

Chapter 03

ADMINISTRATION OF ESTATES

Sections:

- 40.0301 Jurisdiction
- 40.0302 Chapter not applicable to communal property
- 40.0305 Priority for granting letters of administration
- 40.0306 Qualifications of executors and administrators
- 40.0307 Time for executor to show he is qualified
- 40.0308 Appointment of administrator with will annexed
- 40.0309 Petition for letters
- 40.0310 Oath and bond
- 40.0311 Forms of letters
- 40.0320 Notice to creditors
- 40.0321 Inventory and account
- 40.0322 Sale of personal estate
- 40.0323 Sale of real property
- 40.0330 Payment of debts of estate
- 40.0331 Final accounting
- 40.0332 Distribution of estate
- 40.0333 Fees
- 40.0334 Petition for transfer of personal property to person entitled to letters of administration
- 40.0335 Contents of petition
- 40.0336 Order directing transfer of property
- 40.0337 Immunity of persons making transfers
- 40.0338 Contest of transfer order
- 40.0339 Procedure when debts exceed value of property
- 40.0340 Responsibility of transferee for property
- 40.0341 Action against transferee
- 40.0342 Procurement of money without petition

Reviser's Comment: The law dealing with alienation of land contained in 40.0302, 40.0323 and 40.0333 of the A.S.C.A., as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. 1, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled, since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-3 to ensure that the law dealing with alienation of land complies with the Constitution.

40.0301 Jurisdiction.

(a) The estates of deceased persons shall be administered in the Trial Division of the High Court, which shall have exclusive jurisdiction over such estates.

(b) The Trial Division of the High Court has jurisdiction to take proof of wills and grant letters testamentary, letters of administration, and letters of administration with will annexed, when the decedent at or immediately previous to his death was domiciled in American Samoa or left property or assets in, or to be received in, American Samoa.

History: 1962, PL 7-32; and 1979, PL 16-53 § 10.

Amendments: 1979 Substituted "Trial Division" for "probate division" in both subsections.

40.0302 Chapter not applicable to communal property.

The provisions of this chapter do not apply to communal property held under the Samoan custom.

History: 1962, PL 7-21; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1.

40.0305 Priority for granting letters of administration.

(a) Letters of administration in case of intestacy, and letters of administration with will annexed, shall be granted to the person or persons entitled thereto in the following priority:

(1) to the surviving spouse or some person designated by the surviving spouse;

(2) to the next of kin in the order of their degree of relationship to the deceased, and in case of degree of relationship to the deceased, the administrator shall be selected in the discretion of the Trial Division of the High Court;

(3) to a competent creditor residing in American Samoa.

(b) If no person entitled to administer shall apply for letters of administration within 6 months, the Trial Division of the High Court may deem all prior rights to administer renounced and proceed to appoint some suitable person to administer such estate.

History: 1962, PL 7-21; and 1979, PL 16-53 § 11.

Amendments: 1979 Substituted “Trial Division” for “probate.”

40.0306 Qualifications of executors and administrators.

No letters of administration, letters testamentary or letters of administration with will annexed may be issued to any person who has not reached the age of 21 years, any person who is not a resident of American Samoa, or any person who is mentally incompetent to execute the duties of such trust.

History: 1972, PL 7-21.

40.0307 Time for executor to show he is qualified.

(a) If any person appointed as executor neither shows that he is qualified, or renounces his appointment within 60 days after his appointment, the Trial Division of the High Court shall, on application of an interested party, issue a citation to such party to show cause within 10 days after service of the citation why he should not be deemed to have renounced.

(b) If, upon service of the citation, he does not qualify himself or renounce within the time specified, the Trial Division of the High Court shall enter a decree that such person has renounced his appointment as executor.

History: 1962, PL 7-21; and 1979, PL 16-53 § 12.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0308 Appointment of administrator with will annexed.

(a) If no executor is appointed in a will offered for probate, or if at any time by reason of death, removal or any reason there is no executor qualified to act, the Trial Division of the High Court may issue letters of administration with will annexed to some suitable person or persons.

