

**Reprint  
as at 5 December 2013**



**Administration Act 1969**

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Justice.**

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**An Act to consolidate and amend certain enactments relating to the administration of the estates of deceased persons**

**1 Short Title and commencement**

- (1) This Act may be cited as the Administration Act 1969.
- (2) This Act shall come into force on 1 January 1971.

**2 Interpretation**

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

**administration** means probate of the will of a deceased person, and includes letters of administration of the estate of a deceased person, granted with or without a will annexed, for general, special, or limited purposes, and in the case of a trustee corporation includes an order to administer and an election to administer

**administrator** means any person to whom administration is granted; and includes a trustee corporation in any case where it is deemed to be an executor or administrator by reason of having filed an election to administer

**Commonwealth** means the Commonwealth of Nations; and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible

**Commonwealth country** means a country that is a member of the Commonwealth; and includes every territory for whose international relations the Government of that country is responsible

**court** means the High Court; and includes a Judge of that court  
**de facto relationship** has the meaning given to it by section 2 of the Property (Relationships) Act 1976

**estate** means real and personal property of every kind, including things in action

**goods** has the same meaning as in the Credit Contracts and Consumer Finance Act 2003

**hire purchase agreement** means an agreement under which goods are let or hired with an option to purchase and an agreement for the purchase of goods by instalment payments (whether the agreement describes the payments as rent or hire or otherwise) under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid; and—

- (a) includes—
- (i) any agreement to sell goods under which the buyer grants security over the goods to the seller for the whole or part of the purchase price and the property in the goods passes to the buyer subject to that security (in which case the agreement is a hire purchase agreement made at the time the sale is made); and
  - (ii) a sale and loan arrangement under which a person lends money on the security of any goods that have been bought or are to be bought if the whole or part of the purchase price is paid out of the proceeds of the loan, and the loan is made by the seller or is arranged by the seller and made by a third party who is engaged in the business of lending money or who habitually lends money in the course of the third party's business (in which case the arrangement is a hire purchase agreement made at the time of the making of the loan); but
- (b) does not include, subject to paragraph (a), any agreement under which property in the goods passes absolutely to the person who agrees to purchase them at the time of the agreement or upon or at any time before delivery of the goods

**intestate** includes a person who leaves a will but dies intestate as to some beneficial interest in his or her real or personal estate

**Maori** means a Maori within the meaning of Te Ture Whenua Maori Act 1993

**personal chattels**, in relation to any person who has died, means all vehicles, boats, and aircraft and their accessories, garden effects, horses, stable furniture and effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores, which immediately before his or her death were owned by him or her or in which immediately before his or her death he or she had an interest as debtor under a security interest as defined in the Personal Property Securities Act 1999, or as purchaser under a hire purchase agreement; but does not include any chattels used exclusively or principally at the death of the deceased for business purposes or money or securities for money

**real estate** means lands, tenements, and hereditaments, corporeal or incorporeal, and whether in possession, reversion, remainder, or expectancy; and any estate or interest in them or any of them, whether freehold or chattel interests; and any possibility, right, or title of entry or action in or concerning them or any of them

**Registrar** means the Registrar of the High Court

**rules** means rules from time to time made under the authority of this Act

**securities** includes stocks, funds, shares, and convertible notes

**surviving de facto partner**, in relation to a deceased person, means a person who was living in a de facto relationship with the deceased person at the date of his or her death

**trustee company** means a trustee company within the meaning of the Trustee Companies Act 1967

**trustee corporation** means Public Trust or the Māori Trustee or any trustee company

**will** includes a codicil.

References to a child or issue living at the death of any person include a child or issue who is conceived but not born at the death but who is subsequently born alive.

- (2) Nothing in this Act shall affect any special provision in any Act for the time being in force relating to the wills of Maori or to the obtaining of administration of the estate of a deceased Maori or the distribution of the estate of a deceased Maori.

Compare: 1952 No 56 s 2

Section 2(1) **court**: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 2(1) **de facto relationship**: inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 4 of the Administration Amendment Act 2001 (2001 No 6).

Section 2(1) **goods**: inserted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **hire purchase agreement**: inserted, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **Maori**: amended, on 1 July 1993, pursuant to section 362(2) of Te Ture Whenua Maori Act 1993 (1993 No 4).

Section 2(1) **personal chattels**: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 2(1) **personal chattels**: amended, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 2(1) **personal chattels**: amended, on 1 January 1971, by section 2 of the Administration Amendment Act 1970 (1970 No 45).

Section 2(1) **Registrar**: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 2(1) **surviving de facto partner**: inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 4 of the Administration Amendment Act 2001 (2001 No 6).

Section 2(1) **trustee corporation**: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### 3 Act to bind Crown

This Act shall bind the Crown.

Compare: 1952 No 56 s 3

### 4 Application of Parts 1, 2, and 4

Except as otherwise provided in this Act, Parts 1, 2, and 4 shall apply in every case, whether the death occurred before or after the commencement of this Act.

## **Part 1** **Administration by administrator**

### *Grant of administration*

#### **5 Probate jurisdiction of High Court**

- (1) The court shall continue to have jurisdiction and authority in relation to the granting and revoking of probate of wills and letters of administration with or without a will annexed of the estates of deceased persons, and in regard to the hearing and determining of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.
- (2) Without restricting subsection (1) or any other enactment, the court shall have jurisdiction to make a grant of probate or letters of administration in respect of a deceased person, whether or not the deceased person left any estate in New Zealand or elsewhere, and whether or not the person to whom the grant is made is in New Zealand.

Compare: 1952 No 56 s 4; Supreme Court of Judicature (Consolidation) Act 1925 s 20 (UK); Administration of Justice Act 1932 s 2 (UK)

Section 5 heading: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

#### **5A Killer not competent to be granted administration**

A person who is a killer of a victim for the purposes of the Succession (Homicide) Act 2007 or who is awaiting trial for an offence of homicide (within the meaning of that Act) is not competent to be granted and must not be granted—

- (a) probate of the victim's will; or
- (b) letters of administration of the estate of the victim, with or without a will annexed.

Section 5A: inserted, on 17 November 2007, by section 17 of the Succession (Homicide) Act 2007 (2007 No 95).

#### **6 Discretion of court as to person to whom administration is granted**

- (1) In granting letters of administration with or without a will annexed, or an order to administer with or without a will annexed, in respect of the estate of any deceased person or any part thereof, the court shall have regard to the rights of all persons interested in the estate of the deceased person or the pro-

ceeds of sale thereof, and, in particular, administration with a will annexed may be granted to a devisee or legatee; and any such administration may be limited in any way the court thinks fit:

provided that, subject to the provisions of subsection (2), where the deceased died wholly intestate as to his or her estate, administration shall be granted to some 1 or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose.

- (2) Where by reason of the insolvency of the estate or other special circumstances the court thinks it necessary or expedient to do so, it may—
  - (a) grant administration to such person or persons as it thinks expedient notwithstanding that some other person is appointed an executor or that, apart from this subsection, some other person would by law be entitled to a grant of administration:
  - (b) grant probate to 1 or more of the executors appointed by a will, notwithstanding that some other person or persons may also be appointed as an executor or executors.
- (3) A grant may be made under subsection (2) notwithstanding that any person excluded from the grant would be competent to take it.
- (4) Before determining to exclude from any such grant any person who, apart from this section, would by law be entitled to, or be included in, the grant, and wishes to have, or to be so included in, the grant, the court shall have regard to his or her competency and solvency, his or her ability effectively to administer the estate, the rights of all persons interested in the estate, and any changes in circumstances between the making of the will (if any) and the time when the court is asked to make the grant.
- (5) The court may, in its discretion, make any grant of administration (other than the probate of a will) conditional upon the person to whom the grant is made giving such security as the court may require for the due collection, getting in, and administration of the estate of the deceased:

provided that the court shall not require any trustee corporation, or any person obtaining administration to the use or for the benefit of the Sovereign, to give any such security.

- (6) The court shall not exercise its powers under subsection (5) unless it is satisfied that, in the special circumstances of the case, the imposition of the requirement of security would be expedient having regard to the following matters:
- (a) the value of the estate:
  - (b) the financial position of the proposed administrator:
  - (c) the extent of his or her interest (if any) in the estate:
  - (d) whether or not he or she is a creditor in the estate:
  - (e) whether or not there are any minor beneficiaries or beneficiaries under any other disability:
  - (f) such other matters as the court thinks relevant.
- (7) It shall not be necessary in any motion for a grant of administration, or in any affidavit filed in support of such motion, to include any information for the purposes only of subsections (5) and (6) unless the court in a particular case expressly requires that information to be supplied.

Compare: Supreme Court of Judicature (Consolidation) Act 1925 s 162 (UK)

Section 6(5): inserted, on 1 January 1980, by section 3 of the Administration Amendment Act 1979 (1979 No 38).

Section 6(6): inserted, on 1 January 1980, by section 3 of the Administration Amendment Act 1979 (1979 No 38).

Section 6(7): inserted, on 1 January 1980, by section 3 of the Administration Amendment Act 1979 (1979 No 38).

## **7 Administration pending legal proceedings**

- (1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any grant of administration, are pending, the court may grant administration of the estate of the deceased to a temporary administrator, who shall, until he or she is discharged or removed under section 21, have all the rights and powers of a general administrator, other than the right of distributing the balance of the estate remaining after payment of debts, funeral and testamentary expenses, duties, and fees, and every such temporary administrator shall be subject to the immediate control of the court and act under its direction.

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

Compare: Supreme Court of Judicature (Consolidation) Act 1925 s 163 (UK)

## **8 Grant of special administration where administrator is out of New Zealand**

- (1) If at any time after the death of a person any administrator of his or her estate is residing out of New Zealand, the court may, on the application of any creditor or person interested in the estate, grant to him or her or some other person special administration of the estate of the deceased in such form and with such powers as the court may direct or approve. Unless the court otherwise directs, every grant of special administration shall continue until the administrator to whom the grant is made is discharged or removed under section 21.
- (2) While a grant of special administration of the estate of a deceased person remains in force the previously subsisting administration of that estate shall be deemed to be suspended, and the administrator thereunder shall not be liable for acts and things done by the administrator under the grant of special administration.
- (3) The court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into court of any money or securities belonging to the estate, and all persons shall obey any such order.
- (4) If the administrator capable of acting as such returns to and resides within the jurisdiction of the court while any legal proceedings to which a special administrator is a party are pending, the administrator who so returns may be made a party to the legal proceedings, and the court may order that the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as it may specify.
- (5) Nothing in this section shall restrict section 21.

Compare: Supreme Court of Judicature (Consolidation) Act 1925 s 164 (UK)

**9 Administration during minority of executor**

- (1) Where a person who is sole executor of a will is at the date of the testator's death a minor who is not entitled to a grant of probate under subsection (3), administration with the will annexed may be granted to such person as the court thinks fit, until the minor becomes entitled to and obtains a grant of probate to him or her; and on his or her attaining full age or sooner becoming entitled to a grant of probate under that subsection and not before, probate of the will may be granted to him or her.
- (2) Where a testator by his or her will appoints a person who at his or her death is a minor who is not entitled to a grant of probate under subsection (3) to be an executor, the appointment shall not operate to transfer any interest in the estate of the deceased to the minor or to constitute him or her an administrator for any purpose, unless and until probate is granted to him or her under this section.
- (3) Where a testator by his or her will appoints a person who is a minor to be an executor, probate of the will may be granted to the person if, at the date of the grant,—
  - (a) the person has attained full age; or
  - (b) the person has attained the age of 18 years and is or has been married or in a civil union.
- (4) A minor to whom probate is granted under paragraph (b) of subsection (3) shall have the same rights, powers, duties, and obligations as executor as he or she would have if he or she were of full age, and shall be liable accordingly for his or her acts and omissions as executor.

Compare: Supreme Court of Judicature (Consolidation) Act 1925 s 165 (UK)

Section 9(3)(b): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 4 of the Administration Amendment Act 2005 (2005 No 4).

**9A Grant of administration to holder of enduring power of attorney**

- (1) For the purposes of this section and section 9B,—  
**attorney**, in relation to a donor, means the holder of a power of attorney granted by the donor

**donor**, in relation to the estate of a deceased person, means—

- (a) a person who is the sole executor, or the last surviving executor, of a will made by the deceased person; or
- (b) a person who has the right, in respect of the estate of the deceased person, to apply for letters of administration with or without a will annexed

**mentally incapable**, in relation to a donor, means that the donor is not wholly competent to manage his or her own affairs in relation to his or her property

**power of attorney**, in relation to a donor, means an enduring power of attorney (as described in section 95 of the Protection of Personal and Property Rights Act 1988) that—

- (a) authorises the attorney to act generally in relation to the whole of the donor's affairs in relation to the donor's property (whether or not the attorney is also authorised to act in relation to the donor's personal care and welfare); and
- (b) is not subject to any conditions or restrictions that prohibit the attorney from applying for a grant of administration on behalf of the donor.

(2) If,—

- (a) on the date of a person's death or within 3 months after that date, the donor is or becomes mentally incapable; and
  - (b) there is an attorney in respect of that donor,—
- the court may, on the application of the attorney, make a grant of administration to the attorney.

(3) If—

- (a) an attorney applies under subsection (2) for a grant of administration; and
- (b) the donor dies before the court finally determines that application,—

the court may make a grant of administration under subsection (2) to the applicant, even though, because of the donor's death, the applicant is no longer an attorney.

