



BERMUDA

NON-CONTENTIOUS PROBATE RULES 1974

SR&O 34 / 1974

[made under section 57 of the Administration of Estates Act 1974 and brought into operation on 1 September 1974]

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SCHEDULE

Citation

1 These Rules may be cited as the Non-Contentious Probate Rules 1974.
[commencement omitted]

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Interpretation

2 (1) In these Rules, unless the context otherwise requires—

“the Act” means the Administration of Estates Act 1974 [*title 26 item 12*];

“authorized officer” means any officer of the Registry who is for the time being authorized by the Chief Justice to administer any oath or to take any affidavit required for any purpose connected with his duties;

“gross value” in relation to any estate means the value of the estate without deduction for debts, incumbrances or funeral expenses;

“oath” means the oath required by rule 5 to be sworn by every applicant for a grant;

“statutory guardian” means a surviving parent of an infant who is the guardian of the infant by virtue of section 10 of the Minors Act 1950 [*title 27 item 21*];

“testamentary guardian” means a person appointed by deed or will to be guardian of an infant under the power conferred by section 11 of the Minors Act 1950 [*title 27 item 21*];

“will” includes a nuncupative will and any testamentary document or copy or reconstruction thereof.

(2) A form referred to by number means the form so numbered in the Schedule; and such forms shall be used wherever applicable, with such variations as the Court or a Judge or the Registrar may in any particular case direct or approve.

Form of application

3 An application for the grant or revocation of probate or administration shall be made in Form 1.

Duty of Registrar on receiving application

4 (1) The Registrar shall not allow any grant to issue until all inquiries which he may see fit to make have been answered to his satisfaction.

(2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond that contained in the oath.

(3) The Registrar shall not require a guarantee under section 17 of the Act as condition of granting administration to any person, without giving that person or, where the application for the grant is made through a barrister, the barrister an opportunity of being heard with respect to the requirement.

Oath in support of grant

5 (1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case, which shall be contained in an affidavit sworn by the applicant, and by such other papers as the Registrar may require.

(2) The oath may be submitted in draft for settling by the Registrar.

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(3) The oath shall state whether the place of residence or some property of the deceased is in Bermuda.

(4) The oath shall state the gross value of the estate to be coered by the grant.

(5) The statement of gross value referred to in paragraph (4) may be made to the best of the applicant's knowledge, information and belief, and shall relate to the value as at the date of the death of the deceased.

(6) On an application for a grant of administration the oath shall state whether, and if so, in which manner, all persons having a prior right to a grant have been cleared off, and whether any minority or life interest arises under the will or intestacy.

(7) Where the deceased died domiciled outside Bermuda, the oath shall state where the deceased died domiciled, according to the best of the applicant's knowledge, information and belief.

Grant in additional name

6 Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in grant.

Marking of wills

7 Every will in respect of which an application for a grant is made shall be marked by the signatures of the applicant and the person before whom the oath is sworn, and shall be exhibited to any affidavit which may be required under these Rules as to the validity, terms, condition or date of execution of the will:

Provided that where the Registrar is satisfied that compliance with this rule might result in the loss of the will, he may allow a photographic copy thereof to be marked or exhibited in lieu of the original document.

Engrossments for purposes of record

8 (1) Where the Registrar considers that in any particular case a photographic copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be lodged.

(2) Where a will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which paragraph (2) applies, it shall be made bookwise on durable paper following continuously from page to page on both sides of the paper.

(4) Where any pencil writing appears on a will, there shall be lodged a copy of the will or of the pages or sheets containing the pencil writing, in which there shall be underlined in red ink those portions which appear in pencil in the original.

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Evidence as to due execution of will

9 (1) Where a will that is not a holograph will contains no attestation clause or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the will, he shall, before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

(2) If no affidavit can be obtained in accordance with paragraph (1), the Registrar may, if he thinks fit having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show that the signature on the will is in the handwriting of the deceased, or of any other matter which may raise a presumption in favour of the due execution of the will.

(3) If the Registrar, after considering the evidence—

- (a) is satisfied that the will was not duly executed, he shall refuse probate and shall mark the will accordingly;
- (b) is doubtful whether the will was duly executed, he may refer the matter to the Court on motion.

Holograph will

10 (1) If a will presented for probate purports to be entirely in the handwriting of the testator and to be signed by himself, then two persons at least shall make affidavit verifying the handwriting and signature of the testator.

(2) Such affidavit shall be in Form 3, with such variations as circumstances may allow.

Execution of will of blind or illiterate testator

11 Before admitting to proof a will which appears to have been signed by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Registrar shall satisfy himself that the testator had such knowledge.

Evidence as to terms, condition and date of execution of will

12 (1) Where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 17 of the Wills Act 1988 [*title 26 item 2*], or by the re-execution of the will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved:

Provided that this paragraph shall not apply to any alteration which appears to the Registrar to be of no practical importance.

(2) If from any mark on a will it appears to the Registrar that some other document has been attached to the will, or if a will contains any reference to another document in

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such terms as to suggest that it ought to be incorporated in the will, the Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

(3) Where there is doubt as to the date on which a will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.

Attempted revocation of will

13 Any appearance of attempted revocation of a will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Registrar's satisfaction.

Affidavit as to due execution, terms etc of will

14 The Registrar may require an affidavit from any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rules 11, 12 and 13, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution of a will the deponent shall depose to the manner in which the will was executed.