(b) An administrator with will annexed shall have the same powers and duties, give the same bond, meet the same qualifications, and shall be appointed in the same priority as an administrator.

History: 1962, PL 7-21; and 1979, 16-53 § 13.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

Case Notes:

Makes no provision for attorney’s fees, absent which the court will not permit executor to compensate himself for legal services rendered. In re Laisene estate, ASR (1978).

Position of executor is one personal to the estate and is not inheritable, or assignable, upon the death of an executor; new application must be made. Tolmie v. Hunkin, ASR (1976).

40.0309 Petition for letters.

Petitions for letters of administration, letters testamentary or letters of administration with will annexed must be sworn to, and must set forth the following:

- (1) the date of the death of the decedent and whether he died testate or intestate;
- (2) that he was domiciled in American Samoa when he died, or that he left property in American Samoa;
- (3) that the applicant is the person entitled to be appointed administrator, administrator with will annexed, or executor;
- (4) the approximate value and nature of the decedent’s estate;
- (5) the names and residences of all parties entitled as heirs, distributees, devisees or legatees of the estate if known, which of the parties are minors or under a legal disability, whether with or without guardian, and the names and residences of the guardians if any.

History: 1962, PL 7-21.

40.0310 Oath and bond.

Before any person shall assume the duties of administrator, administrator with will annexed or executor, he shall take an oath before the Trial Division of the High Court that he will faithfully and honestly discharge the duties of his trust, and shall give a bond in such amount as shall be required by the Trial Division of the High Court, which shall in no case exceed 2 times the estimated value of the property which shall come into his hands during administration. The Development Bank of American Samoa, when acting as legal representative of an estate, is not required to give bond.

History: 1962, PL7-21; and 1979, PL 16-53 § 14.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0311 Forms of letters.

All letters shall be issued in the name of the government, attested to in the name of the Trial Division of the High Court, signed by the Chief Justice, or the Associate Justice, and sealed with the seal of the High Court.

History: 1962, PL 7-21; and 1979, PL 16-53 § 15.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0320 Notice to creditors.

Every executor, administrator and administrator with will annexed shall, within 20 days after the granting of his letters, notify all persons having claims against the estate to exhibit them within 60 days from the date of the first publication of such notice. Notice shall be published once in some newspaper published in American Samoa if any, and shall be posted at the government offices.

History: 1962, PL 7-21.

40.0321 Inventory and account.

- (a) Every executor, administrator and administrator with will annexed shall, within 3

months after he qualifies, return to the Trial Division of the High Court, under oath, a true, full and complete inventory of all property, real and personal, that has come into his hands during administration, and such inventory shall be signed by him and recorded by the Trial Division of the High Court.

(b) The administrator, executor or administrator with will annexed shall also file an annual inventory and account, under oath, of the amount of property received by him and his receipts and disbursements for the past year.

History: 1962, PL 7-21, and 1979, PL 16-53 § 16.

Amendments: 1979 Subsection (a): substituted “Trial Division” for “probate division”.

40.0322 Sale of personal estate.

Every executor, administrator and administrator with will annexed shall have power to sell the personal estate which has come into his hands, under such terms and conditions as may be imposed by the Trial Division of the High Court.

History: 1962, PL 7-21; and 1979, PL 16-53 § 17.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0323 Sale of real property.

(a) Real property in an estate may be sold only upon an order signed by the Trial Division of the High Court.

(b) The court may not grant an application to sell real estate until all the personal property has been exhausted and the proceeds thereof found insufficient to pay the estate debts.

(c) Sales of real property shall be conducted in accordance with the order of the Court, and subject to the provisions of 37.0201 et seq. regarding the alienation of land.

History: 1962, PL 7-2 1; and 1979 PL 16-53 § 18; readopted 1980, PL 16-88 § 1;.

Amendments: 1979 Subsection (a): substituted “Trial Division” for “probate division”.

