Administration of Estates Act 1925

1925 CHAPTER 23 15 and 16 Geo 5

PART II

EXECUTORS AND ADMINISTRATORS

General Provisions

4 . . . . . [F1]

Textual Amendments

F1 Ss. 4, 10–14, 16, 18–20 repealed by Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 226, **Sch. 6**

5 Cesser of right of executor to prove.

Where a person appointed executor by a will—

(i) survives the testator but dies without having taken out probate of the will; or

(ii) is cited to take out probate of the will and does not appear to the citation; or

(iii) renounces probate of the will;

his rights in respect of the executorship shall wholly cease, and the representation to 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.

6 Withdrawal of renunciation.

(1) 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 previously 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.

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

7 Executor of executor represents original testator.

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

This provision 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.

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

(3) The chain of such representation is broken by—

(a) an intestacy; or

(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 administration if probate is subsequently granted.

(4) Every person in the chain of representation to 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.

Modifications etc. (not altering text)

C1 S. 7 excluded by Administration of Estates Act 1971 (c. 25), **s. 1(3)**

8 Right of proving executors to exercise powers.

(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 others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual 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 this Act.

[F2 9 Vesting of estate in Public Trustee where intestacy or lack of executors.

(1) Where a person dies intestate, his real and personal estate shall vest in the Public Trustee until the grant of administration.

(2) Where a testator dies and—

(a) at the time of his death there is no executor with power to obtain probate of the will, or

(b) at any time before probate of the will is granted there ceases to be any executor with power to obtain probate,

the real and personal estate of which he disposes by the will shall vest in the Public Trustee until the grant of representation.

(3) The vesting of real or personal estate in the Public Trustee by virtue of this section does not confer on him any beneficial interest in, or impose on him any duty, obligation or liability in respect of, the property.**]**

Textual Amendments

F2 S. 9 substituted (1.7.1995) by 1994 c. 36, **s. 14(1)** (with s. 20); S.I. 1995/1317, **art. 2**

Modifications etc. (not altering text)

C2 S. 9 restricted (1.7.1995) by 1974 c.39, **s. 176(7)** (as substituted (1.7.1995) by 1994 c. 36, s. 21(1), **Sch. 1 para. 6** (with s. 20); S.I. 1995/1317, **art. 2**)

C3 S. 9(1)(2) applied (1.7.1995) by 1994 c. 36, **s. 14(4)** (with s. 20); S.I. 1995/1317, **art. 2**

10—14. . . . . . [F3]

Textual Amendments

F3 Ss. 4, 10–14, 16, 18–20 repealed by Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 226, **Sch. 6**

15 Executor not to act while administration is in force.

Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to bring any action or otherwise act as 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.

16 . . . . . [F4]

Textual Amendments

F4 Ss. 4, 10–14, 16, 18–20 repealed by Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 226, **Sch. 6**

17 Continuance of legal proceedings after revocation of temporary administration.

[[F5](1) If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, that court may order that the proceeding be continued by or against the new personal

representative 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 that court directs.**]**

[[F5](2) The county court has jurisdiction under this section where the proceedings are pending in that court.**]**

Textual Amendments

F5 S. 17 renumbered as subsection (1) of that section and subsection (2) added by County Courts Act 1984 (c. 28, SIF 34), s. 148(1), **Sch. 2 Pt. III para. 11(1)(2)**

Modifications etc. (not altering text)

C4 Ss. 17(2), 38(4), 41(1A), 43(4) modified by County Courts Act 1984 (c. 28, SIF 34), **s. 24(2)**(*d*)

18—20. . . . . . [F6]

Textual Amendments

F6 Ss. 4, 10–14, 16, 18–20 repealed by Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), s. 226, **Sch. 6**

21 Rights and liabilities of administrator.

Every person to whom 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.

[[F7]21A Debtor who becomes creditor's executor by representation or administrator to account for debt to estate.

(1) Subject to subsection (2) of this section, where a debtor becomes his deceased creditor's executor by representation or administrator—

(a) his debt shall thereupon be extinguished; but

(b) he shall be accountable for the amount of the debt as part of the creditor's estate in any case where he would be so accountable if he had been appointed as an executor by the creditor's will.