Wills not proved under section 7 of the Wills Act 1988

15 Nothing in rule 9, 10, 11, 12 or 13 shall apply to any will which it is sought to establish otherwise than by reference to section 7 of the Wills Act 1988 [*title 26 item 2*], but the terms and validity of any such will shall be established to the Registrar's satisfaction.

Wills of HM Forces and mariners

16 If it appears to the Registrar that there is prima facie evidence that a will is one to which Part III of the Wills Act 1988 [*title 26 item 2*] applies, the will may be admitted to proof if the Registrar is satisfied that it was signed by the testator or, if unsigned, that it is in the testator's handwriting.

Evidence of foreign law

17 Where evidence of the law of a country outside Bermuda is required on any application for a grant, the affidavit of any person who practises, or has practised, as a lawyer in that country and who is conversant with its law may be accepted by the Registrar unless the deponent is a person claiming to be entitled to the grant or his attorney, or is the spouse of any such person or attorney:

Provided that the Registrar may in special circumstances accept the affidavit of any other person who does not possess the qualifications required by this rule if the Registrar is satisfied that by reason of such person's official position or otherwise he has knowledge of the law of the country in question.

Order of priority for grant where deceased left a will

18 Where the deceased died on or after the 1st September, 1974 the person or persons entitled to a grant of probate or administration with the will annexed shall be determined in accordance with the following order of priority:

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- (i) the executor;
- (ii) any residuary legatee or devisee holding in trust for any other person;
- (iii) any residuary legatee or devisee for life;
- (iv) the ultimate residuary legatee or devisee or, where the residue is not wholly disposed of by the will, any person entitled to share in the residue not so disposed of (including a nominee when claiming bona vacantia on behalf of the Government) or, subject to rule 24(3), the estate representative of any such person:

Provided that where the residue is not in terms wholly disposed of, the Registrar may, if he is satisfied that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of the application for the grant, allow a grant to be made (subject however to rule 35) to any legatee or devisee entitled to, or to a share in, the estate so disposed of, without regard to the persons entitled to share in any residue not disposed of by the will;

- (v) any specific legatee or devisee or any creditor or, subject to rule 24(3), the estate representative of any such person or, where the estate is not wholly disposed of by the will, any person who, notwithstanding that the amount of the estate is such that he has no immediate beneficial interest therein, may have a beneficial interest in the event of an accretion thereto;
- (vi) any legatee or devisee, whether residuary or specific, entitled on the happening of any contingency, or any person having no interest under the will of the deceased who would have been entitled to a grant if the deceased had died wholly intestate.

Grants to attesting witnesses etc

19 Where a gift to any person falls by reason of section 11 of the Wills Act 1988 (which provides that gifts to attesting witnesses or their spouses shall be void), such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

Order of priority for grant in case of intestacy

20 (1) Where the deceased died on or after the 1st September, 1974, wholly intestate, the persons having a beneficial interest in the estate shall be entitled to a grant of administration in the following order of priority:

- (i) The surviving spouse;
- (ii) The children of the deceased, or the issue of any such child who has died during the lifetime of the deceased;
- (iii) The father or mother of the deceased;
- (iv) Brothers and sisters of the whole blood, or the issue of any deceased brother or sister of the whole blood who has died.

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(2) If no person in any of the classes mentioned in paragraph (1)(ii) to (iv) has survived the deceased, then, in the case of a person dying wholly intestate without leaving a surviving spouse, the persons hereinafter described shall, if they have a beneficial interest in the estate, be entitled to a grant in the following order of priority:—

- (i) Brothers and sisters of the half blood, or the issue of any deceased brother or sister of the half blood who has died;
- (ii) Grandparents;
- (iii) Uncles and aunts of the whole blood, or the issue of any deceased uncle or aunt of the whole blood who has died;
- (iv) Uncles and aunts of the half blood, or the issue of any deceased uncle or aunt of the half blood who has died.

(3) In default of any person having a beneficial interest in the estate, the nominee of the Government shall be entitled to a grant if he claims bona vacantia on behalf of the Government.

(4) If all persons entitled to a grant under the foregoing provisions of this rule have been cleared off, a grant may be made to a creditor of the deceased or to any person who, notwithstanding that he has no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion thereto.

(5) Subject to rule 24(3), the estate representative of a person in any of the classes mentioned in paragraphs (1) and (2) or the estate representative of a creditor shall have the same right to a grant as the person whom he represents:

Provided that the persons mentioned in paragraph (1)(ii) to (iv) and in paragraph (2) shall be preferred to the estate representative of a spouse who has died without taking a beneficial interest in the whole state of the deceased as ascertained at the time of the application for the grant.

(6) The Adoption of Children Act 2006 shall apply in determining the entitlement to a grant as it applies to the devolution of property on intestacy.

(7) *[Deleted by 2002:36]*

[Rule 20 para (7) deleted by 2002:36 Sch para 23 effective 19 January 2004; para (6) amended by 2011 : 17 s. 11(e) effective 4 November 2013]

Right of assignee to a grant

21 (1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of priority for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest priority.

(2) Where there are two or more assignees, administration may be granted with the consent of the others to any one or more (not exceeding four) of them.

(3) Where administration is applied for by an assignee, a copy of the instrument of assignment shall be lodged in the Registry.

