

## **ADMINISTRATION OF ESTATES ACT 1961 (ACT 63)**

### Section 1-Devolution on personal representatives

(1) The movable and immovable property of a deceased person shall devolve on his personal representatives with effect from his death.

(2) In the absence of an executor the estate shall, until a personal representative is appointed, vest as follows:—

(a) if the entire estate devolves under customary law—in the successor;

(b) in any other case—in the Chief Justice.

### Section 2-Status of personal representatives

(1) The personal representatives shall be the representative of the deceased in regard to his movable and immovable property.

(2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.

### Section 3-Property of the deceased

(1) An interest in property which cannot by law be disposed of by testamentary disposition is not property for the purpose of this Act.

(2) Immovable property passing under any gift contained in a will which operates as an appointment under a general power to appoint by will shall be deemed to be property of the testator.

(3) The interest of a deceased person under a joint tenancy where another tenant survives the deceased is not property of the deceased.

(4) On the death of a corporator sole his interest in the corporation's movable and immovable property is not property of the deceased and shall devolve on his successor.

### Section 4-Property devolving under customary law

The interest of an intestate in any property, movable or immovable, of which by customary law he could have disposed by testamentary disposition shall be deemed to be his property.

### Section 5-Application

This Part applies to any estate in respect of which a grant of probate or letters of administration may be granted by the court.

### Section 6-Appointment and incorporation of Administrator-General

(1) The President shall appoint a suitable person to be the Administrator-General for the purposes of this Act and as many assistant administrators-general as may be required.

(2) The Administrator-General shall be a corporation sole by the name of the Administrator-General of the Republic of Ghana and shall have perpetual succession and an official seal and may sue and be sued in his corporate name, but any instrument sealed by him shall not by reason of his using a seal be rendered liable to a higher stamp duty than if he were an individual.

(3) The Administrator-General shall be entitled to appear in court either in person or by counsel in any proceeding to which he is a party.

#### Section 7-Liability of the Administrator-General

1) Neither the Administrator-General nor any agent shall be personally liable to any person in respect of assets which are in the possession, at the time of his death, of any person whose estate is being administered by the Administrator-General, and are dealt with by the Administrator-General or agent, unless the Administrator-General or his agent, respectively, knows, or has actual notice, before the assets are dealt with that they were not in fact the property of the person whose estate is being administered by the Administrator-General, and generally neither the Administrator-General nor any agent shall be liable for any act done by him bona fide in the supposed and intended performance of his duties, unless it is shown that the act was done not only illegally but wilfully or with gross negligence.

(2) Nothing in this section shall affect section 19 of this Act.

#### Section 8- Liability of the Government

The revenue of the Republic shall be liable to make good all sums required to discharge any liability which the Administrator-General, if he were a private administrator, would be personally liable to discharge except when the liability is one to which neither the Administrator-General nor any of his agents has in any way contributed, or which neither he nor any of his agents could, by the exercise of reasonable diligence, have averted and in either of those cases the Administrator-General shall not, nor shall the revenue of the Republic, be subject to any liability.

#### Section 9-Non-Liability of Administrator-General and Government

When death is proved to the satisfaction of the Administrator-General

(a) by a certified copy of a register of deaths; or

(b) by a certificate of a local authority in an area where there is no compulsory registration of deaths; or

(c) by a certificate of, in the case of a public officer, the official head of the department in which he was employed,

neither the Administrator-General personally nor the Government shall be liable for any loss incurred through a fraudulent or innocent misrepresentation concerning the death in question.

#### Section 10-Sale of goods of third party

If during the administration of an estate by the Administrator-General there is sold by the Administrator-General or any agent on his behalf any goods or chattels belonging to a third party, the amount realised by the sale shall be paid over to the owner upon proof by him of ownership unless the proceeds have already been applied in payment of the debts of the deceased or have been distributed in the ordinary course of administration whilst the Administrator-General or his agent was in ignorance or without actual notice of the claim of that person to the goods or chattels sold.

#### Section 11-No security or oath required from Administrator-General

(1) The Administrator-General shall not be required to verify otherwise than by his signature, any petition presented by him under the provisions of this Act, and if the facts stated in any such petition are not within the Administrator-General's own personal knowledge, the petition may be subscribed and verified by any person competent to make the verification.

(2) The facts stated in the reports of administrative officers to the Administrator-General shall, for the purposes of this section, be deemed to be within the personal knowledge of the Administrator-General.

(3) The Administrator-General shall not be required to enter into any administration bond, or to give other security to the court on the grant of any letters of administration to him by that name.

#### Section 12-Administrator-General may be appointed executor

The Administrator-General may be appointed the executor of any will.

#### Section 13-Grants to be made to Administrator-General by that name

All probates and letters of administration granted to the Administrator-General shall be granted to him by that name, and shall be deemed to include his successors in office and shall authorise the Administrator-General to act as executor or administrator, as the case may be, of the estate to which such probate or letters relate.

#### Section 14-Effects of grant to Administrator-General

Probate or letters of administration granted by the court to the Administrator-General shall be conclusive as to his representative title against all debtors of the deceased and all persons holding assets, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such assets, to the Administrator-General, or to his agents duly appointed in accordance with the provisions of this Act.

#### Section 15-Entry of name of Administrator-General on company

(1) The entry of the name of the Administrator-General in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to enter the name of the Administrator-General on its register by reason only that the Administrator-General is a corporation, and in dealing with assets the fact that the person dealt with is the Administrator-General shall not of itself constitute notice of a trust.

(2) The Administrator-General shall not be personally liable for any claim as a contributory.

#### Section 16-Power of Administrator-General to petition court

(1) The Administrator-General may, whenever he becomes aware of any estate which he considers unrepresented, present a petition to the court in the form set out in the First Schedule to this Act, praying for the grant of probate or of letters of administration of the estate and the court may, upon being satisfied that the estate is unrepresented, make an order accordingly, and thereupon the Administrator-General shall forthwith cause an inventory to be made of the estate and filed in the court.

(2) The Administrator-General shall not petition the court in respect of any estate for the administration of which other special provision is made by any enactment.

#### Section 17-Entering upon estate before court order

The Administrator-General may, if he thinks fit, immediately on becoming aware of any unrepresented estate and before obtaining a grant of probate or of letters of administration of the same, enter upon the estate for the purpose of sealing up or making such other dispositions for the security of the estate as he may deem necessary.

#### Section 18-Time of application

Nothing in any enactment shall preclude the Administrator-General from applying to the court for a grant of probate or of letters of administration at any time after the death of the deceased.

