



Administration of Estates Act (Northern Ireland) 1955

1955 CHAPTER 24

PART IV

ADMINISTRATION OF ASSETS

37 Powers of personal representative as to appropriation.

- (1) The personal representative may appropriate any part of the estate of the deceased person in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased person, 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 person:

Provided that—

- (a) an appropriation shall not be made under this section—
 - (i) so as to affect prejudicially any specific devise or bequest; or
 - (ii) unless notice of the intended appropriation has been served on all parties interested in the residuary estate (other than persons who may come into existence after the time of the appropriation or who cannot be found or ascertained at that time) any one of which parties may within six weeks from the service of such notice on him apply to the court to prohibit the appropriation;
- (b) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased person for the investment of money subject to the trust, shall not (save as in this section 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

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representative), or the person who may for the time being be entitled to the income:

If the person whose consent is so required as aforesaid is an infant or^{F1} is incapable, by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986, 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,^{F1} or controller], 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^{F1} controller 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 person for the investment of money subject to the trust, no consent shall be required on behalf of^{F1} that 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 person as he may think fit, and may for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance or transfer (including an assent) which may be requisite for giving effect to the appropriation.
 - (4) Unless the court on an application made to it under sub-paragraph (ii) of paragraph (a) of the proviso to sub-section (1) otherwise directs, an appropriation made pursuant to this section shall bind all persons interested in the property of the deceased person 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 may thereafter come into existence, or 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 does not prejudice any other power of appropriation conferred by law or by the will, if any, of the deceased person, and takes effect with any extended powers conferred by the will, if any, of the deceased person, 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 management or varying investments which would have been 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 property has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser in good faith and for value, the

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appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite notices and 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.
- (9) This section applies whether the deceased person 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 answer an annuity by means of the income of that fund or otherwise.
- (10) Where any property is appropriated under the provisions of this section a transfer thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so transferred is accepted by the person to whom it is transferred in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for the like purpose.

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