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Joinder of administrator

22 (1) An application to join with a person entitled to a grant of administration a person entitled in a lower degree shall, in default of renunciation by all persons entitled in priority to such last-mentioned person, be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as estate representative and such other evidence as the Registrar may require.

(2) An application to join with a person entitled to a grant of administration a person having no right thereto shall be made to the Registrar and shall be supported by an affidavit by the person entitled, the consent of the person proposed to be joined as estate representative and such other evidence as the Registrar may require:

Provided that there may without any such application be joined with a person entitled to administration—

- (a) on the renunciation of all other persons entitled to join in the grant, any kin of the deceased having no beneficial interest in the estate, in the order of priority described in rule 20;
- (b) unless the Registrar otherwise directs, any person whom the guardian of an infant may nominate for the purpose under rule 29(4);
- (c) a trust corporation.

Additional estate representatives

23 (1) An application under section 11(2) of the Act to add an estate representative shall be made to the Registrar and shall be supported by an affidavit by the applicant, the consent of the person proposed to be added as estate representative and such other evidence as the Registrar may require.

(2) On any such application the Registrar may direct that a note shall be made on the original grant of the addition of a further estate representative, or he may impound or revoke the grant or make such other order as the circumstances of the case may require.

Grants where two or more persons entitled in same degree

24 (1) A grant may be made to any person entitled thereto with out notice to other persons entitled in the same degree.

(2) A dispute between persons entitled to a grant in the same degree shall be brought by summons before the Registrar.

(3) Unless the Registrar otherwise directs, administration shall be granted to a living person in preference to the estate representative of a deceased person who would, if living, be entitled in the same degree and to a person not under disability in preference to an infant entitled in the same degree.

(4) If the issue of a summons under this rule is known to the Registrar, he shall not allow any grant to be sealed until such summons is finally disposed of.

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Exceptions to rules as to priority

25 (1) Nothing in rule 18, 20, 22 or 24 shall operate to prevent a grant being made to any person to whom a grant may or may require to be made under any enactment.

(2) The rules mentioned in paragraph (1) shall not apply where it appears from the oath that the deceased died domiciled outside Bermuda, except in a case to which the proviso to rule 27 applies.

Grants to persons having spes successionis

26 Where the beneficial interest in the whole estate of the deceased is vested absolutely in a person who has renounced his right to a grant and has consented to administration being granted to the person or persons who would be entitled to his estate if he himself had died intestate, administration may be granted to such person or one or more (not exceeding four) of such persons:

Provided that a surviving spouse shall not be regarded as a person in whom the estate has vested absolutely unless he would be entitled to the whole of the estate, whatever its value may be.

Grants where deceased died domiciled outside Bermuda

27 Where it appears from the oath that the deceased died domiciled outside Bermuda, the Registrar may order that a grant do issue—

- (a) to the person entrusted with the administration of the estate by the Court having jurisdiction at the place where the deceased died domiciled;
- (b) to the person entitled to administer the estate by the law of the place where the deceased died domiciled;
- (c) if there is no such person as is mentioned in paragraph (a) or (b) or if in the opinion of the Registrar the circumstances so require, to such person as the Registrar may direct;
- (d) if, by virtue of section 11 of the Act, a grant is required to be made to, or if the Registrar in his discretion considers that a grant should be made to, not less than two administrators, to such person as the Registrar may direct jointly with any such person as is mentioned in paragraph (a) or (b) or with any other person:

Provided that without any such order as aforesaid—

- (a) probate of any will which is admissible to proof may be granted—
 - (i) if the will is in the English language, to the executor named therein;
 - (ii) if the will describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person;

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- (b) where the whole of the estate in Bermuda consists of immovable property, a grant limited thereto may be made in accordance with the law which would have been applicable if the deceased had died domiciled in Bermuda.

Grants to attorneys

28 Where a person entitled to a grant resides inside or outside Bermuda, and does not himself apply for a grant, administration may be granted to his lawfully constituted attorney for his use and benefit, limited until such person shall obtain a grant or in such other way as the Registrar may direct:

Provided that where the person so entitled is an executor, administration shall not be granted to his attorney without notice to the other executors, if any, unless such notice is dispensed with by the Registrar.

Grants on behalf of infants

29 (1) Where the person to whom a grant would otherwise be made is an infant, administration for his use and benefit until he attains the age of eighteen years shall, subject to paragraphs (3) and (5) of this rule, be granted—

- (a) to both parents of the infant jointly or to the statutory or testamentary guardian of the infant or to any guardian appointed by a court of competent jurisdiction; or
- (b) if there is no such guardian able and willing to act and the infant has attained the age of sixteen years, to any next of kin nominated by the infant or, where the infant is a married woman, to any such next of kin or to her husband if nominated by her.

(2) Any person nominated under paragraph (1)(b) may represent any other infant whose next of kin he is, being an infant below the age of sixteen years entitled in the same degree as the infant who made the nomination.

(3) Notwithstanding anything in this rule, administration for the use and benefit of the infant until he attains the age of eighteen years may be granted to any person assigned as guardian by order of the Registrar in default of, or jointly with, or to the exclusion of, any such person as is mentioned in paragraph (1) of this rule; and such an order may be made on application by the intended guardian, who shall file an affidavit in support of the application and, if required by the Registrar, an affidavit of fitness sworn by a responsible person.

(4) Where, by virtue of section 11 of the Act, a grant is required to be made to not less than two administrators and there is only one person competent and willing to take a grant under the foregoing provisions of this rule, administration may, unless the Registrar otherwise directs, be granted to such person jointly with any other person nominated by him as a fit and proper person to take the grant.

