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No. 39 of 1999

Fifth Session Fifth Parliament Republic of Trinidad
and Tobago

SENATE

BILL

AN ACT to to amend the law relating to the distribution
of the estates of deceased persons

THE DISTRIBUTION OF ESTATES (NO. 2) BILL, 1999

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Bill proposed to amend the Succession Act, 1981, the Administration of Estates Ordinance, Ch. 8. No. 1 and the Wills and Probate Ordinance, Ch. 8. No. 2. The purpose is two-fold and is explained hereunder.

The Succession Act, in Part VIII, permits certain categories of persons to apply to the High Court for the Court to make appropriate financial settlement on them (from the estate of the deceased) where, either no such provision or insufficient provision was made by the deceased under his will.

The proposed amendment to Part VIII would have the effect of increasing the categories of persons, who can apply to the High Court for appropriate redress, to include a cohabitant, that is, a person who was living in a cohabitational relationship with the deceased.

Likewise, under the existing law of intestacy, contained in the Administration of Estates Ordinance, such category of person (i.e. a cohabitant) is presently excluded from claiming a beneficial interest in the deceased's estate. The proposed amendment would give a cohabitant the same right to a beneficial interest in the estate as a spouse.

The proposed amendment to the Wills and Probate Ordinance would be consequent upon the amendment to Part VIII of the Succession Act.

The Bill is divided in three Parts as follows:

Part I—Amendment to the Succession Act. This Part, proposes certain amendments to Part VIII of the Act, by including a number of definitions for the purpose of giving meaning to this Part and also including a cohabitant as a category of person who can apply for financial relief.

(The reader is asked to note that the Succession Act, 1981 has not been proclaimed. It is intended that, upon this Bill being assented to, Part VIII of the Act shall be proclaimed).

Part II—Amendment to the Administration of Estates Ordinance. The main purpose of this Part is to include a cohabitant, as a category of person, able to claim a beneficial interest in the estate of the deceased intestate.

In addition, the interpretation section is amended to include definitions of “kin” and “next of kin”, which definitions have been simplified for purposes of clarity. Section 3 of the Ordinance is consequentially repealed.

Furthermore, in the proposed new clause 24, where an intestate dies leaving one or more children, the spouse or cohabitant shall take one-half of the estate. The present position is that a spouse takes one-third.

Part III—Amendment to the Wills and Probate Ordinance. This amendment is consequential upon the amendments made to Part VIII of the Succession Act and the proposed proclamation of that Part.

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[, 1999]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

1. This Act may be cited as the Distribution of Short title
Estates Act, 1999.

PART I

AMENDMENT TO THE SUCCESSION ACT

Act No. 27 of 1981
amended

2. The Succession Act is amended—

(a) in section 94 by repealing subsection (1) and substituting as follows:

“(1) In this Part—

“beneficiary”, in relation to the estate of a deceased person, means—

(a) a person who, under the will of the deceased or under the law relating to intestacy, is beneficially interested in the estate or would be so interested if an Order had not been made under this Part; and

(b) a person who has received any sum of money or other property, which by virtue of section 102(1) or (2) is treated as part of the net estate of the deceased, or would have received that sum or other property if an Order had not been made under this Part;

“cohabitant” or “cohabiting partner” means—

(a) in relation to a man, a woman who has been living with or who has

lived together with a man in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of his death;

(b) in relation to a woman, a man who has been living with or has lived together with a woman in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the date of her death,

but only one such relationship shall be taken into account for the purposes of this Part;

“cohabitational relationship” means the relationship between cohabitants, who not being married to each other, have lived together in a *bona fide* domestic relationship for a period of not less than five years immediately preceding the death of either cohabitant;

“conveyance” includes any instrument, other than a will, consisting of or comprising a transfer, mortgage or other charge, lease, assent, vesting

declaration, disclaimer, release or other assurance of property or of an interest therein and “convey” has a corresponding meaning;

