- (c) a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business;

“conveyance” includes a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by an instrument, except a

will, and “convey” has a corresponding meaning;

“court” means the Supreme Court;

“disposition” includes a conveyance, a devise, a bequest and an appointment of property contained in a will, and “dispose of” has a corresponding meaning;

“estate” means real and personal estate, and the expression “real estate” includes —

- (a) chattels real and land in possession, remainder and reversion, and every interest in or over land to which the deceased person was entitled at the time of his death; and
- (b) real estate held on trust or by way of mortgage, whether by way of sale, demise or submise, or security, but not money to arise under a trust for sale of land nor money secured or charged on land;

“grant representation” or “grant of representation” means a grant of probate or administration;

“income” includes rents and profits;

“intestate” means a person who dies without leaving a will and includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

“legal estate” means the estate, charge and interest in or over land subsisting or created at law which is by statute authorised to subsist or to be created at law;

“non-contentious or common form probate business” means the business of obtaining probate or administration where there is no contention as to the right thereto, including —

- (a) the passing of probate or administration through the court where the contest has terminated;
- (b) all business of a non-contentious nature in matters of testacy and

intestacy not being proceedings in any action;

(c) the business of lodging caveats against the grant of probate or administration; and

(d) the issuing of citations;

“pecuniary legacy” includes an annuity, a general legacy, and a demonstrative legacy so far as it is not discharged out of the designated property and any other general direction by a testator for the payment of money;

“personal representative” means the executor (original or by representation) or administrator for the time being of a deceased person;

“possession” includes the receipt of rents and profits or the right to receive the same, if any;

“probate” means the probate of a will;

“property” includes a thing in action and any interest in real or personal property;

“purchaser” means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser and “valuable consideration” includes marriage, but does not include a nominal consideration in money;

“real estate” means real estate, including chattels real, which by virtue of Part IX devolves on the personal representative of a deceased person;

“Registrar” means the Registrar of the Supreme Court;

“Registry” means the registry of the Probate Division in the Supreme Court situate in New Providence and includes a sub-registry of the Probate Division;

“representation” means the probate of a will and administration, and the expression “taking out representation” refers to the obtaining of the probate of a will or of the grant of administration;

“sub-registry” means a registry of the Probate Division situate elsewhere than in New Providence;

“testamentary cause or matter” includes all causes or matters relating to the grant or revocation of probate or administration;

“trust corporation” means the Public Trustee or a corporation —

- (a) appointed by the court in any particular case to be a trustee; or
- (b) authorised by rules under the Public Trustee Act to act as custodian trustee; or
- (c) licensed under the laws of The Bahamas to carry on trust business;

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“will” includes any testamentary instrument of which probate may be granted.

(2) A reference to a child or issue living at the death of any person includes —

- (a) a child or issue *en ventre sa mere* at the death;
- (b) a child in respect of whom an adoption order has been made by any court of competent jurisdiction.

(3) A reference to the estate of a deceased person includes a reference to property over which the deceased exercises a general power of appointment including a statutory power to dispose of an entailed interest by the deceased’s will.

PART II - DEPOSITORY FOR WILLS

Establishment of a depository for wills of living persons.

3. (1) There shall be established under the control and direction of the Chief Justice, a depository for the safe custody and preservation of original wills.

(2) Upon payment of the prescribed fee, a person may deposit his will to be kept in the depository and the Registrar shall cause to be recorded every will so deposited.

(3) Every will deposited must be contained in a sealed envelope which shall state thereon —

- (a) the name and address of the testator as it appears in the will;
- (b) the name and address of any executor as it appears in the will;
- (c) the date of the will; and
- (d) the name of the person who deposits the will.

(4) A will deposited pursuant to subsection (2), may be withdrawn by the testator and a will withdrawn may be substituted for deposit upon payment of the prescribed fee.

(5) The Registrar shall cause to be recorded every will withdrawn, whether substituted with another will or not.

(6) A will shall, subject to the control of the court and to rules, only be open to inspection —

- (a) by the testator, during his lifetime;
- (b) upon proof of death of the testator —
 - (i) by the personal representative named in the will or his attorney;
 - (ii) by any beneficiary named in the will or his attorney.

(7) The deposit of a will shall not create a presumption that such will is the last will and testament of the testator.

PART III - JURISDICTION AND PROCEDURE FOR OBTAINING A GRANT OF REPRESENTATION

4. The court shall have jurisdiction to make a grant of representation in respect of a deceased person — Jurisdiction.

- (a) who was ordinarily resident in The Bahamas; or
- (b) whose estate consists of property in The Bahamas.

5. A person who seeks to obtain a grant of representation in respect of the estate of a deceased person, notwithstanding that the deceased person left no estate, shall make application to the Registry in the manner prescribed by rules. Application for grant of representation.

6. (1) A person who seeks to obtain a grant of representation limited — Limited grants of representation.

- (a) in duration in respect of property;

- (b) to any special purpose as specified in sections 9 to 15,

shall make an *ex parte* application specifically for that purpose.

(2) The court may order an application to be heard *inter partes* if it is of the view that other interested parties should be joined for any purpose or to determine any issue.

(3) A limited grant shall cease when the purpose for which the grant is made has been determined.

(4) If a grant is made limited to a particular purpose, then in the application for a grant in respect of the rest of the estate, the applicant shall declare in the oath any limited grant previously made.

PART IV – GRANTS OF REPRESENTATION

Grant of Probate.

7. The court may grant probate to one or more but not exceeding four executors of a deceased person, and the grant may be limited in any way the court thinks fit.

Grant of administration.

8. The court may grant administration (with or without the will annexed) of the estate of a deceased person, and a grant may be limited in any way the court thinks fit.

Administration *pendente lite* - administration pending suit.