(2) Subsection (1) of this section does not apply where the debtor's authority to act as executor or administrator is limited to part only of the creditor's estate which does not include the debt; and a debtor whose debt is extinguished by virtue of paragraph (*a*) shall not be accountable for its amount by virtue of paragraph (*b*) of that subsection in any case where the debt was barred by the Limitation Act 1939 before he became the creditor's executor or administrator.

(3) In this section "debt" includes any liability, and "debtor" and "creditor" shall be construed accordingly.**]**

Textual Amendments

F7 S. 21A added by Limitation Amendment Act 1980 (c. 24, SIF 79), **s. 10**

Modifications etc. (not altering text)

C5 S. 21A extended by Limitation Act 1980 (c. 58, SIF 79), s. 40(2), **Sch. 3 para. 2**

Special Provisions as to Settled Land

22 Special executors as respects settled land.

(1) A testator may appoint, and in default of such express appointment shall be deemed to have appointed, as his special executors in regard to settled land, the persons, if any, who are at his death the trustees of the settlement thereof, and probate may be granted to such trustees specially limited to the settled land.

In this subsection "settled land" means land vested in the testator which was settled previously to his death and not by his will.

(2) A testator may appoint other persons either with or without such trustees as aforesaid or any of them to be his general executors in regard to his other property and assets.

Modifications etc. (not altering text)

C6 S. 22 applied by Chevening Estate Act 1959 (c. 49), **s. 1(4)**

23 Provisions where, as respects settled land, representation is not granted to the trustees of the settlement.

(1) Where settled land becomes vested in a personal representative, not being a trustee of the settlement, upon trust to convey the land to or assent to the vesting thereof in the tenant for life or statutory owner in order to give effect to a settlement created before the death of the deceased and not by his will, or would, on the grant of representation to him, have become so vested, such representative may—

(a) before representation has been granted, renounce his office in regard only to such settled land without renouncing it in regard to other property;

(b) after representation has been granted, apply to the court for revocation of the grant in regard to the settled land without applying in regard to other property.

(2) Whether such renunciation or revocation is made or not, the trustees of the settlement, or any person beneficially interested thereunder, may apply to the High Court for an order appointing a special or additional personal representative in respect of the settled land, and a special or additional personal representative, if and when appointed under the order, shall be in the same position as if representation had originally been granted to him alone in place of the original personal representative, if any, or to him jointly with the original personal representative, as the case may be, limited to the settled land, but without prejudice to the previous acts and dealings, if any, of the personal representative originally constituted or the effect of notices given to such personal representative.

(3) The court may make such order as aforesaid subject to such security, if any, being given by or on behalf of the special or additional personal representative, as the court may direct, and shall, unless the court considers that special considerations apply, appoint such persons as may be necessary to secure that the persons to act as representatives in respect of the settled land shall, if willing to act, be the same persons as are the trustees of the settlement, and an office copy of the order when made shall be furnished to the **[**[F8]principal registry of the Family Division of the High Court**]** for entry, and a memorandum of the order shall be endorsed on the probate or administration.

(4) The person applying for the appointment of a special or additional personal representative shall give notice of the application to the **[**[F8]principal registry of the Family Division of the High Court**]** in the manner prescribed.

(5) Rules of court may be made for prescribing for all matters required for giving effect to the provisions of this section, and in particular—

(a) for notice of any application being given to the proper officer;

(b) for production of orders, probates, and administration to the registry;

(c) for the endorsement on a probate or administration of a memorandum of an order, subject or not to any exceptions;

(d) for the manner in which the costs are to be borne;

(e) for protecting purchasers and trustees and other persons in a fiduciary position, dealing in good faith with or giving notices to a personal representative before notice of any order has been endorsed on the probate or administration or a pending action has been registered in respect of the proceedings.

Textual Amendments

F8 Words substituted by Administration of Justice Act 1970 (c. 31), s. 1(6), **Sch. 2**

24 Power for special personal representatives to dispose of settled land.

(1) The special personal representatives may dispose of the settled land without the concurrence of the general personal representatives, who may likewise dispose of the other property and assets of the deceased without the concurrence of the special personal representatives.

