

ACT NO. 11 OF 2004



I assent.

[L.S.]

J. I. ULUIVUDA
President

[7th July 2004]

AN ACT

TO AMEND THE SUCCESSION, PROBATE AND ADMINISTRATION ACT

ENACTED by the Parliament of the Fiji Islands—

Short title, etc

1.—(1) This Act may be cited as the Succession, Probate and Administration (Amendment) Act 2004.

(2) This Act comes into force on a date appointed by the Minister by notice in the *Gazette*.

(3) In this Act, the Succession, Probate and Administration Act (Cap.60) is referred to as the “principal Act”.

Section 3 amended

2. Section 3 of the principal Act is amended in subsection (1)—

- (a) by deleting “leaving property”; and
- (b) by adding after subsection(1) the following subsection—

“(1A) Without prejudice to subsection (1) or any other written law, the court may grant probate or letters of administration in respect of a deceased person, whether or not the deceased person left any estate in the Fiji Islands or elsewhere, and whether or not the person to whom the grant is made is in the Fiji Islands”.

Subsection 6 amended

3. Section 6(1) of the principal Act is amended—
- (a) by repealing paragraph (a) and substituting the following paragraphs—
 “(a) if the intestate leaves a wife or husband, without issue, the surviving wife or husband shall take the whole of the estate absolutely;”;
- (b) by repealing paragraphs (b) and (c) and substituting the following paragraph—
 “(c) if the intestate leaves issue, the surviving wife or husband shall take the prescribed amount and the personal chattels and one third only of the residuary estate absolutely, and the issue shall take *per stirpes* and not *per capita* the remaining two-thirds of the residuary estate absolutely;”;
- (c) in subsection (3), by inserting the following definition—
 “‘prescribed amount’ means \$20,000 or any other prescribed amount.”.

New sections inserted

4. The principal Act is amended by adding after section 6 the following sections—

“Right of spouse to acquire matrimonial home

6A.—(1) In this section—

“dwelling house” means—

- (a) a building that is designed to be used, or designed to be used principally, as a separate residence for one family or person, together with the land which form the curtilage of the building;
 or
- (b) an apartment or flat that is so designed, together with any interest in any part of the building of which the apartment or flat forms a part, or in any part of the curtilage of that building, that is owned or otherwise held in conjunction with the apartment or flat;

“interest” in relation to a matrimonial home, means—

- (a) an interest in fee simple;
 (b) a leasehold estate; or
 (c) an exclusive right to occupy conferred by virtue of a holding of shares in a company that owns the land on which is erected the building in which the matrimonial home is included and includes an interest held by an intestate as a tenant in common (but only if there is only one other tenant in common and that tenant in common is the surviving husband or wife of the intestate) but does not include an interest so held as a joint tenant;

“matrimonial home” in relation to the estate of an intestate means a dwelling house in which the intestate held an interest in respect of which the surviving husband or wife of the intestate is entitled to exercise the right conferred by this section.

(2) Where—

- (a) an intestate dies leaving a husband or wife and issue;
- (b) the value of the estate of the intestate(excluding any personal chattels)exceeds the prescribed amount;
- (c) the intestate, at the time of his or her death, held an interest in a dwelling house which is situated in the Fiji Islands; and
- (d) that dwelling house was, at that time, occupied by the intestate and his or husband or wife, as their only or principal residence;

the surviving husband or wife of the intestate has the right to acquire the matrimonial home under sections 6B to 6F for an amount equal to the value of the matrimonial home as fixed in accordance with the provisions of this section.

(3) The right under subsection (2) shall be exercised by written notification filed in court as follows—

- (a) where there is a sole administrator who is not the surviving husband or wife of the intestate, delivered to that administrator;
- (b) where there are two or more administrators, delivered to each of those administrators(other than one who is the surviving husband or wife of the intestate); or
- (c) where there is a sole administrator who is the surviving husband or wife of the intestate.

(4) A notification delivered or filed under subsection (3) shall not be revocable except with the leave of the Court.

(5) Upon delivery or filing of the notification under subsection (3) the administrator shall hold the matrimonial home in trust for the surviving husband or wife.

(6) For the purpose of enabling the surviving husband or wife to decide whether or not to exercise the right conferred by section (2), he or she may require the administrator to ascertain and fix the value of the interest of the intestate in the matrimonial home under subsections (7), (8) and (9) and to inform the surviving husband or wife of that value.

