

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER S15

SETTLED ESTATES ACT

Showing the Law as at 15 December 2006

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates Act 16/2006, in force 31 October 2006

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SETTLED ESTATES ACT

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SETTLED ESTATES ACT

Interpretation

1. (1) In this Act—

"Court" means the High Court or any Judge thereof;

"fine" includes premium or foregift and any payment, consideration or benefit in the nature of a fine;

"income" includes rents and profits;

"land" includes an undivided share in land;

"person" includes corporation;

"possession" includes receipt of income;

"rent" includes yearly or other rent, and reservation in the nature of rent;

"securities" includes stocks, funds and shares;

"settled estate" and "settled land" signify land, and any estate or interest therein, which is the subject of a settlement;

"settlement" signifies any Act, deed, agreement, will or other instrument, or any number of such instruments, whether passed or made before or after commencement of this Act on 25th January, 1895, under or by virtue of which any land or any estate or interest in land stands limited to or in trust for any persons by way of succession;

"will" includes codicil and other testamentary instrument and a writing in the nature of a will.

(2) An estate or interest in remainder or reversion not disposed of by a settlement and reverting to the settlor, or descending to the testator's heir, is for the purposes of this Act an estate or interest coming to the settlor or heir, under or by virtue of the settlement.

(3) The determination of the question whether land is settled land for the purposes of this Act or not is governed by the state of facts and by the trusts or limitations of the settlement at the time of the settlement taking effect.

(4) The person who is for the time being under a settlement beneficially entitled to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement.

(5) If in any case there are 2 or more persons entitled as tenants in common or as joint tenants or for other concurrent estates or interests, they together constitute a tenant for life for the purposes of this Act.

(6) A person being the tenant for life within the foregoing definitions shall be deemed to be such, notwithstanding that, under the settlement or otherwise, the settled land or his estate or interest therein is encumbered or charged in any manner or to any extent.

(7) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land or with power of consent to or approval of the exercise of such a power of sale or, if under the settlement there are no such trustees, then the persons, if any, for the time being who are by the settlement declared to be trustees thereof for the purposes of this Act are for the purposes of this Act trustees of the settlement.

(8) Capital money arising under Part 2 and receivable for the trusts and purposes of a settlement is in this Act referred to as capital money arising under this Act.

Application

2. This Act shall apply to settlements made and lands settled as well before as after its passing on 25th January, 1895.

PART 1

LEASES AND SALES OF SETTLED ESTATES UNDER AUTHORITY OF THE COURT

Power to Court to authorise leases of settled estates

3. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions contained in this Act, to authorise leases of any settled estates, or of any part or parts thereof, or of any rights or privileges over or affecting any settled estates, or any part or parts thereof, for any purpose whatsoever, whether involving waste or not, if the following conditions are observed—

(a) every such lease shall be made to take effect in possession at or within 1 year next after the making thereof and shall be for a term of years not exceeding, for an agricultural or occupational lease, 21 years and, for a mining lease, or a lease of water mills, way-leaves, water-leaves or other rights or easements, 40 years and, for a building lease, 99 years, but any such lease, except an agricultural lease, may be for such term of years as the Court shall direct, where the Court shall be satisfied that it is the usual custom of the district and beneficial to the inheritance to grant such a lease for a longer term than the term hereinbefore specified in that behalf;

(b) on every such lease shall be reserved the best rent, either uniform or not, that can be reasonably obtained, to be made payable half-yearly or oftener, without taking any fine, but in the case of a mining lease or a building lease a peppercorn rent or any smaller rent than the rent to be ultimately made payable may, if the Court shall think fit so to direct, be made payable during all or any part of the first 5 years of the term of the lease;

(c) where the lease is of any earth or mineral, a certain portion of the whole rent reserved shall be from time to time set aside and invested as hereinafter mentioned, namely, when and so long as the person for the time being entitled to the receipt of such rent is a person who by reason of his estate or by virtue of any declaration in the settlement is entitled to work such earth or mineral for his own benefit one-fourth part of such rent, and otherwise three-fourth parts thereof; and in every such lease sufficient

provision shall be made to ensure such application of the aforesaid portion of the rent by the appointment of trustees or otherwise, as the Court shall deem expedient;

(d) no such lease shall authorise the felling of any trees, except so far as shall be necessary for the purpose of clearing the ground for any buildings, excavations or other works authorised by the lease; and

(e) every such lease shall be by deed, and the lessee shall execute a counterpart thereof, and every such lease shall contain a condition for re-entry on non-payment of the rent for a period of 28 days after it becomes due, or for some less period to be specified in that behalf.