(4) If—

- (a) a donor applies for a grant of administration in respect of the estate of a deceased person; and

- (b) the donor becomes mentally incapable before the court finally determines that application; and
  - (c) there is an attorney in respect of that donor,—  
the court may make a grant of administration under subsection (2) to the attorney.
- (5) In the circumstances set out in subsection (4), an attorney does not need to make a separate application for a grant of administration, but may, if the attorney wishes, continue the proceedings in the attorney's own name.
- (6) A grant of administration under subsection (2) continues until—
- (a) the attorney is discharged or removed as administrator under section 21; or
  - (b) the power of attorney ceases to have effect in accordance with section 106 (other than subsection (1)(b)) of the Protection of Personal and Property Rights Act 1988; or
  - (c) the attorney is removed as administrator, as specified in section 9B(3)(b) or section 9B(4).

Section 9A: inserted, on 3 July 1998, by section 2 of the Administration Amendment Act (No 2) 1998 (1998 No 82).

**9B Further provisions relating to grant of administration to holder of enduring power of attorney**

- (1) Where the court has made a grant of administration under section 9A(2), the following provisions of the Protection of Personal and Property Rights Act 1988 do not apply in respect of the attorney's decision to apply for the grant of administration, or any act or omission of the attorney in his or her capacity as administrator of the estate:
- (a) section 101:
  - (b) section 102(2)(a):
  - (c) section 102(2)(c):
  - (d) section 102(2)(d):
  - (e) section 102(2)(e):
  - (f) section 102(2)(f):
  - (g) section 102(2)(g):
  - (h) section 103:
  - (i) section 105(1).

- (2) If the donor dies while the attorney is acting as administrator, the attorney must, within 3 months after the date of death of the donor, apply to the court for directions relating to whether the attorney may continue to act as administrator.
- (3) If an application is made under subsection (2), the court may—
- (a) direct the attorney to continue to act as administrator; or
  - (b) remove that attorney as administrator under section 21.
- (4) If—
- (a) the donor dies; and
  - (b) the attorney fails to make an application under subsection (2) within 3 months after the date of death of the donor; and
  - (c) any person interested in the estate in respect of which the attorney is acting as administrator, or Public Trust, or the Māori Trustee, or any creditor of the testator or intestate, applies to the court under section 21 to have the attorney removed as administrator,—
- the court must remove that attorney as administrator under section 21.

Section 9B: inserted, on 3 July 1998, by section 2 of the Administration Amendment Act (No 2) 1998 (1998 No 82).

Section 9B(4)(c): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **10 Administration with will annexed**

Where the court grants administration of the estate of a deceased person with the will annexed, the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

Compare: Supreme Court of Judicature (Consolidation) Act 1925 s 166 (UK)

## **11 Cesser of right of executor to prove**

- (1) Where a person appointed executor by a will—
- (a) survives the testator but dies without having been granted probate of the will; or
  - (b) is cited to take out probate of the will and does not appear to the citation; or
  - (c) renounces probate of the will,—

his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of the testator's estate shall devolve and be committed as if that person had not been appointed executor.

- (2) Where a person is appointed by a will to be both executor and trustee and his or her rights in respect of the executorship wholly cease under subsection (1), his or her rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he or she had not been appointed as trustee:

provided that nothing in this subsection shall prevent his or her subsequent appointment as trustee.

Compare: Administration of Estates Act 1925 s 5 (UK)

## **12 Withdrawal of renunciation**

- (1) Notwithstanding anything to the contrary in section 11, an executor who has renounced probate (whether before or after the commencement of this Act) may be permitted by the court to withdraw the renunciation and prove the will.

- (2) Where an executor who has renounced probate has been permitted (whether before or after the commencement of this Act) to withdraw the renunciation and prove the will,—

(a) the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other person to whom administration has been granted, and a memorandum of the subsequent probate shall be endorsed on the original grant of administration:

(b) his rights (if any) in respect of the trusteeship shall revive except so far as the court otherwise orders.

Compare: Administration of Estates Act 1925 s 6 (UK)

## **13 Executor of executor represents original testator**

- (1) An executor of a sole or last surviving executor of a testator shall be the executor of that testator:

provided that for the purposes of the foregoing provisions of this subsection a person who does not prove the will of his or her testator shall be deemed not to be an executor notwithstanding his or her appointment as such by the will, and in the

case of an executor who on his or her death leaves surviving him or her some other executor of his or her testator who at the time of the testator's death has not proved but who afterwards proves the will of that testator, it shall cease to apply when probate to the surviving executor is granted.

- (2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.
- (3) The chain of representation is broken by—
  - (a) the failure to leave a will; or
  - (b) the failure of a testator to appoint an executor; or
  - (c) the failure to obtain probate of a will,—but is not broken by a temporary grant of administration if probate is subsequently granted.
- (4) Every person in the chain of representation to a testator—
  - (a) has the same rights in respect of the estate of that testator as the original executor would have had if living; and
  - (b) is, to the extent to which the estate of that testator has come to his or her hands, answerable as if he or she were an original executor.

Compare: Administration of Estates Act 1925 s 7 (UK)

#### **14 Notice to be sent to Public Trustee of applications for administration**

*[Repealed]*

Section 14: repealed, on 21 November 1973, by section 2 of the Administration Amendment Act 1973 (1973 No 47).

#### **15 Administration bond**

*[Repealed]*

Section 15: repealed, on 1 January 1980, by section 4(1) of the Administration Amendment Act 1979 (1979 No 38).

#### **16 Proceedings if condition of bond broken**

*[Repealed]*

Section 16: repealed, on 1 January 1980, by section 4(1) of the Administration Amendment Act 1979 (1979 No 38).

**17 Administration as evidence**

Every administration of a will or with a will annexed shall be evidence of that will upon all questions concerning real estate in the same manner and to the same extent as in questions concerning personal estate; and every administration shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of the death of the testator or intestate.

Compare: 1952 No 56 s 8

**18 Certificates of administration**

(1) Subject to the provisions of subsection (2), at any time after the grant of the relevant administration the Registrar may, on the request of the administrator, issue under his or her hand and the seal of the court such number of certificates of administration, in the form set out in Schedule 1, as may be required.

(2) *[Repealed]*

(3) Every such certificate shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of death of the testator or intestate and of the grant of administration to the administrator for all purposes including registering the administrator as proprietor of any estate or interest in any land under the Land Transfer Act 1952, or of any mining privilege under the Mining Act 1926, or of any securities issued by or property in any bank or company or body or association. No District Land Registrar or Mining Registrar or bank or company or body or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the administrator holds any such land or mining privilege or securities or property, or (except where a caveat has been lodged under the authority of the Land Transfer Act 1952) as to his or her authority to transfer or deal with the same.

(4) The fee payable to the Registrar in respect of each such certificate shall be \$30 or such other amount as may from time to time be prescribed by the Governor-General by Order in Council.

Compare: 1952 No 56 s 8A; 1957 No 38 s 2(1)

Section 18(1): amended, on 1 January 1986, by section 11(2) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 18(2): repealed, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

Section 18(4): amended, on 1 July 2013, by regulation 5(1) of the High Court Fees Regulations 2013 (SR 2013/226).

## **19 Proceedings where executor neglects to prove will**

- (1) In any case where any executor named in a will neglects or refuses to prove the will, or to renounce probate thereof, within 3 months from the death of the testator, the court may, upon the application of any other executor or executors or of any person interested in the estate or of Public Trust or of the Māori Trustee or of any creditor of the testator, grant an order nisi calling upon the executor who so neglects or refuses to show cause why probate of the will should not be granted to that executor alone or with any other executor or executors or, in the alternative, why administration should not be granted to the applicant or some other person.
- (2) Upon proof (whether by affidavit or otherwise) of service of the order, or upon the court dispensing with service of the order, if the executor who is so called upon does not appear or upon cause being shown, the court may make such order for the administration of the estate, and as to costs, as appears just.
- (3) Where Public Trust or the Māori Trustee applies, and any executor is out of New Zealand, the court may exercise the power given by this section and grant administration to Public Trust or the Māori Trustee without first granting an order nisi calling upon any executor who is out of New Zealand to show cause.
- (4) On the application of any executor who was out of New Zealand when the grant under subsection (3) without an order nisi was made, and who has not refused or renounced administration, the court may grant probate to that executor, or if Public Trust is one of the executors named in the will to Public Trust and that executor, in any manner and subject to any limitations or conditions that the court thinks proper.
- (5) No application under subsection (4) shall be made until 14 days after notice in writing of the intention to apply has been

left at the Office at Wellington of Public Trust or of the Māori Trustee, whichever received the prior grant.

Compare: 1952 No 56 s 9

Section 19(1): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 19(3): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 19(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 19(5): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **20 When powers, etc, of Public Trust or Māori Trustee to pass to executor**

- (1) Immediately on the grant of probate under subsection (4) of section 19—
  - (a) all the powers, rights, discretions, and duties of Public Trust or the Māori Trustee (except those conferred or imposed by the Public Trust Act 2001 or the Maori Trustee Act 1953 and except also the rights reserved by this section) in relation to the testator's estate, and all liability of Public Trust or the Māori Trustee under any contract or agreement entered into by him or her, or otherwise affecting or relating to the estate or any part thereof, shall pass to the executor obtaining probate:
  - (b) no claim shall thereafter lie against Public Trust or the Māori Trustee in respect of any such liability:  
provided that nothing in this paragraph shall apply where Public Trust is one of the executors named in the will:
  - (c) subject to and on the allowance and payment of all money due for commission, necessary outlay, disbursements, costs, charges, and expenses affecting the estate, including the costs of and incidental to the application for probate, and consequent thereon, and subject also to the provisions of this section and section 19, such portion of the estate as is then unadministered by Public Trust or the Māori Trustee shall vest in the executor obtaining probate.

- (2) Nothing in this section shall relieve Public Trust or the Māori Trustee from the consequences of his or her own devastavit.

Compare: 1952 No 56 s 10

Section 20 heading: amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 20 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 20(1)(a): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 20(1)(a): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 20(1)(b): amended, on 1 July 2009, by section 30(1) of the Māori Trustee Amendment Act 2009 (2009 No 12).

Section 20(1)(b): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 20(1)(c): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 20(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **21 Discharge or removal of administrator**

- (1) Where an administrator is absent from New Zealand for 12 months without leaving a lawful attorney, or desires to be discharged from the office of administrator, or becomes incapable of acting as administrator or unfit to so act, or where it becomes expedient to discharge or remove an administrator, the court may discharge or remove that administrator, and may if it thinks fit appoint any person to be administrator in his or her place, on such terms and conditions in all respects as the court thinks fit.
- (2) The administrator so removed or discharged shall, from the date of that order, cease to be liable for acts and things done after that date.
- (3) Upon any administrator being discharged or removed as aforesaid (whether or not any other administrator is appointed) all the estate and rights of the previous administrator or administrators which were vested in him or her or them as such shall become and be vested in the continuing administrator or administrators (including any administrator appointed under subsection (1)) who shall have the same powers, authorities, discretions, and duties, and may in all respects act, as if he or

she or they had been originally appointed as the administrator or administrators.

- (4) This section shall, with all necessary modifications, extend to the case where an administrator dies, and the powers and authorities hereby conferred may be exercised and shall take effect accordingly.
- (5) Nothing in this section shall restrict section 8.  
Compare: 1952 No 56 s 11

### *The administering of estates*

#### **22 Interim vesting of estate where no executor appointed**

- (1) Subject to the provisions of this Act and any other Act, where a person dies without leaving a will that effectively appoints an executor, his or her estate shall, until administration is granted in respect thereof, vest in the Crown in the same manner and to the same extent as formerly in England in the case of personal property it vested in the ordinary.
- (2) While any estate remains vested in the Crown in accordance with this section, the Crown Proceedings Act 1950 shall apply to the service on the Crown of notices and documents relating to the estate as if they related to civil proceedings instituted against the Crown.

Compare: Administration of Estates Act 1925 s 9 (UK)

#### **23 Executor not to act while another administrator is in office**

Subject to the provisions of this Act and of any other Act, where administration has been granted in respect of any part of the estate of a deceased person, and is not for the time being suspended, no person other than the administrator of that part of the estate shall have power to bring an action or otherwise act as administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

Compare: Administration of Estates Act 1925 s 15 (UK)

#### **24 Estate to vest in administrator**

- (1) Immediately upon the grant of administration of the estate of any deceased person, all the estate then unadministered of that

person, whether held by him or her beneficially or held by him or her in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person:

provided that nothing in this section shall affect the earlier vesting in an executor by operation of law.

- (2) The title of every administrator to any part of the estate of a deceased person, whether he or she has died before or after the commencement of this Act, shall relate back to and be deemed to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration.
- (3) If there are concurrently more administrators than 1 of any part of the estate that part shall vest in them as joint tenants.

Compare: 1952 No 56 s 12

## **25 How estate to be held by administrator**

Subject to the provisions of this Act, the administrator shall hold—

- (a) the estate of any person who dies or has died either before or after the commencement of this Act leaving a will according to the trusts and dispositions of the will, so far as the will affects that estate:
- (b) the estate of any person who dies after the commencement of this Act intestate as to that estate according to the provisions of Part 3:
- (c) the estate of any person who has died before the commencement of this Act intestate as to that estate according to the provisions of the enactments and law which would have applied thereto if this Act had not been passed.