(5) Where an infant who is sole executor has no interest in the residuary estate of the deceased, administration for the use and benefit of the infant until he attains the age of eighteen years shall, unless the Registrar otherwise directs, be granted to the person entitled to the residuary estate.

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(6) An infant's right to administration may be renounced only by a person assigned as guardian under paragraph (3) and authorized to renounce by the Registrar.

[Rule 29 paras (1), (3) and (5) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Grant where infant co-executor

30 (1) Where one of two or more executors is an infant, probate may be granted to the other executor or executors not under disability, with power reserved of making the like grant to the infant on his attaining the age of eighteen years, and administration for the use and benefit of the infant until he attains the age of eighteen years may be granted under rule 29 if and only if the executors who are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

(2) An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

[Rule 30 paras (1) and (2) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Grants in case of mental or physical incapacity

31 (1) Where the Registrar is satisfied that a person entitled to a grant is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1968 [*title 11 item 36*], of managing and administering his property and affairs, or is by reason of physical incapacity incapable of managing his affairs, administration for his use and benefit, limited during his incapacity or in such other way as the Registrar may direct, may be granted—

- (a) in the case of mental incapacity, to the person authorized by the Judge under section 52 of the Mental Health Act 1968 [*title 11 item 36*], to apply for the grant (which shall be deemed to be the conduct of legal proceedings on behalf of the patient), or
- (b) where there is no person so authorized, or in the case of physical incapacity—
 - (i) if the person incapable is entitled as executor and has no interest in the residuary estate of the deceased, to the person entitled to the residuary estate of the deceased;
 - (ii) if the person incapable is entitled otherwise than as executor or is an executor having an interest in the residuary estate of the deceased, to the person who would be entitled to a grant in respect of his estate if he had died intestate,

or to such other person as the Registrar may by order direct.

(2) Unless the Registrar otherwise directs no grant of administration shall be made under this rule unless all persons entitled in the same degree as the person incapable have been cleared off.

(3) In the case of mental incapacity, notice of intended application for a grant under this rule shall be given to the Chief Justice or, in his absence, the Puisne Judge as the judicial authority for the purposes of Part IV of the Mental Health Act 1968 [*title 11 item*

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36], except where the person incapable is an executor with no beneficial interest in the estate.

(4) In the case of physical incapacity, notice of intended application for a grant under this rule shall, unless the Registrar otherwise directs, be given to the person alleged to be so incapable.

Grants to trust corporations and other corporate bodies

32 (1) Where a trust corporation applies for a grant through one of its officers, such officer shall lodge a certified copy of the resolution authorizing him to make the application and shall depose in the oath that the corporation is a trust corporation within the meaning of section 1 of the Act and that it has power to accept a grant:

Provided that it shall not be necessary to lodge a certified copy of the resolution where the trust corporation is entitled by virtue of rules made under the Act, to act as trustee.

(2) Where a trust corporation applies for a grant of administration otherwise than as attorney for some person, there shall be lodged with the application the consents of all persons entitled to a grant and of all persons interested in the residuary estate of the deceased, unless the Registrar directs that such consents be dispensed with on such terms, if any, as he may think fit.

(3) Where a corporation (not being a trust corporation) would, if an individual, be entitled to a grant, administration for its use and benefit, limited until further representation is granted, may be granted to its nominee or, if the corporation has its principal place of business outside Bermuda, its nominee or lawfully constituted attorney, and a copy of the resolution appointing the nominee or, as the case may be, the power of attorney, sealed by the corporation or otherwise authenticated to the Registrar's satisfaction, shall be lodged with the application for the grant, and the oath shall state that the corporation is not a trust corporation.

Advertisement of applications for administration

33 An applicant for a grant of administration shall cause notice in Form 2 of his intention to apply for a grant of administration to be published three times at intervals of not less than one week in a newspaper for the time being approved as the Gazette; and such notice shall be dated on the day of the first publication thereof.

Renunciation of probate and administration

34 (1) Renunciation of probate by an executor shall not operate as renunciation of any right which he may have to a grant of administration in some other capacity unless he expressly renounces such right.

(2) Unless the Registrar otherwise directs, no person who has renounced administration in one capacity may obtain a grant thereof in some other capacity.

(3) A renunciation of probate or administration may be retracted at any time on the order of the Registrar:

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Provided that only in exceptional circumstances may leave be given to an executor to retract a renunciation of probate after a grant has been made to some other person entitled in a lower degree.

Notice to Attorney General of intended application for grant where Government may be entitled to bona vacantia

35 In any case in which it appears that the Government is or may be beneficially interested in the estate of a deceased person, notice of intended application for a grant shall be given by the applicant to the Attorney-General and the Registrar may direct that no grant shall issue within a specified time after the notice has been given.