Leases may contain special covenants

4. Subject and in addition to the conditions hereinbefore mentioned, every such lease shall contain such covenants, conditions and stipulations as the Court shall deem expedient with reference to the special circumstances of the demise.

Power to authorise leases to extend to preliminary contracts

5. The power to authorise leases conferred by this Act shall extend to authorise preliminary contracts to grant any such leases, and any of the terms of such contracts may be varied in the leases.

Modes in which Court may authorise leases

6. The power to authorise leases conferred by this Act may be exercised by the Court either by approving of particular leases or by ordering that powers of leasing in conformity with the provisions of this Act shall be vested in trustees in manner hereinafter mentioned.

Evidence on application to Court to authorise lease

7. When application is made to the Court either to approve of a particular lease or to vest any powers of leasing in trustees, the Court shall require the applicant to produce such evidence as it shall deem sufficient to enable it to ascertain the nature, value and circumstances of the estate and the terms and conditions on which leases thereof ought to be authorised.

Who to be lessor

8. When a particular lease or contract for a lease has been approved by the Court, the Court shall direct what person or persons shall execute the same as lessor, and the lease or contract executed by such person or persons shall take effect in all respects as if he or they were at the time of the execution thereof absolutely entitled to the whole estate or interest which is bound by the settlement and had immediately afterwards settled the same according to the settlement, and so as to operate, if necessary, by way of revocation and appointment of the use, or otherwise, as the Court shall direct.

Vesting by Court of powers of leasing in trustees

9. Where the Court shall deem it expedient that any general powers of leasing any settled estates conformably to this Act should be vested in trustees, it may by order vest any such power accordingly either in the existing trustees of the settlement or in any other persons, and such powers, when exercised by such trustees, shall take effect in all respects as if the power so vested in them had been originally contained in the settlement and so as to operate, if necessary, by way of revocation and appointment of the use, or otherwise, as the Court shall direct; and in every such case, the Court, if it shall think fit, may impose any conditions as to consents or otherwise on the exercise of such power,

and the Court may also authorise the insertion of provisions for the appointment of new trustees from time to time for the purpose of exercising such powers of leasing as aforesaid.

Power to Court to authorise sales of settled estates and timber

10. It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, to authorise a sale of the whole or any parts of any settled estates or of any timber, not being ornamental timber, growing on any settled estates, and every such sale shall be conducted and confirmed in the same manner as by the rules and practice of the Court for the time being is or shall be required in the sale of lands sold under a decree of the Court.

Consideration for land sold for building purposes

11. When any land is sold for building purposes, it shall be lawful for the Court, if it shall see fit, to allow the whole or any part of the consideration to be a rent issuing out of such land, which may be secured and settled in such manner as the Court shall approve.

Exceptions and reservations on sale

12. On any sale of land any earth or mineral may be excepted, and any rights or privileges may be reserved, and the purchaser may be required to enter into any covenants or submit to any restrictions which the Court may deem advisable.

Power to Court to authorise dedication of part of settled estate for works or open spaces

13. (1) It shall be lawful for the Court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens or other open spaces, sewers, drains or watercourses, either to be dedicated to the public or not; and the Court may direct that the parts so laid out shall remain vested in the trustees of the settlement or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects and with such provisions for the appointment of new trustees, when required, as by the Court shall be deemed advisable.

(2) Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the Court may direct that any such streets, roads, paths, squares, gardens or other open spaces, sewers, drains or watercourses, including all necessary or proper fences, pavings, connections and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charged upon all or any part of the settled estates or be raised and paid out of the rents and profits of the settled estates or any part thereof or out of any money or investments representing money liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates or out of the income of such money or investments or out of any accumulations of rents, profits or income; and the Court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens or other open spaces, sewers, drains or watercourses or other works out of any such rents, profits, income or accumulations during such period or periods of time as to the Court shall seem advisable.