Compare: 1952 No 56 s 13

## **26 Estate to be assets for payment of debts, etc**

The whole of the estate of every deceased person shall be assets in the hands of his or her administrator for the payment of all duties and fees payable under any Act imposing or charging duties or fees on the estates of deceased persons, and for the payment in the ordinary course of administration of his or

her debts and of debts properly incurred by his or her administrator; and for those purposes the administrator may, in as full and effectual a manner in law as the testator or intestate could have done in his or her lifetime, sell, lease (with or without an optional or compulsory purchasing clause), or mortgage (with or without a power of sale), the estate, or any part thereof.

Compare: 1952 No 56 s 14

**27 Power of sale on intestacy**

- (1) On the death of a person intestate as to any real or personal estate, his or her administrator shall have power to sell that real estate and to call in, sell, and convert into money such part of that personal estate as may not consist of money, with power to postpone the sale, calling in, and conversion for such a period as the administrator, without being liable to account, may think proper, and so that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold under this section except for special reason.
- (2) This section shall have effect notwithstanding that the administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.
- (3) Where the deceased leaves a will this section shall have effect subject to the provisions contained in the will.

Compare: 1952 No 56 s 23

**28 Method of sale or lease**

The provisions of sections 14 to 18 of the Trustee Act 1956 shall, so far as they are applicable and with any necessary modifications, apply to any sale or lease under sections 26 and 27 as if the sale or lease were under the said sections 14 to 18 of the Trustee Act 1956:

provided that nothing in this section shall restrict the term of any lease which may be granted under section 26:

provided also that land of any value may be sold or leased under section 26, or may be sold under section 27 without the consent of the court.

Compare: 1952 No 56 ss 14, 15

**29 Administrator to represent real estate**

In all actions concerning the real estate of a deceased person, his or her administrator shall represent his or her real estate and the persons interested therein in the same manner and to the same extent as, in actions concerning personal estate, the administrator represents that estate and the persons interested therein.

Compare: 1952 No 56 s 18

**30 Rights and duties of administrator as to real estate**

The administrator of any deceased person shall have the same rights and be subject to the same duties and liabilities with respect to the real estate of that person as he or she has and is subject to with respect to the personal estate of that person, and shall perform the duties imposed on the administrator by any Act imposing or charging duties or fees or liabilities on the estates of deceased persons.

Compare: 1952 No 56 s 20

**31 Payment of claims where estate insufficient**

Where the estate within the meaning of Part 6 of the Insolvency Act 2006 of any deceased person is insufficient to pay his or her debts, funeral, and testamentary expenses in full, it shall be lawful for the administrator to apply that estate in accordance with the priorities that would be applicable if it were being administered under that Part, without the administrator being under any obligation to have recourse to that Part or to administer that estate thereunder, and any surplus shall be held for the person or persons lawfully entitled thereto.

Compare: 1957 No 36 s 104

Section 31: amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

**32 Administration suits**

- (1) In any case where the assets of any deceased person are being administered by the court (whether the person has died before or after the commencement of this Act) if his or her estate proves to be insufficient for the payment in full of his or her debts and liabilities, the same rules shall apply and be observed

as would be applicable if the estate were being administered under Part 6 of the Insolvency Act 2006, and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of the deceased person may come in under the decree or order for the administration of the estate and make such claims against it as they may respectively be entitled to by virtue of that Part and this Act.

- (2) In any action or other proceeding for the administration by the court of the estate of any deceased person, no court shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of the action or proceeding, unless the court first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which the continuance was necessary.

Compare: 1952 No 56 ss 46, 47

Section 32(1): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

### **33 Debts under deeds and simple contracts to stand in equal degree**

Subject to the provisions of this Act and of any other Act, in the administration of the estate of every person who has died, whether before or after the commencement of this Act, no debt or liability of the person shall be entitled to any priority or preference by reason merely that it arises under a bond, deed, or instrument under seal; but all the creditors of that person shall be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable:

provided that nothing in this section shall prejudice or affect any lien, charge, mortgage, or other security which any creditor may hold or be entitled to for payment of his or her debt or liability.

Compare: 1952 No 56 s 21

**34 Charges on property of deceased to be paid primarily out of the property charged**

- (1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his or her will disposes of, an interest in property, or where an interest in property passes by survivorship on the death of a person, and at the time of his or her death the interest is charged with the payment of money, whether by way of mortgage, charge, or otherwise, and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for payment of all amounts charged thereon; and every part of the said interest, according to its value, shall bear a proportionate part of the amounts charged on the whole thereof.
- (1A) However, subsection (1) does not apply to an interest in any personal chattels if a person dies possessed of or entitled to the interest and it passes under the will or on the intestacy of the person to the person's husband, wife, or civil union partner, or to a surviving de facto partner of the person.
- (2) Such a contrary or other intention shall not be deemed to be signified—
  - (a) by a general direction for payment of debts or of all the debts of the testator out of his or her personal estate, or his or her residuary real and personal estate, or his or her residuary real estate, or his or her residuary personal estate; or
  - (b) by a charge of debts upon any such estate—  
unless that intention is further signified by words expressly or by necessary implication referring to all or some part of the charge on the interest in property.
- (3) Nothing in this section shall affect the right of a person entitled to the payment with which the interest in property is charged to obtain payment or satisfaction thereof out of the other assets of the estate or otherwise.

Compare: 1952 No 51 s 149; Administration of Estates Act 1925 s 35 (UK)

Section 34(1) proviso: repealed, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 5(1) of the Administration Amendment Act 2001 (2001 No 6).

Section 34(1A): inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 5(2) of the Administration Amendment Act 2001 (2001 No 6).

Section 34(1A): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 5 of the Administration Amendment Act 2005 (2005 No 4).

### **35 Articles held under hire purchase agreement**

- (1) Where any person, immediately before his or her death, had an interest as purchaser under a hire purchase agreement of any goods, if the person has by his or her will made a bequest in terms that would have included the goods if he or she had owned them immediately before his or her death, the bequest shall take effect, unless the context otherwise requires, as if he or she then owned the goods.
- (2) Where any person, immediately before his or her death, had an interest as purchaser under a hire purchase agreement of any goods, the provisions of section 34 shall apply as if he or she then owned the goods and as if any amount payable by the purchaser under the agreement (including, in any case where the agreement confers on the purchaser an option to purchase the goods, any amount payable in the event of the exercise of that option) and not already paid were a charge on the goods.
- (3) The provisions of this section are without prejudice to the rights of the vendor of the goods under or by virtue of the hire purchase agreement.

Section 35: replaced, on 1 January 1980, by section 5 of the Administration Amendment Act 1979 (1979 No 38).

Section 35(1): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 35(2): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

### **36 Application of sections 34 and 35**

- (1) Sections 34 and 35 shall not apply to any will made before 1 January 1971.
- (2) For the purposes of this section every will which is re-executed or confirmed or revived by any codicil shall be deemed to have been made at the time when it was first made, and not at the time when it was re-executed or confirmed or revived.

- (3) Section 149 of the Property Law Act 1952 continues to apply to a will made before 1 January 1971 as if that section had not been repealed by the Property Law Act 2007.

Section 36(3): replaced, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

### **36A Direction for payment of duty on dutiable estate**

*[Repealed]*

Section 36A: repealed, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

### **37 Liability of specific devise or bequest where estate primarily liable is insufficient**

If any testator's estate primarily liable for the payment of his or her debts is insufficient for that purpose, each of his or her specifically devised or bequeathed estates (if more than 1) shall be liable to make good the deficiency, in the proportion that the value of each of those estates bears to the aggregate value of the specifically devised or bequeathed estates of the testator.

Compare: 1952 No 56 s 22

### **38 Proving executors may exercise powers**

Where probate is granted to 1 or some of 2 or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are conferred by law or by the will on the administrator may be exercised by the proving executor or executors for the time being, and shall be as effectual as if all the persons named as executors had concurred therein.

Compare: Administration of Estates Act 1925 s 8 (UK)

### **39 Interest on legacies and annuities**

- (1) In any case where a legacy is charged upon both land and chattels, unless the will otherwise provides, interest shall be payable on the legacy and be a charge on the land and chattels in accordance with the rules of law that would apply if the legacy were charged upon the land only.
- (2) While interest is payable on a legacy or on arrears of an annuity, in accordance with the will or instrument pursuant to

which the legacy or annuity is payable or any enactment or rule of law, unless the will or instrument otherwise provides or the court otherwise orders, the interest on the legacy or arrears of the annuity is payable—

- (a) at the rate of 7.5% per annum; or
- (b) at any other rate that may from time to time be fixed for the purposes of this section by the Governor-General by Order in Council.

(2A) However, if an administrator (in accordance with any power conferred on the administrator in that behalf) appropriates property in or towards satisfaction of a legacy (other than an annuity),—

- (a) the legatee is entitled to the income from the property so appropriated; and
- (b) interest is not payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation.

(2B) The Ministry of Justice must, at least once every 2 years after the date on which this subsection comes into force, review and report to the Minister of Justice on the rate of interest payable under subsection (2).

(3) Subsection (1) shall not apply in any case where the will or instrument pursuant to which a legacy is payable was made before the commencement of this Act, whether or not the testator (in the case of a will) dies after the commencement of this Act.

Section 39(2): replaced, on 22 October 2003, by section 3 of the Administration Amendment Act 2003 (2003 No 58).

Section 39(2A): inserted, on 22 October 2003, by section 3 of the Administration Amendment Act 2003 (2003 No 58).

Section 39(2B): inserted, on 22 October 2003, by section 3 of the Administration Amendment Act 2003 (2003 No 58).

#### **40 No right of retainer by administrator**

No person, being a creditor in his or her own right or as a trustee of any estate of which he or she is administrator, shall, by virtue of his or her office as administrator, have any right of retainer in priority to the other creditors of the estate in respect of any debt due to him or her; but every such creditor or admin-

istrator shall rank with other creditors, but without prejudice to any preferential claim or security which as a creditor he or she might have been able to enforce if he or she had not been the administrator.

Compare: 1952 No 56 s 26

**41 Rights and liabilities of administrator**

Every person to whom administration of the estate of a deceased person is granted, other than an executor, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he or she were the executor of the deceased.

Compare: Administration of Estates Act 1925 s 21 (UK)

**42 Liability of agent of administrator**

No person appointed an administrator upon an application made by him or her as the attorney or agent for an administrator absent from New Zealand shall be liable to account or pay money, or transfer property, to any one in respect of his or her administratorship excepting only to the administrator whose attorney or agent he or she was, or to any person who, after his or her appointment as administrator upon an application so made, is appointed administrator of the same estate.

Compare: 1952 No 56 s 27

**43 Administrator's right to distrain**

*[Repealed]*

Section 43: repealed, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

**44 Administrator may be required to exhibit inventory**

Every administrator shall, when required by the court so to do, exhibit on oath in the court a true and perfect inventory and account of the estate of the deceased; and the court shall have power as heretofore to require administrators to bring in inventories.

Compare: 1952 No 56 s 28; Administration of Estates Act 1925 s 25 (UK)

**45 Protection of persons acting on administration**

- (1) Every administrator or person who makes any payment or disposition or assumes any liability, or who permits any payment or disposition to be made, or who does any act, or who permits any act to be done, in good faith under an administration shall, notwithstanding any defect or circumstances whatsoever affecting the validity of the administration or its subsequent revocation, have the same indemnity and protection in so doing and in respect of all commission and remuneration earned by him or her in so doing, as he or she would if the administration were valid and not revoked.
- (2) Where an administration is revoked, all payments and dispositions made in good faith to an administrator before the revocation thereof shall be valid discharges to the person making the same; and the administrator who acted under the revoked administration may retain and reimburse himself or herself out of the estate that comes into his or her hands in respect of any acts, payments, dispositions, liabilities, commission, and remuneration in respect of which he or she is indemnified as aforesaid or which the person to whom administration is afterwards granted might have properly made.
- (3) Nothing in subsection (1) shall affect or prejudice the rights of any person entitled to any money or property that has been the subject of a payment or disposition to which that subsection relates against any person (other than the administrator in that capacity) to whom the payment or disposition has been made, but the person so entitled shall have the same remedy against the person (other than the administrator in that capacity) to whom the payment or disposition was made as he or she would have had against the administrator if the payment or disposition had not been made.
- (4) Nothing in this section shall restrict section 51.

Compare: 1952 No 56 s 30; Administration of Estates Act 1925 s 27 (UK)

**46 Interpretation of sections 47 to 50**

In sections 47 to 50—

**application** includes an action and every other form of legal proceedings; and the terms **apply** and **applicant** have corresponding meanings

**distribution** includes a sale, letting, or other disposition or alienation pursuant to an option granted or directed or authorised to be granted by a will or by any instrument creating a trust in any case where the consideration for the sale, letting, or other disposition or alienation is less than the administrator or trustee might reasonably have been expected to require if the option had not been so granted or directed or authorised to be granted; and also includes a forgiveness or release of a debt or other liability or a release of any security therefor which, by a will or any instrument creating a trust, is given or directed or authorised to be given for less than full valuable consideration

**order** includes a judgment.

Compare: 1952 No 56 s 30A(8); 1960 No 100 s 2

**47 Protection of administrator against certain claims**

- (1) This section shall apply to applications and orders—
- (a) under the Family Protection Act 1955:
  - (b) under the Law Reform (Testamentary Promises) Act 1949:
  - (c) under section 26(2) or section 70 or section 99 or section 180(2) of the Family Proceedings Act 1980:
  - (ca) *[Repealed]*
  - (d) under the Property (Relationships) Act 1976:
  - (e) under Part 7 of the Child Support Act 1991:
  - (ea) under the Succession (Homicide) Act 2007:
  - (f) arising out of contracts to make a will containing certain provisions or not to revoke an existing will or specified provision therein or not to make a will.
- (2) No action shall lie against the administrator or trustee of the estate of any deceased person by reason of his or her having distributed any part of the estate, and no application or order to which this section applies shall disturb the distribution, if it was properly made, in accordance with subsection (2) of section 48, by the administrator or trustee for the purpose of providing for the maintenance, support, or education of any person who was totally or partially dependent on the deceased immediately before the death of the deceased, whether or not the administrator or trustee had notice at the time of the distribution of any application or intention to make any application

that would affect the estate, being an application to which this section applies.

