



Administration of Estates Act (Northern Ireland) 1955

1955 CHAPTER 24

PART IV

ADMINISTRATION OF ASSETS

29 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 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.
- (2) This section takes effect without prejudice to the rights of incumbrancers.

30 Administration of assets.

Subs. (1) rep. by 1989 NI 19

Subs. (2) rep. by 1971 c. 31 (NI)

- (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.

Changes to legislation: There are currently no known outstanding effects for the Administration of Estates Act (Northern Ireland) 1955, PART IV. (See end of Document for details)

31 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 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 or equitable mortgage or charge or otherwise (including a lien for unpaid purchase money), and the deceased person 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 person, 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.

32 Powers of personal representatives to sell or transfer.

- (1) The personal representatives 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 beneficially entitled thereto, and before selling for the purposes of distribution the personal representatives shall, so far as practicable, give effect to the wishes of the persons of full age for the time being beneficially 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 so, however, that—
 - (a) a purchaser shall not be concerned to see that the personal representatives have complied with such wishes; and
 - (b) it shall not in any case be necessary for any person beneficially entitled to concur in any such sale.
- (2) It shall not be lawful for some or one only of several joint personal representatives, without leave of the court, to exercise any power conferred by this section or by section forty to dispose of any land, save that where probate is granted to one or some of several persons named as executors, whether or not power is reserved to the others or other to prove, the disposition of the land may, notwithstanding any other provision or rule of law to the contrary, be made by the proving executor or executors, without leave of the court, as fully and effectually as if all the persons named as executors had concurred therein. Where a disposition is so made by the proving executor or executors sub-section (1) and the said section forty shall have effect as if references therein to personal representatives were references to the proving executor or executors.

Changes to legislation: There are currently no known outstanding effects for the Administration of Estates Act (Northern Ireland) 1955, PART IV. (See end of Document for details)

33^{F1} Protection of bona fide purchasers.

- (1) A purchaser, in good faith and for value, from the personal representatives of a deceased person, of any property, being the whole or part of the estate of that deceased person, shall be entitled to hold that property freed and discharged from any debts or liabilities of the deceased person, except such as are charged thereon otherwise than by the will of the deceased person, and from all claims of the persons beneficially entitled thereto, and shall not be concerned to see to the application of the purchase money.
- (2) A purchaser in good faith and for value of any property to which this sub-section applies, being the whole or part of the estate of a deceased person, which has been transferred by the personal representatives to the person beneficially entitled thereto, or to the vesting of which in the person beneficially entitled thereto the personal representatives have assented, shall be entitled to hold that property freed and discharged from the claims of creditors of the deceased person except claims of which the purchaser had actual or constructive notice at the time of his purchase.
- (3) Sub-section (2) applies to all property other than registered land.

F1 1979 NI 14

34 General provisions as to assent or transfer by personal representatives.

- (1) In this and the next succeeding section—
 - (a) references to the land of a testator or intestate are references to land to which the testator or intestate was entitled or over which he exercised a general power of appointment by will; and
 - (b) the expression “person entitled” includes, in relation to any estate or interest in the land of a testator or intestate—
 - (i) the persons or person (including the personal representatives of the testator or intestate or any of them) who (whether by devise, bequest, devolution, appropriation or otherwise) may be beneficially entitled to that estate or interest; and
 - (ii) the trustees or trustee or the personal representatives or representative of any such persons or person.
- (2) Without prejudice to any other power conferred by this Act on personal representatives with respect to any land of a testator or intestate, the personal representatives may execute an assent vesting any estate or interest in any such land in the person entitled thereto, or may transfer any such estate or interest to the person entitled thereto and may make the assent or transfer either subject to or free from a charge for the payment of any money which the personal representatives are liable to pay; and where the assent or transfer is made subject to a charge for all moneys, if any, which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before the assent or transfer.
- (3) At any time after the expiration of one year from the death of an owner of land, if the personal representatives have failed on the request of the person entitled to transfer, by assent or otherwise, the land to the person entitled, the court may, if it thinks fit, on the application of the person entitled and after notice to the personal representatives, order that the transfer be made, and in default of compliance with that order within the time specified therein by the court, may make an order vesting the land in the person

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entitled as fully and effectually as might have been done by a transfer thereof by the personal representatives.

