



Administration of Estates Act 1925

1925 CHAPTER 23 15 and 16 Geo 5

PART III

ADMINISTRATION OF ASSETS

41 Powers of personal representative as to appropriation.

- (1) The personal representative may appropriate any part of the real or personal estate, 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, whether settled or not, 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:

Provided that—

- (i) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;
- (ii) 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 [^{F1}lacks capacity (within the meaning of the Mental Capacity Act 2005) to give the consent, it] shall be given on his behalf by his parents or parent, testamentary or other guardian, . . . [^{F2}]^{F3} or a person appointed as deputy for him by the Court of Protection], 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;

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- (iii) 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;
- (iv) if [^{F4}no deputy is appointed for a person who lacks capacity to consent], 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 [^{F5}said person];
- (v) 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 such legacy share or interest, provided that the appropriation is of an investment authorised as aforesaid.

[^{F6}(1A) The county court has jurisdiction under proviso (ii) to subsection (1) of this section where the estate in respect of which the application is made does not exceed in amount or value the county court limit.]

- (2) 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.
- (3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.
- (4) 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.
- (5) 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.
- (6) 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 [^{F7}trusts] 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.
- (7) If after any real estate 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.
- (8) 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, also an annuity, and “purchaser” means a purchaser for money or money’s worth.

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- (9) 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, including the statutory power to dispose of entailed interests, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

Textual Amendments

- F1** Words in s. 41(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), **Sch. 6 para. 5(2)(a)(i)** (with [ss. 27-29](#), 62); S.I. 2007/1897, art. 2(1)(d)
- F2** Word repealed by [Mental Health Act 1959 \(c. 72\)](#), **Sch. 7 Pt. I**
- F3** Words in s. 41(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), **Sch. 6 para. 5(2)(a)(ii)** (with [ss. 27-29](#), 62); S.I. 2007/1897, art. 2(1)(d)
- F4** Words in s. 41(1) substituted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), s. 68(1), **Sch. 6 para. 5(2)(b)** (with [ss. 27-29](#), 62); S.I. 2007/1897, art. 2(1)(d)
- F5** Words substituted by [Mental Health Act 1959 \(c. 72\)](#), **Sch. 7 Pt. I**
- F6** S. 41(1A) inserted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), **Sch. 2 Pt. III para. 13**
- F7** Word in s. 41(6) substituted (1.1.1997) by 1996 c. 47, s. 25(1), **Sch. 3 para. 6(3)** (with [ss. 24\(2\)](#), 25(4)); S.I. 1996/2974, **art. 2**

Modifications etc. (not altering text)

- C1** S. 41 excluded by [Intestates' Estates Act 1952 \(c. 64\)](#), s. 5, **Sch. 2 para. 6(2)**
- C2** [Ss. 17\(2\)](#), 38(4), 41(1A), 43(4) modified by [County Courts Act 1984 \(c. 28, SIF 34\)](#), **s. 24(2)(d)**
- C3** S. 41(5) excluded by [Intestates' Estates Act 1952 \(c. 64\)](#), s. 5, **Sch. 2 para. 1(3)**

Changes to legislation:

There are currently no known outstanding effects for the Administration of Estates Act 1925, Section 41.