- (3) No person who may have made or may be entitled to make an application to which this section applies shall be entitled to bring an action against the administrator or trustee by reason of his or her having distributed any part of the estate if the distribution was properly made, in accordance with subsection (2) of section 48, by the administrator or trustee after the person (being of full legal capacity) has advised the administrator or trustee in writing or acknowledged in any document that the person either—
- (a) consents to the distribution; or
  - (b) does not intend to make any application that would affect the proposed distribution.
- (4) No action shall lie against the administrator or trustee by reason of his or her having distributed any part of the estate if the distribution was properly made, in accordance with subsection (2) of section 48, by the administrator or trustee after the expiration of 6 months from the date of the grant in New Zealand of administration in the estate of the deceased, and before service on him or her of any application, and without notice in writing of any application or intention to make an application that would affect the estate, being an application to which this section applies.
- (5) Subsection (4) does not apply to protect an administrator who, at the time of making a distribution, had reason to suspect that the death of the deceased was a homicide and the person to whom the distribution was made was a killer of the deceased.

Compare: 1952 No 56 s 30A; 1960 No 100 s 2

Section 47(1): replaced, on 1 July 1992, by section 242(1) of the Child Support Act 1991 (1991 No 142).

Section 47(1)(ca): repealed, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 6 of the Administration Amendment Act 2001 (2001 No 6).

Section 47(1)(d): replaced, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 6 of the Administration Amendment Act 2001 (2001 No 6).

Section 47(1)(ea): inserted, on 17 November 2007, by section 17 of the Succession (Homicide) Act 2007 (2007 No 95).

Section 47(5): inserted, on 17 November 2007, by section 17 of the Succession (Homicide) Act 2007 (2007 No 95).

**48 Notices and distributions**

- (1) For the purposes of this section and of section 47, notice in writing to an administrator or trustee of an intention to make any application to which section 47 applies shall lapse and shall be incapable of being renewed, so as to impose liability on the administrator or trustee in respect of a distribution thereafter, and the administrator or trustee may act as if he or she had not received the notice, unless, before the expiration of 3 months after the date on which he or she first receives notice in writing of the intention to make the application, the administrator or trustee is served with a copy of the application or receives notice in writing that the application has been made to the court:

provided that nothing in this subsection shall prevent the subsequent making of the application within the period allowed by law.

- (2) Notwithstanding the provisions of section 8 of the Family Protection Act 1955, for the purposes of sections 47 and 51, a distribution by an administrator or trustee of any part of the estate shall be deemed to be properly made if it is made in accordance with any trust, power, or authority which is subsisting when the distribution is made and would justify the distribution if each application to which section 47 applies in connection with the estate (being an application on which no order had been made before the distribution) were disallowed by the court:

provided that nothing in this subsection shall restrict the provisions in subsection (4) of section 47 requiring that the distribution shall have been made before service on him or her of a copy of any application and without notice in writing of the matters specified in that subsection.

Compare: 1952 No 56 s 30A(6), (7); 1960 No 100 s 2

**49 Following of assets, etc**

- (1) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust and there is nothing in any Act to prevent the distribution from being disturbed, the court may—

- (a) make, subject to such terms and conditions as it thinks fit, in respect of any interest in any such assets that is for the time being retained by the person to whom those assets were distributed or his or her administrator or any person who has received any interest in those assets from either of them otherwise than in good faith and for full valuable consideration, any order to which section 47 applies, or an order on any claim to which section 35 of the Trustee Act 1956 applies, or an order requiring the transfer or payment of any such interest in any such assets to the administrator of the deceased or the trustee or to any person who in accordance with any enactment or rule of law has a right to follow the assets:
- (b) order that any person to whom any assets were so distributed or his or her administrator shall pay to any applicant for an order to which section 47 applies or for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee or to any person who in accordance with any enactment or rule of law has a right to follow the assets a sum not exceeding the net value of the assets at the date of distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the court thinks equitable) with interest thereon from that date until the date of the order at such rate as the court may specify:
- (c) order that any person who has received any interest in any such assets from the person to whom they were distributed or his or her administrator, otherwise than in good faith and for full valuable consideration, shall pay to any applicant for an order to which section 47 applies, or for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee, or to any person who in accordance with any enactment or rule of law has a right to follow the assets, a sum not exceeding the net value of that interest at the date of the distribution, or in a case where full valuable consideration has not been

given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the court thinks equitable) with interest thereon from that date until the date of the order at such rate as the court may specify:

- (d) in making any such order fix such terms and conditions as the court thinks fit, and for the purpose of giving effect to any such order, make such further order as it thinks fit.
- (2) The remedies given to any person by subsection (1) are in addition to all other rights and remedies (if any) available to that person, and nothing in that subsection shall restrict any such other rights and remedies.
- (3) Subject to the provisions of subsection (4), no application for an order under subsection (1) shall be heard by the court,—
- (a) in the case of an application for an order under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, unless the application for an order under the said subsection (1) is made within 12 months from the date of the grant in New Zealand of administration in the estate:  
provided that, in the case of an application for an order under the Family Protection Act 1955 made by an administrator on behalf of a person who is not of full age or mental capacity, an application for an order under the said subsection (1) may be made within 2 years from the date of the grant in New Zealand of administration in the estate:
  - (b) in the case of an application to which subparagraph (i) of paragraph (b) of section 50 applies, unless the application is made within 1 year after the satisfaction by the administrator or trustee of any claim in respect of any right or remedy against him or her:
  - (c) in any other case, unless the application for an order under the said subsection (1) is made within the time within which the applicant could have enforced his or her claim in respect of the estate without special leave of the court if the assets had not been distributed:

provided that, with the special leave of the court, the application may be heard by the court on an application made within the time within which the applicant could have enforced his or her claim in respect of the estate with special leave of the court if the assets had not been distributed.

- (4) Notwithstanding anything to the contrary in subsection (3), in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, and any person who is entitled to apply for an order under subsection (1) has, within the time specified in the said subsection (3), made an application to the court for any order to which section 47 applies or an order on any claim to which section 35 of the Trustee Act 1956 applies, and that person was not aware of the distribution at the time when he or she made that application, that person, or any other person on whose behalf that application is deemed to be made, may apply to the court under the said subsection (1), and the application may be heard by the court after the expiration of the period prescribed by the said subsection (3) if it is made within 6 months after the date on which that person first became aware of the distribution.

Compare: 1952 No 56 s 30B(1)–(4); 1960 No 100 s 2

## **50 Freedom to exercise remedies**

Notwithstanding any rule of law to the contrary, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust—

- (a) any person may exercise the remedies (if any) given to him or her by subsection (1) of section 49 and all other rights and remedies available to him or her (including all rights which he or she may have to follow assets and any money or property into which they have been converted) without first exercising the rights and remedies (if any) available to him or her against the administrator or the trustee in consequence of the making of the distribution:
- (b) if any person exercises any right or remedy available against the administrator or the trustee in consequence

of the distribution of any such assets, the administrator or trustee may—

- (i) apply to the court for any order which may be made under subsection (1) of section 49:
- (ii) in any proceedings against him or her in respect of the exercise of any such right or remedy, by leave of the court and in accordance with the rules of court relating to such notices, issue a third party notice against any person against whom he or she may apply for an order under subparagraph (i).

Compare: 1952 No 56 s 30B(1)–(5); 1960 No 100 s 2

#### **51 Restriction on following assets**

In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, relief (whether under subsection (1) of section 49 or in equity or otherwise) against any person other than the administrator or trustee or in respect of any interest of any such person in any assets so distributed and in any money or property into which they have been converted, may be denied wholly or in part, if—

- (a) the person from whom relief is sought received the assets or interest in good faith and has altered his or her position in the reasonably held belief that the distribution was properly made and would not be set aside; and
- (b) in the opinion of the court it is inequitable to grant relief or to grant relief in full, as the case may be.

Compare: 1952 No 56 s 30B(6); 1960 No 100 s 2

#### **52 Liability of person fraudulently obtaining or retaining estate of deceased**

If any person other than the administrator, to the defrauding of creditors or without full valuable consideration, obtains or receives or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he or she shall be charged as executor in his or her own wrong to the extent of the estate received or coming

into his or her hands, or the debt or liability released, after deducting—

- (a) any debt for valuable consideration and without fraud due to him or her from the deceased person at the time of his or her death which might properly be retained by an administrator; and
- (b) any payment made by him or her which might properly be made by an administrator.

Compare: Administration of Estates Act 1925 s 28 (UK)

#### *Powers and procedure of court*

#### **53 Direction to executor to prove or renounce, etc**

The court shall have power to direct any person named as executor in a will to prove or renounce probate of the will, and (subject to this Act and any other enactment and the rules) to do such other things as it thinks fit concerning the granting and revocation of administration, and the hearing and determination of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

Compare: Supreme Court of Judicature (Consolidation) Act 1925 s 159 (UK)

#### **54 Production of instruments purporting to be testamentary**

The court may, whether any suit or other proceeding is or is not pending with respect to any administration, order any person to produce any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of that person; and if it is not shown that any such paper or writing is in the possession or under the control of any person, but it appears that there are reasonable grounds for believing that he or she has knowledge of any such paper or writing, the court may direct that person to attend for the purpose of being examined in open court, or upon interrogatories, respecting the same; and that person shall be bound to answer any such questions or interrogatories, and, if so ordered, to produce and bring in any such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering any such questions or interrogatories, or not bringing in any such paper or writing, as he or she would have been subject to in case he or she had been a

party to a suit in the court and had made any such default; and the costs of any such suit or proceeding shall be in the discretion of the court.

Compare: Court of Probate Act 1857 s 26 (UK)

**55 Continuance of legal proceedings after revocation of temporary administration**

If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the court may order that the proceeding be continued by or against the new administrator in like manner as if the same had been originally commenced by or against him or her, but subject to such conditions and variations, if any, as that court directs.

Compare: Administration of Estates Act 1925 s 17 (UK)

**56 Question of fact may be tried by a jury**

- (1) If any question of fact arises in any proceeding under this Act, the court may, if it thinks fit, cause the same to be tried by a jury before the court itself, or before any Judge of the court, and may settle an issue for that purpose.
- (2) In every such case the subsequent proceedings in respect of that issue shall be the same as if it had been settled in an ordinary action.

Compare: 1952 No 56 s 34

**57 Practice of court in its administration jurisdiction**

The practice of the court in regard to administration shall, except where otherwise provided by this Act or by the rules, be regulated, so far as the circumstances of the case will admit, by the practice of the court heretofore in force.

Compare: 1952 No 56 s 35

**58 Form of order to Public Trust or Māori Trustee**

Whenever the court grants an order to Public Trust (either alone or together with any other person or persons) or to the Māori Trustee to administer the estate of any deceased person, the order shall be in the form in Schedule 2 or in such other

form or forms as may be prescribed by the Governor-General by Order in Council.

Compare: 1952 No 56 s 36; 1957 No 38 s 4

Section 58 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 58: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **59 Power to make rules**

The power to make rules of court under section 51C of the Judicature Act 1908 shall include power to make rules—

- (a) prescribing the forms of administration:
- (b) prescribing the practice in obtaining a grant of administration, and the procedure and practice of the court and the duties of the Registrar:
- (c) regulating the procedure and practice of the court with respect to non-contentious or common form probate business:
- (d) regulating the procedure and practice of the court with respect to contentious probate business:
- (e) regulating the practice and procedure of the court in relation to the resealing of probates or letters of administration under Part 2, and in particular for the purpose of imposing upon persons applying thereunder for the resealing of probates or letters of administration, or relieving any such persons from, any requirements that may be imposed upon persons applying to the High Court of New Zealand for original grants of probate or letters of administration:
- (f) prescribing orders of priority among applicants for administration which shall apply unless the court in special circumstances otherwise directs:
- (g) generally for carrying the provisions of this Act into effect.

Compare: 1952 No 56 ss 37, 53

Section 59: amended, on 1 January 1986, by section 11(2) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

Section 59(1)(e): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

*Caveats***60 Caveat may be lodged**

- (1) Any person may lodge with the Registrar a caveat against any application for administration at any time previous to the granting of administration, and every such caveat shall set forth the name of the person lodging it, and an address within New Zealand at which notices may be served on him or her.
- (2) Every such caveat shall, unless application for administration is sooner made, lapse upon the expiration of 1 year from the date of the lodging of the caveat.
- (3) Any such caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar. A copy of every such notice shall be served on any person who has applied for administration or to whom an order nisi, under the provisions of section 61, has been granted.
- (3A) Where any such caveat has lapsed or has been withdrawn, the court may, on the application of the administrator of the estate and after giving the caveator a reasonable opportunity to be heard, make an order for the payment of costs by the caveator.
- (4) Nothing in this section shall prevent any person who has lodged a caveat from lodging a subsequent caveat, whether or not any caveat previously lodged has lapsed or been withdrawn.