- (4) An assent not in writing shall not be effectual to pass any estate or interest in land.
- (5) The statutory covenants implied by a person being expressed in a deed to convey as personal representative shall also be implied in any assent signed by a personal representative unless the assent otherwise provides.
- (6) It shall not be lawful for some or one only of several joint personal representatives, without leave of the court, to make any assent or transfer under this section, save that:
 - (a) where probate is granted to one or some of several persons named as executors, whether or not power is reserved to the others or other to prove, such assent or transfer may, notwithstanding any other provision or rule of law to the contrary, be made by the proving executor or executors, without leave of the court, as fully and effectually as if all the persons named as executors had concurred therein; and
 - (b) where the proving executor or executors exercise any power conferred by the preceding paragraph this section and the next two succeeding sections shall have effect as if references therein to personal representatives were references to the proving executor or executors.
- (7) The court may order land not specifically devised or land vested in a personal representative as such to be sold on such terms and within such period as may appear reasonable, and, on the failure of the personal representative to comply with such order, the court may, on the application of the person entitled or any person beneficially interested, direct a sale of the lands upon such terms as it thinks fit.
- (8) This section shall not operate to impose any stamp duty in respect of an assent.

35 Special provisions as to unregistered land.

- (1) An assent to the vesting of any estate or interest in unregistered land of a testator or intestate in favour of the person entitled thereto shall—
 - (a) be in writing;
 - (b) be signed by the personal representatives;
 - (c) be deemed, for the purposes of the Registration of Deeds Acts, to be a conveyance of that estate or interest from the personal representatives to the person entitled;
 - (d) operate, subject to the provisions of the Registration of Deeds Acts with respect to priorities, to vest that estate or interest in the person entitled subject to such charges and encumbrances, if any, as may be specified in the assent and as may otherwise affect that estate or interest; and
 - (e) subject to the said provisions, be deemed (unless a contrary intention appears therein) for all purposes necessary to establish the title of the person entitled to intervening rents and profits, to relate back to the date of the death of the deceased person so, however, that nothing in this paragraph shall operate to enable any person to establish a title inconsistent with the will of the deceased person.
- (2) Any person in whose favour an assent or conveyance of any unregistered land is made by personal representatives may at his own expense require the personal

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representatives to register that assent or conveyance in the Registry of Deeds pursuant to the Registration of Deeds Acts.

- (3) An assent or conveyance of unregistered land by a personal representative shall, in favour of a purchaser, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person who was entitled to have the estate or interest to which the assent relates vested in him but shall not otherwise prejudicially affect the claim of any person originally entitled to that estate or interest or to any charge or encumbrance thereon.

S. 36 rep. with savings by 1970 c. 18 (NI)

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 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^{F2} 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,^{F2} 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^{F2} 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

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the deceased person for the investment of money subject to the trust, no consent shall be required on behalf of^{F2} 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 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

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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.

F2 1986 NI 4

38^{F3} Power to appoint trustees of infant's property.

- (1) Where an infant is absolutely entitled under the will or on the intestacy of any person dying before or after the commencement of this Act to the estate of the deceased person or to the residue thereof or to any share therein or to any devise or legacy and such estate, residue, share, devise or legacy is not under the will, if any, of the deceased person devised or bequeathed to trustees for the infant, the personal representatives of the deceased person may appoint any two or more persons (whether or not including the personal representatives or any of them) to be trustees of such estate, residue, share, devise or legacy for the infant and may execute such assurance or take such other action as may be necessary for vesting such estate, residue, share, devise or legacy, as the case may be, in the trustees so appointed. One of the persons so appointed may be a trust corporation.
- (2) On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of the property vested in the trustees so appointed,^{F4} . . .
- (3) Where an infant becomes entitled to any estate or interest in land under an intestacy and by reason of the intestacy there is no instrument under which the estate or interest of the infant arises or is acquired, a settlement shall be deemed for the purposes of the Settled Land Acts, 1882 to 1890, to have been made by the intestate or by the person whose interest the infant has acquired and, if there are more than one personal representative, the personal representatives, or, where trustees of that land have been appointed by the personal representatives under this section, those trustees, shall for the purposes aforesaid be deemed to be the trustees of that settlement.
- (4) Personal representatives or any trustees appointed by them under this section shall be deemed to be trustees for the purposes of sections forty-two and forty-three of the Conveyancing and Law of Property Act, 1881 .
- (5) ^{F5} Without prejudice to their powers under the said sections forty-two and forty-three, personal representatives or trustees appointed by them under this section may at any time or times, with the sanction of the court, pay or apply the capital of any estate, residue or share therein or any legacy or devise to which an infant is entitled under the will or on the intestacy of a deceased person for the advancement or benefit of the infant in such manner as the court may approve and the court may on any application made to it under this section order such capital or any part thereof to be lodged in court until the infant attains [^{F6} eighteen] or marries[^{F7}, or forms a civil partnership,] under that age.