#### Section 19-Uncertainty as to succession

(1) Whenever

(a) any person dies leaving assets in Ghana and the court is not satisfied that there is any person immediately available who is legally entitled to succession to the assets, or that danger is to be apprehended of misappropriation, deterioration, or waste of the assets before the succession thereto can be determined, or whether the Administrator-General is entitled to a grant of probate or of letters of administration of the estate of the deceased in respect thereof, or

(b) the agent in charge of any assets in Ghana belonging to any person not

residing in Ghana or belonging to a company not incorporated in Ghana dies without leaving any responsible person in charge thereof,

the court may, upon the application of the Administrator-General or any person interested in the assets or in the due administration thereof, direct the Administrator-General to collect and take possession of the assets and to hold, possess, realise, and dispose of them according to the direction of the court, and in default of any such directions, to the provisions of this Act so far as applicable to the assets.

(2) Any order of the court made under this section shall entitle the Administrator-General

(a) to maintain any suit or proceedings for the recovery of the assets; and

(b) if he thinks fit to apply for a grant of probate or of letters of administration of the estate of the deceased; and

(c) Subject to section 54 of this Act, to retain out of the assets of the estate any fees chargeable under rules made under this Act and to reimburse himself for all payment made by him in respect of the assets which a private administrator might lawfully have made. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 1].

#### Section 20-Grant to persons appearing

If in the course of proceedings to obtain a grant of probate or of letters of administration under section 16, section 18 or section 19 of this Act any person appears and establishes his claim

(a) to probate of the will of the deceased; or

(b) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law,

the court may grant probate of the will or letters of administration accordingly, and shall award the Administrator-General the costs of any proceedings taken by him, under those sections, to be paid out of the estate as part of the testamentary or intestate expenses thereof.

#### Section 21-Grant to Administrator-General

If in the course of the proceedings to obtain a grant of probate or of letters of administration under section 16, section 18 or section 19 of this Act, no person establishes his claim to probate of a will, or to a grant of letters of administration as next-of-kin of the deceased within such period as to the court seems reasonable, or if a person who has established his claim to a grant of letters of administration as next-of-kin of the deceased fails to give such security as may be required of him by law, the court may grant probate or letters of administration to the Administrator-General.

#### Section 22-Transfer by private executor or administrator to Administrator-General

(1) Any private executor or administrator may, with the previous consent of the Administrator-General by instrument in writing under his hand, notified in the Gazette, transfer the assets of the estate vested in him by virtue of the probate or letters to the Administrator-General by that name.

(2) As from the date of transfer, the transferor shall be exempt from all liability as executor or administrator, as the case may be, except in respect of acts or omissions done, or committed, before the date of transfer, and the Administrator-General shall have the same rights and be subject to the same liabilities as if probate or letters of administration, as the case may be, had been granted to him by that name at the date of transfer.

#### Section 23-Revocation of grant to Administrator-General

(1) If an executor or next-of-kin of the deceased who has not been personally served with a citation or who has not had actual notice thereof in time to appear pursuant thereto, establishes to the satisfaction of the court a claim to probate of a will or to letters of administration in preference to the Administrator-General, any probate or letters of administration granted to the Administrator-General may be revoked, and probate or letters of administration may be granted to the executor or next-of-kin, as the case may be.

(2) Probate or letters of administration granted to the Administrator-General shall not be revoked under this section upon the application of the next-of-kin of the deceased, unless the application be made within six months after the grant to the Administrator-General and the court is satisfied that there has been no unreasonable delay in making the application or in transmitting the authority under which the application is made.

#### Section 24-Costs of Administrator-General on revocation to grant

(1) If any grant of probate or letters of administration to the Administrator-General is revoked, the court may order the costs of obtaining the letters of administration and the whole or any part of the fees which would otherwise have been payable under this Act together with the costs of the Administrator-General in any proceedings taken to obtain revocation, to be paid to or retained by the Administrator-General out of the estate.

(2) This section shall not affect section 19 (2) (c) of this Act.

#### Section 25-On revocation previous acts of Administrator-General deemed valid

(1) If any grant of probate or letters of administration to the Administrator-General is revoked, it shall so far as regards the Administrator-General and all persons acting under his authority in pursuance thereof, be deemed to have been valid, except as to any act done by the Administrator-General, or any such person, after notice of a will or of any other fact which would render the probate or letters void.

(2) No notice of a will or of any other fact which would render any grant void shall affect the Administrator-General or any person acting under his authority in pursuance of the grant unless within the period of one month from the time of giving the notice proceedings are commenced to prove the will or to cause the letters to be revoked and the proceedings are prosecuted without unreasonable delay.

#### Section 26-Payments made by Administrator-General prior to revocation of grant

If any grant of probate or letters of administration to the Administrator-General is revoked upon the grant of probate of a will or upon the grant of letters of administration with copy of the will annexed, all payments made or acts done by or under the authority of the Administrator-General in pursuance of the grant to him prior to revocation, which would have been valid if the grant had not been revoked shall be deemed valid notwithstanding revocation.

#### Section 27-Movable and immovable property to be realised

(1) The Administrator-General may, convert into money all movable property except household chattels of an intestate to which section 3 of the Intestate Succession Law, 1985 (PNDCL 111) applies and with the consent of the Court the immovable property of an intestate which he administers.

(2) Notwithstanding subsection (1) of this section if in the opinion of the Administrator-General the claims of creditors of the intestate cannot be met without converting those household chattels of the intestate into money he shall apply to the Court for an order to sell and convert such household chattels into money.

(3) The Court shall, in making an order under subsection (2) of this section consider all the circumstances of the case, including the wishes of those beneficiaries entitled to such household chattels under the Intestate Succession Law, 1985 (PNDCL 111).

(4) Notwithstanding subsection (1) of this section if all parties interested in the immovable property consent in writing to the conversion into money by the Administrator-General or if the value of the immovable property does not exceed fifty thousand cedis and the Administrator-General is satisfied that the conversion of the immovable property into money would be to the advantage of the estate, the consent of the Court shall not be necessary. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 2].

#### Section 28-Payment of debts and distribution of assets

(1) The Administrator-General shall cause advertisements to be published in the Gazette, and in such other manner as he thinks fit, calling upon the creditors of a person whose estate he administers and other persons beneficially entitled thereto to come in and prove their claims before him within such period as he may specify. Subject to section 42 of this Act he shall after the expiration of that period pay the debts proved, and if the

whole thereof cannot be paid he shall pay a dividend thereon-if he collects any further assets after making payment he shall, in case any part of the debts proved remains unpaid, pay them and any debts subsequently proved before him or a dividend thereon; but such debts as are subsequently proved shall first be paid a dividend in proportion to their amount equal to the dividend paid to creditors having previously proved their debts.

(2) The Administrator-General may require that any claim filed by a creditor or a claimant shall express the name and place of abode of the creditor or claimant, the origin of the debt or claim, the degree or class of the debt and the particulars and exact amount thereof, verified by affidavit, and there shall also be annexed to every claim the documents purporting to be evidence thereof; he may also require any claimants to make an affidavit in the prescribed form setting forth particulars concerning the person beneficially entitled to the estate according to the best of their knowledge and belief.