Compare: 1952 No 56 s 38; 1965 No 43 s 2

Section 60(1): amended, on 1 April 1973, by section 18(3) of the Judicature Amendment Act 1972 (1972 No 130).

Section 60(3A): inserted, on 1 January 1980, by section 6 of the Administration Amendment Act 1979 (1979 No 38).

**61 Where a caveat lodged, court may grant order nisi**

In every case where a caveat has been lodged and has neither lapsed nor been withdrawn, the following provisions shall apply:

- (a) the court may, upon application on behalf of the person applying for administration, supported by affidavits upon which, if there had been no caveat, administration would have been granted, may make one or other of the following orders:

- (i) in any case where the court is satisfied that the caveat has been or may have been lodged vexatiously or frivolously, an order for the discharge of the caveat or for security for costs; or
  - (ii) in any other case, an order nisi for the grant of administration to the person applying, which order nisi shall name a time and place for showing cause against the same, and the court may enlarge any such order from time to time:
- (aa) in any case where, pursuant to subparagraph (i) of paragraph (a), the court makes an order for the discharge of the caveat, it may also make an order—
- (i) for the payment of costs by the caveator:
  - (ii) prohibiting the caveator from lodging a subsequent caveat:
- (b) every such order nisi, and every order enlarging the same, shall be served on the caveator by delivering a copy of the same at the address mentioned in his or her caveat:
- (c) if before the day named in the order nisi or the day to which the order is enlarged the caveat is withdrawn, the order nisi may be made absolute at any time thereafter:
- (d) in any case to which paragraph (c) does not apply, if on the day named in the order nisi, or on the day to which the order is enlarged, the caveator does not appear, the order nisi may be made absolute, upon an affidavit of service; but if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as in an ordinary action, and the court may order—
- (i) that the order nisi be made absolute or discharged; or
  - (ii) that the application for administration be made in solemn form,—
- and any order made under subparagraph (i) or subparagraph (ii) may be with or without costs, as may be just, and, if the court so directs, those costs may be paid out of the estate:
- (e) at any hearing under paragraph (d), the parties may, subject to the rules, verify their cases in whole or in part by

affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after cross-examination may be re-examined orally in open court by or on behalf of the party by whom the affidavit was filed:

- (f) in any case where a caveat is lodged by Public Trust, the court may, if it thinks fit, order costs to be paid to him or her out of the estate, whether the order nisi is discharged or not.

Compare: 1952 No 56 s 39; 1965 No 43 s 3

Section 61(a): replaced, on 1 January 1980, by section 7(1) of the Administration Amendment Act 1979 (1979 No 38).

Section 61(aa): inserted, on 1 January 1980, by section 7(1) of the Administration Amendment Act 1979 (1979 No 38).

Section 61(e): amended, on 1 January 1980, by section 7(2) of the Administration Amendment Act 1979 (1979 No 38).

Section 61(f): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

### *Miscellaneous provisions*

#### **62 Succession to, capacity of, and construction of wills of, married women and minors in certain cases**

- (1) Notwithstanding anything to the contrary in this Act or in any other Act or in any rule of law, where any person to whom this section applies dies intestate in respect of any movable property in New Zealand, the succession to and distribution of that property shall be determined in all respects as if that person had died domiciled in New Zealand, and where any such person dies leaving a will made in New Zealand either before or after the passing of this Act, the validity and construction of that will as far as it affects movable property in New Zealand, and the capacity of that person to make the will affecting that property, shall be determined in all respects as if that person had been domiciled in New Zealand at the date of the will and had continued to be so domiciled until his or her death.
- (2) This section shall apply to the following persons:
- (a) every married woman who dies after 31 December 1948 and who would be domiciled in New Zealand at her

death if she could retain and acquire a domicile distinct from that of her husband:

- (b) every minor who dies in New Zealand after 31 December 1948 and whose mother would be domiciled in New Zealand at the death of the minor or the mother, whichever first occurs, if the mother could retain and acquire a domicile distinct from that of her husband.
- (2A) This section shall not apply to any person who dies after the commencement of the Domicile Act 1976.
- (3) The situation of any movable property shall be determined for the purposes of this section in the same manner as it would be determined for the purpose of the Estate and Gift Duties Act 1968 (as in force before the Estate Duty Repeal Act 1999 was enacted).
- (4) *[Repealed]*  
Compare: 1952 No 56 s 41  
Section 62(2A): inserted, on 1 January 1981, by section 14(1) of the Domicile Act 1976 (1976 No 17).  
Section 62(3): amended, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).  
Section 62(4): repealed, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

### **63 Administration not to be granted to companies other than trustee companies**

- (1) No grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without a will annexed, shall be made to any company unless the company is expressly authorised by an Act of Parliament to apply for and obtain the grant.
- (2) For the purposes of this section a grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company; and where a power is granted to a company or to the directors of a company by will to nominate any person as executor of the will, a grant to a person so nominated shall be deemed to be a grant to the company.
- (3) Nothing in this section shall—
  - (a) prevent the grant of probate of the will of any deceased person to any company or to a syndic of the company

in any case where the company is appointed as executor of the will and the actual document providing for the appointment was made before 1 January 1963:

- (b) prevent the grant of probate of the will of any deceased person to any person nominated as executor of the will by a company or the directors of a company pursuant to a power granted by any testamentary instrument, if the actual document granting the power was made before 1 January 1963:
- (c) prevent the resealing in New Zealand of probate or letters of administration granted to a company in any other country:
- (d) affect any grant of probate or letters of administration subsisting at the date of the commencement of this section.

Compare: 1960 No 100 s 4

#### **64 Devolution of loan stock without administration**

- (1) Where any person has died, whether before or after the commencement of this section, and at the time of his or her death the person was the registered holder of government stock of a nominal value not exceeding the prescribed amount, or of local authorities stock of a nominal value not exceeding the prescribed amount, or of both, the registrar of such stock may, in its discretion and without requiring any person to obtain administration, register as holder of the stock any person who proves to its satisfaction:
  - (a) that the registered holder has died and administration of his or her estate has not been obtained in New Zealand; and
  - (b) that he or she is either—
    - (i) beneficially entitled to the stock under the will or on the intestacy of the deceased stockholder; or
    - (ii) entitled to obtain in New Zealand administration of the estate of the deceased stockholder.
- (2) In this section,—  
**government stock** means any stock issued under Part 6 of the Public Finance Act 1989

**local authorities stock** means any stock issued—

- (a) under Part 3 of the Local Authorities Loans Act 1956;  
or
- (b) by a local authority within the meaning of the Local Government Act 2002; or
- (c) before the commencement of section 2 of the Local Government Act 2002, by a local authority within the meaning of the Local Government Act 1974.

Compare: 1952 No 56 s 43A; 1964 No 24 s 3

Section 64(1): amended, on 3 June 1998, by section 2 of the Administration Amendment Act 1998 (1998 No 24).

Section 64(1): amended (with effect on 1 July 1989), on 26 July 1989, by section 86(1) of the Public Finance Act 1989 (1989 No 44).

Section 64(2): replaced, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

**64A Vesting of shares or debentures without administration**

- (1) This section applies to a company within the meaning of section 2(1) of the Companies Act 1993 that has issued shares or debentures.
- (2) In this section, **value**, in relation to shares, means the amount paid up on the shares and, in relation to debentures, means the amount owing under the debentures.
- (3) Where the registered holder of shares or debentures dies, whether before or after the commencement of this Act, and the value of the shares or debentures does not exceed the prescribed amount, the directors of a company to which this section applies may, without requiring the production of probate or letters of administration, register, as the holder of the shares or debentures, any person who proves to their satisfaction—
  - (a) that he or she is entitled to be so registered under the will or intestacy of the deceased holder; or
  - (b) that he or she is entitled to obtain probate of the will of the deceased holder or letters of administration of that person's estate; and
  - (c) that in neither case has any grant of probate or letters of administration been made or resealed in New Zealand in respect of the deceased holder.

(d) *[Repealed]*

Section 64A: inserted, on 1 July 1994, by section 2(1) of the Administration Amendment Act 1993 (1993 No 109).

Section 64A(1): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 64A(3): amended, on 3 June 1998, by section 3 of the Administration Amendment Act 1998 (1998 No 24).

Section 64A(3)(c): amended, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

Section 64A(3)(d): repealed, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

**65 Payment without administration**

(1) In this section,—

**bank** means a person carrying on in New Zealand the business of banking; and includes the Reserve Bank of New Zealand and Post Office Bank Limited

**local authority** means a local authority within the meaning of the Local Government Act 2002

**society** means any building society within the meaning of the Building Societies Act 1965, any industrial and provident society registered or deemed to be registered under the Industrial and Provident Societies Act 1908, or any friendly society or branch thereof or credit union registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982

**trustees of a superannuation fund** means the trustees or administering body of any pension plan or superannuation fund; and includes the Government Superannuation Fund Authority and the Board of Trustees of the National Provident Fund.

(2) In the event of the death of any person to whom any sum of money not exceeding the prescribed amount is payable by the trustees of a superannuation fund, a society, a bank, an employer of the deceased person at or within 6 months before the date of his or her death, a local authority, a trustee corporation, Housing New Zealand Corporation, the Accident Compensation Corporation, the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964, or the Crown respectively, whether the death occurred before or after the commencement of this section, it shall be lawful for the trustees of the superannuation

fund, society, bank, employer, local authority, trustee corporation, Housing New Zealand Corporation, the Accident Compensation Corporation, the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964, or the Crown, as the case may be, without requiring administration of the estate of that deceased person to be obtained in New Zealand, and on receiving such evidence as it considers satisfactory that the person has died and that administration of his or her estate has not been obtained in New Zealand, to pay the sum or any part thereof to any of the following persons:

- (a) the widow, widower, surviving civil union partner, or children of the deceased person:
- (aa) a surviving de facto partner of the deceased person:
- (b) the persons beneficially entitled to the estate of the deceased person under the will or on the intestacy of that person:
- (c) any person appearing to be entitled to obtain administration of the estate of the deceased person in New Zealand:
- (d) any person related by blood or marriage or civil union to the deceased person who undertakes to maintain the children of that person who are minors or any of them:
- (e) any person who has and is exercising the role of providing day-to-day care for any of the children of the deceased person who are minors:

provided that no payment shall be made to any person unless he or she applies for or consents to receive that payment.

- (3) It shall be lawful for the trustees of a superannuation fund, a society, a bank, an employer of the deceased person at or within 6 months before the date of his or her death, a local authority, a trustee corporation, Housing New Zealand Corporation, the Accident Compensation Corporation, the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964, or the Crown, respectively, out of the money to which subsection (2) applies, to pay the funeral expenses of a deceased person, or to refund the amount of those expenses to any person who has paid them,

in any case where no person has applied for or consented to receive payment of the money under subsection (2).

- (4) Where money is payable by a bank in the event of the death of any person and comprises money in a separate investment account under the National Savings Act 1940 and also other money, the provisions of subsections (2) and (3) shall apply separately to the amount of money in the investment account and to the amount of other money as if each such amount was the only amount payable by the bank in the event of the death of that person.
- (5) Where, by virtue of a policy or policies of insurance within the meaning of the Life Insurance Act 1908, a sum of money not exceeding the prescribed amount (including profits but not including any money that may be payable to or deductible by the company liable under the policy or policies) has become payable to the administrator of a deceased person, whether before or after the commencement of this section, it shall be lawful for the company, without requiring administration of the estate of the deceased person to be obtained in New Zealand, and upon receiving such evidence as it considers satisfactory that the person has died and that administration of his or her estate has not been obtained in New Zealand, to make payment of the sum or any part thereof to any of the persons to whom payment may be made under paragraphs (a) to (e) of subsection (2).
- (6) Any payment made in good faith pursuant to this section to a person to whom the maker of the payment has reasonable grounds to believe that payment may be made under this section shall be valid against all persons whomsoever, and the maker of the payment shall be absolutely discharged from all liability in respect of money paid by him or her under this section.
- (7) Every person to whom money is paid pursuant to this section shall be liable to apply the money in due course of administration, and the maker of the payment may, if he or she thinks fit, without being liable to see to the application of the money, require any such person to give sufficient undertakings, by bond or otherwise, that the money so paid will be so applied.

Compare: 1952 No 56 s 43B; 1964 No 24 s 3

Section 65(1) **bank**: replaced, on 22 May 1998, by section 22(1) of the Private Savings Banks (Transfer of Undertakings) Act 1992 (1992 No 21).

Section 65(1) **local authority**: replaced, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 65(1) **society**: amended, on 1 April 1983, by section 161(1) of the Friendly Societies and Credit Unions Act 1982 (1982 No 118).

Section 65(1) **trustees of a superannuation fund**: amended, on 2 October 2001, by section 40 of the Government Superannuation Fund Amendment Act 2001 (2001 No 47).

Section 65(1) **trustees of a superannuation fund**: amended, on 1 October 1995, by section 31 of the Government Superannuation Fund Amendment Act 1995 (1995 No 28).