- (7) For the purposes of this section, the administrator of the estate of an intestate may, from time to time, ascertain and fix the value of—
- (a) the intestate's estate;
 - (b) a share of any person in the intestate's estate; or
 - (c) subject to subsection (5), the value of the interest of the intestate in the matrimonial home.
- (8) Any valuation made under subsection(7) so made in good faith shall be binding on all persons interested in the intestate's estate.
- (9) In ascertaining and fixing the value of the interest of an intestate in a matrimonial home the administrator shall—
- (a) ascertain in the market value of the matrimonial home at the date at which the value is required to be ascertained;
 - (b) ascertain any amount which was, at that date, outstanding under any mortgage, charge or other encumbrance to which the home was subject as at that date; and
 - (c) fix the value of the matrimonial home as the difference between the market value ascertained under paragraph (a) and any amount ascertained under paragraph (b).

Restrictions

- 6B.—(1) The right conferred by section 6A(2) shall not be exercised—
- (a) after the death of the surviving husband or wife of the intestate;
 - (b) after 12 months from the date on which the letters of administration were first taken out in respect of the estate of the intestate;
 - (c) if the interest of the intestate in the matrimonial home is required by the administrator to meet funeral and administration expenses, debts and other liabilities payable out of the estate of the intestate; or
 - (d) in any case in which the transfer or conveyance by the administrator to the husband or wife of the interest of the intestate in the matrimonial home would require compliance with the provisions of any written law relating to the manner of dividing or subdividing land.
- (2) Without limiting subsection(1), where—
- (a) the matrimonial home forms part of a building and an interest in the whole of the remainder of the building is comprised in the intestate's estate;

- (b) the matrimonial home is held with land used for agricultural purposes and an interest in that land is comprised in that estate;
- (c) the whole or a part of the matrimonial home was, at the time of the intestate's death, used as a hotel or lodging house; or
- (d) a part of the matrimonial home was, at that time, used for purposes other than residential purposes,

the right conferred by section 6A(2) shall not be exercisable unless the Court, on the application of the administrator or the surviving husband or wife of the intestate (not being the sole administrator), makes an order declaring the Court to be satisfied that the exercise of that right is not likely to diminish the value of assets in the estate (disregarding any household chattels and the interest of the intestate in the matrimonial home) or to make those assets more difficult to dispose of.

- (3) During the period of 12 months referred to in subsection (1)(b), the administrator (not being the surviving husband or wife of the intestate) shall not, except as authorised under subsection(4), without the written consent of the surviving husband or wife sell or dispose of the interest of the intestate in the matrimonial home except in the course of administration due to want of other assets.
- (4) Where in respect of an application made under subsection (2) the Court does not order that the right conferred by section 6A(2) shall be exercisable by the surviving husband or wife, the Court may authorise the administrator to dispose of the interest of the intestate in the matrimonial home before the expiration of 12 months referred to in subsection (1)(b).

Presumption

6C.—(1) Where, in any case in which the surviving husband or wife of an intestate exercises the right conferred by section 6A(2) in relation to building within the meaning of paragraph (a) of the definition of “dwelling house”, the area of—

- (a) the land on which the building is erected; and
- (b) the land which is attached to and occupied with the building for the amenity or convenience of the building,

does not exceed 2,500 square metres and no estate or interest in any land contiguous with the land comprised in that area is comprised in the intestate's estate, the land referred to in paragraph (b) shall be presumed, until the contrary is proved, to form the curtilage of the building.

- (2) Where the surviving husband or wife of an intestate exercises the right under section 6A(2) in relation to a building within the meaning of paragraph (a) of the definition of “dwelling- house”, but a question arises as to the curtilage of the building, the administrator or any person beneficially interested in the estate of the intestate may apply to the Court for an order to determine the question, and on any such application being made, the Court may make such order in respect to the question as it thinks just.

