

**CAYMAN ISLANDS**



# **SUCCESSION ACT**

**(2021 Revision)**

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*Note (not forming part of this Act): This revision replaces the 2006 Revision which should now be discarded.*



## CAYMAN ISLANDS



## SUCCESSION ACT

(2021 Revision)

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## CAYMAN ISLANDS



## SUCCESSION ACT

(2021 Revision)

**Short title**

1. This Act may be cited as the *Succession Act (2021 Revision)*.

**Definitions**

2. In this Act —

“**administrative expenses**” do not, for the purpose of calculating any commission payable to a personal representative under section 6, include such commission;

“**British court in a foreign country**” means any British court having jurisdiction out of Her Majesty’s dominions in pursuance of an Order in Council, whether made under any Act or otherwise;

“**child**” or “**issue**” includes an individual —

- (a) who is the offspring of a party, or both parties, to a civil partnership; or
- (b) who has been treated by a party, or both parties, to a civil partnership as a child or issue of the family, including a stepchild, an adopted or foster child or a child born to parents who were not in a civil partnership;

“**civil partner**” has the meaning assigned by section 2 of the *Civil Partnership Act, 2020 [Law 35 of 2020]*;

“**civil partnership**” has the meaning assigned by section 2 of the *Civil Partnership Act, 2020 [Law 35 of 2020]*;

“**Court**” means the Grand Court and includes a judge of that Court;

“**Court of Probate**” means any court or authority, by whatever name designated, having jurisdiction in matters of probate;

“**Her Majesty’s dominions**” includes any British Protectorate or protected state and any territory in respect of which a mandate on behalf of the United Nations has been accepted by Her Majesty;

“**intestate**” includes a person who leaves a will but dies intestate as to some beneficial interest in that person’s real or personal estate;

“**land**” includes all hereditaments corporeal and incorporeal;

“**net value**” in relation to a deceased estate means, in respect of a person dying wholly intestate, the value of the residuary estate and, in respect of any other deceased person, an amount equivalent to what would have been the residuary estate had such person died intestate less all pecuniary legacies and all specific devises and bequests as valued for the purpose of the winding up of such estate;

“**next-of-kin**”, in relation to a person, includes the person’s civil partner;

“**parent**” includes a person who is a parent of a child or issue by virtue of a civil partnership;

“**personal chattels**” means vehicles, animals and accessories (not kept or used for business purposes), garden tools and furniture, plate, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business purposes, nor money nor securities for money;

“**personal representative**” means an executor or administrator who has obtained probate or letters of administration;

“**prescribed**” means prescribed by any rule or by this Act;

“**probate**” and “**letters of administration**” include confirmation in Scotland, and any instrument having in any part of Her Majesty’s dominions or in any foreign country the same effect which under English law is given to probate and letters of administration respectively;

“**recorded**” means recorded in the public records of the Islands;

“**registered land**” means land registered under the *Registered Land Act (2018 Revision)* or any other law under which land may officially be registered;

“**residuary estate**” with respect to an intestate means every beneficial interest (including rights of entry or in reversion) of the intestate in real and personal estate after payment of all funeral and administration expenses, debts and other liabilities as are properly payable thereout, which (otherwise than in right of a power of appointment) the intestate could, if of full age and capacity, have disposed of by will;

“**relative**”, in relation to a person, includes the person’s civil partner; and



“rules” mean Rules of Court.

### **Grant of probate and letters of administration and the effect thereof**

3. (1) No person acting otherwise than as an agent of necessity shall take possession of or in any manner administer any part of the estate of a deceased person unless that person has first obtained from the Court a grant of probate of the will or letters of administration of the estate of such deceased person.
- (2) No grant of probate or letters of administration shall be made to a person who has not attained the age of eighteen years.
- (3) No grant of probate or letters of administration in respect of an estate of a deceased person shall be granted to more than four persons jointly.
- (4) A grant of probate of the will of a deceased person shall be deemed to take effect from the time of the death of such person.
- (5) A grant of letters of administration of the estate of a deceased person shall take effect from the time of the grant.
- (6) A person who has been named in the will of a deceased person as an executor and who has not attained the age of eighteen years at the time of the death of such deceased person may, on attaining the age of eighteen years, apply for a grant of probate of the said will and such grant shall take effect from the date thereof.
- (7) Applications to the Court for grants of probate or letters of administration shall be made in the manner prescribed.
- (8) Where a deceased person has left a will in which no executor is named the Court shall make a grant of letters of administration with the will annexed.