#### Section 29-Disposal of assets received for abroad

Where the Administrator-General is administering an estate and he receives assets which at the time of the death of the deceased were situated outside Ghana those assets shall be treated in the same manner as assets in Ghana at the time of death.

#### Section 30-Barring of claims

(1) When the Administrator-General has given the prescribed notice for creditors and others to send in their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of.

(2) He shall not be liable, for the assets so distributed, to any person of whose claim he had not notice at the time of the distribution.

(3) No notice of any claim which has been sent in and has been rejected, or disallowed in part by the Administrator-General shall affect him unless proceedings to enforce the claim are commenced within two months after notice of rejection or disallowance of the claim has been given and unless proceedings are prosecuted without unreasonable delay.

(4) This section shall not prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received them.

(5) In computing the period of limitation, if any, for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor to the Administrator-General and the date of the final decision of the Administrator-General on the claim shall be excluded.

#### Section 31-Costs in suit against Administrator-General



(1) If any suit is brought by a creditor against the Administrator-General, the creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator-General stating the amount and other particulars of his claim, and had given such evidence in support thereof as, in the circumstances of the case, the Administrator-General was reasonably entitled to require.

(2) If the suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to payment out of the assets of the deceased equally and rateably with the other creditors.

#### Section 32-Disposal of jewellery

Repealed

#### Section 33-Power of Administrator-General to pay for Improvements

The Administrator-General may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure

(a) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge; and

(b) with the sanction of the court on such improvements as may be reasonable and proper in the case of such property.

#### Section 34-Power to apply to court for directions or information

(1) The court, on the application of the Administrator-General or of any person interested in the assets of an estate or in the due administration thereof, may give to the Administrator-General directions as to any estate in his charge or in regard to the administration of any such estate.

(2) Where any property of a deceased person devolves in accordance with customary law the Administrator-General may apply to a court of competent jurisdiction for information as to how that property should be distributed and the property distributed in accordance with such information shall, so far as concerns the liability of the Administrator-General or the Government, be deemed to be well administered.

#### Section 35-Administrator-General to keep accounts

(1) The Administrator-General shall make a complete inventory of every estate which he administers and shall keep an account of all receipts, payments and dealings with the estate; he shall retain all letters received, and copies of all letters written by him, and all deeds, writings, and papers of or relating to the estate.

(2) The Administrator-General may destroy any private papers, bills, receipts, memoranda and other similar documents of no value, which he has received along with the estate and which are not claimed by the

beneficiaries, or other persons entitled thereto.

#### Section 36-Inspection of accounts

A creditor or beneficiary of an estate which is in the charge of the Administrator-General is entitled

(a) on payment of the prescribed fee and subject to the prescribed conditions and restrictions, to inspect, at a reasonable time, the accounts relating to the estate and the reports and certificates of the auditor, and

(b) on payment of the prescribed fee, to make copies of, and extracts from the accounts and the reports.

#### Section 37-Payment of money into the prescribed bank and investment of surplus funds

(1) An Administrator-General's account shall be kept by the Administrator-General with such bank as may be prescribed, and all moneys received by the Administrator-General in respect of proceedings under this Act shall be paid into that account.

Whenever the cash balance standing to the credit of the Administrator-General's account is in excess of the amount which in the opinion of the Administrator-General is required for the time being to answer demands in respect of the estate being administered by him, the Administrator-General may deposit the cash balance or any part thereof with the Accountant-General or in a Government savings bank or invest the whole or any part thereof in any funds or securities in which trustees are by the law for the time being in force authorised to invest trust funds.

(2) Whenever any money so placed on deposit or invested is, in the opinion of the Administrator-General, required to answer any demands in respect of estates administered by him, the Administrator-General shall thereupon withdraw the money deposited or realise the investment, as the case may be, and place the amount received to the credit of the cash balance of the Administrator-General's account.

(3) When the realised assets of an estate are so small in value that the estate is practically indivisible amongst the beneficiaries or creditors entitled thereto or when after division of the estate a balance remains which by reason of the number of the beneficiaries or creditors and the small amount of the balance is practically indivisible amongst the beneficiaries or creditors, the assets or balances shall be paid or transferred on the closing of the estate account into the Consolidated Fund.

#### Section 38-Administrator-General to final account

(1) On the completion of the administration of an estate the Administrator-General shall file in court his accounts and vouchers relating thereto, together with an affidavit in verification, and after fourteen days' notice has been given in the prescribed manner by the Administrator-General to all persons interested, who are resident in Ghana, setting forth the day and the

hour to be appointed by the taxing officer for the passing of the accounts, the accounts may be examined and taxed by the taxing officer in the presence of any person who may attend upon the notice, and objection may be taken to the account, or to any item or part thereof, and the taxation may be brought under review by the court in the same manner, as near as may be, as in the case of any proceeding in court.

(2) A certificate under the hand of the taxing officer or of a judge of the court, to the effect that the accounts have been examined and found correct, shall be a valid and effectual discharge in favour of the Administrator-General, as against all persons whatsoever.

#### Section 39-Power to file interim account

The Administrator-General may, on giving the notice referred to in section 38 of this Act, pass interim accounts prior to the completion of the administration.

#### Section 40-Administrator-General to file interim account

Where the administration of an estate by the Administrator-General is not completed within eighteen months after the grant of letters of administration, the Administrator-General shall, unless otherwise ordered by the court, file in the court an interim statement of accounts which may be examined in accordance with the rules of court.

#### Section 41-Power to transfer share of minor to relative

When any person entitled to a share under the will or in the distribution of the estate of a deceased person, whose estate is being administered by the Administrator-General, is a minor, the court may, upon the application of the Administrator-General, appoint the father or mother of the minor, or some other suitable person, to receive the share of the minor on his behalf, and upon the appointment being made, the Administrator-General may pay the share of the minor to that person on behalf of the minor, and the receipt of that person shall be a full and complete discharge to the Administrator-General so far as regards that share.

#### Section 42-Distribution of proceeds of estate

As soon as may be after the expiration of the time limited for the submission of claims in the last of the notices published in pursuance of section 28 of this Act, or after the settlement of any disputed claim, the Administrator-General shall dispose of the property of the estate in the manner following

(a) he shall reimburse himself of all such costs and charges as he may reasonably have incurred in collecting the estate;

(b) he shall pay to the credit of the Consolidated Fund out of the gross amount of moneys arising from the realisation of the estate such percentage thereof as may be prescribed;

(c) he shall pay the creditors of the estate in the order and manner provided by law; and

(d) he shall pay or distribute the balance (if any) which remains after such payments aforesaid to the persons legally entitled thereto, if known or, if unknown, to the Accountant-General in trust for the persons entitled thereto, in accordance with section 45 of this Act.

