

**CHAPTER 3.06****UNREPRESENTED ESTATES ACT****ARRANGEMENT OF SECTIONS**

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## CHAPTER 3.06

### UNREPRESENTED ESTATES ACT

(Acts 2 of 1884, 5 of 1932, 3 of 1946, 21 of 1953 and S.R.O. 15/1956)

#### Commencement

[10 December 1884]

#### Short title

1. This Act may be cited as the Unrepresented Estates Act.

#### Interpretation

2. In this Act—

“**Court**” means the High Court or any Judge thereof;

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

#### Appointment of Administrator of Estates

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

#### Bailiff to be Administrator until appointment made

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

#### Administrator to be an officer of the Supreme Court

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

#### Administrator to take oath

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

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

### **Administrator responsible for acts of his clerks, etc.**

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

### **Administrator not to act as agent, etc.**

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

### **Court on petition of Administrator, to grant order to collect unrepresented estate**

9. Subject to the provisions of section 36 the Administrator of Estates shall, so often as he shall find any estate which he shall consider unrepresented, present a petition to the Court stating the particulars of such estate, and praying for an order to collect and receive the same, and the Court is hereby required upon being satisfied that such estate is unrepresented, to grant such order accordingly.

### **Definition of unrepresented estate**

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

- (a) the estate of every person who shall die intestate, where the widow or next of kin of such person shall be unknown, or shall have refused to take out letters of administration, or shall be absent from Montserrat without having an agent therein;
- (b) the estate of every person who shall die leaving a will, and, owing to any cause, it shall be necessary to appoint administrators *cum testamento annexo, or de bonis non*, of such estate, and the person entitled to such letters of administration shall be unknown, or shall refuse to take out such letters of administration, or shall be absent from Montserrat without having an agent therein;
- (c) every estate whereof the executors or administrator shall be absent from Montserrat without having an agent therein;
- (d) the estate of every person who shall die intestate and without leaving next of kin him surviving.

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

### **Letters of administration not to be granted to creditor**

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

### **Administrator to take possession of estate and make inventory**

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

### **Court may revoke order**

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

### **On death of Administrator estates to vest in his successor**

14. Upon the death, or removal from office, of any Administrator of Estates for the time being; all real and personal estates and effects which shall have been vested in such Administrator, by virtue of this Act, at the time of his death or removal, shall become vested in the succeeding Administrator of Estates without the necessity of any act or deed whatsoever.

### **Administrator to collect debts, etc.**

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

### **Process to be in name of Administrator**

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

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

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

### **Administrator to report to Attorney General on taking possession of estates and to publish notice to creditors**

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

### **Particulars to be furnished of creditor's claims**

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

### **Court to settle disputes as to validity of claims**

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

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

### **Court may order immediate sale of perishable part of estate**

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

### **Sale of personal property**

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

Provided that the Court may, if it sees fit, by any order, or orders, extend the time within which such sale shall be made, or direct the said estate to be sold by private contract:

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

### **Sale of real estate**

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

### **Distribution of proceeds of estates**

**24.** At the expiration of twelve months from the date of the order for taking possession of the estate of any deceased person, the Administrator of

Estates, out of the money which shall have been received on account thereof, shall, in the first place, reimburse himself all costs and charges which he shall reasonably have incurred in collecting and settling such estate (such costs and charges having been first allowed by the Court), and also shall deduct, and pay into the Treasury ten per cent. upon the gross amount of such money, to be applied as hereinbefore mentioned; and, in the next place, shall pay the creditors of the said estate in the order prescribed by law, if sufficient money shall remain for the payment thereof in full, and the balance, if any, which shall remain after such payment shall be paid into, or remain in, the Treasury in trust for the next of kin, heir at law, legatee, or devisee of such deceased person, as the case may be; but if sufficient money shall not remain for the payment of all the said creditors in full, then the same shall be divided rateably among the said creditors:

Provided that in the case of an estate which is unrepresented by reason of a person dying in the circumstances described in paragraph (d) of section 10, the balance of any money remaining after the creditors of the estate have been paid in full, shall be paid by the Administrator of Estates into the Treasury.

#### **Application of ten per cent deducted by Administrator**

**25.** The ten per cent upon the gross amount of such money payable into the Treasury under the provisions of section 24 shall be applied as follows—

- (a) seven and one half per cent shall be paid by the Accountant General in respect of the services which the Administrator of Estates is required by the Act to perform, to the credit of the revenue of Montserrat; and
- (b) two and one half per cent shall be applied to providing a reserve fund for defraying the incidental expenses of carrying this Act into effect.

#### **Administrator to submit his accounts monthly to the Court**

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

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

**27.** No fees of Court shall be payable or taken in respect of applications made to the Court, to which the Administrator of Estates is the only party, concerning unrepresented estates or the management thereof, nor in respect of the filing of affidavits or other documents in Court by the said Administrator, and it shall be sufficient for the Court to write upon the face of any document in the above cases, which otherwise should bear a stamp,

and in the place where such stamp would be, the word “Exempt,” with the chapter number of this Act.

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

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

### **No action to be brought against Administrator for debts of estate, but Court may order payment**

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

### **Persons claiming balance of estate to apply to Court**

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

### **Audit of Administrator’s accounts**

**31.** The Administrator of Estates shall, weekly, exhibit a statement of his accounts to the Auditor-General, or Administrator who shall forthwith ascertain the balance, and allow such accounts if they shall be found correct; and the Administrator of Estates shall, within forty-eight hours next after the allowance of such accounts, pay the balance so ascertained into the

hands of the Accountant General to the credit of the estate, or respective estates, on account of which the same shall have been received.

### **List of unrepresented estates to be published annually**

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

### **Books and accounts to be kept by Administrator**

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

### **Books and accounts may be searched**

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

### **Forms**

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

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

36. (1) Notwithstanding anything hereinbefore contained, in case of the death in Montserrat of any person, known to the Administrator of Estates to be a citizen of the United States, having real or personal property situate in any part of Montserrat, and without having therein any known heirs or testamentary executors by him appointed, it shall be the duty of such Administrator, so soon as he shall become aware of the fact, to inform the United States Consul in whose Consular District Montserrat is of the circumstance, in order that the information may be immediately forwarded by him to the persons interested, if he knows or can ascertain who the same may be.

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

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**SCHEDULE**

**FORMS**

(Section 35)

**FORM 1**

**PETITION TO COLLECT AN ESTATE**

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

The petition of ....., Administrator of Estates,

Humbly Showeth—

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

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

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

Dated .....

A. B.

FORM 2

**ORDER TO COLLECT AN ESTATE**

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

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

C.D.

Judge.

FORM 3

**ORDER TO SELL REAL ESTATE IN THE  
EASTERN CARIBBEAN SUPREME COURT**

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

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

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

C.D.

Judge.