F3 1969 c. 28 (NI)

F4 2001 c. 14 (NI)

F5 1980 NI 3

F6 1969 c. 28 (NI)

F7 2004 c.33

Changes to legislation: There are currently no known outstanding effects for the Administration of Estates Act (Northern Ireland) 1955, PART IV. (See end of Document for details)

39 Right to follow property in hands of beneficiary.

Property which has been transferred or appropriated by personal representatives to a person beneficially entitled thereto shall, so long as it remains vested in that person, or in any person claiming under him not being a purchaser in good faith and for value, continue to be liable to answer the debts of the deceased person as it would have been liable if it had remained vested in the personal representatives; and in the event of a sale or mortgage thereof in good faith and for value by such person beneficially entitled or by any person claiming under him not being a purchaser in good faith and for value, he shall continue to be personally liable for such debts to the extent to which such property was liable when vested in the personal representative, but not beyond the value thereof.

40 Powers to deal with estate, etc.

- (1) The personal representatives of a deceased owner of land may, in addition to any other powers conferred on them by this Act,—
 - (a) make such leases of the land as may be reasonably necessary for the due administration of the estate of the deceased owner; or
 - (b) with the consent of the beneficiaries, or with the approval of the court, make leases of the land for such term and on such conditions as the personal representatives may think proper; or
 - (c) [^{F8}Without prejudice to Article 28 or 30 of the Property (Northern Ireland) Order 1997] make, on such terms and conditions as the personal representatives may think proper, a sub fee farm grant of the land, or a sub-lease thereof with a nominal reversion, where such sub fee farm grant or sub-lease amounts in substance to a sale and the personal representatives have satisfied themselves that it is the most appropriate method of disposing of the land in the course of the administration of the estate;

and where personal representatives grant or lease any land pursuant to any power conferred on them by this sub-section they may sell any rent reserved on such grant or any reversion expectant upon the determination of any such lease.
- (2) Notwithstanding anything to the contrary contained in the [^{F9}Rent (Northern Ireland) Order 1978], or in the Business Tenancies (Temporary Provisions) Acts (Northern Ireland), 1952^{F10} and 1954^{F10}, the right of the personal representatives to obtain possession of any premises demised by them pursuant to the power conferred by paragraph (a) of sub-section (1) shall be exercisable as if those Acts had not been passed.
- (3) Where a sub fee farm grant or sub-lease is executed by personal representatives pursuant to the power conferred on them by paragraph (c) of sub-section (1) it shall, until the contrary is proved, be assumed that the power was properly exercised and the grantee or lessee (as the case may be) shall not be concerned to satisfy himself that this was so or to see to the application of any rent or other moneys payable by him. In this sub-section a reference to the grantee or the lessee shall include a reference to a person purchasing from, and to a successor in title of, the grantee or lessee.
- (4) The personal representatives of a deceased person may from time to time raise money by way of mortgage for the payment of debts, death duties or other taxes and, with the approval of all the beneficiaries being *sui juris* or 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 that deceased person.

Changes to legislation: There are currently no known outstanding effects for the Administration of Estates Act (Northern Ireland) 1955, PART IV. (See end of Document for details)

- (5) Where land is settled by will and there are no trustees of the settlement, the personal representatives proving the will shall for all purposes be deemed to be trustees of the settlement until trustees of the settlement are appointed but a sole personal representative shall not be deemed to be a trustee for the purposes of the Settled Land Acts, 1882 to 1890, until at least one other trustee is appointed.
- (6) 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.

Subs. (7)(8) rep. by 1969 c. 30 (NI)

- (9)^{F11} 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 he may reasonably deem sufficient;
 - (c) accept any composition or security for any debt or property claimed;
 - (d) allow time for payment of any debt; or
 - (e) compromise, compound, abandon, submit to arbitration, or otherwise settle, any debt, account, dispute, claim or other matter relating to the estate of that deceased;
 - (f) settle and fix reasonable terms of remuneration for any trust corporation appointed by him under section thirty-eight to act as trustee over any property and authorise such trust corporation to charge and retain such remuneration out of that property

and for any of those purposes may enter into such agreements or arrangements and execute such documents as seem to him expedient, without being personally responsible for any loss occasioned by any act or thing so done by him in good faith.

- (10) This section shall not prejudice or affect any powers conferred by will on personal representatives, and the powers conferred by this section on the personal representatives 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.

F8 1997 NI 8

F9 1978 NI 20

F10 1964 c. 36 (NI)

F11 1958 c. 23 (NI)

41 Time allowed for distribution.

- (1) The personal representatives of a deceased person shall distribute his estate as soon after his death as is reasonably practicable having regard to the nature of that estate, the manner in which it is required to be distributed and all other relevant circumstances, but proceedings against the personal representatives in respect of their failure to distribute shall not, without leave of the court, be brought before the expiration of one year from the date of the death of the deceased person.

Subs. (2) rep. by SLR 1976

Changes to legislation: *There are currently no known outstanding effects for the Administration of Estates Act (Northern Ireland) 1955, PART IV. (See end of Document for details)*

- (3) Nothing in this section shall prejudice or affect the rights of creditors of a deceased person to bring proceedings against his personal representatives before the expiration of one year from his death.

Changes to legislation:

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