Guarantee

- 36 (1) A guarantee shall not be required on an application for administration—
- (a) where the applicant is a person who has an immediate beneficial interest in the estate of the deceased or a barrister and attorney, unless the Court considers that there are special circumstances making it desirable to require a guarantee; or
 - (b) where the applicant or one of the applicants is a trust corporation; or
 - (c) where the applicant is a consular officer under the Consular Conventions Act 1957 [*title 6 item 2*], or a nominee of the Government.
- (2) Subject to the foregoing, the Registrar may require a guarantee under section 17 of the Act as a condition of granting administration where it is proposed to grant it—
- (a) by virtue of rule 18(v) or rule 20(4) to a creditor or the estate representative of a creditor or to a person who has no immediate beneficial interest in the estate of the deceased but may have such an interest in the event of an accretion to the estate;
 - (b) under rule 26 to a person or some of the persons who would, if the person beneficially entitled to the whole of the estate died intestate, be entitled to his estate;
 - (c) under rule 28 to the attorney of a person entitled to a grant;
 - (d) under rule 29 for the use and benefit of an infant;
 - (e) under rule 31 for the use and benefit of a person who is by reason of mental or physical incapacity incapable of managing his affairs;
 - (f) to an applicant who appears to the Registrar to be resident elsewhere than in Bermuda.
- (3) Every guarantee entered into by a surety for the purposes of section 17 of the Act shall be in Form 4.
- (4) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by a commissioner for taking affidavits or other person authorized by law to take affidavits, declarations and affirmations.

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(5) Unless the Registrar otherwise directs—

(a) if it is decided to require a guarantee, it shall be given by two sureties, except where the gross value of the estate does not exceed two thousand dollars or a corporation is a proposed surety, and in those cases one will suffice;

(b) no person shall be accepted as a surety unless he is resident in Bermuda:

Provided that a corporation undertaking indemnity insurance in the United Kingdom, Canada or the United States of America may be accepted as the proposed surety if the representative of that corporation is resident in Bermuda;

(c) no officer of the Registry shall become a surety;

(d) the limit of the liability of the surety or sureties under a guarantee given for the purposes of section 17 of the Act shall be the gross amount of the estate as sworn on the application for the grant;

(e) every surety, other than a corporation, shall justify.

(6) Where the proposed surety is a corporation there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the Registrar that its assets are sufficient to satisfy all claims which may be made against it under any guarantee which it has given or is likely to give for the purposes of section 17 of the Act:

Provided that the Registrar may, instead of requiring an affidavit in every case, except an affidavit made not less often than once in every year together with an undertaking by the corporation to notify the Registrar forthwith in the event of any alteration in its constitution affecting its power to become surety for the purposes of section 17 of the Act.

Application for leave to sue on guarantee

37 An application for leave under section 17(3) of the Act to sue a surety on a guarantee given for the purposes of that section shall, unless the Registrar otherwise directs under rule 53, be made by summons to the Registrar, and notice of the application shall in any event be served on the administrator, the surety and any co-surety.

Amendment of grant

38 If the Registrar is satisfied that a grant should be amended he may make an order accordingly:

Provided that except in special circumstances no grant shall be amended under this rule except on the application or with the consent of the person to whom the grant was made.

Caveats

39 (1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat in the Registry.

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(2) Any person who wishes to enter a caveat (in this rule called "the caveator") may do so by completing Form 5 in the appropriate book at the Registry and obtaining an acknowledgment of entry from the proper officer, or by sending through the post at his own risk a notice in Form 5 to the Registry.

(3) Where the caveat is entered by a barrister on the caveator's behalf, the name of the caveator shall be stated in Form 5.

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

(5) The Registrar shall maintain an index of caveats entered in the Registry and on receiving an application for a grant he shall cause the index to be searched.

(6) The Registrar shall not allow any grant to be sealed if he has knowledge of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the sealing of a grant on the day on which the caveat is entered.

(7) A caveat may be warned by the issue from the Registry of a warning in Form 6 at the instance of any person interested (in this rule called "the person warning") which shall state his interest and, if he claims under a will, the date of the will, and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning or a copy thereof shall be served on the caveator.

(8) A caveator who has not entered an appearance to a warning may at any time withdraw his caveat by giving notice at the Registry and the caveat shall thereupon cease to have effect and, if it has been warned, the caveator shall forthwith give notice of withdrawal of the caveat to the person warning.

(9) A caveator having an interest contrary to that of the person warning may, within eight days of serving of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (11), enter an appearance in the Registry by filing Form 7 and making an entry in the appropriate book, and shall forthwith thereafter serve on the person warning a copy of Form 7 sealed with the seal of the Registry.

(10) A caveator having no interest contrary to that of the person warning but wishing to show cause against the sealing of a grant to that person may, within eight days of service of the warning upon him inclusive of the day of such service, or at any time thereafter if no affidavit has been filed under paragraph (11), issue and serve a summons for directions, which shall be returnable before the Registrar.

(11) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the Registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under paragraph (10), and thereupon the caveat shall cease to have effect.

(12) Upon the commencement of a probate action the Registrar shall, in respect of each caveat then in force (other than a caveat entered by the plaintiff), give to the caveator

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notice of the commencement of the action and, upon the subsequent entry of a caveat at any time when the action is pending, shall likewise notify the caveator of the existence of the action,

(13) Unless the Registrar by order made on summons otherwise directs—

- (a) any caveat in force at the commencement of proceedings by way of citation or motion shall unless withdrawn pursuant to paragraph (8) of this rule, remain in force until an application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such proceedings, and upon such application any caveat entered by a party who had notice of the proceedings shall cease to have effect;
- (b) a caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action;
- (c) the commencement of a probate action shall, whether or not any caveat has been entered, operate to prevent the sealing of a grant (other than a grant under section 14 of the Act) until application for a grant is made by the person shown to be entitled thereto by the decision of the Court in such action, and upon such application any caveat by a party who had notice of the action, or by a caveator, who was given notice under paragraph (12) of this rule, shall cease to have effect.