9. (1) Where any legal proceedings are pending —

- (a) touching the validity of the will of a deceased person; or
 (b) for obtaining, recalling or revoking any grant,

the court may grant representation of the estate of the deceased person to an administrator pending suit, who shall, subject to subsection (2), have all the rights and powers of a general administrator.

(2) An administrator pending suit shall be subject to the control of the court and act under its direction and except in such circumstances as may be prescribed, no distribution of the estate or any part of the estate of the deceased person shall be made by such an administrator without leave of the court.

(3) The court may, out of the estate of the deceased person, assign to an administrator appointed under this section such reasonable remuneration as the court thinks fit.

10. Where a sole or last surviving personal representative dies intestate without having fully administered the estate of a deceased person, the court may grant representation to an administrator to administer the goods of the deceased left unadministered.

Grant *de bonis non*.

11. (1) Where there is no personal representative of a deceased and it is necessary for the estate of the deceased to be represented in legal proceedings, the court may grant representation to an administrator *ad litem* to represent the estate in proceedings.

Grant *ad litem* - grant limited to an action.

(2) The court may issue a grant *ad litem* to any person bringing, defending or being a part to the proceedings.

12. (1) If at the expiration of twelve months from the death of a person, any personal representative of the deceased to whom a grant has been made is residing out of the jurisdiction of the court, the court may on the application of any person interested in the estate of the deceased, grant to such person in such form as the court thinks special administration of the estate of the deceased.

Grant of special administration where personal representative is abroad.

(2) The court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into court of any moneys or securities belonging to the estate of the deceased person, and all persons shall obey any such order.

(3) If the personal representative capable of acting as such returns to and resides within the jurisdiction of the court while any legal proceedings to which the special administrator is a party are pending, that personal representative shall be made a party to the legal proceedings and the costs of and incidental to the special administration and the legal proceedings shall be paid by such person out of such fund as the court in which the proceedings are pending may direct.

13. (1) Where the only person who would otherwise be entitled to a grant is a minor, a grant of letters of administration with the will annexed for the use and benefit of the minor, limited until he attains the age of eighteen years, shall be issued in the following order of priority —

Grant during minority of executor.

- (a) to the parents of the minor jointly;
- (b) to the statutory or testamentary guardian of the minor; or

(c) to any guardian appointed by a court of competent jurisdiction.

(2) Where the minor is the sole executor and has no interest in the residuary estate of the deceased, administration for the use and benefit of the minor, limited until he or she attains the age of eighteen years, shall be granted to the person entitled to the residuary estate unless the court otherwise directs.

(3) Where a testator by his will appoints a minor to be executor, the appointment shall not operate to transfer any interest in the property of the deceased to the minor or to constitute the minor a personal representative for any purpose unless and until probate is granted under this section.

Where a minor is a co-executor.

14. (1) Where one or more minors has been appointed as executor jointly with other executors, probate may be granted to the executors who are not minors with power reserved to the executor who is a minor or executors who shall be entitled to apply for probate on attaining the age of eighteen years.

(2) Where the executor or executors who are not minors renounce, or, on being cited to accept or refuse a grant, fail to make an effective application for a grant, an appointment may be made in accordance with section 13.

Grant in case of mental incapacity.

15. (1) Where the court is satisfied that a person entitled to a grant is by reason of mental incapacity incapable of managing his affairs, the court may make a grant of representation for the use and benefit of that person, limited until further representation is granted, or in such other way, or until such other time as the court may direct.

(2) A grant in case of mental incapacity shall be made in the following order of priority —

- (a) to the person authorized by the court in accordance with any other law to apply for a grant;
- (b) where there is no person so authorised to act, to any person entitled to the residuary estate of the deceased; or
- (c) to such other person or persons as the court may by order direct.

(3) Unless the court otherwise directs, no grant shall be made under this section unless all the persons equally entitled with the incapable person have been cleared off.

16. Administration with the will annexed shall continue to be granted in every case where such a grant was customary before the commencement of this Act, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

Administration with will annexed.

17. (1) Where a person entitled to apply for a grant resides outside The Bahamas, a grant of administration for the use and benefit of that person may be made to his or her attorney acting under a duly recorded power of attorney.

Grant to attorneys.

(2) Where the donor of the power is an executor, notice of the application must be given to any other executor unless the court otherwise directs.

(3) A grant to an attorney may be limited until a further grant is made or in such other way as the court may direct.

18. (1) Where a deceased person died domiciled outside of The Bahamas leaving a will in the English language which is admissible to proof, probate may be granted to the person named as executor.

Grant where deceased person died outside of The Bahamas.

(2) If the will described the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, probate may be granted to that person.

(3) Where the whole or substantially the whole of the estate in The Bahamas of a person who dies intestate consists of real property, a grant may be made to the person who would have been entitled to a grant had the deceased died domiciled in The Bahamas.

(4) In any other case the court may order that the grant be issued to —

- (a) a person entrusted with the administration of the estate by the court;
- (b) the person beneficially entitled to the estate by the law of the place where the deceased died domiciled if there is no such person as mentioned in paragraph (a), and if more than one, to such of them as the court may direct; or

(c) such other person as the court may direct.

(5) Where it appears in an application for a grant of representation that a deceased person was domiciled outside of The Bahamas, the court may require evidence of —

- (a) the domicile of the deceased;
- (b) the requirements of the law of the domicile as to the validity of any will made by the deceased;
- (c) the law of the domicile as to the person entitled in distribution of the estate.

Grant in an additional name.

19. Where a grant is sought in a name in addition to the true name of the deceased, the applicant must give evidence on affidavit —

- (a) stating the true name of the deceased;
- (b) defining any part of the estate which was held in a name other than the true name of the deceased; and
- (c) stating any other reason for the inclusion of the other name in the grant.

