SCHEDULES

SECOND SCHEDULE

Section 5.

RIGHTS OF SURVIVING SPOUSE [F1OR CIVIL PARTNER]AS RESPECTS THE MATRIMONIAL [F1OR CIVIL PARTNERSHIP]HOME

Textual Amendments

F1 Words in Sch. 2 heading inserted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 13(4)(b)**; S.I. 2005/3175, Sch. 1

1 (1) Subject to the provisions of this Schedule, where the residuary estate of the intestate comprises an interest in a dwelling-house in which the surviving **[**F2husband or wife**][**F2spouse or civil partner**]** was resident at the time of the intestate's death, the surviving **[**F2husband or wife**][**F2spouse or civil partner**]** may require the personal representative, in exercise of the power conferred by section forty-one of the principal Act (and with due regard to the requirements of that section as to valuation) to appropriate the said interest in the dwelling-house in or towards satisfaction of any absolute interest of the surviving **[**F2husband or wife**][**F2spouse or civil partner**]** in the real and personal estate of the intestate.

(2) The right conferred by this paragraph shall not be exercisable where the interest is—

(a) a tenancy which at the date of the death of the intestate was a tenancy which would determine within the period of two years from that date; or

(b) a tenancy which the landlord by notice given after that date could determine within the remainder of that period.

(3) Nothing in subsection (5) of section forty-one of the principal Act (which requires the personal representative, in making an appropriation to any person under that section, to have regard to the rights of others) shall prevent the personal representative from giving effect to the right conferred by this paragraph.

(4) **[**F3The reference in this paragraph to an absolute interest in the real and personal estate of the intestate includes a reference to the capital value of a life interest which the surviving **[**F2husband or wife**][**F2spouse or civil partner**]** has under this Act elected to have redeemed.**]**

(5) Where part of a building was, at the date of the death of the intestate, occupied as a separate dwelling, that dwelling shall for the purposes of this Schedule be treated as a dwelling-house.

Textual Amendments

F2 Words in Sch. 2 substituted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 13(2)**; S.I. 2005/3175, Sch. 1

F3 Sch. 2 para. 1(4) omitted (E.W.) (1.10.2014) by virtue of Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 4 para. 2(2)** (with s. 12(4)); S.I. 2014/2039, art. 2

Modifications etc. (not altering text)

C1 Para. 1(2) excluded by Leasehold Reform Act 1967 (c. 88), **s. 7(8)**

2 Where—

(a) the dwelling-house forms part of a building and an interest in the whole of the building is comprised in the residuary estate; or

(b) the dwelling-house is held with agricultural land and an interest in the agricultural land is comprised in the residuary estate; or

(c) the whole or a part of the dwelling-house was at the time of the intestate's death used as a hotel or lodging house; or

(d) a part of the dwelling-house was at the time of the intestate's death used for purposes other than domestic purposes,

the right conferred by paragraph 1 of this Schedule shall not be exercisable unless the court, on being satisfied that the exercise of that right is not likely to diminish the value of assets in the residuary estate (other than the said interest in the dwelling-house) or make them more difficult to dispose of, so orders.

3 (1) The right conferred by paragraph 1 of this Schedule—

(a) shall not be exercisable after the expiration of twelve months from the first taking out of representation with respect to the intestate's estate;

(b) shall not be exercisable after the death of the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]**;

(c) shall be exercisable, except where the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]** is the sole personal representative, by notifying the personal representative (or, where there are two or more personal representatives of whom one is the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]**, all of them except the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]**) in writing.

(2) A notification in writing under paragraph (c) of the foregoing sub-paragraph shall not be revocable except with the consent of the personal representative; but the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]** may require the personal representative to have the said interest in the dwelling-house valued in accordance with section forty-one of the principal Act and to inform him or her of the result of that valuation before he or she decides whether to exercise the right.

(3) **[**[F4]The court may extend the period of 12 months referred to in sub-paragraph (1)(a) if the surviving spouse or civil partner applies for it to be extended and satisfies the court that a period limited to 12 months would operate unfairly—

(a) in consequence of the representation first taken out being probate of a will subsequently revoked on the ground that the will was invalid, or

(b) in consequence of a question whether a person had an interest in the estate, or as to the nature of an interest in the estate, not having been determined at the time when representation was first taken out, or

(c) in consequence of some other circumstances affecting the administration or distribution of the estate.

(4) For the purposes of the construction of the references in this paragraph to the first taking out of representation, there shall be left out of account—

(a) a grant limited to settled land or to trust property,

(b) any other grant that does not permit any of the estate to be distributed,

(c) a grant limited to real estate or to personal estate, unless a grant limited to the remainder of the estate has previously been made or is made at the same time,

(d) a grant, or its equivalent, made outside the United Kingdom (but see sub-paragraph (5)).