40.0330 Payment of debts of estate. 1982, PL 17-3 1 § 1

Debts of a decedent must be paid in the following order:

- (1) debts which by law have a specific lien on the property of the estate;
- (2) funeral expenses and expenses of last illness;
- (3) taxes;
- (4) debts due the government of the United States and the government of American Samoa;
- (5) judgments of any Court in American Samoa,
- (6) all other debts and demands.

History: 1962, PL 7-21.

40.0331 Final accounting.

An executor, administrator or administrator with will annexed may be required to file his final account after two years from his qualification, at the instance of any interested party, but such account may be filed voluntarily at any time after the time within which claims may be filed against the estate has expired. Such account shall be audited and recorded by the Trial Division of the High Court.

History: 1962, PL7-21; and 1979, PL 16-53 § 19.

Amendments 1979 Substituted “Trial Division” for “probate division”.

40.0332 Distribution of estate.

After the final account has been audited and recorded, the Trial Division of the High Court shall make and file a decree of distribution, which shall name the persons entitled to the estate and the proportions or parts to which each is entitled. Such decree shall be conclusive as to the rights of heirs, legatees, devisees and creditors, and upon the filing of the decree the administrator, executor or administrator with will annexed shall immediately distribute the assets of the estate in accordance therewith.

History: 1962, PL7-21; and 1979, PL 16-53 § 20.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0333 Fees.

The Trial Division of the High Court shall allow every executor, administrator or administrator with will annexed a commission upon all receipts and disbursements which shall appear to be fairly made in the courts of administration and in the proper discharge of the duties of the trust. Such commission shall not exceed 2½ percent upon receipts and 2½ percent upon disbursements. with a minimum fee of \$40.

History: 1962, PL7-21; and 1979, PL 16-53 § 21.

Amendments: 1979 Substituted “Trial Division” for “probate division”.

40.0334 Petition for transferal of personal property to person entitled to letters of administration.

When a decedent leaves personal property, including but not limited to cash, bank or other accounts, wages or salary due, shares of stock or other interest in any business enterprise, and goods and chattels of any nature, of a total value not exceeding \$10,000, and known debts if any, of less than that amount, and the person or persons entitled to the personal property left by the decedent cannot readily obtain possession thereof, those persons entitled to letters of administration in the priorities listed in 40.0305, may file a sworn petition in the Trial Division of the High Court, asking the issuance of an order that such personal property be transferred to the petitioner. If none of the persons named in 40.0305 file such petition within 90 days of the death of the decedent, then any creditor of the decedent may file a sworn petition as set forth above.

History: 1962, PL 7-21; 1967, PL 10-16; and 1979, PL 16-8 § 1.

Amendments: 1979 Raised dollar amount from \$1,000 to \$10,000.

Case Notes:

Territorial statute providing for transfer of small estates to persons entitled thereto without letters of administration was inapplicable to estate with assets in excess of \$10,000. A.S.C.A. § 40.0334. In re Estate of Fuimaono, 7 A.S.R.2d 142 (1988).

When petitioner had secured the transfer of contents of a safe deposit box belonging to decedent by attesting that the assets in decedent’s estate had a total value of less than \$10,000, the assets could not be distributed or retained by the petitioner without the issuance of letters of administration for decedent’s estate. A.S.C.A. § 40.0334. In re Estate of Fuimaono, 7 A.S.R.2d 142 (1988).

Surviving spouse who received funds belonging to deceased husband, under statute providing for the simplified administration of small estates, was required to pay his debts and

funeral expenses and to distribute the remainder of the funds to his legal heirs. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26 (1988).

Surviving spouse who received funds belonging to deceased husband under statute providing for the simplified administration of small estates, and who used the funds to purchase a pickup truck rather than distributing them to legal heirs, would be required to restore the funds. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26 (1988).

Adult heir were competent to decide whether to seek recovery of their share of decedent's estate from surviving spouse who had spent the funds in the estate, but minor heirs could not waive their share of the estate; accordingly, surviving spouse would be required to restore funds to minors' trust accounts. A.S.C.A. §§ 40.0334 et seq. In re Estate of Salanoa, 8 A.S.R.2d 26 (1988).