Who to convey

14. On every sale or dedication to be effected as hereinbefore mentioned, the Court may direct what person or persons shall execute the deed of conveyance; and the deed executed by such person or persons shall take effect as if the settlement had contained a power enabling such person or persons to effect such sale or dedication and so as to operate, if necessary, by way of revocation and appointment of the use or otherwise, as the Court shall direct.

Applications to Court to exercise its powers under this Act

15. Any tenant for life and also any person in possession of any settled estates as the assignee of any person who but for such assignment would be tenant for life of such estates may apply to the Court by petition in a summary way to exercise the power conferred upon the Court by this Part.

What consents necessary to application

16. Subject to the exceptions hereinafter contained, every such application must be made with the concurrence or consent of the following parties, namely—

(a) where there is a tenant in tail under the settlement in existence and of full age, then the parties to concur or consent shall be such tenant in tail, or, if there is more than 1 such tenant in tail, then the first of such tenants in tail, and all persons in existence having any beneficial estate or interest under or by virtue of the settlement prior to the estate of such tenant in tail, and all trustees having any estate or interest on behalf of any unborn child prior to the estate of such tenant in tail; and

(b) in every other case the parties to concur or consent shall be all the persons in existence having any beneficial estate or interest under or by virtue of the settlement, and also all trustees having any estate or interest on behalf of any unborn child;

but—

(c) where an infant is tenant in tail under the settlement, it shall be lawful for the Court, if it shall think fit, to dispense with the concurrence or consent of the person, if only 1, or all or any of the persons, if more than 1, entitled, whether beneficially or otherwise, to any estate or interest subsequent to the estate tail of such infant;

(d) where on any such application the concurrence or consent of any such person as aforesaid shall not have been obtained, notice shall be given to such person in such manner as the Court shall direct, requiring him to notify within a time to be specified in such notice whether he assents to or dissents from such application or submits his rights or interests, so far as they may be affected by such application, to be dealt with by the Court; and every such notice shall specify to whom and in what manner such notification is to be delivered or left. In case no notification shall be delivered or left in accordance with the notice and within the time thereby limited, the person to or for whom such notice shall have been given or left shall be deemed to have submitted his rights and interests to be dealt with by the Court;

(e) where on any such application the concurrence or consent of any such person as aforesaid shall not have been obtained, and in case such person cannot be found, or in case it shall be uncertain whether he be living or dead, or in case it shall appear to the Court that such notice as aforesaid cannot be given to such person without expense disproportionate to the value of the subject-matter of the application, then and in any

such case the Court, if it shall think fit, on the ground of the rights or interests of such person either being small or remote or being similar to the rights or interests of any other person or persons, or on any other ground, may by order dispense with notice to such person, and such person shall thereupon be deemed to have submitted his rights and interests to be dealt with by the Court.

Power to Court to dispense with consent

17. An order may be made upon any such application notwithstanding that the concurrence or consent of any such person as aforesaid shall not have been obtained or shall have been refused, but the Court in considering the application shall have regard to the number of persons who concur in or consent to the application and who dissent therefrom or who submit or who are to be deemed to submit their rights or interests to be dealt with by the Court and to the estates or interests which such persons respectively have or claim to have in the estate as to which such application is made; and every order of the Court made upon such application shall have the same effect as if all such persons had been consenting parties thereto, but it shall be lawful for the Court, if it shall think fit, to give effect to any petition subject to and so as not to affect the rights, estate or interest of any person whose concurrence or consent has been refused, or who has not submitted or is not deemed to have submitted his rights or interests to be dealt with by the Court, or whose rights, estate or interest ought in the opinion of the Court to be excepted.

Notice to trustees and others

18. Notice of any application to the Court under this Part shall be served on all trustees who are seised or possessed of any estate in trust for any person whose consent or concurrence to or in the application is hereby required and on any other parties who in the opinion of the Court ought to be so served, unless the Court shall think fit to dispense with such notice.

Motion for leave to be heard on application

19. Notice of any such application shall, if the Court shall so direct, but not otherwise, be inserted in such newspapers as the Court shall direct, and any person, whether interested in the estate or not, may apply to the Court by motion for leave to be heard in opposition to or in support of any such application, and the Court is hereby authorised to permit such person to appear and be heard in opposition to or support of any such application, on such terms as to costs or otherwise and in such manner as it shall think fit.