(14) Except with the leave of the Registrar, no further caveat may be entered by or on behalf of any caveator whose caveat has ceased to have effect under paragraph (11) or (13) of this rule.

(15) In this rule “grant” includes a grant made by any court outside Bermuda which is produced for resealing by the Court.

Citations

40 (1) Every citation shall issue from the Registry and shall be settled by the Registrar before being issued.

(2) Every averment in a citation, and such other information as the Registrar may require, shall be verified by an affidavit sworn by the person issuing the citation (in these Rules called “the citor”) or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn by the citor’s barrister.

(3) The citor shall enter a caveat before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Registrar, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in the Registry before the citation is issued, except where the will is not in the citor’s possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

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(6) A person who has been cited to appear may, within eight days of service of the citation upon him inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under rule 41(5) or rule 42(2), enter an appearance in the Registry by filing Form 7 and making an entry in the appropriate book, and shall forthwith thereafter serve on the citor a copy of Form 7 sealed with the seal of the Registry.

Citation to accept or refuse to take a grant

41 (1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the executors of the last survivor of deceased executors, who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may apply ex parte to the Registrar for an order for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

- (a) in the case of a citation under paragraph (1), apply to the Registrar for an order for a grant to himself;
- (b) in the case of a citation under paragraph (2), apply to the Registrar for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;
- (c) in the case of a citation under paragraph (3), apply to the Registrar by summons (which shall be served on the person cited) for an order requiring such person to take a grant within a specified time or for a grant to himself or to some other person specified in the summons.

(6) An application under paragraph (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not applied for a grant under paragraph (4), or has failed to prosecute his application with reasonable diligence, the citor may—

NON-CONTENTIOUS PROBATE RULES 1974

- (a) in the case of a citation under paragraph (1), apply by summons to the Registrar for an order for a grant to himself;
- (b) in the case of a citation under paragraph (2), apply by summons to the Registrar for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (5)(b);
- (c) in the case of citation under paragraph (3), apply by summons to the Registrar for an order requiring the person cited to take a grant within a specified time or for a grant to himself or to some other person specified in the summons,

and the summons shall be served on the person cited.

Citation to propound a will

42 (1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired and no person cited has entered an appearance, or if no person who has appeared proceeds with reasonable diligence to propound the will, the citor may apply by summons to the Registrar for an order for a grant as if the will were invalid.

Address for service

43 All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

Power to make summary order to produce any instrument purporting to be testamentary

44 The Court may, upon summons, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order any person to produce and bring in to the Registry, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same; and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.

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Applications under rule 44

45 An application under rule 44 for an order requiring a person to bring in a will or to attend for examination may, unless a probate action has been commenced, be made to the Registrar by summons, which shall be served on every such person as aforesaid.

Registrar may issue subpoenas to produce papers

46 It shall be lawful for the Registrar, and whether any suit or other proceeding shall or shall not be pending in the Court, to issue a subpoena requiring any person to produce and bring in to the Registry, or otherwise, as in such subpoena may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power, or under the control of such person; and such person, upon being duly served with such subpoena, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the Court, and had been ordered by the Judge to produce and bring in such paper or writing.

Affidavit in support of application to Registrar for issue of subpoena to produce papers

47 An application under rule 46 for the issue by the Registrar of a subpoena to bring in a will shall be supported by an affidavit setting out the grounds of the application, and if any person served with a subpoena denies that the will is in his possession or control he may file an affidavit to that effect.

Limited grants under section 7 of the Act

48 An application for an order for a grant under section 7 of the Act limited to part of an estate may be made to the Registrar, and shall be supported by an affidavit stating—

- (a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;
- (b) whether the estate of the deceased is known to be insolvent;
- (c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have been cleared off.

Applications for leave to swear to death

49 An application for leave to swear to the death of a person in whose estate a grant is sought may be made to the Registrar and shall be supported by an affidavit setting out the grounds of the application and containing particulars of any policies of insurance effected on the life of the presumed deceased.

Grants in respect of nuncupative wills and of copies of wills

50 (1) An application for an order admitting to proof a nuncupative will, or a will contained in a copy, a completed draft, a reconstruction or other evidence of its contents where the original will is not available, may be made to the Registrar:

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Provided that where a will is not available owing to its being retained in the custody of a foreign court or official, a duly authenticated copy of the will may be admitted to proof without any such order as aforesaid.

(2) The application shall be supported by an affidavit setting out the grounds of the application and by such evidence on affidavit as the applicant can adduce as to—

- (a) the due execution of the will;
- (b) its existence after the death of the testator; and
- (c) the accuracy of the copy or other evidence of the contents of the will,

together with any consents in writing to the application given by any persons not under disability who would be prejudiced by the grant.

Issue of copies of original wills and other documents

51 (1) Where copies are required of original wills or other documents deposited under section 54 of the Act, such copies may be photographic copies sealed with the seal of the Registry and issued as office copies and, where such office copies are available, copies certified under the hand of the Registrar to be true copies shall be issued only if it is required that the seal of the Court be affixed thereto.

(2) Copies, not being photographic copies of original wills or other documents deposited under section 54 of the Act shall be examined against the documents of which they purport to be copies only if so required by the person demanding the copy, and in such case the copy shall be certified under the hand of the Registrar to be a true copy and may in addition be sealed with the seal of the Court.