Grant to Consular Officers.

20. (1) Where a person —

- (a) is a national of a state with which the Government of The Bahamas has concluded a consular convention and is named as executor in the will of a deceased person disposing of property in The Bahamas; or
- (b) is otherwise a person to whom a grant of representation to the estate in The Bahamas of a deceased person may be made, the court if satisfied, on the application of a consular officer of the said state —
 - (i) that the said national is not resident in The Bahamas; and
 - (ii) that no application for a grant of such representation is made by a person duly authorised by power of attorney to act for the national in that behalf,

shall make to that officer any such grant of representation to the estate of the deceased as would be made to him if he were so authorised as aforesaid.

(2) Where any person who is not resident in The Bahamas and is a national of such a state referred to in subsection (1) —

- (a) is entitled to any money or other property in The Bahamas forming a part of the estate of a deceased person, or to receive payment in The Bahamas of any money becoming due on the death of a deceased person; or
- (b) is among the persons to whom any money or other property of a deceased person may under any Act, whether passed before or after the commencement of this Act, be paid or delivered without grant of probate or other proof of title,

then, a consular officer of that state shall have the like right and power to receive and give a valid discharge for any such money or property as if he were duly authorised by power of attorney to act for him in that behalf.

(3) No person shall be authorised or required by subsection (2) to pay or deliver any money or property to a consular officer if it is within his knowledge that any other person in The Bahamas has been expressly authorised to receive that money or property on behalf of the said national.

(4) Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of powers conferred on him by or under this section or in respect of any document for the time being in his possession relating thereto.

PART V - POWERS OF COURT IN GRANTING REPRESENTATION

21. (1) The court shall not make a grant of representation unless the applicant for such a grant has filed an oath sworn by the applicant in the form prescribed by rules.

Requirements for issue of a grant of representation.

(2) Every person to whom a grant of administration is made, shall give a bond (referred to as “an administration bond”) to the court, with one surety, or more if the court directs, to guarantee that they will —

- (a) duly collect, get in and administer the real and personal estate of the deceased;
- (b) file a return within the time specified in section 22, providing a true and correct account in such form as may be directed by the rules, showing

the value of the personal estate and effects of the deceased person; and

- (c) pay, within the said period, the full amount of the fees which shall become due and payable by virtue of any Act or shall be otherwise payable on the estate in respect of which such administration is required to be granted.

(3) The judge shall have power to enforce any administration bond or to assign it in accordance with the provisions of this section to some other person.

(4) An administration bond shall be in a penalty of double the amount at which the personal estate and effects of the deceased are sworn unless the judge in any case thinks fit to direct the same to be reduced, and the judge may also direct that more bonds than one be given so as to limit the liability of any surety to such amount as the judge thinks reasonable.

(5) Where it appears to the satisfaction of a judge that the condition of an administration bond has been broken, the judge may, on an application in that behalf, order that the bond or any part thereof shall be assigned to such person as may be specified in the order, and the person to whom the bond is ordered to be assigned shall be entitled, by virtue of the order —

- (a) to sue thereon in his own name as if it had originally been given to him instead of to a judge; and
- (b) to recover thereon as trustee for all persons interested, the full amount recoverable in respect of the breach of the condition thereof.

(6) Without prejudice to any proceedings instituted before the date of commencement of this Act, any administration bond given prior to the date of commencement of this Act may be enforced or assigned as if it had been given to a judge under this section.

Filing of return.

22. (1) Once a grant of representation has been issued or resealed, the applicant or the personal representative of the estate of the deceased person shall file a return of the value of the personal estate and effects of the deceased in the form prescribed, within —

- (a) six months after the date of the grant of representation, where the estate of the deceased is situate on New Providence; or

(b) nine months after the date of the grant of representation, where the estate of the deceased or any part thereof is situate on any of the Family Islands.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars.

23. (1) The court may, if necessary, at any time issue a warrant of appraisal in the prescribed form directing any person to ascertain the value of the personal estate of the deceased, or any part thereof, and to make a return setting forth the nature and value of the same and such return must be filed in the Registry.

Warrant of appraisal.

(2) The person making the return must at the time of making it also make a declaration as to its truth and such declaration must be made before —

- (a) the Registrar, if made in New Providence or Grand Bahama;
- (b) the Family Island Administrator, if made in a Family Island.

24. (1) The court shall, in granting representation have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof.

Discretion of court as to persons to whom administration may be granted.

(2) The court may grant administration with the will annexed to a devisee or legatee and any such administration may be limited in any way the court thinks fit.

(3) Notwithstanding subsections (1) and (2), where the deceased died wholly intestate as to his estate, letters of administration shall be granted to one or more persons interested in the residuary estate of the deceased, if they make an application for that purpose.

(4) If by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law be entitled to the grant of administration, the court may, in its discretion, notwithstanding anything in this Act, appoint as administrator such person as it thinks expedient and any administration granted under this provision may be limited in any way the court thinks fit.

Power to grant representation of real and personal estate separately or together

25. (1) Subject to subsection (2), the court may grant representation —

- (a) either separately or together in respect of real estate and in respect of the personal estate of a deceased person;
- (b) in respect of real estate although there is no personal estate, or in respect of personal estate although there is no real estate.

(2) Where the estate of a deceased person is known to be insolvent, the grant of representation shall not be severed except as regards a trust estate in which the deceased had no beneficial interest.

PART VI - RESEALING AND REVOCATION OF A GRANT OF REPRESENTATION

Resealing of foreign grants.

26. (1) Where a court —

- (a) in any member state of the Commonwealth;
- (b) in any state of the United States of America; or
- (c) in any other country specified by Order by the Attorney-General,

grants representation by whatever name called in respect of the estate of a deceased person, the probate or administration so granted may upon application in the manner prescribed by rules, be sealed with the seal of the court and thereupon shall be of like force and effect and have the same operation in The Bahamas as if granted by the court.

