
CHAPTER 108**ADMINISTRATION OF ESTATES**

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CHAPTER 108

ADMINISTRATION OF ESTATES

An Act providing for the administration of a deceased person’s property, and to provide for related matters. *5 of 2002*

*[Assent 31st January, 2002]
[Commencement 1st February, 2002]*

**PART I
PRELIMINARY**

1. This Act may be cited as the Administration of Estates Act. *Short title.*

2. (1) 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;

“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;

“the 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;

“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;

“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 II devolves on the personal representative of a deceased person;

“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;

“trust corporation” means either a Public Trustee or a corporation appointed by the court in a particular case to be a trustee or entitled by rules made under section 16 of the Public Trustee Act to act as a custodian trustee;

“will” includes a testament, a codicil, an appointment by will or by writing in the nature of a will in exercise of a power, and any other testamentary disposition.

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

- (a) a child or issue *en ventre sa mère* 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 DEVOLUTION OF REAL ESTATE

3. (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.

4. (1) Subject to the provisions of this Act, 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 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.

Application to chattels real.

(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 II.

5. (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 property in remainder or reversion which is capable of being disposed of by his will is not deemed to be an interest so ceasing.

PART III EXECUTORS AND ADMINISTRATORS

6. 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,

Ceasing of right of executor to prove.

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.

7. 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.

Withdrawals of renunciation.

8. (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.

9. (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.

10. (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.

Power to act.

11. When administration 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 of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

12. 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.

13. 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.

Rights and liabilities of administration.

14. 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.

Duty of personal representative as to inventory.

15. (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.

Rights of personal representative to distrain.

(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.

16. (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 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.

Liability of person fraudulently obtaining or retaining estate of deceased.

17. If any person, to the defrauding of creditors or without full valuable consideration, 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 —

- (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.

Liability of estate of personal representative.

18. 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.

Remuneration of executors and administrators.

19. (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 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 hands 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).

20. 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.

Power to make rules

PART IV ADMINISTRATION OF ASSETS

21. (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

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

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.

(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.

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

22. (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.

(2) A purchaser of the estate or part thereof to which subsection (1) refers shall not be concerned to see that the personal representative have 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.

Administration of assets.
First Schedule.

23. (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 First 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 First Schedule.

First Schedule

24. (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.

Charges on property of deceased to be out of property charged

(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.

Effect of assents
or conveyance by
personal
representative.

25. (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.

(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 of 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.

Validity of conveyance not affected by revocation of representation.

26. (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.

(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.

Right to follow property and powers of court thereto.

27. (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.

(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.

28. (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 —

Power to deal
with estate

- (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.

Purchases from
personal
representative.

29. 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.

Power of
personal
representative as
to appropriation.

30. (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 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;

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(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.

31. (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.

Power to appoint trustees.

(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.

Permission to
take possession
before
conveyance.

32. (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.

(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, 1998 relating to vesting orders and to the appointment of a person to convey, shall apply.

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

33. 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.

Power to postpone distribution.

PART V SUPPLEMENTARY

34. Whenever any citizen of any country —

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

Administration of estates by Consular Officers.

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.

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

- (a) 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;
- (b) 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; and

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(c) 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.

(2) Until rules are made pursuant to subsection (1), proceedings shall commence by originating summons.

Application of Act.

36. Save as otherwise expressly provided, this Act shall not apply in any case where the death occurred before the commencement of this Act.

Repeals.

37. The Acts mentioned in the second column of the Second Schedule are hereby repealed to the extent specified in the third column of that Schedule, but as respects the Acts mentioned in Part I of that Schedule only so far as they apply to deaths occurring after the commencement of this Act.

FIRST SCHEDULE (Section 23)

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.

SECOND SCHEDULE (Section 37)

PART I

<i>Chapter No.</i>	<i>Short Title</i>	<i>Extent cf Repeal</i>
95	Personal Representatives Remuneration	The whole Act
105	Executors	The whole Act
140	Clandestine Mortgages	Section 4

PART II

66	Civil Procedure	The whole Act
91	Real Estate Devolution	The whole Act
92	Real Estate Charges	The whole Act
96	Fraudulent Administration of Intestates Estates	The whole Act

98	Posthumous Children	The whole Act
100	Administration of Estates by Consular Officers	The whole Act
104	Fraudulent Devises	The whole Act
123 ¹	Conveyancing and Law of Property	Section 33
160 ²	Law of Property	Sections 14, 15, 16, 17 and 18 ³

¹ Chapter 138 in the Rev Ed, 2000

² Chapter 170 in the Rev Ed, 2000

³ Sections 9, 10, 11, 12 and 13 in the Rev Ed, 2000