“Court” means the High Court;

“deceased” or “deceased person” includes a person who is not of full age and capacity who is, for the purposes of this Part, treated as having power to dispose of by will all property of which he would have had power to dispose of had he been of full age and capacity;

“former spouse” means a person whose marriage was, during the deceased’s lifetime, dissolved or annulled by a decree of divorce or of nullity of marriage made under the Matrimonial Proceedings and Property Act;

“grant” means a grant of probate or administration;

“net estate” in relation to a deceased person means—

- (a) all property of which the deceased had power to dispose by his will (otherwise than by virtue of a special power of appointment) less the amount of his funeral,

testamentary and administration expenses, debts and liabilities;

- (b)* any property in respect of which the deceased held a general power of appointment (not being a power exercisable by will) which has not been exercised;
- (c)* any sum of money or other property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of section 102(1) or (2);
- (d)* any property which is treated for the purposes of this Act as part of the net estate of the deceased by virtue of an Order made under section 103;
- (e)* any sum of money or other property which is by reason of a disposition or contract made by the deceased, ordered under section 104 or 105 of this Act to be provided for the purpose of the making of financial provision under this Part;

“real estate” includes chattels real, and land in possession,

remainder or reversion, and every estate or interest in or over land, including real estate held on trust or by way of mortgage or security, to which a deceased person was entitled at the time of his death;

“reasonable financial provision” means—

(a) in the case of an application made by a person described in section 95(1)(a) and 95(1)(aa), except where, in case of a spouse of the deceased, the marriage was the subject of a decree of judicial separation and at the date of the death the decree was in force and the separation was continuing, such financial provision as would be reasonable in all the circumstances for a spouse or cohabitant to receive, whether or not that provision is required for his or her maintenance;

(b) in the case of any other application made by a person described in section 95(1)(b) to (e), such financial provision as would be reasonable

in all the circumstances
for the applicant to
receive for his or her
maintenance;

“relevant property” means the
income from that part of the
net estate used for the
purpose of providing periodic
payments or a lump sum
payment to the person in
whose favour an Order is
made under section 4;

“spouse” means a husband or
wife and in relation to a
deceased person a widow or
widower;

“valuable consideration” does not
include marriage or a
promise of marriage.”;

(b) by inserting immediately after section 94(7)
the following new subsections:

“ (8) A reference to a child includes a
child *en ventre sa mere* and a child in
respect of whom an Adoption Order
has been made under the Adoption of
Children Act.

Chap. 46:03

(9) A reference to a will includes
the disposition of the deceased’s estate
by his will or under the law relating to
intestacy or to a combination of the
deceased’s will and that law.”;

(c) in section 95—

(i) in subsection (1) by inserting
after paragraph (a) the following:

“(aa) a cohabitant;”;

- (ii) by repealing subsection (2);
- (iii) in subsection (3) by deleting the words “(1)(c)” and substituting the words “(1)(e)”;
- (d) in section 97(2)(a) by inserting after the words “duration of the marriage” the words “or the cohabitational relationship”;
- (e) in section 100(9) by deleting the words “95(1)(d), (e) or (f),” and substituting the words “96(1)(d), (e) or (f),”;
- (f) in section 113(3) by deleting the words “in accordance with section 70”; and
- (g) in section 115 by—
 - (i) deleting the words “section 34 of the Evidence Ordinance” and substituting the words “section 37 of the Evidence Act”; and
 - (ii) by deleting the words “section 34(1)” and replacing it with the words “section 37(1)” wherever they appear.