(2) The court, before sealing a grant of representation —

- (a) may if it thinks fit —
 - (i) require such evidence, if any, as to the domicile of the deceased person;
 - (ii) on the application of any creditor, require that adequate securities be given for the payment of all debts due from the estate to creditors in The Bahamas; and
- (b) shall be satisfied that all fees have been duly paid and all securities have been given in respect of such part of the estate in The Bahamas which the laws of The Bahamas require to be paid and given on representation being granted.

(3) A security given pursuant to subsection (2) shall have effect for the benefit of every creditor.

(4) For the purposes of this section, a duplicate of any grant of representation sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

27. (1) Where any paper by whatever named called, is issued by a court in a civil law jurisdiction, the court may, upon application in the manner prescribed by rules, issue the relevant grant of representation to the applicant.

Papers issued in civil law jurisdictions.

(2) For the purposes of this section, “paper” means any document issued in respect of a testamentary or non-testamentary application.

28. An application for the revocation of a grant of representation shall be made through a Registry in the prescribed form.

Application for revocation of grant of representation.

29. (1) Where it appears to the court that —

(a) a grant of representation either ought not to have been made; or

(b) contains an error,

the court may call in the grant and if satisfied that it could be revoked at the instance of any party interested, may revoke it.

Revocation of a grant or resealing, at instance of the court.

(2) A grant of representation may be revoked pursuant to subsection (1) without being called in, if it cannot be called in.

(3) Where it appears to the court that a grant resealed pursuant to section 26 ought not to have been resealed, the court may call in the relevant document and may, if satisfied that the resealing could be cancelled at the instance of a party interested, cancel the resealing.

(4) A resealing may be cancelled under subsection (3) without the relevant document being called in, if it cannot be called in.

(5) In subsections (3) and (4), “the relevant document” means the original grant, or where some other document was sealed by the court, that document.

PART VII - MISCELLANEOUS PROVISIONS

Destruction and concealment of a will.

30. Any person who, during the lifetime of a testator or after his death —

- (a) destroys, retains, steals or conceals;
- (b) attempts to destroy, retain, steal or conceal; or
- (c) aids and abets a person to destroy, retain, steal or conceal,

a will or codicil or other testamentary instrument, whether the same relates to real or personal estate or to both, commits an offence and is liable to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

Records of grants.

31. (1) There shall continue to be kept in the Registry, records of all grants which are made by the court.

(2) The records shall be in such form and shall contain such particulars as the Chief Justice shall direct.

Subpoena to bring in testamentary document.

32. (1) Where it appears that any person has possession of, custody of, or power over any document which is, or purports to be a testamentary document, the court may, whether or not any legal proceedings are pending, issue a subpoena requiring such person to attend and bring in the document in such manner as the court may in the subpoena direct.

(2) Any person who, having been required by the court to produce a document under this section, fails to bring in any document shall be guilty of contempt of court.

Examination of person with knowledge of testamentary document.

33. (1) Where it appears that there are reasonable grounds for believing that any person has knowledge of any document which is, or purports to be a testamentary document, the court may, whether or not any legal proceedings are pending, order such person to attend for the purpose of being examined in open court.

(2) The court may —

- (a) require any person who is before it in compliance with an order under subsection (1) to answer any question relating to the document concerned; and

(b) if appropriate, order such person to bring in the document in such manner as the court may direct.

(3) Any person who, having been required by the court to do so under this section fails to attend for examination, answer any question or bring in any document shall be guilty of contempt of court.

34. The court may summon any person named as an executor in a will to prove or renounce probate of the will and to do such other things concerning the will as the court had power to order such a person to do before the commencement of this Act.

Summons to executor to prove or renounce a will.

35. (1) Section 21(2) shall not apply in the case of an application for a grant of representation of the estate and effects of a deceased person made by or on behalf of a public trustee appointed under the Public Trustee Act.

Exemption for public trustees.

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(2) A public trustee referred to under subsection (1) shall be subject to the same liabilities and duties as if he had given the bond required by that section.

(3) All fees of court or stamp duties imposed by any Act or rule on or in respect of any bond or other document shall be paid by the public trustee as if he had given such bond.

36. If any executor or administrator shall, through mistake or misapprehension, or otherwise without fraud, have omitted out of the return any part of the personal estate or effects of the testator or intestate, it shall be lawful for such executor or administrator, at any time within three months after the discovery of such omission, to amend his return, and to pay the additional fees due on the estate of the deceased without being liable to any penalty of forfeiture under this Act.

Provisions for rectifying mistakes of omission without fraud.

37. (1) Where under a will or an intestacy any beneficiary is a minor or a life interest arises, any grant of representation shall be made either to a trust corporation (with or without an individual) or to not less than two individuals unless it appears to the court to be expedient in all the circumstances to appoint an individual as sole administrator.

Minor as a beneficiary.

(2) For the purpose of determining whether a minority or life interest arises, the court may act on such *prima facie* evidence furnished by the applicant or any

other person or such evidence as may be prescribed by rules.

(3) If there is only one personal representative, not being a trust corporation, then during the minority of a beneficiary or the subsistence of a life interest and until the estate is fully administered, the court may, on the application of any person interested or of the guardian, committee or receiver of any such person, appoint one or more personal representatives in addition to the original personal representative in accordance with rules.

Power to grant representation to a trust corporation.

38. (1) Where a trust corporation is named in a will as executor whether alone or jointly with another person, the court may grant representation to the corporation either solely or jointly with any other person, as the case may require and the corporation may act accordingly as executor or administrator as the case may be provided that a resolution made by the corporation is filed authorising such.

(2) A grant of representation shall not be made to a nominee on behalf of a trust corporation.