(5) A grant sealed under section 2 of the Colonial Probates Act 1892 counts as a grant made in the United Kingdom for the purposes of sub-paragraph (4), but is to be taken as dated on the date of sealing.**]**

Textual Amendments

F2 Words in Sch. 2 substituted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 13(2)**; S.I. 2005/3175, Sch. 1

F4 Sch. 2 para 3(3)-(5) substituted (E.W.) (1.10.2014) for Sch. 2 para. 3(3) by Inheritance and Trustees' Powers Act 2014 (c. 16), s. 12(2), **Sch. 4 para. 2(3)** (with s. 12(4)); S.I. 2014/2039, art. 2

4 (1) During the period of twelve months mentioned in paragraph 3 of this Schedule the personal representative shall not without the written consent of the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]** sell or otherwise dispose of the said interest in the dwelling-house except in the course of administration owing to want of other assets.

(2) An application to the court under paragraph 2 of this Schedule may be made by the personal representative as well as by the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]**, and if, on an application under that paragraph, the court does not order that the right conferred by paragraph 1 of this Schedule shall be exercisable by the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]**, the court may authorise the personal representative to dispose of the said interest in the dwelling-house within the said period of twelve months.

(3) Where the court under sub-paragraph (3) of paragraph 3 of this Schedule extends the said period of twelve months, the court may direct that this paragraph shall apply in relation to the extended period as it applied in relation to the original period of twelve months.

(4) This paragraph shall not apply where the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]** is the sole personal representative or one of two or more personal representatives.

(5) Nothing in this paragraph shall confer any right on the surviving **[**[F2]husband or wife**][**[F2]spouse or civil partner**]** as against a purchaser from the personal representative.

Textual Amendments

F2 Words in Sch. 2 substituted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 13(2)**; S.I. 2005/3175, Sch. 1

5 (1) Where the surviving **[**[F2]husband or wife**]**[[F2]spouse or civil partner**]** is one of two or more personal representatives, the rule that a trustee may not be a purchaser of trust property shall not prevent the surviving **[**[F2]husband or wife**]**[[F2]spouse or civil partner**]** from purchasing out of the estate of the intestate an interest in a dwelling-house in which the surviving **[**[F2]husband or wife**]**[[F2]spouse or civil partner**]** was resident at the time of the intestate's death.

(2) The power of appropriation under section forty-one of the principal Act shall include power to appropriate an interest in a dwelling-house in which the surviving **[**[F2]husband or wife**]**[[F2]spouse or civil partner**]** was resident at the time of the intestate's death partly in satisfaction of an interest of the surviving **[**[F2]husband or wife**]**[[F2]spouse or civil partner**]** in the real and personal estate of the intestate and partly in return for a payment of money by the surviving **[**[F2]husband or wife**]**[[F2]spouse or civil partner**]** to the personal representative.

Textual Amendments

F2 Words in Sch. 2 substituted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 13(2)**; S.I. 2005/3175, Sch. 1

6 **[**[F5](1) Where the surviving spouse or civil partner lacks capacity (within the meaning of the Mental Capacity Act 2005) to make a requirement or give a consent under this Schedule, the requirement or consent may be made or given by a deputy appointed by the Court of Protection with power in that respect or, if no deputy has that power, by that court.**]**

(2) A requirement or consent made or given under this Schedule by a surviving **[**[F2]husband or wife**]**[[F2]spouse or civil partner**]** who is an infant shall be as valid and binding as it would be if he or she were of age; and, as respects an appropriation in pursuance of paragraph 1 of this Schedule, the provisions of section forty-one of the principal Act as to obtaining the consent of the infant's parent or guardian, or of the court on behalf of the infant, shall not apply.

Textual Amendments

F2 Words in Sch. 2 substituted (E.W.) (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(2), **Sch. 4 para. 13(2)**; S.I. 2005/3175, Sch. 1

F5 Sch. 2 para. 6(1) substituted (1.10.2007) by Mental Capacity Act 2005 (c. 9), s. 68(1), **Sch. 6 para. 8** (with ss. 27-29, 62); S.I. 2007/1897, art. 2(1)(d)

7 (1) Except where the context otherwise requires, references in this Schedule to a dwelling-house include references to any garden or portion of ground attached to and usually occupied with the dwelling-house or otherwise required for the amenity or convenience of the dwelling-house.

(2) This Schedule shall be construed as one with Part IV of the principal Act.

Changes to legislation:
There are currently no known outstanding effects for the Intestates' Estates Act 1952, SECOND SCHEDULE.