### **Time for obtaining probate, etc.**

4. In the absence of special leave of the Court, probate of the will or letters of administration of the estate of a deceased person must be obtained within six months of the death or within two months of the termination of any dispute touching the right to such probate or letters of administration.

### **One year to administer an estate**

5. Personal representatives shall have one year within which to realise and administer an estate.

### **Commission to be paid to personal representatives**

6. A personal representative shall be entitled to, or if there are two or more personal representatives shall be entitled to share equally, a commission on the net value of the estate, in the following scale —

For the first \$100,000 net value 3 per cent

For the next \$100,000 net value 2 per cent

For the balance 1 per cent

Subject to a minimum commission of \$300:

Provided however that, where a testator has by that testator's will directed that the testator's executor shall be paid for the executor's services or has made a devise or bequest to the testator's executor in *lieu* of the executor being paid for the executor's services, such executor shall not be entitled to claim any commission under this section unless the executor shall file a renunciation of the executor's claim under the will within ten days of the grant of probate or letters of administration and elects to be paid the commission allowed by this section in *lieu* thereof.

### **Accounts must be filed**

7. Every personal representative shall, within one year after the grant of probate or letters of administration, file in the office of the Clerk of the Court, accounts, showing the receipts and distributions of the testator's or intestate's estate, duly supported by affidavit, and such accounts shall be open to the inspection of persons beneficially interested.

### **Removal of personal representative**

8. The Court may, on the petition of any beneficially interested person, remove any personal representative found responsible for neglect or misconduct in the management or administration of the estate and may appoint another suitable person in that person's place.

### **Retirement and substitution of personal representative**

9. The Court may grant leave to a personal representative to retire, upon the passing of the personal representative's accounts, and on such terms as the Court may think fit. The Court may by such order or upon the death or incapacity of a personal representative appoint a suitable person to administer the estate of the deceased in the place of such personal representative permitted to retire or who has become incapacitated or who has died.

### **Application in chambers**

10. Applications for removal or the substitution of a personal representative may be made by chamber summons.

### **Former rules to apply *pro tem***

11. Until such time as further provision is made, the rules, forms and practices in force and used in the Court immediately before the commencement of this Act shall continue to be used by the Court in the exercise of its jurisdiction in respect of the probate of wills and the administration of the estates of persons dying domiciled or leaving property in the Islands.





**Procedure as to grant of administration**

- 12.** (1) The Clerk of the Court shall, immediately after any application made to the Court for administration of the estate of any deceased person, cause notice thereof, with the several particulars which may from time to time be required by the rules, to be publicly posted in the Court House for three consecutive weeks; and no administration shall be granted by the Court until the expiration of twenty-one days from the day of the application for the grant, nor, unless the same is unopposed, shall administration be granted except upon the judgment of the Court:

Provided that, and it is hereby declared that, unless the Court so orders, this section does not apply to an application to the Court for a grant of probate (as opposed to letters of administration) nor to an application for the sealing by the Court of a probate or letters of administration granted by a court outside the Islands.

- (2) The Court shall, in granting letters of administration, have regard to the rights and interests in the estate of the persons making application therefor and the rules shall provide guidance as to priorities.

**Solemn form**

- 13.** When proceedings are taken for the proving of a will in solemn form, or for revoking the probate of any will on the ground of the invalidity thereof, the party taking such proceedings shall bring an action commenced by writ of summons and thereupon a summons shall issue to the next-of-kin and any persons pretending interest in the estate.