#### Section 43-Disposal of immovable property

When after winding up an estate any immovable property remains undisposed of, the Administrator-General shall forthwith, and before closing the accounts of the estate, apply to the court for directions as to the disposal of the immovable property, and the court may order it to be sold, or may appoint a receiver or make such other order as the court thinks fit.

#### Section 44-Assets of persons not domiciled in Ghana payable to executor abroad

(1) When a person, not having his domicile in Ghana, has died leaving assets in Ghana, the Administrator-General, after having given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged at the expiration of the time therein named such lawful claims as he may have notice of, may, instead of distributing any surplus or residue of the deceased's assets to persons residing in another country who are entitled thereto, transfer, with the consent of the executor or administrator, if any, as the case may be, in the country of the domicile of the deceased, the surplus or residue to that executor or administrator for distribution to those persons; or to a consular officer of that country or other authority competent to receive it, whose receipt shall be a full and complete discharge to the Administrator-General.

(2) The Administrator-General may transfer the residue through the Accountant-General in any such case and a written acknowledgement by the Accountant-General that he has received the surplus for such a purpose shall be a full and complete discharge to the Administrator-General.

(3) The Minister may prescribe the fees payable to a consular officer or authority mentioned in this section.

#### Section 45-Disposal of proceeds of interstate estates

(1) When the Administrator-General has completed the administration of the estate of any person who has died intestate and without known next-of-kin by paying all debts, fees, expenses and liabilities incident to the collection, management and administration of the estate and, after the passing of the accounts of the estate by the taxing officer or a judge, any sum of money remains to the credit of the estate in the hands of the Accountant-General, the Administrator-General shall inform the Attorney-General who shall forthwith publish a notice in the Gazette, announcing the completion of the administration of the estate and the passing of the accounts and the amount of the residue of the estate remaining and calling

upon all persons claiming to be interested in such estate on legal, equitable or moral grounds to present their petitions to the court.

(2) A petition may be presented at any time within two years from the date of the notice, unless the court, under subsection (3) of this section, fixes a lesser period within which the petition may be presented, and no claim shall be entertained after the expiration of two years or such lesser period of time as may be fixed by the court, and the hearing of the petition shall not take place until two months have elapsed after the expiration of the period of two years or lesser period and until the petitioner has given two months' notice in the Gazette of the presentation of the petition or intention to present it, and if the petition has been presented and no such notice given, until after the day appointed by the court.

(3) (a) Where the court is satisfied upon application, either by the Attorney-General or by a person who has presented a petition as provided for in subsection (1) of this section, that it is unlikely that there will be any further petitions presented or that a lesser period of time will be sufficient for the presentation of petitions, the court may order that instead of the period of two years mentioned in subsection (2) there shall be substituted for that period such lesser period, not being less than six months, as the court may consider sufficient.

(b) Notice of any order made by the court under this subsection shall be published in the Gazette.

(4) Every petition shall state the place of residence of the claimant and the grounds upon which, and the description of the estate in respect of which, the claim is made.

(5) A copy of the petition shall be served upon the Attorney-General.

(6) Any person claiming to be interested in the estate may appear personally or by a legal practitioner, and the respective claims of different petitioners may be heard and dealt with at the hearing.

(7) The equitable or moral claims in this section referred to shall include those of dependants, whether kindred or not, of the deceased or other persons for whom the deceased might reasonably have been expected to make provision.

#### Section 46-Orders on petition

(1) Where a petitioner verifies a claim by evidence to the satisfaction of the Court, the Court shall make an appropriate order in the matter, including the awarding of costs.

(2) The order may contain a direction to the Accountant-General to pay from the sum standing to the credit of the estate

(a) the sum of money awarded to the claimant or petitioner by the order, or

(b) a debt appearing to the Court to be then outstanding and due from the

estate.

#### Section 47-Rival claims to residue

Where two or more persons lay claim to any estate or residue, the Administrator-General may pay into court and notify the claimants and the court may with the consent of the parties, dispose of their claims by determining them in a summary manner, and may make such order therein with regard to costs and all other matters as the circumstances may require. Where the parties do not consent, they may proceed to obtain a decision of their claims according to the ordinary course of law.

#### Section 48-Assets unclaimed for five years to be transferred to Consolidated Fund

(1) All assets deposited by the Administrator-General with the Accountant-General in accordance with section 42, or paid into court in accordance with section 47, of this Act, which have remained with the Accountant-General or court for a period of five years or upwards, without any application for payment thereof having been made and granted by the court, shall be transferred, in the prescribed manner, to the account and credit of the Consolidated Fund.

(2) The assets shall not be so transferred if any suit or proceeding is pending in respect thereof in any court.

(3) If before the end of the period of five years it is claimed and proved on behalf of the Republic to the satisfaction of the court that any assets deposited with the Accountant-General are bona vacantia, then those assets shall at once become the absolute property of the Republic, but shall be subject to the power of disposal conferred on the Minister by section 49 of this Act.

#### Section 49-Power of Minister to dispose of unclaimed assets

The Minister may dispose of or distribute either the whole or any part of any assets transferred under the provisions of section 48 of this Act, or otherwise, to or among any kindred of the deceased or any other such persons in such shares or manner as he thinks fit, regard being had to any equitable or moral claims.

#### Section 50-Fees

There shall be charged in respect of the duties of the Administrator-General such fees as may be prescribed.

#### Section 51-Expenses

(1) Any expenses which might be retained or paid out of any estate in the charge of the Administrator-General, if he were a private administrator of the estate, shall be so retained and paid and the fees prescribed under section 50 of this Act shall be retained and paid in like manner as an addition to the expenses.

(2) Fees of court payable under any enactment or rule of court shall not be charged, paid or collected in respect of estates administered by the Administrator-General under section 59 of this Act.

(3) Fees, charges and reimbursements to be retained or paid by the Administrator-General shall have priority over all debts of the deceased and may be deducted from any moneys received by the Administrator-General in the course of the administration.

#### Section 52-Right of Administrator-General to costs

When the court orders the costs of the proceedings, to which the Administrator-General is a party, to be paid otherwise than out of the estate of a deceased person which is being administered by the Administrator-General, the Administrator-General shall be entitled to charge ordinary costs, whether he has appeared in person or not; and those costs shall be credited to the Consolidated Fund.

#### Section 53-Power to administer where assets do not exceed C100

(1) Subject to the provisions of the Intestate Succession Law, 1985 (PNDCL 111), whenever any person dies intestate leaving property or assets in Ghana, the gross value of which does not exceed fifty thousand cedis the Administrator-General may by notice in the Gazette (which may be combined with a notice to creditors and others) advertise his intention to administer the estate and at the expiration of the time limited by the notice he may apply to the Court for leave to administer the estate.

