

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER U15

UNREPRESENTED ESTATES ACT

Showing the Law as at 15 December 2010

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 7/2010, in force 1 November 2010

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UNREPRESENTED ESTATES ACT

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UNREPRESENTED ESTATES ACT

Interpretation

1. In this Act—

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

"property" means goods, things in action, land, and every kind of property, whether real or personal, and every kind of estate and interest, present or future, vested or contingent.

Appointment of Administrator of Estates

2. It shall be lawful for Her Majesty the Queen or for the Governor provisionally on Her behalf, to appoint an officer in Anguilla, to be called the Administrator of Estates.

Bailiff to be Administrator until appointment made

3. Until such appointment is made, the Bailiff shall be *ex officio* Administrator of Estates under this Act.

Administrator to be an officer of the High Court

4. Every duly appointed and every *ex officio* Administrator of Estates shall be an officer of the High Court.

Administrator to take oath

5. The Administrator of Estates, previously to his entering upon the duties of his office, shall take and subscribe the following oath before a Judge—

"I do swear that I will faithfully, honestly and diligently perform the duties of the office of Administrator of Estates, without fear, favour, or partiality. So help me God.".

Administrator responsible for acts of his clerks, etc.

6. The Administrator of Estates shall be personally responsible for the honesty and fidelity of every clerk, servant, or other person, whom he may deem it necessary to employ in the execution of the duties of his office.

Administrator not to act as agent, etc.

7. The Administrator of Estates shall not act as the attorney or agent of any person, nor act as the executor or administrator of any deceased person, save and except such deceased person shall have been his wife, or shall have been related to him not more remotely than in the fourth degree according to the computation of the civil law.

Court on petition of Administrator to grant order to collect unrepresented estate

8. Subject to the provisions of section 35, the Administrator of Estates shall, so often as he shall find any estate which he shall consider unrepresented, present a petition to the Court stating the particulars of such estate, and praying for an order to collect and receive the same, and the Court is

hereby required upon being satisfied that such estate is unrepresented, to grant such order accordingly.

Definition of unrepresented estate

9. (1) Such unrepresented estate shall be defined to mean as follows—

(a) the estate of every person who shall die intestate, where the widow or next of kin of such person shall be unknown, or shall have refused to take out letters of administration, or shall be absent from Anguilla without having an agent therein;

(b) the estate of every person who shall die leaving a will, and, owing to any cause, it shall be necessary to appoint administrators *cum testamento annexo*, or *de bonis non*, of such estate, and the person entitled to such letters of administration shall be unknown, or shall refuse to take out such letters of administration, or shall be absent from Anguilla without having an agent therein;

(c) every estate whereof the executors or administrator shall be absent from Anguilla without having an agent therein;

(d) the estate of every person who shall die intestate and without leaving next of kin him surviving.

(2) In this section, the expression "next of kin" means those persons who are entitled to take beneficially on an intestacy under the provisions of the Intestates Estates Act.

Letters of administration not to be granted to creditor

10. No letters of administration of any estate shall be granted to any person in the character of a creditor thereof, but in every case where, but for this Act, letters of administration of any estate would be granted to a creditor thereof, such estate shall be considered as unrepresented within the meaning of this Act.

Administrator to take possession of estate and make inventory

11. After receiving such order as aforesaid, the Administrator of Estates shall forthwith take possession and cause an inventory of the estate mentioned in such order to be made, and shall file the same in Court.

Court may revoke order

12. Upon the petition of any person claiming to be lawfully entitled to the administration or management of any estate in respect of which any such order shall have been made as aforesaid, it shall be lawful for the Court, if it shall see fit, to revoke such order, and to direct the Administrator of Estates to desist from interfering with such estate, but all matters and things which shall have been *bona fide* done or performed by the Administrator of Estates, previously to the presenting of such petition, shall be valid and effectual to all intents and purposes whatsoever.

On death of Administrator, estates to vest in his successor

13. Upon the death, or removal from office, of any Administrator of Estates for the time being, all real and personal estates and effects which shall have been vested in such Administrator, by virtue of

this Act, at the time of his death or removal, shall become vested in the succeeding Administrator of Estates without the necessity of any act or deed whatsoever.

Administrator to collect debts, etc.

14. The Administrator of Estates shall, as soon as possible after the receiving of any order to collect any estate, get in and collect all debts due to the same, and institute, if necessary, all and every legal process requisite for compelling payment thereof.