40.0335 Contents of petition.

(a) Such sworn petition shall set forth the name, residence, and date of death of the decedent, and the names and addresses of the surviving spouse, children, brothers, and sisters of the decedent or, if none survived the decedent, the name, address and relationship of the nearest surviving relative.

(b) The petition shall also state the total value of the personal property, the total of all known debts of the decedent; shall contain a brief statement as to any will made by decedent concerning his personal property, and the property, if any, that passed or is to pass under such will and to whom it went or is to go; and shall contain the promise of the petitioner to pay, as far as the assets of the estate permit, the debts of the decedent, and to distribute the balance, if any, to the person or persons entitled thereto.

History: 1962, PL 7-21; 1967, PL 10-16.

40.0336 Order directing transfer of property.

Upon the filing of such petition, if it appears to the Court that the ends of justice will be served, the Court may issue an order, either without notice or after such notice as it deems proper, directing the transfer of the personal property to the petitioner, or to such other person as the Court deems proper, directing that the transferee pay, as far as the assets of the estate permit, the debts of the decedent, and then distribute the balance, if any, to the person or persons entitled thereto.

History: 1962, PL 7-21; 1967, PL 10-16.

40.0337 Immunity of persons making transfers.

Any person transferring property or money to petitioner under Court order may not incur liability thereby, or be held to account for the same by any person.

History: 1962, PL 7-21; 1967, PL 10-16.

40.0338 Contest of transfer order.

Any person upon whom demand is made to transfer money or other property under a court order, who denies the right of the petitioner or other transferee to receive the same shall, within 10 days of the demand to transfer being made upon him, file his answer in the Court that issued the order, setting forth the grounds that entitle him to retain possession thereof. Upon the filing of such answer, the Court shall, after notice to petitioner or other transferee, set the matter down for hearing and make such finding and enter such further order as the ends of justice require.

History: 1962, PL 7-21; 1967, PL 10-16.

40.0339 Procedure when debts exceed value of property.

If the transferee finds, after receipt of the personal property, that the debts of the decedent exceed the value of the property received, he shall make no further distribution of the same, but shall at once report the facts to the Court that issued the transfer order, setting forth the money and other personal property received, the disbursements he has already made, the names and addresses of the recipients of the property already disbursed and the reason therefor; and shall list all known debts of decedent, including those that have recently come to transferees attention; and he shall take no further action save by order of the Court.

History: 1962, PL 7-21; 1967, PL 10-16.

40.0340 Responsibility of transferee for property.

A transferee shall be personally responsible for property received by him pursuant to a transfer order.

History: 1962, PL 7-21; 1961, PL 10-16.

40.0341 Action against transferee.

Any party claiming an interest in transferred property may, after demand, maintain an action against the transferee, but no action shall be brought after 2 years from the date of the order under which the property was transferred.

History: 1962, PL7-21;1967, PL 10-16.

40.0342 Procurement of money without petition.

(a) If the value of the estate of decedent does not exceed \$1,000, the surviving spouse, or the children of the decedent if there is no surviving spouse, if entitled by inheritance or by the last will and testament of the decedent to any money of the decedent on deposit in the Development Bank of American Samoa, or to any money owing to the decedent by the government, may collect such money, not to exceed \$300, without first procuring letters or filing a petition under this section, upon furnishing the Development Bank of American Samoa or the Treasurer of American Samoa, as the case may be, with an affidavit showing the right of the affiant or affiants to receive such money.

(b) The receipt of the affiant or affiants shall constitute sufficient acquittance for any payment by the Development Bank of American Samoa or the government made pursuant to this section, and shall fully discharge the Development Bank of American Samoa or the government from any further liability to any person with reference thereto, without the necessity of the Development Bank of American Samoa or the government making any further inquiry into the truth of the facts stated in the affidavit.

(c) Such payment shall not preclude administration when necessary to enforce payment of the debts of a decedent.

History: 1962, PL7-21;1967, PL 10-16.