Recording of notice of exercise by Court of its powers

20. The Court shall direct that some sufficient notice of any exercise of any of the powers conferred on it by this Part shall be placed on the settlement or on any copy or copies thereof or otherwise recorded in any way it may think proper, in all cases where it shall appear to the Court to be practicable and expedient for preventing fraud or mistake.

Payment and application of money arising from sales or set aside out of rents

21. (1) All money to be received on any sale effected under the authority of this Part, or to be set aside out of the rent reserved on any lease of earth or minerals as aforesaid, may, if the Court shall think fit, be paid to any trustees of whom it shall approve, or otherwise the money shall be paid into Court *ex parte* the applicant in the matter of this Act, and in the former event such money shall be applied as the Court shall from time to time direct to some 1 or more of the following purposes, namely—

(a) the discharge or redemption of any encumbrance affecting the hereditaments in respect of which such money was paid, or affecting any other hereditaments subject to the same uses or trusts;

(b) the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

(c) the payment to any person becoming absolutely entitled.

(2) The application of the money in manner aforesaid may, if the Court shall so direct, be made by the trustees without any application to the Court, or otherwise upon an order of the Court upon the petition of the person who would be entitled to the possession or the receipt of the rents and profits of the land, if the money had been invested in the purchase of land.

(3) Where, under this Part, money is in Court, that money may be invested or applied as capital money arising under this Act.

Interim application of money

22. Until the money paid to trustees can be applied as aforesaid, the money shall be invested as the Court shall direct, and the interest and dividends of such investments shall be paid to the person who would have been entitled to the rents and profits of the land, if the money had been invested in the purchase of land.

Application of money paid into Court in respect of lease or reversion

23. Where any purchase money paid into Court under the provisions of this Part shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate or interest in land less than the whole fee simple thereof, or of any reversion dependent on any such lease, estate or interest, it shall be lawful for the Court on the petition of any party interested in such money to order that the same shall be laid out, invested, accumulated and paid in such manner as the Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, interest or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Power to Court to exercise its powers repeatedly

24. The Court shall be at liberty to exercise any of the powers conferred on it by this Part, whether the Court shall have already exercised any of those powers in respect of the same property or not; but no such powers shall be exercised, if an express declaration that they shall not be exercised is contained in the settlement, but the circumstance of the settlement containing powers to effect similar purposes shall not preclude the Court from exercising any of the powers conferred by this Act, if it shall think that the powers contained in the settlement ought to be extended.

Leases and sales which settlor could not have authorised

25. Nothing in this Part shall be construed to empower the Court to authorise any lease, sale or other act beyond the extent to which in the opinion of the Court the same might have been authorised in and by the settlement by the settlor or settlors.

Validation of acts of Court

26. After the completion of any lease or sale or other act under the authority of the Court, and purporting to be in pursuance of this Act, the same shall not be invalidated on the ground that the Court was not hereby empowered to authorise the same, except that no such lease, sale or other act shall have any effect against such person as herein mentioned whose concurrence or consent ought to be obtained, or who ought to be served with notice, or in respect of whom an order dispensing with such service ought to be obtained, in the case where such concurrence or consent has not been obtained, and such service has not been made or dispensed with.

Applications and consents by married women

27. (1) Where a married woman shall apply to the Court, or consent to an application to the Court, under this Act, she shall first be examined apart from her husband touching her knowledge of the nature and effect of the application, and it shall be ascertained that she freely desires to make or assent to such application; and such examination shall be made, whether the hereditaments which are the subject of the application shall be settled in trust for the separate use of such married woman independently of her husband or not; and no clause or provision in any settlement restraining anticipation shall prevent the Court from exercising, if it shall think fit, any of the powers given by this Act; and no such exercise shall occasion any forfeiture, anything in the settlement contained to the contrary notwithstanding.

(2) The examination of such married woman, when resident within the jurisdiction of the Court, shall be made either by the Court or by some solicitor duly appointed by the Court for the purpose, who shall certify under his hand that he has examined her apart from her husband and is satisfied that she is aware of the nature and effect of the intended application, and that she freely desires to make or consent to the same; and when the married woman is resident out of the jurisdiction of the Court, her examination may be made by any person appointed for that purpose by the Court, whether he is or is not a solicitor of the Court, and such person shall certify under his hand to the effect hereinbefore provided in respect of the examination of a married woman resident within the jurisdiction; and the appointment of any such person not being a solicitor shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction of the Court.