(2) In this section the expression "special personal representatives" means the representatives appointed to act for the purposes of settled land and includes any original personal representative who is to act with an additional personal representative for those purposes.

Duties, Rights, and Obligations

[[F9]25 Duty of personal representatives.

The personal representative of a deceased person shall be under a duty to—

(a) collect and get in the real and personal estate of the deceased and administer it according to law;

(b) when required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court;

(c) when required to do so by the High Court, deliver up the grant of probate or administration to that court.**]**

Textual Amendments

F9 S. 25 substituted by Administration of Estates Act 1971 (c. 25), **s. 9**

Modifications etc. (not altering text)

C7 S. 25(a)(b) applied by Administration of Estates Act 1971 (c. 25), **s. 11(2)**

C8 S. 25(c) excluded by Administration of Estates Act 1971 (c. 25), **s. 1(5)**

26 Rights of action by and against personal representative.

(1) F10

(2) F10

F11(3) . . . . . .

[F12(4) To recover rent due or accruing to the deceased, a personal representative may exercise any power under section 72(1) (commercial rent arrears recovery) or 81 (right to rent from sub-tenant) of the Tribunals, Courts and Enforcement Act 2007 that would have been exercisable by the deceased if he had still been living.**]**

(5) F10

(6) F10

Textual Amendments

F10 S. 26(1)(2)(5)(6) repealed by Law Reform (Miscellaneous Provisions) Act 1934 (c. 41), **s. 1(7)**

F11 S. 26(3) omitted (6.4.2014) by virtue of Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 14 para. 28(2), **23 Pt. 4** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F12 S. 26(4) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 14 para. 28(3)** (with s. 89); S.I. 2014/768, art. 2(1)(b)

27 Protection of persons acting on probate or administration.

(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.

(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 made.

28 Liability of person fraudulently obtaining or retaining estate of deceased.

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.

29 Liability of estate of personal representative.

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.

30 Provisions applicable where administration granted to nominee of the Crown.

(1) Where the administration of the real and personal estate of any deceased person is granted to a nominee of the Crown (whether the Treasury Solicitor, or a person nominated by the Treasury Solicitor, or any other person), any legal proceeding by or against that nominee for the recovery of the real or personal estate, or any part of share thereof, shall be of the same character, and be instituted and carried on in the same manner, and be subject to the same rules of law and equity (including, except as otherwise provided by this Act, the rules of limitation under the statutes of limitation or otherwise), in all respects as if the administration had been granted to such nominee as one of the persons interested under this Act in the estate of the deceased.

(2) An information or other proceeding on the part of His Majesty shall not be filed or instituted, and a petition of right shall not be presented, in respect of the real or personal estate of any deceased person or any part or share thereof, or any claim thereon, except . . . [F13] subject to the same rules of law and equity within and subject to which a proceeding for the like purposes might be instituted by or against a subject.

(3) The Treasury Solicitor shall not be required, when applying for or obtaining administration of the estate of a deceased person for the use or benefit of His Majesty, to deliver, nor shall . . . [F14] the High Court or the Commissioners of Inland Revenue be entitled to receive in connexion with any such application or grant of administration, any affidavit, statutory declaration, account, certificate, or other statement verified on oath; but the Treasury Solicitor shall deliver and the said Division and Commissioners respectively shall accept, in lieu thereof, an account or particulars of the estate of the deceased signed by or on behalf of the Treasury Solicitor.

(4) References in sections two, four, . . . [F15] and seven of the [M1]Treasury Solicitor Act, 1876, and in subsection (3) of section three of the [M2]Duchy of Lancaster Act, 1920, to "personal estate" shall include real estate.

Textual Amendments

F13 Words repealed by Limitation Act 1939 (c. 21), **Sch.**

F14 Words repealed by Administration of Justice Act 1970 (c. 31), **Sch. 11**

F15 Word repealed by Statute Law (Repeals) Act 1981 (c. 19), s. 1(1), **Sch. 1 Pt. I**

Marginal Citations

M1 1876 c. 18.

M2 1920 c. 51.

31 Power to make rules.

Provision may be made by rules of court for giving effect to the provisions of this Part of this Act so far as 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.

Changes to legislation:
There are currently no known outstanding effects for the Administration of Estates Act 1925, Part II.