**Caveat procedure**

- 14.** Caveats against the grant of probate or administration by the Court may be lodged in the office of the Clerk of the Court.

**Procedure of judgments**

- 15.** On judgment being given by the Court in any contentious case for the grant or revocation of probate or letters of administration the Court shall thereupon grant probate or letters of administration to the party or parties in whose favour such judgment has been given, in accordance with such judgment, or as the case may require, and thereupon any probate or letters of administration theretofore granted shall be revoked or varied according to the effect of such judgment.

**Time for returning inventory**

- 16.** The Court shall fix the period within which any person obtaining probate or letters of administration of the estate of any deceased person shall be required to return the inventory of the estate and effects of the testator or intestate, and shall have power to extend such time if need be.

**Evidence by affidavit receivable**

17. It shall be lawful for the Court, on application being made to it for probate of any will or for letters of administration, to receive evidence by affidavit of the due execution of the will, and of all matters and things required to be proved in support of such application; and it shall be sufficient in all cases where an oath is required to be taken that such oath shall be in writing and sworn before a Justice of the Peace and filed in the Court:

Provided that in cases where letters of administration are applied for by any person in the character of a creditor of the deceased, such person shall appear personally in the Court, and shall be required to give strict proof of the several matters relied on that person in support of that person's application.

**Records of wills and grants**

18. The Clerk of the Court shall cause true copies of all original wills of which probate or letters of administration with the will annexed have been granted by the Court to be kept in a book kept in the Court office and shall carefully compare the same with the original will and shall thereafter transmit the original will, with such particulars of the grant of probate or letters of administration thereof as may be required by the rules, to the Public Recorder to be recorded and kept by the Public Recorder in the Public Recorder's office:

Provided that when any probate or letters of administration granted as aforesaid is revoked, either by the Court or by the Court of Appeal, the Clerk of the Court shall cancel the aforesaid entry in such way as may be prescribed and shall transmit to the Public Recorder a certificate under the hand and seal of the court of the revocation of the said probate or letters of administration and the Public Recorder shall, on receipt of such certificate, cancel the entry and record of such will in such way as may be prescribed.

**Administration bond**

19. Every person to whom any grant of administration is made shall give a bond to Her Majesty, with one or more surety or sureties, conditioned for duly collecting, getting in and administering the estate of the deceased, and such bond shall be in a penalty of double the amount of the sworn value of the estate and effects of the deceased unless the court in any case thinks fit to direct the same to be reduced, and such bond may also limit the liability of any surety to such amount as the Court shall think reasonable.



**Protection of persons acting *bona fide* as personal representatives**

20. When any probate or letters of administration granted under this Act is revoked, all payments made *bona fide* to any personal representatives under such grant before the revocation thereof shall be a legal discharge to the person making the same; and the personal representative who has acted under such revoked probate or administration may reimburse themselves in respect of any payments made by that personal representation which the person to whom probate or letters of administration is afterwards granted might lawfully have made.

**Office copies**

21. The copy of any will of which probate or letters of administration with the will annexed has been granted by or sealed by the Court, attested as a true copy by the Clerk of the Court having the custody of the same, and under the seal of the Court, or a copy of any such will proved in the Court, certified under the hand and seal of the Public Recorder to be a true copy of such will shall, so long as such probate or letters of administration is unrevoked, be received as conclusive evidence of the validity and contents of such will.

**Costs**

22. The Court and the Court of Appeal have power to award costs and enforce the payment thereof, either out of the estate in controversy or against any litigant before such court by virtue of this Act.

**Sealing probates and letters of administration granted outside the Islands**

23. (1) Where a court of probate in any part of Her Majesty's dominions, or in any foreign country, or a British court in a foreign country, has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to and a copy thereof deposited with the Court, be sealed with the seal of the Court, and thereupon shall be of the like force and effect and have the same operation in the Islands as if granted by the Court.
- (2) For the purposes of this Act, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

**Security for payment of debts**

24. The Court acting under section 23 may, if it thinks fit, on the application of any interested person, require, before sealing, that adequate security be given for the payment of debts due from the estate to public or private creditors residing in the Islands.