Section 65(2): amended, on 1 April 2002, by section 337(1) of the Accident Compensation Act 2001 (2001 No 49).

Section 65(2): amended, on 1 July 2001, by section 24(1) of the Housing Corporation Amendment Act 2001 (2001 No 37).

Section 65(2): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 65(2): amended, on 3 June 1998, by section 4 of the Administration Amendment Act 1998 (1998 No 24).

Section 65(2): amended, on 1 April 1983, pursuant to section 122(8) of the Accident Compensation Act 1982 (1982 No 181).

Section 65(2): amended, on 6 August 1976, by section 11(3) of the Superannuation Schemes Act 1976 (1976 No 3).

Section 65(2)(a): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 6(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 65(2)(aa): inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 7 of the Administration Amendment Act 2001 (2001 No 6).

Section 65(2)(d): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 6(2) of the Administration Amendment Act 2005 (2005 No 4).

Section 65(2)(e): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 65(3): amended, on 1 April 2002, by section 337(1) of the Accident Compensation Act 2001 (2001 No 49).

Section 65(3): amended, on 1 July 2001, by section 24(1) of the Housing Corporation Amendment Act 2001 (2001 No 37).

Section 65(3): amended, on 1 October 1998, by section 11 of the Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96).

Section 65(3): amended, on 1 April 1983, pursuant to section 122(8) of the Accident Compensation Act 1982 (1982 No 181).

Section 65(3): amended, on 6 August 1976, by section 11(3) of the Superannuation Schemes Act 1976 (1976 No 3).

Section 65(5): amended, on 3 June 1998, by section 4 of the Administration Amendment Act 1998 (1998 No 24).

## **66 Saving**

Nothing in section 65 shall prevent any person to whom the money to which that section applies or any part thereof ought to have been paid from pursuing and exercising any remedy for recovery thereof against the person or persons to whom the money has been paid.

Compare: 1952 No 56 s 43B(8); 1964 No 24 s 3

## **67 Other Acts providing for payment without administration not affected**

- (1) Nothing in this Act shall affect the powers of any person or body to make any payment to, or register any person to be, the owner of any property in accordance with any of the provisions of section 109 of the Shipping and Seamen Act 1952, section 86 of the Patents Act 1953, section 41 of the Designs Act 1953, section 52 of the Trade Marks Act 2002, or of any other enactment for the time being in force authorising the payment of money belonging to the estate of a deceased person without requiring administration of the estate to be obtained.
- (2) Nothing in this Act, other than Part 1A, shall affect the power of any building society, friendly society, industrial and provident society, trustee savings bank, private savings bank, or the Post Office Bank Limited, to make payment of any money or to transfer any property in accordance with a nomination made by any person pursuant to any other enactment.

Compare: 1952 No 56 s 43(3); 1964 No 24 ss 2, 4(6)

Section 67(1): amended, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 67(1): amended, on 1 July 1994, by section 3 of the Administration Amendment Act 1993 (1993 No 109).

Section 67(2): amended, on 1 April 1987, by section 32(1) of the State-Owned Enterprises Act 1986 (1986 No 124).

Section 67(2): amended (with effect on 11 December 1982), on 11 June 1985, by section 2 of the Administration Amendment Act 1985 (1985 No 79).

**68 Bondsmen and sureties deemed to be trustees**

Every person who, in the capacity of bondsman or surety for another, receives money or other property belonging to the estate of any deceased person shall be deemed to be a trustee within the meaning of the Trustee Act 1956 in respect of that money or property, and may under that Act apply for relief and to be discharged from the custody of the money or property.

Compare: 1952 No 56 s 44

**Part 1A**  
**Nominations of accounts**

Part 1A: inserted, on 11 December 1982, by section 2 of the Administration Amendment Act 1982 (1982 No 43).

**68A Interpretation**

In this Part, unless the context otherwise requires, the term **nomination** means the nomination by any person (in this Part referred to as the nominator), pursuant to any enactment, of any person or persons (in this Part referred to as the nominee or nominees) to whom any amount standing to the credit of the nominator in any account at the time of his or her death is to be paid on his or her death.

Section 68A: inserted, on 11 December 1982, by section 2 of the Administration Amendment Act 1982 (1982 No 43).

**68B Application of Part**

- (1) Except as provided in subsections (2) and (2A), this Part applies to every nomination whether made before or after the commencement of this Part.
- (2) This Part does not apply to any nomination made before the commencement of this Part if the nominator died before that commencement.
- (2A) The revocation, before the date of commencement of this Part, of a testamentary disposition shall not affect a nomination made before the date of that revocation; but if a testamentary disposition revoked before the date of commencement of this Part is revived or republished on or after that date of commencement, this Part shall apply in respect of any revocation

of a testamentary disposition contained in the revived or re-published testamentary disposition.

- (3) In the event of any conflict between any provision of this Part and any provision of any enactment under which any nomination is made, the provision of this Part shall prevail.

Section 68B: inserted, on 11 December 1982, by section 2 of the Administration Amendment Act 1982 (1982 No 43).

Section 68B(1): amended (with effect on 11 December 1982), on 11 June 1985, by section 3(1) of the Administration Amendment Act 1985 (1985 No 79).

Section 68B(2A): inserted (with effect on 11 December 1982), on 11 June 1985, by section 3(2) of the Administration Amendment Act 1985 (1985 No 79).

#### **68C Effect of nominations**

- (1) No nomination, or nominations in the aggregate, shall have effect in respect of any sum in excess of \$6,000 in any account.
- (2) Subject to subsection (3), every nomination shall have effect as if it were a specific legacy bequeathed by will.
- (3) All money in any account that is subject to a nomination at the death of the nominator shall, notwithstanding the nomination, form part of his or her estate, and shall devolve and be subject to all claims against that estate, whether arising under any enactment or contract or otherwise, in the same manner and to the same extent as if it were a specific legacy bequeathed by will.
- (4) Notwithstanding section 24, it shall not be necessary to pay to the administrator of a deceased nominator any money in an account that is subject to a nomination by reason only that it forms part of the deceased nominator's estate pursuant to subsection (3).

Section 68C: inserted, on 11 December 1982, by section 2 of the Administration Amendment Act 1982 (1982 No 43).

Section 68C(4): inserted (with effect on 11 December 1982), on 11 June 1985, by section 4 of the Administration Amendment Act 1985 (1985 No 79).

#### **68D Revocation of nomination**

- (1) Any instrument of nomination may be revoked in any manner by which a will or codicil may be revoked.

- (2) Every instrument of nomination shall be revoked by operation of law in any circumstances in which it would be so revoked if it were a will or codicil.
- (3) Without limiting subsection (1) or subsection (2),—
- (a) every general revocation by a nominator of all former testamentary dispositions shall be deemed to include the revocation of the nomination, unless the nomination is expressly preserved:
  - (b) every general testamentary disposition of the nominator's whole estate, or of the whole of his or her residuary estate, made subsequent to the nomination shall be deemed to revoke the nomination, unless the nomination is expressly preserved.

Section 68D: inserted, on 11 December 1982, by section 2 of the Administration Amendment Act 1982 (1982 No 43).

## Part 2

### Administration granted out of New Zealand

#### 69 Interpretation

For the purposes of this Part,—

**probate or letters of administration** includes an exemplification of any probate or letters of administration, or a duplicate thereof sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, and also includes an exemplification or a copy certified by or under the authority of any court, or a duplicate sealed under the seal of any court, of any instrument which is filed in or issued out of that court and which within the jurisdiction of that court operates to make any person the administrator of any property of a deceased person as if probate or letters of administration had been granted to him or her by that court:

the filing in or the issuing out of any court of any instrument which operates to make any person an administrator as aforesaid shall be deemed to be equivalent to the granting of probate or letters of administration by that court to that person.

Compare: 1952 No 56 s 48

**70 Estate of person dying abroad not to vest without administration obtained in New Zealand**

- (1) Estate in New Zealand belonging to any person who dies abroad shall not vest in any person under any bequest or devise, or under an intestacy, or by inheritance, until administration of that estate is obtained in New Zealand; or, if probate or letters of administration of the estate have been granted in any place out of New Zealand, unless the probate or letters of administration are resealed in New Zealand as hereinafter provided.
- (2) Upon the estate in New Zealand becoming legally vested in accordance with the provisions of this section, the legal estate therein shall vest as from the time of the death of the person from whom it is obtained.

Compare: 1952 No 56 s 49

**71 Resealing of probate, etc**

- (1) Where any probate or letters of administration granted—
  - (a) by any competent court in any Commonwealth country (other than New Zealand) or in the Republic of Ireland; or
  - (b) by any court of any Commonwealth country (other than New Zealand) which at the date of the grant has jurisdiction out of the Commonwealth in pursuance of an Order in Council, whether made under any Act or otherwise; or
  - (c) by any competent court of any other country, being a country to which (at the date of the production for sealing under this section) this section is, by Order in Council, declared to apply—

are produced to and a copy thereof deposited with any Registrar of the High Court of New Zealand, the probate or letters of administration may be sealed with the seal of the last-mentioned court, and shall thereupon have the like force and effect and have the same operation in New Zealand, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if the probate or letters of administration had been originally granted by the High Court of New Zealand.

- (2) Nothing in this section shall prevent the court from making an independent grant of administration in New Zealand.

Compare: 1952 No 56 s 50

Section 71(1): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**72 Seal not to be affixed till fees are paid and administration bond is entered into**

The seal of the High Court of New Zealand shall not be affixed to any probate or letters of administration granted in any Commonwealth country (other than New Zealand) or in the Republic of Ireland, or in any other country to which section 71 is declared as aforesaid to apply, so as to give operation thereto as if the grant had been made by the High Court of New Zealand, until all such fees have been paid as would have been payable if the probate or letters of administration had been originally granted by the High Court of New Zealand; and, further, no such letters of administration shall be so sealed until such bond is entered into as would have been required if the letters had been originally granted by the said High Court:

provided that the court may if it thinks fit dispense with the bond or reduce the amount of the penalty thereunder:

provided also that where letters of administration are at any time granted to any Public Trustee or other like public official of any Commonwealth country (other than New Zealand) or of the Republic of Ireland or of any other country to which section 71 is declared as aforesaid to apply, it shall not be necessary, upon the resealing in New Zealand of the letters of administration, for the said Public Trustee or other official, as the case may be, to execute any such bond.

Compare: 1952 No 56 s 51

Section 72: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

**73 No probate, etc, granted out of New Zealand to be evidence unless resealed**

Probate or letters of administration granted in any place out of New Zealand shall not be received in evidence of the title of any person to any estate in New Zealand until the probate

or letters of administration are resealed in New Zealand as hereinbefore provided.

Compare: 1952 No 56 s 52

**74 Effect of sections 70 and 73**

Nothing in sections 70 and 73 shall restrict the provisions of sections 64 and 65, or the provisions of any other enactment relating to the payment or devolution of any estate without administration.

### **Part 3 Distribution of intestate estates**

**75 Application of this Part**

This Part, except section 80, shall not apply in any case where the death occurred before the commencement of this Act; and the estate of any person who died intestate before the commencement of this Act shall be distributed in accordance with the enactments and law in force at the death of that person.

Compare: 1952 No 56 s 54

Section 75: amended, on 1 January 1980, by section 9(1) of the Administration Amendment Act 1979 (1979 No 38).

**76 Abolition of escheat**

There shall be no escheat to the Crown for want of heirs or successors.

Compare: 1952 No 56 s 55

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

If a person (the **intestate**) dies intestate as to any real or personal estate and leaves the other person or people referred to in column 1 of the following table, that estate must be distributed in the manner or held on the trusts set out in column 2 of that table opposite the reference to the other person or people:

**Person or people  
intestate leaves**

1 Husband, wife, civil union partner, or surviving de facto partner, but no issue and no parents

**How estate to be distributed**

**Personal chattels (as defined in section 2(1)):** the husband, wife, civil union partner, or surviving de facto partner takes these absolutely, except that any that are subject to a hire purchase agreement, are taken subject to the vendor's rights under that agreement

**Residue of the estate:**

- this stands charged with the payment to the husband, wife, civil union partner, or surviving de facto partner of the prescribed amount, plus interest (at the rate prescribed by or under section 39) on that amount from the date of the death until that amount is paid or appropriated
- anything that remains of the residue is held in trust for the husband, wife, civil union partner, or surviving de facto partner absolutely

2 Husband, wife, civil union partner, or surviving de facto partner, and issue

**Personal chattels (as defined in section 2(1)):** the husband, wife, civil union partner, or surviving de facto partner takes these absolutely, except that any that are subject to a hire purchase agreement, are taken subject to the vendor's rights under that agreement

**Residue of the estate:**

- this stands charged with the payment to the husband, wife, civil union partner, or surviving de facto partner of the prescribed amount, plus interest (at the rate prescribed by or under section 39) on that amount from the date of the death until that amount is paid or appropriated
- anything that remains of the residue is held in trust as follows:
  - a third for the husband, wife, civil union partner, or surviving de facto partner absolutely; and
  - two-thirds on the statutory trusts for the issue of the intestate

**Person or people  
intestate leaves**

3 Husband, wife, civil union partner, or surviving de facto partner, no issue, but one or both parents

**How estate to be distributed**

**Personal chattels (as defined in section 2(1)):** the husband, wife, civil union partner, or surviving de facto partner takes these absolutely, except that any that are subject to a hire purchase agreement, are taken subject to the vendor's rights under that agreement