Easement on matrimonial home

- 6D. Where the right conferred by section 6A(2) is exercised in respect of a matrimonial home being—
- (a) a dwelling house within the meaning of paragraph (a) of the definition of “dwelling house” which is contiguous with other/and in which an estate or interest is comprised in the intestate’s estate; or
- (b) a dwelling house within the meaning of paragraph (b) of the definition of “dwelling house” which is contiguous with another part of the building of which the dwelling house forms part and in which an estate or interest is comprised in the intestate’s estate,

the administrator may, when transferring or conveying the interest of the intestate in the matrimonial home or the estate or interest in the other land or the other part of the building, by the instrument of transfer or conveyance, create such easements or restrictions as to user benefiting or burdening the matrimonial home or benefiting or burdening that other land or part of the building as he considers necessary for the purpose of rendering usable that other land or part of the building or, as the case may be, the matrimonial home.

Effect of consent of surviving spouse who is a minor

- 6E. A requirement or consent made or given under this section by a surviving husband or wife who is a minor is as valid and effective as it would be if he or she had attained his or her majority.

Right of third party

- 6F.—(1) Nothing in sections 6A to 6E confers on the surviving husband or wife of an intestate whose estate includes a matrimonial home any right as against any person who has in good faith purchased for value from the administrator the interest in the matrimonial home.
- (2) Where the surviving husband or wife of an intestate whose estate includes a matrimonial home is one of two or more administrators, the rule that a trustee may not be a purchaser of trust property shall not prevent the husband or wife from purchasing out of the intestate’s estate any interest of the intestate in the matrimonial home.

Properties not disposed by will

- 6G.—(1) Where a person dies having made a will which effectively disposes of only part of his or her estate, sections 6A to 6F, so far as they are applicable and subject to the modifications specified in subsection (2), apply to and in relation to the part of his or her estate that is not disposed of by the will as if the last-mentioned part comprised the whole of his estate.
- (2) For the purpose of applying subsection(1)—
- (a) references in the sections 6A to 6F to the estate of an intestate are to be construed as references to that part of the estate of a person who dies having made a will referred to in that subsection that is not disposed of by the will; and
- (b) reference in sections 6A to 6F to a person who dies wholly intestate or to an intestate shall be construed as references to a person who dies as referred to in subsection (1).
- (3) The executor or administrator of the estate of a person who dies leaving a will referred to in subsection(1) shall, subject to the rights and powers conferred on him by law for the purposes of the administration of the estate, be a trustee for persons entitled under this section in respect of any part of that is not expressly disposed of, unless it appears from the will that he is intended to take that part beneficially.”

New sections added

5. The principal Act is amended after section 19 by adding the following sections—

“Estate liable for mortgage, etc

- 19A.—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his 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 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 interest, according to its value, shall bear a proportionate part of the amounts charged on the whole thereof.
- (2) A contrary or other intention referred to in subsection (1) shall not be deemed to be signified—
- (a) by a general direction for payment of debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate, or his 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) This section does not 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.

Funeral, testamentary and administration expenses, etc

19B.—(1) Where the estate of a deceased person is solvent, the deceased person's real and personal estate shall, subject to the rules of Court and section 19A and to any provision of the will, be applied towards the discharge of the funeral testamentary and administration expenses, debts and liabilities payable out of the estate in the following order—

- (a) firstly, property of the deceased not disposed of by will subject to retention out of it of a fund sufficient to pay pecuniary legacies;
- (b) secondly, property of the deceased not specifically devised or bequeathed by will but included (either by a specific or general description) in a residuary gift, subject to the retention out of it of a fund sufficient to meet any pecuniary legacies, so far as not provided for;
- (c) thirdly, property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts;
- (d) fourthly, property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts;
- (e) fifthly, any fund, retained to meet pecuniary legacies;
- (f) sixthly, property specifically devised or bequeathed, rateably according to value;
- (g) finally, property appointed by will under a general power rateably according to value;
- (h) any other right or interest of the testator in or in relation to property.

(2) The order of application under subsection (1) may be varied by the will of the deceased.”

New section 49A

6. The principal Act is amended by adding after section 49 the following section—

“Application of forfeiture rule

- 49A. The forfeiture rule under common law that prevents a beneficiary or next of kin from taking any benefit from the estate of the deceased applies only if the beneficiary or next of kin is convicted of the murder, manslaughter, accessory to murder or manslaughter or conspiracy to commit murder or manslaughter of the deceased person, under the laws of Fiji or of any other country.”.

Passed by the House of Representatives this 9th day of June 2004.

Passed by the Senate this 1st day of July 2004.