

ADMINISTRATION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Administration Act 1969.

Clause 1 relates to the Short Title and commencement of the Bill. It is to come into force on 1 January 1980.

Clause 2 amends the definition of the term "personal chattels" in section 2 of the principal Act. The amendment brings the definition into greater harmony with the Hire Purchase Act 1971.

Clauses 3 and 4 should be read together. By virtue of section 15 of the principal Act, where a grant of administration (other than probate of a will) is made to any person, that person is required to execute a bond with 2 sureties, unless the Court excuses him from that requirement, or accepts some other form of security. *Clause 4* abolishes this requirement.

Consequential upon that abolition, *clause 3* empowers the Court, in any particular case, to require such security to be given as it thinks fit.

Clause 5 repeals section 35 of the principal Act and substitutes a new provision. The intention is to make it clear that, for the purposes of section 34 of the principal Act (which provides, in essence, that where a person takes any property over which there is a charge, he takes the property subject to the charge), property being purchased under a hire purchase agreement by the deceased is deemed to have been owned by him, and subject to a charge for all money remaining owing under the agreement. This includes any money that will be payable if any option to purchase the goods under the agreement is exercised. By virtue of the proviso to section 34 (1) of the principal Act, these rules do not apply in respect of personal chattels taken by the surviving spouse.

The overall effect of these provisions is this. All goods subject to a charge (including goods subject to hire purchase obligations) will be taken by the beneficiary subject to the charge. The only exception to this rule is in respect of personal chattels taken by the surviving spouse. In that case, the estate is primarily liable to bear the charge.

Clause 6 empowers the Court to award costs against a caveator whose caveat against the grant of administration has lapsed or has been withdrawn. At present, such an award of costs can be made only where an order nisi is made under section 61 of the principal Act.

Clause 7 amends section 61 of the principal Act relating to caveats against grants of administration. The Court is given power, where it considers that the caveat has or may have been lodged vexatiously or frivolously, to strike it out or require security for costs.

Clause 8 amends sections 64 and 65 of the principal Act so as to increase from \$2,000 to \$4,000 the amount that can devolve or be paid in accordance with those sections without a grant of administration.

Clause 9 makes it clear that any reference in any will or *inter vivos* trust to the Statutes of Distribution is to be construed as a reference to the provisions of Part III of the principal Act as they stood at the time when the trust instrument was made or the will came into operation. At present, it is arguable that the reference must be construed as being to those provisions as originally enacted.

Clause 10 is a drafting amendment, consequential on *clause 5*.

Clause 11 redrafts paragraph (d) of section 77 (1) of the principal Act so as to alter the basis for distribution where the persons to take are grandparents or uncles and aunts. The clause gets away from a per capita distribution at this level and provides for half the estate to go on corresponding terms to the paternal relatives and the other half to go on corresponding terms to the maternal relatives.

Hon. Mr McLay

ADMINISTRATION AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Administration Act 1969

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Administration Amendment Act 1979, and shall be read together with and deemed part of the Administration Act 1969* (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on the 1st day of January 1980.

2. **Definition of term "personal chattels" amended**—
Section 2 (1) of the principal Act is hereby amended by
15 omitting from the definition of the term "personal chattels"
the words "Hire Purchase Agreements Act 1939, or under an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade

*1969, No. 52

Amendments: 1970, No. 45; 1973, No. 47; 1975, No. 56

or business of selling goods of the same nature or description as the goods referred to in the agreement”, and substituting the words “Hire Purchase Act 1971, or under an agreement that would have been such a hire purchase agreement had it been made at retail”.

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3. Court may require security for grant of administration— Section 6 of the principal Act is hereby amended by adding the following subsections:

“(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 Her Majesty, to give any such security.

“(6) The Court shall not exercise its powers under subsection (5) of this section 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 interest (if any) in the estate: 25

“(d) Whether or not he 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.”

4. Administration bonds abolished—(1) Sections 15 and 16 of the principal Act are hereby repealed. 30

(2) Notwithstanding subsection (1) of this section, every bond executed or security given under and for the purposes of section 15 of the principal Act and enuring at the commencement of this Act shall continue to have effect, and sections 15 and 16 of the principal Act shall continue to apply in respect of every such bond or security, in all respects as if those sections had not been repealed by subsection (1) of this section. 35

5. Articles held under hire purchase agreement—The principal Act is hereby amended by repealing section 35, and substituting the following section: 40

“35. (1) Where any person, immediately before his death, had an interest as purchaser under a hire purchase agreement within the meaning of the Hire Purchase Act 1971 of any goods within the meaning of that Act, or an interest as
5 purchaser of any such goods under an agreement that would have been such a hire purchase agreement had it been made at retail, if the person has by his will made a bequest in terms that would have included the goods if he had owned them immediately before his death, the bequest shall take effect,
10 unless the context otherwise requires, as if he then owned the goods.