**Devolution of real estate to personal representatives**

25. (1) Where real estate is vested in any person, without a right in any other person to take by survivorship, it shall, on that person's death, notwithstanding any testamentary disposition, devolve to and become vested in that person's personal representatives or representative from time to time, in the same manner as personalty vesting in them or him.
- (2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.
- (3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

**Vesting of estate of intestate between death and grant of administration**

26. When a person dies intestate that person's estate, until administration is granted in respect thereof, shall vest in a Judge of the Grand Court.

**Personal representatives to hold real estate on the same trusts as personalty**

27. Subject to this Act, the personal representatives shall hold the real estate of the deceased as trustees for the person by law beneficially entitled thereto and subject to the same liabilities for debt, costs and expenses and with the same incidents, including powers of appropriation as if it were personalty, save that it shall not be lawful for some or only one of several joint representatives, without the authority of the Court, to sell or transfer real estate.

**Assent, etc., by personal representatives**

28. (1) Personal representatives may at any time assent in writing to any devise contained in the will of the deceased person, or may convey the land to any person entitled thereto as heir, devisee or otherwise, and may make the assent or conveyance, subject or not to any charge which the personal representatives are liable to pay, and on such assent or conveyance, all liabilities of the personal representatives in respect of the land shall cease except as to any acts done by them before such assent or conveyance.
- (2) At any time after the expiration of one year from the death of the owner of any land, if that owner's personal representatives have failed on the request in writing of the person entitled to the land to convey the land to that person, the Court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made or, in the case of registered land, that the person so entitled be registered as the proprietor of the land either solely, or jointly with the personal representatives.
- (3) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the



Registrar of Lands to register the person named in the assent as proprietor of the land.

### **Succession to real and personal estate on intestacy**

- 29.** (1) The residuary estate of an intestate, not being an entailed interest, shall be distributed in the manner or held on the trusts mentioned in this section namely —
- (a) if the intestate leaves a husband, wife or civil partner and issue, the surviving spouse or civil partner shall take the personal chattels absolutely, and in addition the residuary estate of the intestate (other than personal chattels) shall stand charged with the payment of a net sum of twenty thousand dollars or a sum equal to fifty per centum of the net value of the estate (which ever may be the greater), to the surviving spouse or civil partner with interest thereon from the date of death at the rate of five per centum per annum until paid or appropriated, and subject to providing for such sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held upon trust on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the lifetime of the surviving spouse or civil partner, then upon trust for the surviving spouse or civil partner for the residue of that person's life;
  - (b) if the intestate leaves a husband, wife or civil partner but no issue, the surviving spouse or civil partner shall take the personal chattels absolutely and the residuary estate of the intestate shall be held —
    - (i) if the intestate leaves a surviving parent or parents, as to twenty-five per centum for each parent or parents (as the case may be) absolutely and as to seventy-five per centum for the surviving spouse or civil partner absolutely; or
    - (ii) if the intestate leaves no surviving parent or parents, for the surviving spouse or civil partner absolutely;
  - (c) if the intestate leaves issue but no husband, wife or civil partner, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;
  - (d) if the intestate leaves no issue but both parents, then, subject to the interest of the surviving spouse or civil partner, the residuary estate of the intestate shall be held in trust for the parents in equal shares absolutely;
  - (e) if the intestate leaves no issue but one parent, then, subject to the interest of a surviving spouse or civil partner, the residuary estate of the intestate shall be held in trust for such parent absolutely;
  - (f) if the intestate leaves no issue or parent, then, subject to the interests of the surviving spouse or civil partner, the residuary estate of the intestate shall

be held in trust for the following persons surviving the intestate, and in the following order and manner —