(3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the court may require with a view to the grant to the corporation of representation and the acts of an officer so authorised shall be binding on the corporation.

Evidence of foreign law.

39. Where evidence of foreign law is required on any application for a grant of representation, the court may accept an affidavit from an attorney of at least five years with a licence to practise in the country concerned whom, having regard to the particulars of the knowledge or experience of the deponent given in the affidavit, the court regards as suitably qualified to give expert evidence of the law in question.

Deposits to credit of deceased persons.

40. (1) Notwithstanding the provisions of this or any other Act or law to the contrary, the manager of a bank may, without the production of a grant of probate or letters of administration pay such sums as may be prescribed by rules standing to the credit of a deceased person to any person (in this section referred to as “the claimant”) who upon producing —

(a) satisfactory proof of the death of such deceased person; and

- (b) such evidence as may be required by the manager,

appears to such manager to be entitled by law to the said sum standing to the credit of such deceased person.

(2) Before any payment is made to any person under this section, the claimant shall make and deliver to the bank a declaration in the form prescribed by section 8 of the Oaths Act to the effect that the sums are to be utilized for funeral expenses and the manager shall ensure that the declaration is forwarded to the Registrar General.

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(3) Where any sum is paid to a claimant in accordance with subsection (1), a receipt from the claimant shall be a legal, valid and effectual discharge to the bank for the sums paid.

(4) The bank shall not be liable in respect of any claim by any person in connection with a payment made in accordance with this section.

(5) For the purposes of this section, “manager” includes any authorised officer of the bank.

41. (1) Where —

- (a) an employee (other than a public officer) has died (whether before or after the commencement of this Act) and is entitled to sums from his employer (whether before or at the time of his death); and
- (b) the employer has in his possession a document executed by the employee under oath identifying payment to a specified person,

Payment by employer of monies held to credit of deceased employee.

the employer may without requiring the production of probate or letters of administration pay to the person so identified such sums.

(2) Any sums to which an employee is entitled in accordance with subsection (1) shall not form part of the estate of the deceased employee or be subject to his debts.

(3) Where any sum is paid to a person entitled in accordance with subsection (1) a receipt from such person shall be a legal, valid and effectual discharge to the employer for the sums paid.

(4) The employer shall not be liable in respect of any payment made in accordance with this section.

(5) For the purposes of this section, “public officer” means the holder of any public office, and includes a contract officer.

Application in small estates.

42. (1) A person who seeks to obtain a grant of representation in respect of a deceased person leaving a small estate shall make application to the Registry in the manner prescribed by rules.

(2) For the purposes of this section, “small estate” means an estate where the assessed value of the whole of the real and personal property of the deceased person does not exceed ten thousand dollars in value.

Penalty.

43. (1) A person who makes a false declaration in respect of any application under this Act, whether by omission or commission, is guilty of an offence and shall be liable upon summary conviction to a fine not exceeding five thousand dollars.

(2) Unless the contrary is expressly provided, a person who commits an offence under this Act or any rules made hereunder is liable to a fine not exceeding five thousand dollars.

PART VIII - EXECUTORS AND ADMINISTRATORS

Ceases of right of executor to prove.

44. Where a person appointed by a will —

- (a) survives the testator but dies without having taken out a probate of the will;
- (b) is cited to take out probate of the will but does not appear to the citation; or
- (c) renounces probate of the will,

that person’s interest in respect of the executorship of the will shall wholly cease and the representation of the testator and the administration of his real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor.

Power to act when representation granted.

45. When representation has been granted in respect of any real or personal estate of a deceased person, no person other than the person to whom the grant has been made shall have power to bring an action or otherwise to act as an executor or administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

46. If while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted and that administration is revoked, the court may order that the proceeding be continued by or against the new administrator in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as the court may direct.

Continuance of legal proceedings.

47. Where an executor who has renounced probate, has been permitted whether before or after the commencement of this Act, to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect, without prejudice to the previous acts and dealings of and notices to any other personal representative who has proved the will or taken out letters of administration and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

Withdrawal of renunciation.

48. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

Executor of executor represents original executor.

(2) Subsection (1) shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

(3) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(4) The chain of such representation shall be broken by —

- (a) an intestacy;
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will,

but is not broken by a temporary grant of an administration if probate is subsequently granted.

(5) Every person in the chain of representation of a testator —

- (a) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living; and

- (b) is to the extent to which the estate, whether real or personal of that testator has come to his hands answerable as if he were an original executor.

Right of proving executors to exercise powers.

49. (1) Where probate is granted to one or some of two or more persons named as executors whether or not power is reserved to the other or others to prove all the powers which are by law conferred upon the personal representative may be exercised by the proving executor or executors for the time being and shall be as effective as if all the persons named as executors had concurred therein.

(2) This section applies whether the testator died before or after the commencement of the Act.

Vesting of estate of intestate.

50. (1) Where a person dies intestate, his real and personal estate, until administration is granted, shall vest in a Justice of the Supreme Court.

(2) This section applies whether the testator died before or after the commencement of this Act.

Rights and liabilities of administration.

51. Every person to whom the administration of the real and personal estate of a deceased person is granted, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

Duty of personal representative as to inventory.

52. The personal representative of a deceased person shall when lawfully required so to do, exhibit a true and perfect inventory and account of the real and personal estate of the deceased, and the court shall have power as heretofore to require a personal representative to bring in that inventory.

Rights of personal representative to distrain.

53. (1) A personal representative may distrain for arrears of a rent charge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rent charge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(2) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living; and such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made —

- (a) within six months after the termination of the lease or tenancy;

- (b) during the continuance of the possession of the lessee or tenant from whom the arrears are due.

54. (1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation.

Protection of persons acting on probate or administration.