PART II

AMENDMENT TO THE ADMINISTRATION OF ESTATES ORDINANCE

Ch. 8. No. 1 amended **3. The Administration of Estates Ordinance is amended—**

- (a) in section 2 by adding the following definitions in appropriate alphabetical sequence:
 - “cohabitant” means a person of the opposite sex who, while not married to the intestate, continuously cohabited in a *bona*

fide domestic relationship with the intestate for a period of not less than five years immediately preceding the death of the intestate;

“estate” includes both real and personal property;

“issue” includes all lineal descendants of an ancestor, whether born within or outside of marriage;

“kin” means, in relation to a deceased person, the issue of the deceased, his father or mother, his grandparents and great-grandparents;

“next of kin” means, in relation to a deceased person—

(a) the brothers and sisters of the deceased;

(b) the issue of the grandparents of the deceased;

(c) the brothers and sisters of a parent of the deceased;

(d) the issue of any brothers or sisters of the deceased,

and the kindred of the half blood shall rank immediately after those of the whole blood of the same degree of kinship to the estate;”;

(b) by repealing section 3; and

(c) by repealing sections 23, 24, 25, and 26 and substituting the following:

“Distribution
on intestacy

23. An estate or interest to which a deceased person was entitled on his death in respect of

which he dies intestate shall, after all payment of debts, duties and expenses be distributed or held on trust amongst the same persons being kin or next of kin in accordance with sections 24, 25, 26 and 26A.

Shares of
spouse and
issue

24. (1) Where an intestate dies leaving a surviving spouse but no issue, his estate shall be distributed to or held on trust for the surviving spouse absolutely.

(2) Where an intestate dies leaving issue, but no spouse, his estate shall be distributed *per stirpes* among the issue.

(3) Where an intestate dies leaving a spouse and one child, the surviving spouse shall take one-half of the estate absolutely and the other half shall be distributed to or held on trust for the child.

(4) Where the intestate dies leaving a spouse and more than one child, the surviving spouse shall take one-half the estate absolutely and the remaining one-half shall be distributed to or held on trust for the children.

Rights of
cohabitants

25. (1) Notwithstanding section 24, where an intestate dies leaving no surviving spouse, but dies leaving a surviving

cohabitant, the cohabitant shall be treated for the purposes of this Ordinance as if he or she were a surviving spouse of the intestate.

(2) Notwithstanding section 24, if an intestate dies leaving a spouse and a cohabitant, and the intestate and his spouse were at the time of his death living separate and apart from one another, the whole or such part of the estate as the case may be, as would go to the spouse under section 24 shall be distributed to the surviving spouse and cohabitant in equal shares.

Estate going
to parents

26. Where an intestate leaves no spouse, no cohabitant or no issue, the estate goes to the parents of the intestate in equal shares or the survivor of them.

Distribution
of estate to
next of kin

26A. Where the intestate leaves no spouse, no issue, no cohabitant and no parent, then his estate shall be distributed to or held on trust for his next of kin living at the time of his death in the following order and manner:

(a) to the brothers and sisters of the whole blood in equal shares;

(b) where there are no brothers or sisters of the whole blood, to the brothers and sisters of the half blood in equal shares;

- (c) where there are no brothers and sisters of the whole or half blood to the grandparents of the intestate in equal shares;
- (d) where there are no grandparents to the issue of the brothers and sisters of the whole blood;
- (e) where there is no issue of the brothers and sisters of the whole blood to the issue of the brothers and sisters of the half blood; and
- (f) where there is no issue of the brothers and sisters of the half blood to the uncles and aunts of the intestate, being brothers and sisters of the whole blood and then of the half blood of a parent of the intestate.

Posthumous
births 26B. Descendants and relatives of the intestate, conceived before his death but born afterwards, inherit as if they had been.

No successors 26C. In default of any person taking an absolute interest under the foregoing provisions, the estate of the intestate belongs to the State as *bona vacantia*.”;

- (d) in section 27 by deleting the words “sections 23 and 24” and substituting the words “sections 24 to 26A”; and
- (e) in section 28 by deleting the words “sections 23 and 24” and substituting the words “sections 24 to 26A”.

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FIFTH SESSION

FIFTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time.....

Second time.....

Third time.....