- (i) on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then
  - (ii) on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then
  - (iii) for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then
  - (iv) on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no such person takes an absolutely vested interest under such trusts; then
  - (v) on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then
  - (vi) for the surviving spouse or civil partner of the intestate absolutely; and
- (g) in default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown as *bona vacantia*, and in lieu of any right of escheat:

Provided that the Crown may, out of the whole or any part of the property devolving on the Crown as aforesaid provide, in accordance with existing practice, for the dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

- (2) A husband, wife or the parties to a civil partnership shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.
- (3) Where the intestate and the intestate's husband, wife or civil partner have died in circumstances rendering it uncertain which of them survived the other and the intestate's husband, wife or civil partner is by virtue of section 36 deemed to have survived the intestate, this section shall, nevertheless, have effect as respects the intestate as if the husband, wife or civil partner had not survived the intestate.



**Statutory trusts**

- 30.** (1) Where, by this Act, the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts —
- (a) in trust in equal shares if more than one, for all or any of the children or child of the intestate, surviving the intestate, who attain the age of eighteen years or marry or enter into a civil partnership under that age, and for all or any of the issue surviving the intestate who attain the age of eighteen years or marry or enter into a civil partnership under that age of any child of the intestate who predeceases that intestate, such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;
  - (b) the statutory provisions which relate to maintenance and accumulation of surplus income shall apply, but where a person under the age of eighteen years marries or enters into a civil partnership, such person shall be entitled to give valid receipts for the income of that person's share or interest;
  - (c) where the property held on the statutory trusts for issue is divided into shares, then any money or property which, by way of advancement or on the marriage or the entering into a civil partnership of a child of the intestate has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives; and
  - (d) the personal representatives may permit any child under the age of eighteen years contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss.
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest —
- (a) the residuary estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as has not been paid or applied under any power affecting the same, shall go, devolve

and be held under this Act as if the intestate had died without leaving issue surviving the intestate;

- (b) references to the intestate “**leaving no issue**” shall for the purpose of this section and section 29 be construed as “leaving no issue who attain an absolutely vested interest”; and
  - (c) references in this section and section 29 to the intestate “**leaving issue**” shall be construed as “leaving issue who attain an absolutely vested interest”.
- (3) Where under this Act the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than the aforesaid) were repeated with the substitution of references to the members or member of the class for references to the children or child of the intestate.

### Incidence of statutory trusts

31. (1) For the purposes of this Act, the residuary estate of an intestate, or any part thereof, directed to be held upon the “statutory trusts” shall be held upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale, after payment of insurance, repairs and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land.
- (2) Where —
- (a) an undivided share was subject to a settlement;
  - (b) the settlement remains subsisting in respect of other property; and
  - (c) the trustees thereof are not the same persons as the trustees for sale,
- then the statutory trusts include a trust for the trustees for sale to pay the proper proportion of the net proceeds of sale or other capital money attributable to the share to the trustees of the settlement to be held by them as capital money arising under the *Settled Land Act (1998 Revision)*.





**Powers in respect of interest of surviving spouse or civil partner**

- 32.** (1) Where a surviving spouse or civil partner is entitled to a life interest in the residuary estate or any part thereof, the personal representative may, either with the consent of such tenant for life (not being also the sole personal representative) or, where the tenant for life is the sole personal representative, with the leave of the Court, purchase or redeem such life interest (while it is in possession) by paying the capital value thereof (reckoned according to tables selected by the personal representative) to the tenant for life or the persons deriving title under the tenant for life and the costs of the transaction, and thereupon the residuary estate of the intestate may be dealt with or distributed free from the life interest.
- (2) The personal representative may raise —
- (a) the net sum arrived at in accordance with paragraph (a) of section 29(1) or any part thereof and the interest thereon payable to the surviving spouse or civil partner of the intestate on the security of the whole or any part of the residuary estate of the intestate (other than the personal chattels), so far as that estate may be sufficient for the purpose or the said sum and interest may not have been satisfied by the appropriation under the statutory power available in that behalf; and
  - (b) in like manner the capital sum, if any, required for the purchase or redemption of the life interest of the surviving spouse or civil partner of the intestate, or any part thereof not satisfied by the application for the purpose of any part of the residuary estate of the intestate,
- and in either case the amount, if any, properly required for the payment of the cost of the transaction.