(2) The Administrator-General shall not under the power conferred by this section undertake the administration of an estate if there has been any previous appointment of an administrator under any other provision relating to small estates, or if there has been any previous grant of probate of the will of the deceased or of letters of administration of his estate, unless and until that appointment or grant has been revoked.

(3) It shall not be obligatory on the Administrator-General to file in court his accounts or vouchers in respect of an estate administered under this section unless he is required to do so by a beneficiary or creditor of the administration, and receives payment of such sum as the Administrator-General may reasonably require to cover the costs of preparing, filing and passing the accounts.

(4) The Administrator-General shall give notice in the prescribed manner to all persons interested that he has completed the administration of the estate. A beneficiary or creditor must call on the Administrator-General to file an account under subsection (3) of this section within one month of the notice being given.

(5) The Administrator-General shall have full power to settle finally and without appeal all disputes and questions which may arise in the course of an administration by him under this section, including claims by creditors, but may allow an appeal to the court or may himself apply to the court for directions.

(6) In settling disputes or questions, the Administrator-General may, if he thinks it expedient in the interests of justice or with a view to saving expense, act on information which appears to him to be credible though it is not legal evidence. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 4].

#### Section 54- Power to remit fees in estates not exceeding G 100

(1) Where an estate is administered by the Administrator-General under section 53 of this Act the Administrator-General may remit all fees and costs usually payable upon an administration by the Administrator-General, and substitute therefor a fee calculated in accordance with rules made under section 56 of this Act.

(2) In calculating the amount of the fee payable a fraction of a shilling shall be taken as a shilling.

#### Section 55-Power to make rules

(1) The Minister by legislative instrument may make rules for carrying into effect the objects of this Part and for regulating the proceedings of the Administrator-General.

(2) In particular and without prejudice to the generality of the foregoing power the rules may

(a) provide for the accounts to be kept by the Administrator-General;

(b) provide for the notices to be given by the Administrator-General and the method of service;

(c) prescribe forms, scales of fees and any matter in this Act directed to be prescribed;

(d) define the powers and liabilities of agents, provide for the appointment of such persons as may be thought advisable to be agents, fix the amount of security to be given by agents and the remuneration to be allowed to them, whether by way of fees or salary, and generally regulate their duties.

#### Section 56-Power to Administrator-General to appoint agents

(1) The Administrator-General may appoint such person or persons, as he thinks fit, to act as his agent or agents for the preservation of the assets under section 19 of this Act or in the managing, collection, and getting in of the assets and in payment of the liabilities and the distribution of the assets of a deceased person whose estate is in the course of administration by him. The agent or agents shall in all respects act under the direction of the Administrator-General, who shall not be answerable for any act or omission of any agent not in conformity with his direction, or which would not have happened by the Administrator-General's own fault or neglect.

(2) Every agent shall find security, to the satisfaction of the Administrator-



General, for the performance of his duty.

(3) Agents may be remunerated either by salary or such fees as the Administrator-General with the approval of the Minister may decide.

#### Section 57-Power to administer oath

The Administrator-General may administer oaths, and whenever he desires, for the purposes of this Act, to satisfy himself regarding any question-of-fact, examine upon oath any person who is willing to be so examined by him regarding the question.

#### Section 58-False evidence

Whoever in any matter affecting the administration of an estate makes upon oath a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a judicial proceeding.

#### Section 59-Agent may take charge of assets

In the case of deceased persons, having assets in Ghana, the agent of the Administrator-General of the area in which the assets are situated may, when he thinks it advisable for the protection of the estate, take possession thereof, and in such case he shall forthwith report his action to the Administrator-General, who shall give such directions and take such proceedings in the matter as he thinks fit.

#### Section 60-Annual report of Administrator-General

The Administrator-General shall furnish to the Minister responsible for Finance as early as possible in each year, a statement showing the amount of money received, paid and expended in each case, of the estates being administered by him during the previous year.

#### Section 61-Necessity for probate

A grant of probate is necessary to entitle an executor to administer the property, whether movable or immovable, of the testator. Before probate, the executor may, for the benefit of the estate, exercise the functions which pertain to his office but he shall not be entitled to make a disposition of any property.

#### Section 62-Cesser of rights of executor to prove

Where a person appointed executor by a will

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

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

(c) 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 estate shall devolve and be committed in like manner as if that person had not been appointed executor.

#### Section 63-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.

#### Section 64-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 the probate being granted.

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

(3) The chain of the 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 estate of that testator as the original executor would have had if living; and

(b) is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

#### Section 65-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.

#### Section 66-Liability of acting executor failing to apply for probate

If a person appointed executor by will takes possession of and administers or otherwise deals with any property of the deceased and does not apply for probate within one month after the death, or after the termination of any suit or dispute respecting probate or administration, he may, independently of any other liability, be punished for contempt of court.

#### Section 67-Executor not to act while administration is in force

Where administration has been granted in respect of any 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.

#### Section 68-Continuance of legal proceedings after revocation of temporary administration

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 it had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

#### Section 69-Rights and liabilities of administrator

Every person to whom administration of the 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.

#### Section 70- Duty of personal representative as to inventory

The personal representative of a deceased person shall, when lawfully required so to do, exhibit on oath in the court a true and perfect inventory and account of the estate of the deceased, and the court shall have power as heretofore to require personal representatives to bring in inventories.

#### Section 71-Distress for rent

(1) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living.

(2) The arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made

(a) within six months after the termination of the lease or tenancy; and

(b) during the continuance of the possession of the lessee or tenant from whom the arrears were due.

(3) Any enactments relating to distress for rent apply to any distress made pursuant to this section.

#### Section 72-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 them; 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.

#### Section 73-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 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 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.

#### Section 74-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 estate of the deceased, and he dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable

in respect of the waste or conversion in the same manner as the defaulter would have been if living.

#### Section 75-Power to grant representation of movable and immovable property separately or together

Probate or administration in respect of the immovable property of a deceased person, or any part thereof, may be granted either separately or together with probate or administration of his movable property, and may also be granted in respect of immovable property only where there is no movable property, or in respect of a trust estate only, and a grant of administration to immovable property may be limited in any way the court thinks proper.

#### Section 76-Grant in case of insolvency

Where the estate of the deceased is known to be insolvent, the grant of representation to the estate shall not be several except as regards a trust estate.

#### Section 77-Provisions as to the number of personal representatives

(1) Probate or administration shall not be granted to more than four persons in respect of the same property, and administration shall, if there is any beneficiary who is an infant or if a life interest arises under the will or intestacy, be granted either to a trust corporation, with or without an individual, or to not less than two individuals.