(2) Where a grant of representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the revocation thereof are a valid discharge to the person making the same; and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly been made.

55. If any person, without full valuable consideration, to the defrauding of creditors obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting —

Liability of person fraudulently obtaining or retaining estate of deceased.

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and
- (b) any payment made by him which might properly be made by a personal representative.

56. Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the real or personal estate of the deceased, and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Liability of estate of personal representative.

57. (1) Every executor and administrator shall in exercise of his administration, distribution and final settlement of any estate, be entitled to claim and receive out of the assets of the estate, or from anyone who, as legatee, devisee or creditor, is entitled on administration to the whole or any portion of the estate, any remuneration

Remuneration of executors and administrators.

fixed by the will of the deceased, or, in case no such remuneration is fixed or the deceased died intestate, in the discretion of the Registrar but in no case exceeding the following —

- (a) where the total value of the property does not exceed ten thousand dollars, three per cent on the amount of all receipts; and
- (b) where the total value of the property exceeds ten thousand dollars, three per cent on ten thousand dollars and two per cent on the amount of all receipts over and above ten thousand dollars.

(2) Where any business or undertaking is carried on or is being administered, the remuneration shall not be payable on the gross receipts but shall be that determined and fixed by the Registrar according to the circumstances of each particular case.

(3) The amount assessed by the Registrar as the remuneration of an executor or administrator shall be subject to review by the court upon the application of the executor or administrator or of any person having an interest in the estate.

(4) If any executor or administrator fails to administer any estate with due diligence or fidelity, or to file or render the account of his administration and distribution of the estate in due course of law, and has no lawful and sufficient excuse for his failure, the Registrar may disallow the whole or any portion of the remuneration which he might otherwise have been entitled to receive in respect of his administration of the estate subject, however, to review by the court.

(5) For the purposes of this section, the term “receipts” includes rent, interest and book debts, but does not include money in the possession of the deceased at the time of his death, the proceeds of the sale of effects and realisation of investments, and the like, and the remuneration assessed on the amount of such money, proceeds of sale and realisation of investments, and the like, shall not exceed one-half the rates allowed in paragraphs (a) and (b) in subsection (1).

Power to make rules.

58. Provision may be made by rules of court for giving effect to the provisions of this Part so as it relates to real estate and in particular for adapting the procedure and practice on the grant of letters of administration to the case of real estate.

PART IX - DEVOLUTION OF REAL ESTATE

59. (1) Real estate to which a deceased person was entitled for an interest not ceasing on his death, shall, on his death and notwithstanding any testamentary disposition thereof, devolve on the personal representative of the deceased.

Devolution of real estate on personal representative.

(2) The personal representative shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate and shall hold the estate as trustee for the persons by law entitled thereto.

60. (1) Subject to the provisions of this Act —

Application to chattels real.

- (a) all written laws and rules of law, and all jurisdiction of any court with respect to the appointment of administrators or to probate or letters of administration, or to dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate, in force before the commencement of this Act; and
- (b) all powers, duties, rights, equities, obligations and liabilities of a personal representative in force at the commencement of this Act with respect to chattels real,

shall apply, and attach to the personal representative and shall have effect with respect to real estate vested in him and in particular all such powers of disposition and dealing as were before the commencement of this Act exercisable as respects chattels real by the survivors of two or more personal representatives, as well as by a single personal representative, or by all the personal representatives together, shall be exercisable by the personal representatives or representative of the deceased with respect to his real estate.

(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part shall not be made without the concurrence therein of all such representatives or an order of the court, but where probate is granted to one or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or

executors for the time being, without an order of the court, and shall be as effectual as if all persons named as executors had concurred therein.

(3) Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real estate shall not, save as hereinafter provided, affect —

- (a) any rule as to marshalling or as to administration of assets;
- (b) the beneficial interest in real estate under any testamentary disposition;
- (c) any mode of dealing with any beneficial interest in real estate or the proceeds of sale thereof;
- (d) the right of any person claiming to be interested in the real estate, to take proceedings for the protection or recovery thereof against any person other than the personal representative.

Interpretation of
Part IX.

61. (1) In this Part, “real estate” includes chattels real, and land in possession, remainder, or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death; and real estate held on trust or by way of mortgage or security but not money to arise under a trust for sale of land, or money secured or charged on land.

(2) A testator is deemed to have been entitled at his death to any interest in real estate passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.

(3) The interest of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his death.

(4) On the death of a corporation sole his interest in the corporation’s real and personal estate shall be deemed to be an interest ceasing on his death and shall devolve on his successor.

(5) An entailed interest of a deceased person is deemed an interest ceasing on his death but any further or other interest of the deceased in the same personal representatives or representative of the deceased with respect to his real estate.

PART X - ADMINISTRATION OF ASSETS

62. (1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power disposes of by his will, are assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

Real and personal estate of deceased are assets for payment of debts.

(2) Subsection (1) takes effect without prejudice to the rights of encumbrancers.

(3) If any person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the action or under the process.

63. (1) A personal representative may sell the whole or any part of the estate of a deceased person for the purpose not only of paying debts but also (whether there are or are not debts) of distributing the estate among the persons entitled thereto, but before selling for the purposes of distribution, the personal representative shall, so far as practicable, give effect to the wishes of the persons of full age entitled to the property proposed to be sold, or in the case of dispute of the majority (according to the value of their combined interests) of such persons.

Powers of personal representatives to sell and to act as trustees.

(2) A purchaser of the estate or part thereof to which subsection (1) refers shall not be concerned to see that the personal representative has complied with the wishes of those persons referred to in subsection (1), and it shall not be necessary for any person beneficially entitled to concur in such sale.

64. (1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I of the Schedule.

Administration of assets.

Schedule.