Process to be in name of Administrator

15. The Administrator of Estates shall carry on such process in any court of law in the name of the Administrator of Estates, and no such process shall abate or be prejudiced by the death or removal of any such Administrator, but the same may be continued and carried on by his successor.

Interest to be paid on money belonging to unrepresented estate retained by any person

16. If any person shall retain in his hands or employ for his own benefit or knowingly permit any person so to retain or employ, any sum of money or other effects, part of any unrepresented estate, after a demand thereof shall have been made by the Administrator of Estates, every such person shall be charged and pay interest, at the rate of 1% per month, on such money, or on the value of such effects, for the time during which he shall have retained or employed the same, or permitted the same to be retained or employed as aforesaid; and the Administrator of Estates is hereby authorised and required to demand and sue for such interest, either together with the principal money or effects, or separately, as may be more convenient.

Administrator to report to Law Officer on taking possession of estates and to publish notice to creditors

17. The Administrator of Estates shall, immediately after the taking possession of the estate of any deceased person as aforesaid, notify the fact in writing to the Law Officer of the Crown, and affix and put up in the Court House notice in writing calling upon the creditors of the estate mentioned in such notice to come in and prove their debts on or before a certain day to be therein named, or in default thereof to be excluded from any benefit arising from such estate; and shall cause a copy of such notice to be inserted in the *Gazette*, and in at least one newspaper of Anguilla, and also, if ordered by the Court, twice in one or more leading London, foreign, or colonial newspapers, allowing 2 months to intervene between such insertions; and creditors residing within Anguilla shall be bound to file their claims, at the office of the Administrator of Estates, within 4 months from the time of the putting up of such notice, as aforesaid, and the creditors residing out of Anguilla shall be bound to file their claims, as aforesaid, within 8 months from the time of putting up such notice, on pain, in default thereof, of being excluded from any benefit arising from such estate.

Particulars to be furnished of creditor's claims

18. Such creditor's claim shall express the name and place of abode of the creditor, the origin of the debt, the degree or class of such debt, and the particulars and exact amount thereof, verified by declaration, and there shall also be annexed to such claim the document or documents which shall be considered evidence thereof.

Court to settle disputes as to validity of claims

19. Where any creditor shall dispute the validity of any claim, the contending parties shall forthwith draw up and settle a statement in writing of the grounds upon which such dispute shall have arisen, and submit the same to the Court, and where such parties, or either of them, shall refuse to

draw up and settle such statement and submit the same to the Court, or where the Administrator of Estates shall himself entertain doubts of the validity of any claim, he shall forthwith draw up a statement of the grounds upon which such dispute or doubts shall have arisen, and submit the same to the Court, which shall, in every case, make such order thereon as the circumstances of the case may require.

Court may order immediate sale of perishable part of estate

20. It shall be lawful for the Court, at any time, to make an order for the immediate sale by the Administrator of Estates of such part of any estate as shall be of a perishable nature.

Sale of personal property

21. The Administrator of Estates shall, within 2 months after the taking possession of the estate of any deceased person, sell and dispose of all the personal property belonging to the estate, by public auction (one month's public notice in the *Gazette*, and one at least of the newspapers of Anguilla, of such intended sale having been previously given), but—

(a) the Court may, if it sees fit, by any order, or orders, extend the time within which such sale shall be made, or direct the estate to be sold by private contract; and

(b) the Court may, in its discretion, order the Administrator of Estates to refrain from such sale either as to the whole, or any part, of the personal property of any testator which shall have come to his hands under the provisions of this Act, and to carry into effect the intention of such testator in respect thereof, or otherwise to deal with and administer the same in such manner as the Court shall direct, and this notwithstanding anything in this Act.

Sale of real estate

22. In case it shall be made to appear to the satisfaction of the Court that the money arising from the sale of personal property belonging to the estate of any deceased person will be insufficient to discharge the debts and liabilities thereof, it shall be lawful for the Court to grant an order directing the Administrator of Estates to sell the whole or such part of the real property belonging to any such estate as the Court may deem necessary for the purpose aforesaid; and such order shall be a sufficient authority to the Administrator of Estates to sell any property therein mentioned, and a sufficient protection to the purchaser thereof, but nothing herein shall be taken or construed to give any such purchaser any other or better title to such property than shall have been possessed by the last owner thereof.