(2) The court in granting administration may act on such prima facie evidence, furnished by the applicant or any other person, as to whether or not there is a minority or life interest, as the court thinks sufficient.

(3) If there is only one personal representative (not being a trust corporation) then during the minority of a beneficiary or the subsistence of a life interest and until the estate is fully administered, the court may, on the application of any person interested or of the guardian, committee or receiver of any such person, appoint one or more personal representatives in addition to the original personal representative.

(4) This section shall apply to grants made after the commencement of this Act, whether the testator or intestate died before or after such commencement.

#### Section 78-Power to grant representation to a trust corporation

(1) The court may

(a) where a trust corporation is named in a will as executor, whether alone or jointly with another person, grant probate to the corporation, either solely or jointly with another person, as the case may require; and

(b) grant administration to a trust corporation, either solely or jointly with another person,

and the corporation may act accordingly as executor or administrator, as the case may be.

(2) Probate or administration shall not be granted to a syndic or nominee on behalf of a trust corporation.

(3) Any officer authorised for the purpose by a trust corporation or the directors or governing body thereof may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the court may require with a view to the grant to the corporation of probate or administration, and the acts of an officer so authorised shall be binding on the corporation.

(4) Where, at the commencement of this Act, any interest in any estate is vested in a syndic on behalf of a trust corporation acting as the personal representatives of a deceased person, the said interest shall, by virtue of this Act, vest in the corporation, and the syndic shall be kept indemnified by the corporation in respect of the said interest.

This subsection shall not apply to securities registered or inscribed in the name of a syndic or to an instrument affecting land registered under any enactment in the name of a syndic, but any such securities, land or charge, shall be transferred by the syndic to the corporation or as the corporation may direct.

(5) This section shall have effect whether the testator or the intestate died before or after the commencement of this Act, and no such vesting or transfer shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Section 79-Discretion of courts as to persons to whom administration is to be granted

(1) Subject to the provisions of this section the selection of a personal representative is within the discretion of the court.

(2) In granting administration the Court shall have regard to the right of all persons interested in the estate, and in particular, administration with the will annexed may be granted to a devisee or legatee and the administration may be limited in any way the Court thinks fit. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 5].

(3) The court may

(i) where the deceased died wholly intestate, grant administration to some one or more persons interested in the residuary estate of the deceased, if they make an application for the purpose;

(ii) if by reason of the insolvency of the estate of the deceased or of any other special circumstances, it appears to the court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, notwithstanding anything in this Act, appoint as

administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the court thinks fit.

(4) Where it appears to the court that an estate vested in the successor of the deceased under customary law is being duly dealt with, the court may refuse to grant an application for administration not made by or with the concurrence of the successor.

#### Section 80-Administration pendente lite

(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the court may grant administration of the estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the estate, and the administrator shall be subject to the immediate control of the court and act under its direction.

(2) The court may, out of the estate of the deceased, assign to an administrator appointed under this section such reasonable remuneration as the court thinks fit.

#### Section 81-Grant of Special Administration Where Personal Representative is Abroad

(1) If at the expiration of twelve months from the death of a person any personal representative of the deceased to whom a grant has been made is residing out of the jurisdiction of the court, the court may, on the application of any creditor or person interested in the estate of the deceased, grant to him special administration of the estate of the deceased.

(2) The court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into court of any money or securities belonging to the estate of the deceased person, and all persons shall obey the order.

(3) If the personal representative capable of acting returns to and resides within the jurisdiction of the court while any legal proceedings to which a special administrator is a party are pending, that personal representative shall be made a party to the legal proceedings, and the costs of and incidental to the special administration and the legal proceedings shall be paid by that person and out of such fund as the court in which the proceedings are pending may direct.

#### Section 82-Administration During Minority of Executor

(1) Where an infant is sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the court thinks fit, until the infant attains the age of twenty-one years, and on his attaining that age, and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints an infant to be an executor, the

appointment shall not operate to transfer any interest in the property of the deceased to the infant or to constitute him a personal representative for any purpose unless and until probate is granted to him under this section.

#### Section 83-Administration with Will Annexed

Administration with the will annexed shall continue to be granted in every case where a grant was customary before the commencement of this Act, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted.

#### Section 84-Sealing of Probate and Letters of Administration from other Countries

(1) Where a Court of Probate in a Commonwealth country or in any country to which this section is applied 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 other seal of the court, and thereupon shall be of the like force and effect, and have the same operation in Ghana as if granted by the court.

(2) The court shall, before sealing a probate or letters of administration under this Part, be satisfied:—

(a) that probate duty has been paid in respect of so much, if any, of the estate as is liable to probate duty in Ghana; and

(b) in the case of letters of administration, that security has been given in a sum sufficient to cover the property, if any, in Ghana to which the letters of administration relate.

(3) The court may also on the application of any creditor require before sealing that adequate security be given for the payment of debts due from the estate to creditors residing in Ghana.

(4) The President by legislative instrument may apply this section to a specified country on such conditions, if any, as may be prescribed in the order.

#### Section 85-Duplicate may be Sealed in Lieu of Original

For the purposes of section 84 of this Act, a duplicate of any probate or letters of administration sealed with the seal of a Court of Probate or a copy thereof certified as correct by or under the authority of the court shall have the same effect as the original.

#### Section 86-Rules

Until provision is otherwise made by rules of court, the fees and probate duty prescribed in relation to probate and administration shall apply and be payable as if the person who applied for sealing under section 84 of this



Act were a person applying for probate or letters of administration.

#### Section 87-Interpretation

in sections 84 to 86:—

"Court of Probate" means any court or authority, by whatever name designated, having jurisdiction in matters of probate; "Probate duty" includes any duty payable on the value of the estate for which probate or letters of administration is or are granted.

#### Section 88-Proper Officer and Public Officer

For the purposes of sections 89 to 91 of this Act :—

"the proper officer" means the Administrator-General or his agent or a public officer appointed by the Minister to be the proper officer in relation to a specified category of persons;

"Public officer" includes a pensioner.

#### Section 89-Distribution without Probate Of Sums not Exceeding £200

(1) On the death of any public officer to whom or to whose estate any sum not exceeding two hundred pounds is due or payable by the Government in respect of any pay, allowance, pension, or gratuity (excluding a death gratuity), then, if the proper officer in his discretion so directs, but subject always to the provisions of any regulations made under section 91 and for the time being in force, probate or other proof of the title of the personal representative of deceased public officer may, any law, usage, or custom to the contrary notwithstanding, be dispensed with; and the said sum may be paid to or distributed among the person or persons appearing to the proper officer to be entitled to the estate of the deceased public officer or a distributive share thereof, or may be paid to or distributed among any one or more of such persons, or, if he is unable to discover any such person, may be paid to or distributed among such person or persons as such proper officer thinks fit, and in such proportions as he thinks fit.