“(2) Where any person, immediately before his death, had an interest as purchaser under a hire purchase agreement within the meaning of the Hire Purchase Act 1971 of any
15 goods within the meaning of that Act, or an interest as purchaser of any such goods under an agreement that would have been such a hire purchase agreement had it been made at retail, the provisions of section 34 of this Act shall apply as if he then owned the goods and as if any amount payable
20 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.

25 “(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.”

6. Payment of costs where caveat lapsed or withdrawn—

Section 60 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:
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“(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
35 payment of costs by the caveator.”

7. Procedure where caveat is lodged—(1) Section 61 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraphs:

40 “(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: 5

“(aa) In any case where, pursuant to subparagraph (i) of paragraph (a) of this section, the Court makes an order for the discharge of the caveat, it may also make an order— 10

“(i) For the payment of costs by the caveator:

“(ii) Prohibiting the caveator from lodging a subsequent caveat:” 15

(2) Section 61 of the principal Act is hereby further amended by omitting from paragraph (e) the words “Upon the hearing of the order nisi”, and substituting the words “at any hearing under paragraph (d) of this section,”. 20

8. Devolution of loan stock, and payment, without administration—(1) Section 64 of the principal Act is hereby amended by omitting the expression “\$2,000” (as substituted by section 2 of the Administration Amendment Act 1975) in both places where it occurs, and substituting in each case the expression “\$4,000”. 25

(2) Section 65 of the principal Act is hereby amended by omitting the expression “\$2,000” (as substituted by section 2 of the Administration Amendment Act 1975) in both places where it occurs, and substituting in each case the expression “\$4,000”. 30

(3) Section 2 of the Administration Amendment Act 1975 is hereby consequentially repealed.

9. Construction of documents—(1) Section 75 of the principal Act is hereby amended by inserting, after the words “of this Act” where they first occur, the words “, except section 80,”. 35

(2) Section 80 (1) of the principal Act is hereby amended—

(a) By omitting the words “to this Part of this Act”, and substituting the words “to the provisions of this Part of this Act as they stand when the instrument is made or the will comes into operation”: 40

(b) By adding the words “as they stand when the instrument is made or the will comes into operation”.

10 **10. Intestate succession to personal chattels held under hire purchase agreement**—Section 77 (1) of the principal Act
5 is hereby amended by omitting from paragraph (a) the words “Hire Purchase Agreements Act 1939, or to an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the
10 goods referred to in the agreement,” and substituting the words “Hire Purchase Act 1971, or to an agreement that would have been such a hire purchase agreement had it been made at retail,”.

15 **11. Succession to real and personal estate on intestacy**—
(1) Section 77 (1) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraphs:

20 “(d) If the intestate leaves no husband or wife or issue or parent, the estate shall be held on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate:

25 “(da) If no person takes an absolutely vested interest under the trusts mentioned in the foregoing provisions of this subsection, the estate shall be held in trust for the following persons in the following order and manner, namely:

30 “(i) As to one half of the estate for the maternal grandparents of the intestate in equal shares if they both survive the intestate, but if only one of them survives the intestate for that one, and if the intestate leaves no maternal grandparent, then on the statutory trusts for the maternal uncles and aunts (whether of full or of half blood) of the
35 intestate, but if no person takes an absolutely vested interest under the trusts mentioned in this subparagraph then on the trusts mentioned in subparagraph (ii) of this paragraph:

“(ii) As to the other half of the estate for the paternal grandparents of the intestate in equal shares if they both survive the intestate, but if only one of them survives the intestate for that one, and if the intestate leaves no paternal grandparent, then on the statutory trusts for the paternal uncles and aunts (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under the trusts mentioned in this subparagraph then upon the trusts mentioned in sub-paragraph (i) of this paragraph.” 5 10

(2) This section shall not apply in any case where the death occurred before the 1st day of January 1980 and the estate of any person who died intestate before the 1st day of January 1980 shall be distributed in accordance with the enactments and law in force at the death of that person. 15