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03/09/12

IN THE SUPREME COURT OF TONGA

PRACTICE DIRECTION NO.1 OF 2012 : Section 14 of the Probate and Administration Act (Cap 16).

1. Section 14 of the Act (as amended by Section 5 of the Law Revision (Miscellaneous Amendments) Act 2009) provides that :

"Where it appears to the [Supreme] Court that the value of the property of a deceased person does not exceed \$5000 the Court may without any probate or letters of administration or other formal proceedings pay thereout any debts due by the deceased or any charges and pay the surplus (if any) to such person as may be entitled."

2. Section 3 of the Act provides that :

"The Court shall ascertain the value of the property of the deceased as correctly as the circumstances allow."

3. Before the Court can pay out under the power granted by Section 14 a Judge must be satisfied :

- (i) that the alleged death is evidenced by a death certificate;
- (ii) that the deceased died intestate or alternatively left a will the terms of which are not inconsistent with the application ;
- (iii) that the total value of the estate does not exceed \$5000; and
- (iv) In the case of an Intestacy that the application is being made with the consent or at least informed acquiescence of all beneficiaries of the intestacy listed in the schedule to Section 16 of the Act.

4. Although there is no requirement for the Court to make its own enquiries or to be satisfied beyond reasonable doubt that the information supplied by an applicant is

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correct, all required information should at least be provided by applicants in writing and should preferably be provided by completing "Form for Application for Access to Estate of Deceased" (copy attached).

5. It should be noted that the figure of \$5000 refers to the value of the whole estate. It does not confer authority on the Court to allow sums less than \$5000 standing to the credit of the estate to be paid out to the beneficiary or beneficiaries unless the Court is satisfied that they form part of an estate the total value of which does not exceed \$5000.
6. The proper approach to the valuation of leases which are included in a Section 14 application is not clear. I will be asking Crown Law Office to provide a written opinion on the matter. Pending the provision of the opinion applicants including a lease or other similar interest in land should be asked to provide details of the manner in which their valuation of the interest was calculated.
7. Prior to the amendment of the Act in 2009 the Court was immune from "any action or claim in respect of anything done" under the Act. The amendment removed the immunity which means that the Court may, for example, be found liable at the suit of a beneficiary who has lost his share of the estate as a result of a payment out made without his consent.
8. Nothing in this Practice Direction affects the requirement that the Supreme Court (Probate and Administration) Rule GS 51/65 (Cap 10-S-16) be complied with.

Dated: 29 August 2012.



FORM FOR APPLICATION FOR ACCESS TO ESTATE OF DECEASED

In the matter of the estate of _____
of _____, deceased.

And in the matter of the Probate and Administration Act (Cap 16)

1. APPLICATION NO. _____ 2. DISTRICT: _____
3. DATE OF APPLICATION: _____ 4. DECISION RECORDED: _____
5. APPLICANT'S FULL NAME (INCLUDE ANY A.K.A)

6. APPLICANT'S AGE: _____ 7. OCCUPATION: _____
8. ADDRESS OF APPLICANT: _____

9. IDENTIFICATION SUPPLIED (INCLUDE NUMBER OF DOCUMENT):

PASSPORT NATIONAL ID OTHER (PLEASE DESCRIBE)

10. APPLICANT'S RELATIONSHIP TO DECEASED:

Certified copy of Birth Certificate or Marriage Certificate to be filed, state which is attached hereto:

11. DID DECEASED LEAVE A WILL?

YES NO

12. WILL THERE BE ANY APPLICATION FOR LETTERS OF ADMINISTRATION?

YES NO

13. IS THERE A WIDOW/WIDOWER LIVING?

YES NO

14. HOW MANY CHILDREN DID THE DECEASED HAVE?

IF APPLICANT IS SOMEONE OTHER THAN WIDOW/WIDOWER OR NEXT OF KIN RELEVANT AUTHORIZATION TO BE PRODUCED.

15. DESCRIBE AUTHORITY : _____

16. DESCRIBE THE ESTATE WHICH IS SUBJECT OF APPLICATION AND THE VALUATION FOR EACH ITEM:

17. PURPOSE FOR WHICH PROCEEDS ARE TO BE APPLIED:

18. DO YOU HAVE CONSENT OF ALL BENEFICIARIES TO PRESENT THIS APPLICATION?

19. THE TOTAL VALUE OF THE ESTATES DOES NOT EXCEED \$5000.

I, _____, the applicant herein confirm the above information to be true and correct to the best of my knowledge and belief.

.....
(APPLICANT'S SIGNATURE)

.....
(WITNESS) NAME IN PRINT:

DESIGNATION: _____

NB: The witness must either be a Law Practitioner, Police Officer, Town or District Office or a Justice of the Peace who has known the applicant for over 5 years.