Taxation of costs

52 (1) Every bill of costs shall be referred to the Registrar for taxation.

(2) The party applying for taxation shall file the bill and give to any other parties entitled to be heard on the taxation not less than three clear days' notice of the time appointed for taxation, and shall at the same time, if he has not already done so, supply them with a copy of the bill.

(3) If any party entitled to be heard on the taxation does not attend within a reasonable time after the time appointed, the Registrar may proceed to tax the bill upon being satisfied that such party had due notice of the time appointed

(4) The fees payable on taxation shall be paid by the party on whose application the bill is taxed and shall be allowed as part of the bill.

Power to require application to be made by summons or motion

53 The Registrar may require any application to be made by summons to the Registrar or a Judge or to the Court on motion.

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Appeal from Registrar

54 (1) Any person aggrieved by a decision or requirement of the Registrar may appeal by summons to a Judge.

(2) If any person besides the appellant appeared or was represented before the Registrar, the summons shall be issued within seven days thereof for hearing on the first available day and shall be served on every such person as aforesaid.

Service of notice of motion and summons

55 (1) A judge or the Registrar may direct that a notice of motion or summons for the service of which no other provision is made by these Rules shall be served on such person or persons as the Judge or Registrar may direct.

(2) Where by these Rules or by any direction given under paragraph (1) a notice of motion or summons is required to be served on any person, it shall be served—

- (a) in the case of a notice of motion, not less than five clear days before the day named in the notice for hearing the motion;
- (b) in the case of a summons, not less than two clear days before the day appointed for the hearing, unless a Judge or the Registrar, at or before the hearing, dispenses with service on such terms, if any, as he may think fit.

Notices etc

56 Unless the Registrar otherwise directs or these Rules otherwise provide, any notice or other document required to be given to or served on any person may be given or served by leaving it at, or by sending it by prepaid registered post to, that person's address for service or, if he has no address for service, his last known address.

Affidavits

57 Every affidavit used in non-contentious probate business shall be in the form required by the Rules of the Supreme Court in the case of affidavits to which those Rules apply.

Time

58 Order 3 of the Rules of the Supreme Court 1985 [*title 8 item 1(a)*] shall apply to the computation, enlargement and abridgement of time under these Rules.

Transitional

59 [*omitted*]

Certificate in lieu of grant

60 A certificate issued by the Registrar under section 21 of the Act shall be in Form 8.

Revocation

61 [*omitted*]

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SCHEDULE

FORM 1

FORM OF APPLICATION FOR GRANT OR REVOCATION OF PROBATE OR
ADMINISTRATION IN THE SUPREME COURT OF BERMUDA

In the Estate of [blank] ¹ deceased

Application is hereby made by [blank] ² for ³.

The documents and papers lodged in support of this application are [blank] ⁴

Dated this [blank] day of [blank] 19 [blank].

Signature of applicant(s) or
his/her/their barrister(s) and attorney(s).

FORM 2

NOTICE OF INTENTION TO APPLY FOR ADMINISTRATION
IN THE SUPREME COURT OF BERMUDA

In the Estate of [blank] ⁵ deceased

Notice is hereby given that [blank]⁶ intend(s) to apply to the Supreme Court of Bermuda for the grant of administration ⁷ of the estate of [blank] ⁽¹⁾ deceased, and that such application may be granted, unless within fifteen days of the date of this notice a caveat shall be entered in the Registry of the Supreme Court, Hamilton, by any person objecting to such grant.

Dated this [blank] day of [blank] 19 [blank].

Signature of applicant (s) or
his/her/their barrister(s) and attorney(s)

-
- 1 Full name of deceased.
 - 2 Full name(s) and address(es) and description(s) of applicant(s).
 - 3 Description of grant or revocation applied for.
 - 4 The list of the supporting papers.
 - 5 Full name of deceased.
 - 6 Full name(s) and address(es) and description(s) of proposed administrator(s).
 - 7 Such further description as may be necessary.

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FORM 3

AFFIDAVIT OF HANDWRITING
IN THE SUPREME COURT OF BERMUDA

In the Estate of A.B., deceased.

I, C.D., of [blank], make oath and say I knew and was well acquainted with A.B. of [blank], deceased, who died on the [blank] day of [blank], 19 [blank] at [blank], for upwards of [blank] years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting, and having now carefully perused and inspected the paper writing hereto annexed marked [blank] and initialled by me, purporting to be and contain the last will and testament of the said deceased, bearing date [blank] and being subscribed thus "A.B.", I further make oath and say that I verily believe the whole of the said will, together with the signature "A.B." subscribed thereto, as aforesaid, to be of the true and proper handwriting of the said A.B. deceased.

Sworn at [blank] on the)
[blank] day of [blank])
19 [blank], before me. [blank]) (Signed) C.D.

FORM 4

SURETY'S GUARANTEE
IN THE SUPREME COURT OF BERMUDA

In the Estate of [blank]⁸ deceased

Whereas [blank]⁽¹⁾ of [blank]⁹ died on the [blank] day of [blank] 19 [blank] and [and [blank]]¹⁰ (hereinafter called "the administrator(s)") is/are¹¹ the intended administrator(s) of his estate.