**Application to cases of partial intestacy**

- 33.** Where any person dies leaving a will effectively disposing of part of that person's property, sections 29, 30, 31 and 32 shall have effect as respects the part of that person's property not so disposed of subject to the provisions contained in the will and subject to the following modifications —
- (a) the requirement as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by other persons; and
  - (b) the personal representative shall, subject to that personal representative's rights and powers for the purpose of administration, be a trustee for the persons entitled to the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.

### Construction of documents

34. Where any will or instrument *inter vivos* coming into effect after the 1st day of October, 1976 makes reference to a statute or law affecting distribution of a deceased's estate it shall be construed as a reference to this Act and any such reference to statutory next-of-kin shall, unless the context otherwise requires, be construed as referring to the persons who would take beneficially on an intestacy under this Act.

### Succession of an equitable interest in fee simple vested in a person under the age of eighteen years

35. Where a person under the age of eighteen years dies without having been married or a party to a civil partnership, and independently of this section that person would, at that person's death, have been equitably entitled under a settlement (including a will) to a vested interest estate in fee simple, such infant shall be deemed to have had an entailed interest and the settlement shall be construed accordingly.

### Presumption of survivorship

36. (1) In all cases where, on or after the 23rd March, 2006, the commencement date of the *Succession (Amendment) Act, 2006 [Law 2 of 2006]*, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall for all purposes affecting the title of property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.
- (2) In subsection (1) —  
“**property**” includes any chose in action, and any interest in real or personal property.

### Payment of charges on property of deceased

37. (1) Where a person dies possessed of, or entitled to, or, under a general power of appointment by that person's will disposes of, an interest in property, which at the time of that person's death is charged with the payment of money, whether by way of legal mortgage, equitable or other 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 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 that person's personal estate, or that person's residuary, real and personal estate, or that person's residuary real estate; or



- (b) by a charge of debts upon 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.

### **Appropriation**

- 38.** (1) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in that person's residuary estate, or, if the person is under a disability, then with the consent of that person's guardian or trustee, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions, the whole or any part of the property of the deceased person, in such manner as they think fit:

Provided that before such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon, within the prescribed time, apply to the Court and such valuation and appropriation shall be conclusive, save as otherwise directed by the Court.

- (2) In the case of registered land, the production of the prescribed evidence of an appropriation under this section, shall authorise the Registrar to register the person to whom the property is appropriated as proprietor of the land.

### **Priority of specialty debts abolished**

- 39.** In the administration of the estate of any person no debt or liability of such person shall be entitled to priority or preference by reason merely that the same is secured by or arises under a bond, deed or other instrument under seal, or is otherwise made or constituted a specialty debt; but all creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such person, whether such assets are legal or equitable, any statute or other law notwithstanding:

Provided that this section shall not prejudice or affect any lien, charge or other security which any creditor may hold or be entitled to for the payment of that person's debt.

### **Insolvent estates**

40. Where the estate of any deceased person proves to be insufficient for the payment in full of that person's debts and liabilities, the same rules shall be applied by the Court as to the respective rights of secured and unsecured creditors and as to the valuation of annuities and future and contingent liabilities respectively as are in force under the law of bankruptcy with respect to the estates of persons adjudged bankrupt and the assets of such estate shall be administered and distributed accordingly.

### **Removal of doubt**

41. For the removal of doubt, it is hereby declared that subject to this Act and to any effective provision of any will, a personal representative has the powers and liabilities of a trustee under the *Trusts Act (2021 Revision)* with reference to the estate administered by the personal representatives and the beneficiaries thereof.