(2) The right of retainer of a personal representative and the right to prefer creditors are hereby abolished.

(3) Nevertheless a personal representative —

(a) other than one mentioned in paragraph (b) who, in good faith and at the time when he had no reason to believe that the deceased's estate is insolvent, pays the debt of any person (including himself) who is a creditor of the estate; or

(b) to whom letters of administration have been granted solely by reason of his being a creditor and who, in good faith and at such a time, pays the debt of another person who is a creditor of the estate,

shall not, if it subsequently appears that the estate is insolvent, be liable to account to a creditor of the same degree as the paid creditor for the sum so paid.

(4) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts, and liabilities payable thereout in the order mentioned in Part II of the Schedule.

Schedule.

Charges on property of deceased to be out of property charged.

65. (1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified —

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary, real and personal estate, or his residuary estate; or

(b) by a charge of debts upon any such estate, unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction therefor either out of the other assets of the deceased or otherwise.

66. (1) A personal representative may assent to the vesting in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, and which devolved upon the personal representative.

Effect of assents or conveyance by personal representative.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The statutory covenants implied by a person being expressed to convey as personal representative, may be implied in an assent in like manner as in a conveyance by deed.

(4) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall, any law to the contrary notwithstanding, operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

(5) Any person in whose favour an assent or conveyance of a legal estate is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration at the cost of the estate of the deceased, and that the probate or letters of administration be placed thereon or annexed thereto.

(6) A statement in writing by a personal representative that he had not given or made an assent or conveyance in respect of a legal estate, shall, in favour of a purchaser, but without prejudice to any previous

disposition made in favour of another purchaser deriving title immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration.

(7) A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.

(8) A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration.

(9) An assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him; and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.

(10) A conveyance of a legal estate by a personal representative shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have been discharged or provided for.

(11) An assent or conveyance given or made by a personal representative shall not except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against

any duty, debt or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(12) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge by way of legal mortgage.

(13) This section shall not operate to impose any stamp duty in respect or an assent, and in this section “purchaser” means a purchaser for money or money’s worth.

(14) This section applies to assents and conveyances made after the commencement of this Act, whether the testator or intestate died before or after such commencement.

67. (1) Conveyances of any interest in real or personal estate made to a purchaser either before or after the commencement of this Act by a person to whom probate or letters of administration have been granted shall not be invalidated by reason only of the subsequent revocation or variation, either before or after the commencement of this Act, of the probate or administration.

Validity of conveyance not affected by revocation of representation.

(2) This section takes effect without prejudice to any order of the court made before the commencement of this Act, and applies whether the testator or intestate died before or after such commencement.

68. (1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

Right to follow property and powers of court thereto.

(2) Notwithstanding any such assent or conveyance, the court may, on the application of any creditor or other person interested —

- (a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be

carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;

- (b) declare that the person, not being a purchaser in whom the property is vested, is a trustee for those purposes;
- (c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;
- (d) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Act.

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(3) This section shall not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before or after the commencement of this Act.

Power to deal
with estate.

69. (1) In dealing with the real and personal estate of the deceased, his personal representatives shall, for purposes of administration or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), with respect to personal estate vested in him, and such power of raising money by mortgage may in the case of land be exercised by way of legal mortgage; and without prejudice to the generality of the foregoing may with the consent of the beneficiaries or with the approval of the court, grant —

- (a) leases of the land for such terms and on such conditions;
- (b) licences to use such land for any purpose mentioned in the licence, as the personal representatives may think proper.

(2) The power to raise money by way of mortgage or charge may, without prejudice to subsection (1), be exercised for effecting the payment of expenses, debts, and liabilities, and any legal right, and with the approval of all the beneficiaries being *sui juris*, or of the court (but not otherwise) for the erection, repair, improvement or completion of buildings, or the improvement of lands forming part of the estate of the deceased.

(3) This section shall not prejudice or affect any power or duty of personal representatives to execute any document or do any other act or thing for the purpose of completing any transaction entered into by a deceased person before his death.

(4) A personal representative of a deceased person may —

- (a) accept any property before the time at which it is transferable or payable;
- (b) pay or allow any debt or claim on any evidence they may reasonably deem sufficient;
- (c) accept any composition or security for any debt or property claimed;
- (d) allow time for payment of any debt;
- (e) compromise, compound, abandon, submit or arbitrate or otherwise settle any debt, account, dispute, claim or other matter relating to the estate of the deceased;
- (f) settle and fix reasonable fees of remuneration out of that property, and for any of those purposes may enter into such agreements or arrangements and execute such documents as seem expedient, without being personally responsible for any loss occasioned by any act or thing so done by them in good faith.

(5) This section shall not prejudice or affect any powers conferred by will on a personal representative, and the powers conferred by this section on a personal representative of a deceased person who has died testate shall be exercised subject to any provisions contained in his will with respect to the disposal of his estate.

(6) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.

(7) This section applies whether the testator or intestate died before or after the commencement of this Act.

70. A person who purchases real or personal property from a personal representative is entitled to assume that the personal representative has acted and is acting correctly and within his powers.

Purchases from personal representatives.

Power of
personal
representative as
to appropriation.

71. (1) A personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state or investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased:

Provided that —

- (a) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;
- (b) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased shall not (save as hereinafter mentioned) be made under this section except with the following consents —
 - (i) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;
 - (ii) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income and if the person whose consent is so required as aforesaid is an infant or is incapable, by reason of mental disorder within the meaning of the Mental Health Act, of managing and administering his property and affairs, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, or receiver, or if, in the case of an infant, there is no such parent or guardian, by the court on the application of his next friend;
- (c) no consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;
- (d) if no receiver is acting for a person suffering from mental disorder then, if the appropriation

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is of an investment authorised by law or by the will if any, of the deceased, no consent shall be required on behalf of the said person;

- (e) if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy, share or interest, provided that the appropriation is of an investment authorised as aforesaid.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he thinks fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representative shall in making the appropriation, have regard to the rights of any person who cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.