(2) Upon any such payment or distribution being made, the Government and the proper officer shall thereupon be discharged from all liability in respect of that payment or distribution.

#### Section 90-Decision of Questions Arising under Sections 88 to 91

The decision of the Minister on any question which arises as to the application of sections 88 to 91 of this Act to any person, or as to the amount of any pay, allowance, pension, or gratuity, or as to the reckoning of any service for such pay, allowance, pension, or gratuity, shall be final and conclusive.

#### Section 91-Regulations

The Minister by legislative instrument may make regulations for any of the

purposes of sections 89 and 90 of this Act.

#### Section 92-Movable and Immovable Property of Deceased are Assets for Payment of Debts

(1) The movable and immovable property of a deceased person, to the extent of his beneficial interest therein, and the movable or immovable property 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.

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

(2) If any person to whom any beneficial interest devolves or is given, or in whom any interest vests, disposes thereof in good faith before an action is brought against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the action.

#### Section 93-Realisation of Assets

(1) Subject to subsection (2) of this section the personal representative may, so far as required for the purposes of administration sell and convert into money any movable and immovable property of the deceased other than those household chattels and immovable property to which sections 3 and 4 of the Intestate Succession Law, 1985 (PNDCL 111) apply.

(2) Notwithstanding subsection (1) of this section if the personal representative is of the opinion that the conversion into money of those household chattels and the immovable property referred to in that subsection is necessary for the purposes of administration he shall apply to the Court for an order to sell and convert into money those household chattels and immovable property.

(3) The Court shall, in making an order under subsection (2) of this section, consider all the circumstances of the case, including the wishes of those beneficiaries entitled to the household chattels and the immovable property.

(4) Out of the money arising from sale and conversion and any ready money of the deceased, the personal representative shall pay all testamentary and administration expenses, debts and other liabilities properly payable therefrom having regard to the rules of administration contained in this Part, and shall provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.

(5) Pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest any money in their hands in any investments for the time being authorised by any enactment for the investment of trust money, with power, at the discretion of the personal

representatives, to change the investments for others of a like nature.

(6) The income (including net rents and profits of immovable property after payment of rates, taxes, rents, costs of insurance, repairs and other outgoing properly attributable to income) of so much of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes under subsection (1) of this section, may, however the estate is invested, as from the death of the deceased, be treated and applied as income.

(7) Nothing in this section affects the rights of any creditor of the deceased.

(8) Where the deceased leaves a will, this section shall have effect subject to the provisions contained in the will. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 6].

#### Section 94-Administration of Assets

(1) Where the estate of a deceased is solvent, his movable and immovable property shall, subject to the rules of Court and the provisions of this Act relating to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the testamentary and administration expenses, debts and liabilities payable therefrom in the order specified in the Second Schedule to this Act. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 7].

(2) Where the estate of a deceased person is insolvent, his estate shall be administered as provided by law.

(3) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person. The right of retainer shall not apply to the Administrator-General.

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

(4) Where administration is granted of an estate which was previously being dealt with in accordance with customary law the grant shall not affect the validity of any act duly done in accordance with that law prior to the grant.

#### Section 95-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 mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be

primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified:—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his movable property, or his residuary movable and immovable property, or his residuary immovable property; or

(b) by a charge of debts upon any such property;

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.

#### Section 96-Effect of Assent or Conveyance by Personal Representative

(1) A personal representative may assent to the vesting, in the form set out in the Third Schedule to this Act, in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in immovable property to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, and which devolved upon the personal representative.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The covenants implied by a person being expressed to convey as personal representative may be implied in an assent in like manner as in a conveyance by deed.

(4) Any person in whose favour an assent or conveyance of the property is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon and annexed thereto.

(5) A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of an immovable property, shall, in favour of a purchaser, but without prejudice to any previous disposition made in favour of another purchaser deriving title immediately or immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of the property to which the statement relates, unless notice of a conveyance affecting that property has been placed on or annexed to the probate or administration.

A conveyance by a personal representative to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting the property has been placed on or annexed to the probate or administration) operate to transfer or create the property expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.

A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration.

(6) An assent or conveyance by a personal representative shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting the property has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the property conveyed to him, and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.

(7) A conveyance by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities and testamentary or administration expenses, duties and legacies of the deceased have been discharged or provided for. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 8].

(8) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of that estate or interest against any debt or liability to which that estate or interest would have been subject if there had not been any assent or conveyance.

(9) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any debt or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of debt or liability if reasonable arrangements have been made for discharging it; and an assent may be given subject to any charge by way of mortgage.

(10) This section shall not operate to impose any stamp duty in respect of an assent, and in this section "purchaser" means a purchaser for money or money's worth.

(11) This section applies to assents and conveyances made after the commencement of this Act, whether the testator or intestate died before or after such commencement.

#### Section 97-Validity of Conveyance not Affected by Revocation of Representation

(1) All conveyances of any interest in movable or immovable property

made to a purchaser either before or after the commencement of this Act by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the probate or administration.

(2) This section takes effect without prejudice to any order of the court made before the commencement of this Act, and applies whether the testator or intestate died before or after such commencement.

#### Section 98-Right to Follow Property and Powers of the Court in Relation Thereto

(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing it, to the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received it or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance the court may, on the application of any creditor or other person interested:—

(a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;

(b) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes;

(c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;

(d) make any vesting order, or appoint a person to convey the property.

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before or after the commencement of this Act.

#### Section 99-Powers of Management

(1) In dealing with the movable and immovable property of the deceased his personal representatives shall, for purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have:—

(a) the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act, with respect to any property vested in him, and the power of raising money by mortgage may in the case of land be exercised by way of legal mortgage; and

(b) all the powers, discretions and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale (including power to

overreach equitable interests and powers as if the same affected the proceeds of sale); and

(c) all the powers conferred by law on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him, and, in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

(2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.

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

#### Section 100-Powers of Personal Representative for Raising Money, Etc

(1) For giving effect to beneficial interests the personal representative may limit or demise land for a term of years absolute, to trustees on usual trusts for raising or securing any principal sum and the interests thereon for which the land, or any part thereof, is liable, and may limit or grant a rent charge for giving effect to any annual or periodical sum for which the land or the income thereof or any part thereof is liable.

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

#### Section 101-Appropriation by personal representatives

(1) The personal representative may appropriate any part of the movable or immovable property, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, 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.

(2) An appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest.

(3) An appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents:—

(a) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;

(b) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income.

If the person whose consent is so required as aforesaid is an infant or a

lunatic or defective the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, committee or receiver, or if, in the case of an infant, there is no such parent or guardian, by the court on the application of his next friend.

(4) 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.

(5) If no committee or receiver of a lunatic or defective has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic or defective.