(3) Subject to such examination as aforesaid, married women may make or consent to any application, whether they are of full age or infants.

PART 2

LEASES AND SALES OF SETTLED ESTATES BY TENANTS FOR LIFE

Power of tenant for life to sell

28. (1) A tenant for life may sell the settled land or any part thereof or any easement, right or privilege of any kind over or in relation to the same.

(2) Every such sale shall be made at the best price that can reasonably be obtained.

(3) Any such sale may be made in 1 lot or in several lots and either by auction or by private contract.

(4) On a sale a tenant for life may fix reserve biddings and buy in at an auction.

(5) A sale by a tenant for life may be made subject to any stipulations respecting title or evidence of title or other things.

(6) On any such sale any restriction or reservation with respect to building or other user of the land or with respect to mines and minerals or with respect to or for the purpose of the more beneficial working thereof or with respect to any other thing may be imposed or reserved and made binding, as far as the law permits, by covenant, condition or otherwise, on the settled land or any part thereof.

Mines and minerals

29. A sale may be made by a tenant for life, either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, way-leaves or rights of way, rights of water, and drainage and other powers, easements, rights and privileges for or incidental to or connected with mining purposes in relation to the settled land or any part thereof.

Timber

30. (1) Where a tenant for life is impeachable for waste in respect of timber, and there is on the land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber or any part thereof.

(2) Three-fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

Transfer of encumbrances on land sold

31. Where on a sale there is an encumbrance affecting land sold, the tenant for life with the consent of the encumbrancer may charge that encumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold and by conveyance of the fee simple or other estate or interest the subject of the settlement or by creation of a term of years in the settled land or otherwise make provision accordingly.

Power of tenant for life to lease

32. (1) A tenant for life may lease the settled land or any part thereof or any easement, right or privilege of any kind over or in relation to the same for agriculture or occupation for any term not exceeding 21years.

(2) Every such lease shall be by deed and be made to take effect in possession not later than 12 months after its date.

(3) Every such lease shall reserve the best rent that can reasonably be obtained, which rent shall be incident to the immediate reversion.

(4) Every such lease shall contain a covenant by the lessee for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding 30 days, and on non-observance of any of the covenants or conditions therein contained.

Completion by conveyance

33. (1) On a sale or lease the tenant for life may, as regards land sold or leased or intended so to be, including leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased or intended so to be, convey or create the same by deed for the estate or interest the subject of the settlement or for any less estate or interest to the uses and in the manner requisite for giving effect to the sale or lease.

(2) Subject to the Registered Land Act, such deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed or the easements, rights or privileges created, discharged from all the limitations, powers and provisions of the settlement and from all estates, interests and charges subsisting or to arise thereunder, but subject to and with the exception of—

(a) all estates, interests and charges having priority to the settlement;

(b) all such other, if any, estates, interests and charges as have been conveyed or created for securing money actually raised at the date of the deed; and

(c) all leases and grants at fee farm rents or otherwise and all grants of easements, rights of common or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life or by any of his predecessors in title or by any trustees for him or them under the settlement or being otherwise binding on the successors in title of the tenant for life.

Payment, investment and devolution of capital money; application of income

34. (1) Capital money arising under this Act, subject to payment of claims properly payable thereout and to application thereof for any special authorised object for which the same was raised, shall, when received, be invested or otherwise applied wholly in 1 or partly in 1 and partly in another or others of the following modes, namely—

(a) in investment in securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, with power to vary the investment into or for any other such securities;

(b) in discharge, purchase or redemption of encumbrances affecting the inheritance of the settled land or other the whole estate the subject of the settlement;

(c) in purchase of the reversion of freehold in fee of any part of the settled land being leasehold land held for years or life or years determinable on life;

(d) in purchase of land in fee simple or of leasehold land held for 60 years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein or of or in respect of rights or powers relative to the working of mines or minerals therein;

(e) in purchase, either in fee simple or for a term of 60 years or more, of mines and minerals convenient to be held or worked with the settled land or of any easement, right or privilege convenient to be held with the settled land for mining or other purposes;

(f) in payment of any person becoming absolutely entitled or empowered to give an absolute discharge;

(g) in payment of costs, charges and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of this Act;

(h) in any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

(2) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court at the option of the tenant for life and shall be invested or applied by the trustees or under the order of the Court, as the case may be, accordingly.