Distribution of proceeds of estates

23. (1) At the expiration of 12 months from the date of the order for taking possession of the estate of any deceased person, the Administrator of Estates, out of the money which shall have been received on account thereof, shall reimburse himself all costs and charges which he shall reasonably have incurred in collecting and settling such estate (such costs and charges having been first allowed by the Court), and also shall deduct and pay into the Consolidated Fund 10% upon the gross amount of such money, to be applied as hereinbefore mentioned.

(2) The Administrator of Estates shall then pay the creditors of the estate in the order prescribed by law, if sufficient money shall remain for the payment thereof in full, and the balance, if any, which shall remain after such payment shall be paid into a special fund in trust for the next of kin, heir at law, legatee, or devisee of such deceased person, as the case may be.

(3) If sufficient money does not remain for the payment of all the creditors in full, then the remaining money shall be divided rateably among the creditors, but in the case of an estate which is unrepresented by reason of a person dying in the circumstances described in section 9(1)(d), the balance of any money remaining after the creditors of the estate have been paid in full, shall be paid by the Administrator of Estates into the Treasury to the credit of a deposit account which shall be called the Casual Revenues of the Crown Deposit Account.

(Act 7/2010, s. 26, as am. in L.R. 15/12/2010)

Application of 10% deducted by Administrator

24. The 10% upon the gross amount of such money payable into the Consolidated Fund under the provisions of section 23 shall be applied as follows—

(a) 7 ½% shall be paid by the Accountant General in respect of the services which the Administrator of Estates is required by this Act to perform, to the Consolidated Fund; and

(b) 2 ½% shall be applied to providing a reserve fund for defraying the incidental expenses of carrying this Act into effect.

(Act 7/2010, s. 26)

Administrator to submit his accounts monthly to the Court

25. It shall be the duty of the Administrator of Estates to submit his accounts, once at least in every month, to the Court for inspection and allowance, and as often as the Court shall direct, and generally to abide by the directions of the Court as to the management of any property which may, from time to time, be subject to his administration.

No fees to be paid on application of Administrator to the Court

26. No fees of Court shall be payable or taken in respect of applications made to the Court, to which the Administrator of Estates is the only party, concerning unrepresented estates or the management thereof, nor in respect of the filing of affidavits or other documents in Court by the Administrator, and it shall be sufficient for the Court to write upon the face of any document in the above cases, which otherwise should bear a stamp, and in the place where such stamp would be, the word "Exempt", with the chapter number of this Act.

Expenses of legal process to be paid from reserve fund where estate insufficient

27. The expenses of every legal process and other matter which it shall be necessary to institute or perform on behalf of any estate, the assets whereof shall be insufficient to defray such expenses, shall be paid out of the reserve fund on order of the Court.

No action against Administrator for debts of estate, but Court may order payment

28. No action or suit shall be brought against the Administrator of Estates on account of any debt due from any such estate as aforesaid, but if the Administrator of Estates shall refuse to admit any such debt or claim, it shall be lawful for the Court, upon petition supported by affidavit of the party aggrieved to make such order touching the admission and payment of such debt, and the costs of the application, as the circumstances may require.

Persons claiming balance of estate to apply to Court

29. Any person who shall claim in any other character than that of a creditor thereof, any estate or any balance which shall be in the hands of the Administrator of Estates, or of the Accountant General, shall apply to the Court by petition to have the same delivered over to him; and it shall be lawful for the Court, upon being satisfied of the validity of such claim, to make such order or orders as shall be necessary for the delivery over of such estate or balance, according to the prayer of the petition; and, where 2 or more persons shall lay claim to any estate or balance, it shall be lawful for the Court, with the consent of both or all such persons, their counsel or solicitors, to dispose of the merits of their claims, and determine the same in a summary manner, and to make such order therein touching the costs and all other matters, as the circumstances may require; but, where such consent as aforesaid shall not be given, such persons shall proceed to try the merits of their claims according to the usual course of law, and the Accountant General or the Administrator of Estates, as the case may be, shall, if necessary, take the proper steps for compelling such persons to interplead either at law or in equity.

Audit of Administrator's accounts

30. The Administrator of Estates shall, weekly, exhibit a statement of his accounts to the Accountant General, or Governor who shall forthwith ascertain the balance, and allow such accounts if they shall be found correct; and the Administrator of Estates shall, within 48 hours next after the allowance of such accounts, pay the balance so ascertained into the hands of the Accountant General to the credit of the estate, or respective estates, on account of which the same shall have been received.