(6) 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 the legacy, share or interest, provided that the appropriation is an authorised investment.

(7) 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.

(8) For the purposes of the appropriation, the personal representative may ascertain and fix the value of the respective parts of the movable and immovable property and the liabilities of the deceased as he thinks fit, and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

(9) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(10) 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.

(11) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

(12) If after any immovable 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 the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite



consents, if any, had been given.

(13) 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, and an annuity, and "purchaser" means a purchaser for money or money's worth.

(14) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

#### Section 102-Power to Appoint Trustees of Infants' Property

(1) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Act (in this subsection called " the deceased ") to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint the Public Trustee or a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of the devise, legacy, residue or share for the infant, and may execute or do any assurance or thing requisite for vesting the devise, legacy, residue or share in the trustee or trustees so appointed.

On the appointment the personal representatives, as such, shall be discharged from all further liability in respect of the devise, legacy, residue, or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and the money may be invested in any authorised investment.

(2) Where a personal representative has before the commencement of this Act retained or sold any such devise, legacy, residue or share, and invested it or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into court.

(3) Nothing in this section shall prejudice any right of the Public Trustee under the provisions of the Public Trustee Ordinance, 1952 (No. 24).

#### Section 103-Obligations of Personal Representative as to giving Possession of Land and Powers of the Court

(1) A personal representative, before giving an assent or making a conveyance of immovable property, may permit that person to take possession of the property, and that possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the property as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in

actual

occupation.

(2) Any person who as against the personal representative claims possession of immovable property, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, may apply to the court for directions with reference thereto, and the court may make such vesting or other order as may be deemed proper.

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

#### Section 104-Estate to be Distributed within Specified Period

Subject to the provisions of this Act or any other enactment a personal representative shall distribute the estate of a deceased person within one year after he has been granted probate or letters of administration. [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 9].

#### Section 105-Distribution for Residual Estate

(1) The residuary estate shall be disposed of by the personal representative in accordance with the will of the deceased or, in the case of intestacy, in accordance with the provisions of the Intestate Succession Law, 1985 (PNDCL 111). [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 10].

(2) Where the common law applies, the rules relating to the distribution of movable property shall apply likewise to immovable property.

#### Section 106-Savings

(1) Where, before the commencement of this Act, the administration of any estate has been commenced under the provisions of any other enactment the estate shall, notwithstanding the provisions of this Act, be carried out in accordance with the provisions of the other enactment.

(2) This Act shall not affect the estate of a seaman to whom the Merchant Shipping (Transitory Provisions) Act, 1957 (No. 23) applies.

#### Section 107-Application of Act

Save as otherwise expressly provided, this Act does not apply in any case where the death occurred before the commencement of this Act.

#### Section 108-Interpretation

(1) In this Act, unless the context otherwise requires—

"Administrator-General" includes an Assistant Administrator-General;

"administration" means, with reference to the movable and immovable property of a deceased person, letters of administration, whether general or

limited, or with the will annexed or otherwise;

"administrator" means a person to whom administration is granted;

"agent" means an agent of the Administrator-General duly appointed as provided in section 56 of this Act;

"assets" means all property, movable and immovable, of a deceased person which is chargeable with and applicable to the payment of his debts and legacies or available for distribution amongst those entitled to share;

"conveyance" includes a mortgage, charge by way of legal mortgage, lease, assent, vesting, declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will;

"court" means the High Court;

"disposition" includes a conveyance and also a devise, bequest and an appointment of property contained in a will;

"estate" means all property, movable and immovable;

"income" includes rents and profits;

"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable property;

"lunatic" includes every person so found under any enactment and every person with regard to whom it is proved to the satisfaction of the court that such person is through mental infirmity arising from disease or age incapable of managing his affairs;

"the Minister" means the Minister to whom functions under this Act are for the time being assigned by the President;

"minority" means, according to the context, the state of being an infant or the interest of an infant beneficiary under a will or intestacy;

"pecuniary legacy" includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the designated property, and any other general direction by a testator for the payment of money;

"personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person;

"possession" includes the receipt of rents and profits or the right to receive them, if any;

"prescribed" means prescribed by rules of court or rules made by the Minister pursuant to this Act;

"probate" means the probate of a will;

"probate rules" mean rules and orders made for regulating the procedure and practice of the court in regard to non-contentious or common-form probate business;

"property" includes a thing in action;

"purchaser" means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, and an intending purchaser;

"rent" includes any annual or periodical payment in money or money's worth, issuing out of or charged upon land, but does not include mortgage interest;

"representation" means the probate of a will and administration, and "taking out representation" refers to the obtaining of the probate of a will or of the grant of administration;

"residuary estate" means residue as defined in section 18 of the Intestate Succession Law, 1985 (PNDCL 111) [As Substituted by Administration of Estates (Amendment) Law, 1985 (PNDCL 113) s. 11].

"rules of court" include, in relation to non-contentious or common-form probate business, probate rules;

"securities" include stocks, funds, or shares;

"syndic" means a person deputed to represent, and transact the affairs of, a corporation;

"taxing officer" means any Registrar of the court or any officer duly appointed to act for such officer;

"trust corporation" means the Public Trustee or a corporation appointed by the court in any particular case to be a trustee;

"unrepresented estate" means:—

(a) the estate of every person who dies intestate and whose next of kin (or where such next of kin is an infant, his guardian) is unknown or is absent from Ghana without having an attorney therein or, if in Ghana and known, has refused or neglected for a period of one month after the death of the deceased to apply to the court for letters of administration;

(b) the estate of every person who has died having made a will, when owing to any cause it is necessary to appoint an administrator cum testamento annexo or de bonis non of such estate and the person entitled to such letters of administration is unknown or has, if in Ghana and known, refused or neglected for one month after the death of the testator to apply to the court for such letters of administration or is absent from Ghana without having any attorney therein;

(c) every estate whereof the executors or administrator are absent from Ghana without having an attorney therein;

(d) every estate where the deceased has named the Administrator-General as the sole executor of his will;

"valuable consideration" includes marriage, but does not include a nominal consideration in money;

"will" includes codicil.

(2) References to a child or issue living at the death of any person include a child or issue en ventre sa mere at the death.

(3) References to the property of a deceased person include property over which the deceased exercises a general power of appointment by his will.

#### Section 109-Statutes Ceasing to Apply

Each statute, or provision of a statute, indicated in the Fourth Schedule to this Act shall, insofar as it ever applied in Ghana, cease to apply.

#### Section 110-Repeals

Each enactment indicated in the Fifth Schedule to this Act is repealed.

(2) An instrument made under any repealed enactment and in force immediately before the commencement of this Act shall continue in force as if made under the corresponding provision of this Act.

#### Section 111-Commencement

This Act shall come into operation on such day as the President by legislative instrument may appoint.