(3) The investment or other application by the trustees shall be made according to the direction of the tenant for life and in default thereof according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(4) The investment or other application under the direction of the Court shall be made on the application of the tenant for life or of the trustees.

(5) Any investment or other application shall not during the life of the tenant for life be varied without his consent.

(6) Capital money arising under this Act, while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made shall for all purposes of disposition, transmission and devolution be considered as land, and the same shall be held for and go to the same persons successively in the same manner and for and on the same estates, interests and trusts as the land wherefrom the money arises would, if not disposed of, have been held and gone under the settlement.

(7) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(8) Those securities may be converted into money, which shall be capital money arising under this Act.

(9) Capital money arising under this Act from settled land in Anguilla shall not be applied in the purchase of land out of Anguilla, unless the settlement or the Court expressly authorises the same.

Settlement of land purchased

35. (1) Land acquired by purchase shall be made subject to the settlement in manner directed in this section.

(2) Freehold land shall be conveyed to the uses, on the trusts and subject to the powers and provisions which under the settlement or by reason of the exercise of any power of charging therein contained are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3) Leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers and provisions to, on and subject to which freehold land is to be conveyed as aforesaid, so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male or in tail female, and who dies under the age of 21 years, but shall on the death of that person under that age go as freehold land conveyed as aforesaid would go.

(4) Land acquired by purchase may be made a substituted security for any charge in respect of money actually raised and remaining unpaid from which the settled land or any part thereof has theretofore been released on the occasion and in order to the completion of a sale.

(5) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired by purchase with money arising from sale of land which was before the sale subject to the charge.

(6) On land being so acquired any person who by the direction of the tenant for life so conveys the land as to subject it to any charge shall not be concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals and to easements, rights and privileges over and in relation to land.

Power of tenant for life to enter into contracts

36. (1) A tenant for life—

(a) may contract to make any sale and may vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract, as varied, be in conformity with this Act, and any such consideration, if paid in money, shall be capital money arising under this Act;

(b) may contract to make any lease and in making the lease may vary the terms with or without consideration, but so that the lease be in conformity with this Act; and

(c) may, in any other case, enter into a contract to do any act for carrying into effect the purposes of this Act and may vary or rescind the same.

(2) Every such contract shall be binding on and shall enure for the benefit of the settled land and shall be enforceable against and by every successor in title for the time being of the tenant for life and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor in the like case and manner, if any, as if it had been made by himself.

(3) The Court may on the application of the tenant for life or of any such successor or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying or rescinding thereof.

(4) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease or to the benefit thereof.

(5) A tenant for life may make any conveyance which is necessary or proper for giving effect to any contract entered into by a predecessor in title, and which, if made by such predecessor, would have been valid as against his successors in title.

PART 3

PROCEDURE

Procedure

37. (1) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(2) Every application to the Court under this Act not being an application under Part 1, shall be by petition or by summons in chambers.

(3) On an application by the trustees of a settlement under Part 2, notice shall be served in the first instance on the tenant for life.

(4) On any application notice shall be served upon such persons, if any, as the Court thinks fit.

(5) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges or expenses of all or any of the parties to an application and may, if it thinks fit, order that all or any of those costs, charges or expenses be paid out of property subject to the settlement.

Costs

38. Where the Court directs that any costs, charges or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act or other money liable to be laid out in the purchase of land to be made subject to the settlement or out of investments representing such money or out of income of any such money or investments or out of any accumulations of income of land, money or investments or by means of a sale of part of the settled land in respect whereof the costs, charges or expenses are incurred or of other settled land comprised in the same settlement and subject to the same limitations or by means of a mortgage of the settled land or any part thereof to be made by such person as the Court directs and either by conveyance of the fee simple or other estate or interest the subject of the settlement or by creation of a term or otherwise or by means of a charge on the settled land or any part thereof or partly in 1 of those modes and partly in another or others or in any such other mode, as the Court thinks fit.

PART 4

PERSONS UNDER DISABILITY

Married women

39. (1) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act is entitled for her separate use or is entitled under any statute, passed or to be passed, for her

separate property or as a *feme sole*, then she without her husband shall have the powers of a tenant for life under this Act.