List of unrepresented estates to be published annually

31. It shall be the duty of the Administrator of Estates, once in every year before the last day of the month of February, to cause to be advertised in the *Gazette*, and in such one or more leading London, foreign, or colonial newspapers as the Court shall direct, a list of such unrepresented estates to the credit of which there are any funds, as the Court, in its discretion, shall direct to be placed in such list; and a proportionate part of the cost of such advertisement shall be charged to each of the several estates comprised in such list, and may lawfully, on order of the Court, be paid from the funds to the credit of such estate.

Books and accounts to be kept by Administrator

32. The Administrator of Estates shall keep a separate account of and for each estate which he shall receive into his hands under this Act, and shall also keep such accounts and books as the Court shall direct.

Books and accounts may be searched

33. Any person shall be at liberty to inspect the books and accounts of the Administrator of Estates, during his office hours, on payment of a fee of 24¢.

Forms

34. The forms contained in the Schedule shall be adhered to, as nearly as the circumstances of each case shall permit.

Special provisions as to citizens of U.S.A.

35. (1) Notwithstanding anything hereinbefore contained, in case of the death in Anguilla of any person, known to the Administrator of Estates to be a citizen of the United States, having real or

personal property situate in any part of Anguilla, and without having therein any known heirs or testamentary executors by him appointed, it shall be the duty of such Administrator, as soon as he shall become aware of the fact, to inform the United States Consul in whose Consular District Anguilla is of the circumstance, in order that the information may be immediately forwarded by him to the persons interested, if he knows or can ascertain who the same may be.

(2) Any Consul, so informed under subsection (1), shall have the right to appear, either in person or by delegate in all legal or other proceedings taken in Anguilla, in respect of such property as aforesaid, on behalf of any absent heirs or creditors of the deceased, until such heirs or creditors are otherwise duly represented.

Citation

36. This Act may be cited as the Unrepresented Estates Act, Revised Statutes of Anguilla, Chapter U15.

SCHEDULE

FORMS

(Section 34)

FORM 1

PETITION TO COLLECT AN ESTATE

To the Honourable .....……..., a Judge of the High Court.

The petition of A.B. ……..., Administrator of Estates,

Humbly Showeth—

That your petitioner has been informed and believes that C.D., late of ...…….……..., died on the ..... day of .....……..... , (intestate, and that he has left no widow or next of kin residing in Anguilla, or having an agent therein, *or* leaving a will, but without appointing any executor thereof, and that there is no person residing within Anguilla, or having an agent therein, entitled to letters of administration *cum testamento annexo* of the said C.D., *or* that C.D., the executor of the will of E.F., deceased, died on the .....…….....…... day of .....……....., intestate, leaving a part of the estate of the said E.F., deceased, unadministered, and that there is no person residing within Anguilla, or having an agent therein, entitled to letters of administration *de bonis non* of the estate of the said E.F., deceased, *or* that C.D., executor or administrator of the estate of G., deceased, is absent from Anguilla, without having any agent therein *or* intestate and without leaving next of kin him surviving).

And that the said C.D. died (*or* is) possessed of property within Anguilla.

Your petitioner, therefore, prays that your Honour will be pleased to grant him an order to get in and collect the estate of the said C.D., deceased.

Dated ……

…….. A.B.

FORM 2

ORDER TO COLLECT AN ESTATE

It having been made to appear to the Court, by the petition of A.B., Administrator of Estates, that the estate of .....……......., deceased, is unrepresented, it is ordered that the said A.B., do, with all convenient speed, get in and collect the said estate.

Given under my hand at .....……....., the ..... day of ....., 20..... .

……..……

Judge

———————

FORM 3

ORDER TO SELL REAL ESTATE IN THE HIGH COURT OF THE EASTERN CARIBBEAN SUPREME COURT

In the matter of the Estate of.....……....., deceased.

It having been made to appear to the Court that the personal property belonging to the estate of .....…….....……......, deceased, is insufficient to discharge the debts and liabilities thereof, it is ordered that the Administrator of Estates do sell by public auction on the ..... day of ..... next, all that (*describe the property to be sold*), and for so doing this shall be his warrant.

Given under my hand at .....……....., the ..... day of ....., 20..... .

……..……

Judge

———————