**Residue of the estate:**

- this stands charged with the payment to the husband, wife, civil union partner, or surviving de facto partner of the prescribed amount, plus interest (at the rate prescribed by or under section 39) on that amount from the date of the death until that amount is paid or appropriated
- anything that remains of the residue is held in trust as follows:
  - two-thirds for the husband, wife, civil union partner, or surviving de facto partner absolutely; and
  - a third for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, for that parent absolutely

4 Issue but no husband, wife, civil union partner, or surviving de facto partner

All of the estate is held on the statutory trusts for the issue of the intestate

5 No husband, wife, civil union partner, or surviving de facto partner, and no issue, but one or both parents

All of the estate is held in trust in equal shares for the parents, but if the intestate leaves only one parent, for that parent

**Person or people  
intestate leaves**

**How estate to be distributed**

- |   |   |   |
|---|---|---|
| 6 | No husband, wife, civil union partner, or surviving de facto partner, no issue, and no parents, but 1 or more brothers or sisters (whether of full or half blood)   | All of the estate is held on the statutory trusts for the 1 or more brothers or sisters   |
| 7 | No one who takes an absolutely vested interest under the trusts referred to in items 1 to 6, but one or both maternal or paternal grandparents, or 1 or more maternal or paternal uncles or aunts (whether of full or half blood) | <p>All of the estate is held in trust as follows:</p> <p><b>as to half:</b></p> <ul style="list-style-type: none"><li>• in equal shares for the maternal grandparents, but if the intestate leaves only one such grandparent, for that grandparent; or</li><li>• if the intestate leaves no maternal grandparent, then on the statutory trusts for the maternal uncles and aunts; or</li><li>• if no maternal grandparent or maternal uncle or aunt takes an absolutely vested interest under those trusts, then on the trusts on which the other half of the estate must be held</li></ul> <p><b>as to the other half:</b></p> <ul style="list-style-type: none"><li>• in equal shares for the paternal grandparents, but if the intestate leaves only one such grandparent, for that grandparent; or</li><li>• if the intestate leaves no paternal grandparent, then on the statutory trusts for the paternal uncles and aunts; or</li><li>• if no paternal grandparent or paternal uncle or aunt takes an absolutely vested interest under those trusts, then on the trusts on which the first half of the estate must be held</li></ul> |
| 8 | No one who takes an absolute interest under items 1 to 7  | <p>All of the estate belongs to the Crown as <i>bona vacantia</i>, and the Crown may (without prejudice to any other powers), out of all or any part of the estate, provide for—</p> <ul style="list-style-type: none"><li>• dependants (whether kindred or not) of the intestate; and</li><li>• other persons for whom the intestate might reasonably have been expected to make provision.</li></ul>  |

Section 77: replaced, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 8 of the Administration Amendment Act 2001 (2001 No 6).

Section 77 table item 1: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 1: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(2) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 1: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 77 table item 2: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 2: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(2) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 2: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 77 table item 3: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 3: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(2) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 3: amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Section 77 table item 4: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 5: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 77 table item 6: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 7(1) of the Administration Amendment Act 2005 (2005 No 4).

#### **77A Effect on succession on intestacy of separation order**

Nothing in section 77 affects section 26 of the Family Proceedings Act 1980.

Section 77A: inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 8 of the Administration Amendment Act 2001 (2001 No 6).

**77B Restrictions on succession on intestacy by certain de facto partners**

- (1) This section applies to a surviving de facto partner if his or her de facto relationship with the intestate is a relationship of short duration as defined in section 2 of the Property (Relationships) Act 1976.
- (2) If this section applies to a surviving de facto partner, the partner is not entitled under section 77 to receive, or have held on trust for his or her benefit, any real or personal estate to which section 77 applies, and section 77 applies as if the partner were not a person left by the intestate, unless—
  - (a) the court is satisfied—
    - (i) that there is a child of the de facto relationship; or
    - (ii) that the partner has made a substantial contribution to the de facto relationship; and
  - (b) the court is satisfied that not being entitled to succeed on the intestacy would result in serious injustice to the partner.
- (3) In subsection (2), **child of the de facto relationship** and **contribution** have the same meanings as they have in section 2 of the Property (Relationships) Act 1976.

Section 77B: inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 8 of the Administration Amendment Act 2001 (2001 No 6).

**77C Succession on intestacy if intestate partner dies leaving husband, wife, or civil union partner and 1 or more de facto partners**

- (1) This section applies if the intestate dies leaving—
  - (a) 1 or more surviving de facto partners entitled to succeed on the intestacy, and a husband, wife, or civil union partner; or
  - (b) 2 or more surviving de facto partners entitled to succeed on the intestacy.
- (2) If this section applies,—
  - (a) the real or personal estate of the intestate to which section 77 applies must be distributed or held on trust under that section as if the intestate died leaving (as well as

issue, or parents, or other classes of relatives (if any)) only a husband, wife, or civil union partner or, as the case requires, only one of the surviving de facto partners; but

- (b) the husband, wife, or civil union partner and each surviving de facto partner or, as the case requires, each of the surviving de facto partners, is entitled to an equal share of the estate that would, under section 77, be distributed to or held on trust for a husband, wife, or civil union partner or, as the case requires, 1 surviving de facto partner.

Section 77C: replaced, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 8 of the Administration Amendment Act 2005 (2005 No 4).

## **78 Statutory trusts in favour of issue and other classes of relatives of intestate**

- (1) Where under this Act the estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:

- (a) in trust, in equal shares if more than 1, for all or any children or child of the intestate, living at the death of the intestate, who attain full age or marry or enter into a civil union under that age, and for all or any of the issue living at the death of the intestate who attain full age or marry or enter into a civil union under that age of any child of the intestate who predeceases the intestate, the said issue to take through all degrees, according to their stocks, in equal shares if more than 1, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent takes an absolutely vested interest:

provided that if any person capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving any child or children who shall be living at the expiration of 21 years from the death of the intestate or who shall sooner attain full age or marry or enter into a civil union under that age, that child or those children shall take, in equal shares

- if more than 1, the share which his, her, or their parent would have taken if he or she had not so died:
- (b) the statutory power of advancement, and the statutory provisions which relate to maintenance, education, and benefit, and the accumulation of surplus income, shall apply, and when a person becomes entitled to a vested share or interest under the statutory trusts, that person shall be entitled on attaining the age of 18 years or sooner marrying or entering into a civil union to give a valid receipt for his or her share or interest:
  - (c) the administrator may permit any minor who has a vested or contingent interest in any personal chattels to have the use and enjoyment of the chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss.
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—
- (a) the estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve, and be held under the provisions of this Act as if the intestate had died without leaving issue living at the death of the intestate:
  - (b) references in this Act to the intestate “leaving no issue” shall, subject to the provisions of this section, be construed as “leaving no issue who attain an absolutely vested interest”:
  - (c) references in this Act to the intestate “leaving issue” or “leaving a child or other issue” shall, subject to the provisions of this section, be construed as “leaving issue who attain an absolutely vested interest”:
  - (d) references in the table in section 77 to “no issue” must be construed as “no issue who attain an absolutely vested interest”:

- (e) references in the table in section 77 to “issue” must be construed as “issue who attain an absolutely vested interest”.
- (3) Where under this Act the estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if those trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

Compare: 1952 No 56 s 57

Section 78(1)(a): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 9(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 78(1)(a) proviso: amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 9(1) of the Administration Amendment Act 2005 (2005 No 4).

Section 78(1)(b): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 9(2) of the Administration Amendment Act 2005 (2005 No 4).

Section 78(2)(d): inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 9 of the Administration Amendment Act 2001 (2001 No 6).

Section 78(2)(e): inserted, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 9 of the Administration Amendment Act 2001 (2001 No 6).

## **79 Application to cases of partial intestacy**

- (1) Where any person dies leaving a will effectively disposing of part of his or her estate, the provisions of this Part shall have effect in respect of the part of his or her estate not so disposed of, subject to the provisions of the will and of subsection (2).
- (2) Where the deceased leaves a husband, wife, civil union partner, or surviving de facto partner who acquires a beneficial interest under the will of the deceased,—
- (a) the references in section 77 to the prescribed amount payable to a surviving husband, wife, civil union partner, or surviving de facto partner, and to interest on that amount, must be taken as references to that amount diminished by the value of the beneficial interest at the

- date of death, and to interest on that amount as so diminished; and
- (b) if the value of the beneficial interest exceeds the prescribed amount, section 77 has effect as if references to that amount and interest were omitted.
- (3) References in the foregoing provisions of this section to a beneficial interest acquired under a will shall be construed—
- (a) as including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not a special power of appointment;
  - (b) as not including a reference to a beneficial interest in any personal chattels.
- (4) For the purposes of the foregoing provisions of this section the administrator may ascertain and fix the value of the said beneficial interest in accordance with section 28 of the Trustee Act 1956, and no action shall lie against the administrator if he or she distributes the estate in accordance with the value that he or she has honestly and reasonably so fixed.

Compare: 1952 No 56 s 59; 1965 No 43 s 5

Section 79(2): replaced, on 3 June 1998, by section 6 of the Administration Amendment Act 1998 (1998 No 24).

Section 79(2): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 10 of the Administration Amendment Act 2005 (2005 No 4).

Section 79(2): amended, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 10 of the Administration Amendment Act 2001 (2001 No 6).

Section 79(2)(a): amended, on 26 April 2005 (applying only in respect of the estates of persons who die on or after that date), by section 10 of the Administration Amendment Act 2005 (2005 No 4).

Section 79(2)(a): amended, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 10 of the Administration Amendment Act 2001 (2001 No 6).

## **80 Construction of documents**

- (1) References to any Statutes of Distribution in an instrument *inter vivos* made, or in a will coming into operation, on or after the commencement of this Act, shall be construed as references to the provisions of this Part as they stand when the instrument is made or the will comes into operation; and references in such an instrument or will to statutory next of kin shall

be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part as they stand when the instrument is made or the will comes into operation.

- (2) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before the commencement of this Act and on or after 1 January 1945 (being the date of the commencement of the Administration Amendment Act 1944), by reference to the Statutes of Distribution, or to the statutes relating to the distribution of intestates' estates, shall, unless the contrary thereby appears, be construed as referring to the enactments relating to the distribution of estates of intestates which were in force when the instrument was made or the will came into operation.
- (3) Trusts declared in an instrument *inter vivos* made, or in a will coming into operation, before 1 January 1945, by reference to the Statutes of Distribution, or to the statutes relating to the distribution of intestates' estates, shall, unless the contrary thereby appears, be construed as referring to the enactments relating to the distribution of estates of intestates which were in force immediately before 1 January 1945.

Compare: 1952 No 56 s 60

Section 80(1): amended, on 1 January 1980, by section 9(2)(a) of the Administration Amendment Act 1979 (1979 No 38).

Section 80(1): amended, on 1 January 1980, by section 9(2)(b) of the Administration Amendment Act 1979 (1979 No 38).

## Part 4

### Miscellaneous provisions

#### **81 Right of successor on intestacy to disclaim**

- (1) Subject to the provisions of this section, where a successor has become entitled under this Act to an interest as a beneficiary in the whole or any part of the real and personal property which passes on the intestacy of any person,—
  - (a) the successor may, by deed delivered to the intestate person's administrator, disclaim that interest if at the date of the disclaimer he or she has attained full age and is of sound mind:

- (b) the court may, by order, disclaim the interest on behalf of the successor or authorise the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor has not attained full age or is not of sound mind.
- (2) No disclaimer under this section shall be valid unless—
  - (a) the disclaimer is made by the successor in his or her lifetime; and
  - (b) the disclaimer relates to the whole of the successor's interest as a beneficiary under this Act in the real and personal property which passes on the intestacy of the person, including property which any other person has disclaimed under this section; and
  - (c) the disclaimer is made within 1 year after the date of the first grant in New Zealand of administration in respect of the estate or will of the intestate person (whether that grant was made before or after the commencement of this Act) or within such extended period as may be allowed by the court.
- (3) No disclaimer under this section shall be valid if—
  - (a) the successor has entered into enjoyment of the whole or any part of the interest to which he or she has become entitled as aforesaid; or
  - (b) the successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part thereof or of any property which would include that interest or any part thereof if it were not disclaimed, or has covenanted or agreed to do any such thing; or
  - (c) there is any valuable consideration for the disclaimer; or
  - (d) the disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or
  - (e) the successor is bankrupt when the disclaimer is made.
- (4) The following provisions shall apply to every disclaimer under this section:
  - (a) the disclaimer shall be irrevocable:

- (b) the disclaimer shall not affect the right of the successor to make any application to the court to which section 47 applies in respect of the estate of the intestate person.
- (5) Where a disclaimer which complies with all the requirements of this section has been made by or on behalf of any successor and the disclaimer is not void and does not become void by reason of its being deemed under section 82 to be a transfer of the disclaimed interest—
  - (a) the property which passes on the intestacy of the person shall be distributed as if the successor had died immediately before the intestate person leaving only such issue (if any) as the successor would have left if he or she had died immediately before the intestate person:
  - (b) the successor shall be deemed for all purposes neither to have become entitled to nor to have disposed of the disclaimed interest or any part thereof.
- (6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.
- (7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with the requirements of this section and of any order of the court which relates to the disclaimer and is made under this section.

Compare: 1952 No 56 s 62; 1954 No 51 s 48

Section 81(5)(a): amended, on 24 May 1999, by section 15(1) of the Estate Duty Repeal Act 1999 (1999 No 64).