(2) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(3) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises and to the land therein comprised.

(4) The married woman may execute, make and do all deeds, instruments and things necessary or proper for giving effect to the provisions of this section.

(5) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

Infants

40. (1) Where a person who is in his own right seised of or entitled in possession to land is an infant, then for the purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

(2) Where a tenant for life or a person having the powers of a tenant for life under this Act is an infant, or an infant would, if he were of full age, be a tenant for life, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement and, if there are none, then by such person and in such manner as the Court on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

Persons under disability generally

41. Subject as aforesaid and as hereinafter appears, all powers given by this Act and all applications to the Court under this Act and consents to and notifications respecting such applications may be executed, made or given by, and all notices under this Act may be given to guardians on behalf of infants and by or to trustees appointed on behalf of adults under the Dependent Adults Act or other law and by or to trustees or assignees of the property of bankrupts, debtors in liquidation or insolvents.

(Act 16/2006, s.53)

PART 5

TRUSTEES

Appointment of trustees by Court

42. (1) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having under the settlement, an estate or interest in the settled land in possession, remainder or

otherwise or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act.

(2) The persons so appointed and the survivors and survivor of them, while continuing to be trustees, or trustee, and, until the appointment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

Number of trustees to act

43. (1) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than 2 persons as trustees of a settlement, unless the settlement authorises the receipt of capital trust money of the settlement by 1 trustee.

(2) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Trustees' receipts

44. The receipt in writing of the trustees of a settlement or, where 1 trustee is empowered to act, of 1 trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives or representative, as the case may be, effectually discharges the payer or transferor therefrom and from being bound to see to the application or being answerable for any loss or misapplication thereof and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

Protection of each trustee individually

45. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts and defaults only, and is not answerable in respect of those of any other trustee or of any banker, broker or other person or for the insufficiency or deficiency of any securities or for any loss not happening through his own wilful default.

Protection of trustees generally

46. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking or doing any such application, action, proceeding or thing as they might make, bring, take or do; and in the case of purchase of land with capital money arising under this Act, or of a lease, are not liable for adopting any contract made by the tenant for life or bound to inquire as to the propriety of the purchase or lease, or answerable as regards any price, consideration or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode or liable in respect of purchase money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase or lease.

Trustees' reimbursement

47. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

Reference of differences to Court

48. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference and respecting the costs of the application as the Court thinks fit.

Notice to trustees

49. (1) A tenant for life, when intending to make a sale or lease, shall give notice of his intention in that behalf to each of the trustees of the settlement by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last-known place of abode in Anguilla, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in Anguilla, every letter under this section being posted not less than 1 month before the making by the tenant for life of the sale or lease, or of a contract for the same, but at the date of notice given the number of trustees shall not be less than 2, unless a contrary intention is expressed in the settlement.

(2) The notice of intention to make a sale or lease may be notice of a general intention in that behalf.

(3) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales or leases effected or in progress or immediately intended.

(4) Any trustee, by writing under his hand, may waive notice, either in any particular case or generally, and may accept less than 1 month's notice.

(5) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

PART 6

MISCELLANEOUS

Limited owners who are to have powers of tenant for life

50. (1) Each such person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act, namely—

(a) a tenant in tail;

(b) a tenant in fee simple with an executory limitation, gift or disposition over on failure of his issue or in any other event;

(c) a person entitled to a base fee;

(d) a tenant for years determinable on life, not holding merely under a lease at a rent;

(e) a tenant for the life of another, not holding merely under a lease at a rent;

(f) a tenant for his own life or any other life or for years determinable on life whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over or is subject to a trust for accumulation of income for payment of debts or other purpose;

(g) a tenant in tail after possibility of issue extinct;

(h) a person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until the sale of the land or until forfeiture of his interest therein on bankruptcy or other event.

(2) In every such case the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement and to settled land shall extend to each of the persons aforesaid and to the instrument under which his estate or interest arises and to the land therein comprised.

(3) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

Provisions as to leases for 21 years

51. A lease for a term not exceeding 21years at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste, may be made by a tenant for life—

(a) without any notice of an intention to make the same having been given under section 49;

(b) notwithstanding that there are no trustees of the settlement for the purposes of this Act; and

(c) by any writing under hand only, containing an agreement, instead of a covenant, by the lessee for payment of rent, in cases where the term does not extend beyond 3 years from the date of the writing.