### **English practice, when it applies**

42. (1) In any matter of practice for which no provision is made by this or any other law or by any rules or other regulations made thereunder, the law and practice in similar matters of the Supreme Court of Judicature in England as nearly as may be applies, so far as local circumstances permit and subject to any directions which the Court may give in any particular matter.
- (2) If any difficulty arises in respect of the operation or extent of subsection (1), the Court may give directions, either with respect to a particular matter or generally, as to the procedure to be followed for the removal of such difficulty.

### **Penal**

43. Whoever acting as executor or administrator under this Act is guilty of an offence hereunder may be ordered by the Court to forfeit any commission due to that person from any estate and to pay a fine of one thousand dollars and to make such restoration to the estate as the Court may deem appropriate in addition to any liability which that person may incur under any other law.

### **Rules of Court**

44. The powers conferred upon the Rules Committee by section 19 of the *Grand Court Act (2015 Revision)* are extended to enable the said Rules Committee to make rules under this Act —
- (a) for the purpose of prescribing anything required to be prescribed under this Act;
  - (b) for the better administration of this Act;
  - (c) for prescribing Court forms to be used for the purpose of compliance with this Act;



- (d) subject to the approval of the Cabinet, for prescribing scales of Court fees and legal practitioners' fees in matters connected with the administration of this Act; and
- (e) for the winding up of deceased estates of a value of two thousand dollars or less by which certain formalities, otherwise required by this Act, may be dispensed with.

### **Savings and transitional**

- 45.** (1) Every matter affecting the title of property that was commenced under the former Law and partly dealt with by a court on or before 23rd March, 2006, the commencement date of the *Succession (Amendment) Act, 2006 [Law 2 of 2006]*, is to be continued and dealt with in all respects as if the *Succession (Amendment) Act, 2006 [Law 2 of 2006]* had not come into force.
- (2) Every matter affecting the title of property that was commenced under the former Law and not wholly or partly dealt with by a court on or before 23rd March, 2006, the commencement date of the *Succession (Amendment) Act, 2006 [Law 2 of 2006]*, is to be taken to be a matter commenced under the *Succession (Amendment) Act, 2006 [Law 2 of 2006]* and the provisions of the *Succession (Amendment) Act, 2006 [Law 2 of 2006]* are to apply accordingly.
- (3) In this section —
- “**court**” means any court of the Islands of competent jurisdiction; and
- “**former Law**” means the *Succession Act (2004 Revision)*.

**Publication in consolidated and revised form authorised by the Cabinet this 5th day of January, 2021.**

**Kim Bullings**  
*Clerk of Cabinet*





## ENDNOTES

### Table of Legislation history:

SL #	Law #	Legislation	Commencement	Gazette
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
	45/2020	Succession (Amendment) Law, 2020	4-Sep-2020	LG64/2020/s11
	35/2020	Civil Partnership Law, 2020	4-Sep-2020	LG64/2020/s1
		<b>Succession Law (2006 Revision)</b>	7-Aug-2006	G16/2006/s4
	2/2006	Succession (Amendment) Law, 2006	23-Mar-2006	GE6/2006/s2
		<b>Succession Law (2004 Revision)</b>	23-Aug-2004	G17/2004/s11
29/2004		Status of Children Law, 2003 (Commencement) Order, 2004	31-May-2004	G11/2004/s2
	23/2003	Status of Children Law, 2003 (part)	1-Jun-2004	G2/2003/s11
		<b>Succession Law (1995 Revision)</b>	1-May-1995	G9/1995/s8
	2/1989	Succession (Amendment) Law, 1989	5-Jun-1989	G12/1989/s2
	36/1985	Succession (Amendment) Law, 1985	6-Jan-1986	G1/1986/s4
	22/1983	Succession (Amendment) Law, 1983	14-Nov-1983	G23/1983/s1
	2/1976	Succession (Amendment) Law, 1976	29-Mar-1976	G7/1976/s2
41/1976		Succession Law, 1975 (Commencement) Order, 1976	27-Sep-1976	G20/1976/p1
	18/1975	Succession Law, 1975	1-Oct-1976	G26/1975/s5

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