## **82 Effect of bankruptcy on disclaimer on intestacy or under a will and right of administrator to distribute**

- (1) Where a successor disclaims the interest as a beneficiary to which he or she is entitled under this Act in any real or personal property which passes on the intestacy of any person, or disclaims any interest as a beneficiary in any real or personal property to which he or she is entitled under the will of a deceased person, then, for the purposes of the Insolvency Act 2006 and of any other Act or rule of law relating to the protection of creditors,—
  - (a) the successor shall be deemed to have accepted the disclaimed interest; and

- (b) the disclaimer shall be deemed to be a transfer of the disclaimed interest by the successor to the person or persons who become entitled thereto in consequence of the disclaimer.
- (2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void or voidable otherwise than by reason of its being deemed to be a transfer of the disclaimed interest, the deceased person's administrator may distribute the disclaimed interest or any part of it as if there were no possibility of the disclaimer being or becoming void or voidable by reason of its being deemed to be a transfer of the disclaimed interest if, at the date of the distribution,—
- (a) the successor is not bankrupt; and
  - (b) the administrator has no reason to believe that the successor is about to become bankrupt; and
  - (c) the administrator has no reason to believe that the disclaimer is void or voidable or is about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest.
- (3) No action shall lie against any such administrator by reason of his or her distributing any disclaimed interest as aforesaid or by reason of his or her having failed to make any inquiry as to whether the successor was about to become bankrupt or as to whether the disclaimer was void or voidable or about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection (2) shall affect any right which any person may have to follow and recover any property to which the disclaimer relates.

Compare: 1952 No 56 s 63

Section 82(1): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

## **82A Regulations relating to prescribed amounts**

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing amounts that are required to be prescribed for the purposes of sections 64(1), 64A(3), 65(2), 65(5), and 77.

- (2) If no regulations are made under subsection (1) in respect of—
- (a) section 64(1), then the prescribed amount for the purposes of that provision is \$11,000;
  - (b) section 64A(3), then the prescribed amount for the purposes of that provision is \$11,000;
  - (c) section 65(2), then the prescribed amount for the purposes of that provision is \$11,000;
  - (d) section 65(5), then the prescribed amount for the purposes of that provision is \$11,000.
- (3) If no regulations are made under subsection (1) in respect of section 77,—
- (a) the prescribed amount for the purposes of that provision is \$121,500; and
  - (b) that amount applies to the estates of all persons dying on or after the commencement of this section, but does not apply to the estates of persons dying before that date.
- (4) Each time regulations are made under subsection (1) prescribing an amount for the purposes of section 77, the prescribed amount applies to the estates of all persons dying on or after the date on which those regulations come into force, but does not apply to the estates of persons dying before that date.

Section 82A: inserted, on 3 June 1998, by section 7 of the Administration Amendment Act 1998 (1998 No 24).

Section 82A(1): amended, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 11 of the Administration Amendment Act 2001 (2001 No 6).

Section 82A(3): amended, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 11 of the Administration Amendment Act 2001 (2001 No 6).

Section 82A(4): amended, on 1 February 2002 (applying only in respect of the estates of persons who die on or after that date), by section 11 of the Administration Amendment Act 2001 (2001 No 6).

### **83 Consequential amendment**

*Amendment(s) incorporated in the Act(s).*

### **84 Repeals and savings**

- (1) The enactments specified in Schedule 3 are hereby repealed.
- (2) The enactments specified in Schedule 4 shall not have effect as part of the law of New Zealand.

- (3) The provisions of the Acts Interpretation Act 1924 relating to the repeal of Acts shall apply to the enactments specified in Schedule 4, so far as they were in force in New Zealand immediately before the commencement of this Act, as if they were Acts of the Parliament of New Zealand.
- (4) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of section 3 of the Administration Amendment Act 1960 shall not affect the amendments made by that section.
- (5) Except as expressly provided in this Act, nothing in this Act shall affect the Maori Trustee Act 1953, the Public Trust Act 2001, and the Trustee Companies Act 1967.

Section 84(3): amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

Section 84(5): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

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**Schedule 1**  
**Certificate of administration**

s 18

In the High Court of New Zealand, at *[place]*

In the estate of *[name]*, of *[address]*, deceased.

Pursuant to section 18 of the Administration Act 1969, I hereby certify that, on *[date]*, probate of the will (*or* letters of administration in the estate)\* of the above-named deceased who died on or about *[date]*, was (were) granted to *[name]*, of *[address]*.

Dated at: *[place, date]*

[Seal]

Registrar.

\*In the case of a limited or special grant the exact nature of the grant should be shown.

Schedule 1: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Schedule 1: amended, on 1 April 1973, by section 18(3) of the Judicature Amendment Act 1972 (1972 No 130).

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**Schedule 2**

s 58

**Order to Public Trust or Māori Trustee to  
administer**

Schedule 2 heading: amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

In the High Court of New Zealand,

Date:

Upon reading the affidavits of [*name*], it is ordered that [*name*] shall be administrator of all the real and personal estate of deceased (with the will of the said [*name*] annexed).

Schedule 2: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

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**Schedule 3**  
**Enactments repealed**

s 84(1)

**Administration Act 1952 (1952 No 56) (1957 Reprint, Vol 1, p 39)****Administration Amendment Act 1957 (1957 No 38)****Administration Amendment Act 1960 (1960 No 100)****Administration Amendment Act 1964 (1964 No 24)***Amendment(s) incorporated in the Act(s).***Administration Amendment Act 1965 (1965 No 43)****Administration Amendment Act 1967 (1967 No 55)****Domestic Proceedings Act 1968 (1968 No 62)***Amendment(s) incorporated in the Act(s).***Estate and Gift Duties Act 1968 (1968 No 35)***Amendment(s) incorporated in the Act(s).***Maori Affairs Amendment Act 1967 (1967 No 124)***Amendment(s) incorporated in the Act(s).***Maori Trustee Act 1953 (1953 No 95)***Amendment(s) incorporated in the Act(s).***Matrimonial Proceedings Amendment Act 1968 (1968 No 60)***Amendment(s) incorporated in the Act(s).***Matrimonial Property Amendment Act 1968 (1968 No 61)***Amendment(s) incorporated in the Act(s).***Penal Institutions Act 1954 (1954 No 51)***Amendment(s) incorporated in the Act(s).*

**Public Trust Office Act 1957 (1957 No 36) (1957 Reprint, Vol 12, p 454)**

*Amendment(s) incorporated in the Act(s).*

**Status of Children Act 1969 (1969 No 18)**

*Amendment(s) incorporated in the Act(s).*

**Trustee Amendment Act 1968 (1968 No 24)**

*Amendment(s) incorporated in the Act(s).*

**Trustee Companies Act 1967 (1967 No 35)**

*Amendment(s) incorporated in the Act(s).*

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**Schedule 4**  
**Enactments declared not to have effect in**  
**New Zealand**

ss 84(2), (3)

<b>Session and chapter</b>	<b>Title or Short Title</b>	<b>Extent of repeal</b>
13 Edw 1 ( <i>Stat. Westm. sec.</i> ), c 19	The ordinary chargeable to pay the debts of an intestate.	The whole chapter.
13 Edw 1 ( <i>Stat. Westm. sec.</i> ), c 23	Writ of account for executors	The whole chapter.
13 Edw ( <i>Stat. Westm. sec.</i> ), c 34	Dower forfeited by elopement with adulterer	From “and if a wife willingly leave her husband” to “in which case she shall be restored to her action”.
25 Edw 1, c 7	Widow; her marriage estate; quarantine; estovers; dower; remarriage	The whole chapter.
25 Edw 1, c 18	The King’s tenant, his debtor	From “and the residue” to “reasonable parts”.
Statute ( <i>temp. incert.</i> )	Statute concerning tenants by the Curtesy of England.	The whole statute.
4 Edw 3, c 7	Executors shall have an action of trespass for a wrong done to their testator.	The whole chapter.
25 Edw 3, st 5 c 5	Executors of executors shall have the same rights and duties as the first executors.	The whole chapter.
31 Edw 3, st 4	Probate of testaments	The whole chapter.
31 Edw 3, st 1 c 11	The ordinary shall commit administration upon an intestacy. The administrators shall have the same rights and charges as executors.	The whole chapter.
21 Hen 8, c 4	An Act concerning executors of last wills and testaments.	The whole Act.

<b>Session and chapter</b>	<b>Title or Short Title</b>	<b>Extent of repeal</b>
21 Hen 8, c 5	An Act concerning fines and sums of money to be taken by the Ministers of Bishops and other Ordinaries of Holy Church for the probate of Testaments.	The whole Act.
32 Hen 8, c 37	For recovering of arrearage by executors and administrators.	Sections 1, 2, and 3.
1 Edw 6, c 12	An Act for the repeal of certain statutes concerning treasons, felonies, etc	Section 16.
43 Eliz, c 8	An Act against fraudulent administration of intestates goods.	The whole Act.
29 Chas 2, c 3	The Statute of Frauds	Sections 10, 11, 23, and 24.
30 Chas 2, c 7	An Act to enable creditors to recover their debts of the executors and administrators of executors in their own wrong.	The whole Act.
1 Jas 2, c 17	An Act for reviving and continuance of several Acts of Parliament therein mentioned.	The whole Act.
4 Will & Mar, c 24	An Act for reviving, continuing and explaining several laws therein mentioned that are expired and near expiring.	Section 12.
38 Geo 3, c 87	The Administration of Estates Act 1798.	The whole Act.
11 Geo 4 & 1 Will 4, c 40	The Executors Act 1830	The whole Act.

<b>Session and chapter</b>	<b>Title or Short Title</b>	<b>Extent of repeal</b>
11 Geo 4 & 1 Will 4, c 47	The Debts Recovery Act 1830	The whole Act.
3 & 4 Will 4, c 42	The Civil Procedure Act 1833	Sections 2, 37, and 38.
3 & 4 Will 4, c 74	The Fines and Recoveries Act 1833	In section 27, the words “no woman in respect of her dower, and”.
3 & 4 Will, c 104	The Administration of Estates Act 1833.	The whole Act.
2 & 3 Vict, c 60	The Debts Recovery Act 1839	The whole Act.
20 & 21 Vict, c 77	The Court of Probate Act 1857	The whole Act.
21 & 22 Vict, c 95	The Court of Probate Act 1858	The whole Act.

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## Reprints notes

### 1 *General*

This is a reprint of the Administration Act 1969 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Companies Amendment Act 2013 (2013 No 111): section 14  
High Court Fees Regulations 2013 (SR 2013/226): regulation 5(1)  
Māori Trustee Amendment Act 2009 (2009 No 12): section 30(1)  
Succession (Homicide) Act 2007 (2007 No 95): section 17  
Property Law Act 2007 (2007 No 91): section 364(1)  
Insolvency Act 2006 (2006 No 55): section 445  
Administration Amendment Act 2005 (2005 No 4)  
Care of Children Act 2004 (2004 No 90): section 151  
Administration Amendment Act 2003 (2003 No 58)  
Credit Contracts and Consumer Finance Act 2003 (2003 No 52): section 139  
Local Government Act 2002 (2002 No 84): section 262  
Trade Marks Act 2002 (2002 No 49): section 201  
Public Trust Act 2001 (2001 No 100): section 170(1)  
Accident Compensation Act 2001 (2001 No 49): section 337(1)  
Government Superannuation Fund Amendment Act 2001 (2001 No 47): section 40  
Housing Corporation Amendment Act 2001 (2001 No 37): section 24(1)

Administration Amendment Act 2001 (2001 No 6)  
Personal Property Act 1999 (1999 No 126): section 191(1)  
Estate Duty Repeal Act 1999 (1999 No 64): section 15(1)  
Employment Services and Income Support (Integrated Administration) Act 1998 (1998 No 96): section 11  
Administration Amendment Act (No 2) 1998 (1998 No 82)  
Administration Amendment Act 1998 (1998 No 24)  
Government Superannuation Fund Amendment Act 1995 (1995 No 28): section 31  
Administration Amendment Act 1993 (1993 No 109)  
Te Ture Whenua Maori Act 1993 (1993 No 4): section 362(2)  
Private Savings Bank (Transfer of Undertakings) Act 1992 (1992 No 21): section 22(1)  
Child Support Act 1991 (1991 No 142): section 242(1)  
Public Finance Act 1989 (1989 No 44): section 86(1)  
State-Owned Enterprises Act 1986 (1986 No 124): section 32(1)  
Constitution Act 1986 (1986 No 114): section 29(2)  
Judicature Amendment Act (No 2) 1985 (1985 No 112): section 11(2)  
Administration Amendment Act 1985 (1985 No 79)  
Accident Compensation Act 1982 (1982 No 181): section 122(8)  
Friendly Societies and Credit Unions Act 1982 (1982 No 118): section 161(1)  
Administration Amendment Act 1982 (1982 No 43)  
Judicature Amendment Act 1979 (1979 No 124): section 12  
Administration Amendment Act 1979 (1979 No 38)  
Domicile Act 1976 (1976 No 17): section 14(1)  
Superannuation Schemes Act 1976 (1976 No 3): section 11(3)  
Administration Amendment Act 1973 (1973 No 47)  
Judicature Amendment Act 1972 (1972 No 130): section 18(3)  
Administration Amendment Act 1970 (1970 No 45)

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