Surrender and renewal of leases

52. Any leases, whether granted in pursuance of this Act or otherwise, may be surrendered, either for the purpose of obtaining a renewal of the same or not; and the powers to authorise and grant leases conferred by this Act shall extend to authorise and grant new leases of the whole or any part of the hereditaments comprised in any surrendered lease.

Tenant for life trustee for all parties interested

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties.

General protection of purchasers

54. On a sale or lease, a purchaser or lessee dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

Provision enabling dealings with tenant for life

55. Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, the trustees of the settlement shall stand in the place of and represent the tenant for life and shall, in addition to their powers as trustees, have all the powers of the tenant for life in reference to negotiating and completing the transaction.

Application of money in hands of trustees under powers of settlement

56. Where under a settlement money is in the hands of trustees and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

Application of money paid for lease or reversion

57. Where capital money arising under this Act is purchase money paid in respect of a lease for years or life or years determinable on life or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate or interest, the trustees of the settlement or the Court, as the case may be, and, in the case of the Court, on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested accumulated and paid in such a manner as, in the judgement of the trustees or of the Court, as the case may be; will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate interest or reversion in respect whereof the money was paid, or as near thereto as may be.

Powers not assignable; contract not to exercise powers void

58. (1) The powers under this Act of a tenant for life are not capable of assignment or release and do not pass to a person as being by operation of law or otherwise an assignee of a tenant for life and remain exercisable by the tenant for life after and notwithstanding, any assignment by operation of law or otherwise of his estate or interest under the settlement.

(2) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3) This section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, if the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act on 25th January, 1895; and in this section

"assignment" includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or encumbrance, and "assignee" has a meaning corresponding with that of assignment.

(5) Every instrument whereby a tenant for life in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement and not an instrument vesting in any person any right as assignee for value within the meaning or operation of this section.

Prohibition or limitation against exercise of powers void

59. (1) If in a settlement, will, assurance or other instrument executed or made before or after or partly before and partly after the commencement of this Act on 25th January, 1895, a provision is inserted purporting or attempting, by way of direction, declaration or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending or intended by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid shall be deemed to be void.

(2) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

Provision against forfeiture

60. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

Exercise of powers; limitation of provisions

61. (1) Powers and authorities conferred by this Act on a tenant for life or trustees are exercisable from time to time.

(2) Where a power of sale or leasing or other power is exercised by a tenant for life or by the trustees of a settlement, he and they may respectively execute, make and do all deeds, instruments, and things necessary or proper in that behalf.

(3) Where any provision in this Act refers to sale, purchase, leasing or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act or transaction, the same shall be considered to extend only, unless it is otherwise expressed, to sales, purchases, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts and transactions under this Act.

Saving for other power

62. (1) Nothing in this Act shall take away, abridge or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act, but, where 2 or more persons together constitute the tenant for life for the purposes of this Act, the consent of only one of those persons shall be necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exercisable for any purpose provided for in this Act.

(3) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement or of the tenant for life, or of any other person interested, give its decision, opinion, advice or direction thereon.

Additional or larger powers by settlement

63. (1) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the like incidents, effects and consequences as if they were conferred by this Act unless a contrary intention is expressed in the settlement.

Proceedings for protection or recovery of land settled or claimed as settled

64. The Court may, if it thinks fit, approve of any action, defence, petition to the Legislature or opposition to such a petition or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement and may direct that any costs, charges or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

No obligation to consent

65. Nothing in this Act shall be construed to create any obligation on any person to make or consent to any application to the Court or to exercise any power.

Rules and orders

66. General rules and orders of Court for carrying into effect the purposes of this Act and for regulating the times and form and mode of procedure and generally the practice of the Court in respect to the matters to which this Act relates and for regulating the Court fees and the fees and allowances of officers of the Court, counsel and solicitors in respect of such matters shall be made in the same manner as rules of the High Court may be made, and such rules and orders may be rescinded or altered by the like authority, and all such rules and orders, upon being approved by the Governor in Council and published in the *Gazette*, shall take effect as rules and orders of the Court.

Citation

67. This Act may be cited as the Settled Estates Act, Revised Statutes of Anguilla, Chapter S15.

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