Now Therefore:

1 I/We⁽⁴⁾ [blank] of [blank] [and [blank] of [blank]]¹² hereby [jointly and severally]¹³ guarantee that I/We⁽⁴⁾ will, when lawfully required to do so¹⁴ make good any

-
- 8 Full name of deceased.
9 Address of deceased.
10 Full name(s) and address(es) and description(s) of proposed administrator(s).
11 Delete whichever is inapplicable.
12 Full name(s) and address(es) and description(s) of surety(ies).
13 Delete if only one surety.

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loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator(s) of his/her/their⁽⁴⁾ duty—

- (a) to collect and get in the estate of the deceased and administer it according to law;
- (b) when required to do so by the Court, to exhibit on oath in the Court a full inventory of the estate and, when so required, to render an account of the estate; or
- (c) when so required by the Court, to deliver up the grant to the Court.

2 The giving of time to the administrator(s) or any other forbearance or indulgence shall not in any way affect my/our⁽⁴⁾ liability under this guarantee.

3 The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above, [my] [our aggregate] total liability shall not in any event exceed the sum of \$ [blank]¹⁵

Dated this [blank] day of [blank] 19 [blank]

Signed, sealed and delivered by the above named in the presence of [blank] a Commissioner for taking Affidavits.

[or other person authorized by law to take affidavits]¹⁶

[The Common Seal of [blank]

was hereunto affixed in the presence of [blank]].

FORM 5

CAVEAT

IN THE SUPREME COURT OF BERMUDA

Let no grant be sealed in the estate of [blank] late of [blank]¹⁷ deceased, who died on the [blank] day of [blank] 19 [blank], at [blank] without notice to [blank]¹⁸

Dated this [blank] day of [blank] 19 [blank].

14 An action on the guarantee may only be brought with the leave of the Court.

15 Insert gross value of estate (unless the Registrar has directed otherwise).

16 Attestation is not required in the case of a corporation.

17 Full name and address of deceased.

18 Name(s) of party or parties by whom or on whose behalf the caveat is entered.

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(Signed) [blank]¹⁹ whose address for service is:—
Barrister for the said²⁰

FORM 6
WARNING TO CAVEATOR
IN THE SUPREME COURT OF BERMUDA

To [blank] of [blank] a party who has entered a caveat in the estate of deceased.
You are hereby warned within eight days after service hereof upon you, inclusive of the day of such service,—

(1) to enter an appearance either in person or by your barrister, at the Registry of the Supreme Court, Hamilton, Bermuda, setting forth what interest you have in the estate of the above-named [blank] of [blank] deceased contrary to that of the party at whose instance this warning is issued; or

(2) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for direction by the Registrar of the said Registry.

And take notice that in default of your so doing the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

Dated the [blank] day of [blank] 19 [blank].

Registrar.

Issued at the instance of [blank]

[Here set out the name and interest (including the date of the will, if any, under which the interest arises) of the party warning, name of his barrister and the address for service. If the party warning is acting in person, this must be stated.]

FORM 7
APPEARANCE TO WARNING OR CITATION
IN THE SUPREME COURT OF BERMUDA

Caveat No. [blank] dated the [blank] day of [blank] 19 [blank]²¹

19 To be signed by the caveator's barrister or by the caveator if acting in person.

20 If the caveator is acting in person, substitute "In person".

21 Delete whichever is inapplicable.

NON-CONTENTIOUS PROBATE RULES 1974

Citation dated the [blank] day of [blank] 19 [blank] ⁽¹⁾

Full name and address of deceased:—

Full name and address of person warning [or citor]:—

22

Full name and address of caveator [or person cited]:—

23

Enter in appearance for the above-named caveator [or person cited] in this matter.

Dated this [blank] day of [blank] 19 [blank]

(Signed)

whose address for service is:—

Barrister (or “In person”)

FORM 8

CERTIFICATE IN LIEU OF GRANT
IN THE SUPREME COURT OF BERMUDA

In the Estate of [blank] deceased.

WHEREAS it appears to the Court that the estate of the deceased consists only of personal property of an aggregate value not exceeding \$2,500 so far as can be ascertained after reasonable inquiry;

AND WHEREAS the Court has directed the issue to the applicant named below of a certificate under section 21 of the Administration of Estates Act 1974.

NOW THEREFORE I

Registrar of the Supreme Court of Bermuda hereby certify:

(1) That on the [blank] day of [blank] 19 [blank] a direction issued out of the Supreme Court of Bermuda pursuant to section 21 of the Administration of Estates Act 1974 in the matter of the estate of [blank], late of [blank] who died on or about the [blank] day of [blank] 19 [blank].

22 Here set out the interest of the person warning, or citor, as shown in warning or citation.

23 Here set out the interest of the caveator or person sited, stating date of the will, if any, under which such interest arises.

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(2) [blank] of [blank] being the person to whom this certificate is issued is hereby authorized to make demand of payment or possession and to receive and give a valid receipt for the money or other personal property so received as effectively as if he had been issued a grant of probate or letters of administration.

AND I DO HEREBY ORDER the person to whom this certificate is issued to dispose of the estate of the deceased by paying the reasonable funeral expenses and the debts of the deceased and by distributing the remainder, if any, of the estate

(a) in the case of property which the deceased died testate, to the beneficiaries entitled thereto, or if none can conveniently be found, to the Accountant General to be paid into the Public Treasury; and

(b) in the case of property in which the deceased died intestate, to the persons entitled thereto.

[Amended by:

2001 : 20

2002 : 36

2011 : 17]