(6) This section shall not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

(7) If after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposed of it or any

interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents, if any, had been given.

(8) In this section, “a settled legacy”, “share” or “interest” includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an “annuity”, and “purchaser” means a purchaser for money or money’s worth.

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to satisfy an annuity by means of the income of that fund or otherwise.

Powers to
appoint trustees.

72. (1) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Act (in this subsection called “the deceased”) to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives), to be trustee or trustees of such devise, legacy, residue or share for the infant, and to be trustees of any land devised or any land being or forming part of such residue or share and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed; and on such appointment the personal representatives, as such shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and of investment, or may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

(2) Where a personal representative has before the commencement of this Act retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the court made before such commencement, he shall not be deemed to have incurred

any liability on the account, or by reason of not having paid or transferred the money or property into court.

(3) Where any property is held by trustees in trust for an infant either for life or for any greater interest and whether absolutely or contingently on his attaining the full age, or on the occurrence of any event before his attaining that age, the trustees may at their sole discretion pay to the infant's parent or guardian, if anyone, or otherwise apply for or towards that property or any part thereof, whether there is anyone bound by law to provide for the infant's maintenance or education or not.

(4) The trustees shall accumulate the residue of any income not applied as mentioned in subsection (3) by investing the same and any resulting income thereof from time to time in securities in which they are by the settlement, if any, or by law authorised to invest, money and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise but so that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(5) Subsections (3) and (4) shall apply only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises and shall have effect subject to the terms of that instrument and to the provisions therein contained.

73. (1) A personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the land as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

Permission to take possession before conveyance.

(2) Any person who as against the personal representative claims possession of real estate, or the appointment of a receiver thereof, or conveyance thereof, or an assent to the vesting thereof may apply to the court for directions with reference thereto, and the court may make such vesting or other orders as may be deemed proper, and the provisions of the Trustee Act, relating to

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vesting orders and to the appointment of a person to convey, shall apply.

(3) This section applies whether the testator or intestate died before or after the commencement of this Act.

Power to
postpone
distribution.

74. Subject to the foregoing provisions of this Act, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from the death.

Administration
of estate by
Consular
Officers.

75. Whenever any citizen of any country —

- (a) dies within The Bahamas; or
- (b) dies outside The Bahamas, leaving property within The Bahamas,

and no person in The Bahamas at the time of his death who is rightfully entitled to administer the estate of such deceased person, the Consul, Vice-Consul, or Consular Agent of such State within The Bahamas may take possession and have the custody of the property of such deceased person, and may apply the same in payment of his debts and funeral expenses, and may retain the surplus for the benefit of the persons entitled thereto; but such Consul, Vice-Consul or Consular Agent shall immediately apply for, and shall be entitled to obtain from the court, letters of administration of the property of such deceased person, limited in such manner and for such time as to the court shall seem fit.

PART XI – SUPPLEMENTARY

Rules.
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76. (1) The Rules Committee constituted under section 75 of the Supreme Court Act, may make rules —

- (a) for regulating the practices and procedures of the court with respect to non-contentious probate business;
- (b) for regulating the practices and procedures of the court with respect to contentious probate proceedings;
- (c) to prescribe the form of any document to be made hereunder;
- (d) to prescribe the fees to be paid in respect of any form or document filed or any service rendered by the court;

- (e) for enabling proceedings to be commenced against the estate of a deceased person (whether by the appointment of a person to represent the estate or otherwise) where no grant of probate or administration has been made;
 - (f) for enabling proceedings purporting to have been commenced against a person to be treated, if he was dead at their commencement, as having commenced against his estate, whether or not a grant of probate or administration was made before their commencement;
 - (g) for enabling any proceedings commenced or treated as commenced against the estate of a deceased person to be maintained (whether by substitution of parties, amendment or otherwise) against a person appointed to represent the estate, or if a grant of probate or representation is or has been made, against the personal representative; and
 - (h) in relation to any matter or thing required or permitted to be prescribed by rules under this Act and generally for the better administration and carrying out the provisions of this Act.
- (2) Until rules are made pursuant to subsection (1)(e), (f) and (g), proceedings shall commence by originating summons.

77. Repealed.

78. (1) Notwithstanding the repeal of Part V of the Supreme Court Act any application filed prior to the coming into force of this Act and not determined shall be dealt with in accordance with the provisions of that Act and its Rules save however, any party may apply for, or the court may make an order, that the application continue to be dealt with in accordance with the provisions of this Act.

Savings.
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(2) Any reference in any other law to the Administration of Estates Act* shall be read and construed as a reference to this Act.

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* Repealed and replaced by this Act.

SCHEDULE (Section 64)**PART I****RULES AS TO PAYMENT OF
DEBTS WHERE THE ESTATE IS INSOLVENT**

1. The funeral, testamentary and administration expenses have priority.
2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to the debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

PART II**ORDER OF APPLICATION OF
ASSETS WHERE THE ESTATE IS SOLVENT**

1. Property of the deceased undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.
2. Property of the deceased not specifically devised or bequeathed but included either by a specific or general description in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for under paragraph 1.
3. Property of the deceased specifically appropriated, devised or bequeathed either by a specific or general description for the payment of debts.
4. Property of the deceased charged with or devised or bequeathed either by a specific or general description subject to a charge for the payment of debts.
5. The fund, if any, retained to meet pecuniary legacies.
6. Property specifically devised or bequeathed, rateably according to value.
7. Property appointed by will under a general power of appointment, rateably according to value.
8. Also, the order of application may be varied by the will of the deceased.