



# Administration of Estates Act 1925

## 1925 CHAPTER 23

### PART III

#### ADMINISTRATION OF ASSETS

#### **32 Real and personal estate of deceased are assets for payment of debts**

- (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 (including the statutory power to dispose of entailed interests) disposes 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.

This subsection takes effect without prejudice to the rights of incumbrancers.

- (2) 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.

#### **33 Trust for sale**

- (1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives—
- (a) as to the real estate upon trust to sell the same; and
  - (b) as to the personal estate upon trust to call in sell and convert into money such part thereof as may not consist of money,

with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal

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representatives see special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason.

- (2) Out of the net money to arise from the sale and conversion of such real and personal estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part of this Act, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.
- (3) During the minority of any beneficiary or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money, or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.
- (4) The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is in this Act referred to as " the residuary estate of the intestate."
- (5) The income (including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income) of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid, may, however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between tenant for life and remainderman.
- (6) Nothing in this section affects the rights of any creditor of the deceased or the rights of the Crown in respect of death duties.
- (7) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

### **34 Administration of assets**

- (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 to this Act.
- (2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

- (3) 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 to this Act.

### **35 Charges on property of deceased to be paid primarily, out of the property charged**

- (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment (including the statutory power to dispose of entailed interests) 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 real 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 thereof either out of the other assets of the deceased or otherwise.

### **36 Effect of assent or conveyance by personal representative**

- (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, including the statutory power to dispose of entailed interests, 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 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

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produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto.

- (6) A statement in writing by a personal representative that he has 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 mediately or 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.

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.

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.

- (7) 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.
- (8) A conveyance of a legal estate by a personal representative to a purchaser 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.
- (9) 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 duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.
- (10) 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.
- (11) 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.
- (12) 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.

### **37 Validity of conveyance not affected by revocation of representation**

- (1) All 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 are valid, notwithstanding any 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.

### **38 Right to follow property and powers of the court in relation thereto**

- (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 to which the assent or conveyance relates, or any 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, 1925.
- (3) This section does 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.

### **39 Powers of management**

- (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—
  - (i) the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act, 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
  - (ii) all the powers, discretions and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale (including power to overreach equitable interests and powers as if the same affected the proceeds of sale); and
  - (iii) all the powers conferred by statute on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of

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the deceased, and may be carried into effect, or be varied or rescinded by him, and, in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

- (2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.
- (3) This section applies whether the testator or intestate died before or after the commencement of this Act.

#### **40 Powers of personal representative for raising money, &c**

- (1) For giving effect to beneficial interests the personal representative may limit or demise land for a term of years absolute, with or without impeachment for waste, to trustees on usual trusts for raising or securing any principal sum and the interest thereon for which the land, or any part thereof, is liable, and may limit or grant a rentcharge for giving effect to any annual or periodical sum for which the land or the income thereof or any part thereof is liable.
- (2) This section applies whether the testator or intestate died before or after the commencement of this Act.

#### **41 Powers of personal representative as to appropriation**

- (1) The 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 of 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—

- (i) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;
- (ii) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents:—
  - (a) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;
  - (b) 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 :

If the person whose consent is so required as aforesaid is an infant or a lunatic or defective, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, committee 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;

- (iii) 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;

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- (iv) if no committee or receiver of a lunatic or defective has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic or defective;
  - (v) 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 may think 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 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, 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 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 real estate 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, 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, including the statutory power to dispose of entailed interests, and authorises the setting apart Of a fund to answer an annuity by means of the income of that fund or otherwise.

## **42 Power to appoint trustees of infants' property**

- (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 or one or more of the personal representatives), to be the 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 for the purposes of the Settled Land Act, 1925, and of the statutory provisions relating to the management of land during a minority, 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.

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 the same 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 that account, or by reason of not having paid or transferred the money or property into court.

## **43 Obligations of personal representative as to giving possession of land and powers of the court**

- (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 a conveyance thereof, or an assent to the vesting thereof, or to be registered as proprietor thereof under the Land Registration Act, 1923, may apply to the court for directions with reference thereto, and the court may make such vesting or other order as may be deemed proper, and the provisions of the Trustee Act, 1925, relating to 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.

## **44 Power to postpone distribution**

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.