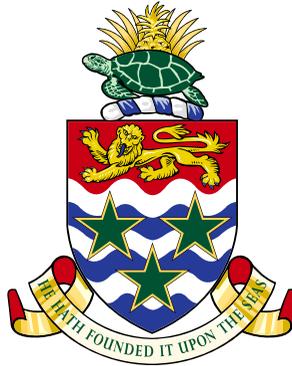


CAYMAN ISLANDS



PRESUMPTION OF DEATH (ANNA EVANS) LAW, 2020

(Law 23 of 2020)

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CAYMAN ISLANDS

(Law 23 of 2020)

I Assent,



Martyn Roper
Governor

Date: 25th day of May, 2020

PRESUMPTION OF DEATH (ANNA EVANS) LAW, 2020

(Law 23 of 2020)

A LAW TO PROVIDE FOR THE CIVIL STATUS OF A MISSING PERSON WHERE THE CIRCUMSTANCES OF THE PERSON'S ABSENCE LEADS TO A PRESUMPTION OF DEATH; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

Short title and commencement

- (1) This Law may be cited as the Presumption of Death (Anna Evans) Law, 2020.
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

Interpretation

- In this Law —

“**applicant**” means a person who applies for a presumption of death order under section 4(1);

“**court**” shall be construed in accordance with section 10;

“**missing person**” means an individual whose existence has become uncertain;



“**presumption of death order**” means an order made under section 4;

“**Registrar-General**” means the person appointed to that office under section 4 of the *Births and Deaths Registration Law (2007 Revision)*;

“**Registry**” means the Registry of Births and Deaths established by section 3 of the *Births and Deaths Registration Law (2007 Revision)*;

“**Rules of Court**” means the Rules of Court made under section 19 of the *Grand Court Law (2015 Revision)* and under section 14 of this Law;

“**spouse**” means a man who is married to a woman and vice versa;

“**trustee**” includes an executor, administrator or personal representative; and

“**variation order**” means an order made under section 6.

PART 2 – PRESUMPTION OF DEATH ORDER

Persons who may apply for presumption of death order

3. Any of the following persons may apply for a presumption of death order —
- (a) the spouse of the missing person;
 - (b) any other family member of the missing person, including a child, grandchild, parent, grandparent, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the missing person;
 - (c) a person who is acting in *loco parentis* to the missing person;
 - (d) a dependant of the missing person; or
 - (e) any other person the court considers to have a sufficient interest in the determination of the application, including, where relevant, the Attorney General or other person acting on behalf of the Government.

Presumption of death order in respect of missing person

4. (1) An applicant may, subject to the conditions in this section, apply for a presumption of death order in respect of a missing person.
- (2) An application for a presumption of death order shall be accompanied by an affidavit by the applicant which shall contain the following information —
- (a) specific evidence tending to indicate that the missing person is dead, including —
 - (i) the circumstances surrounding the disappearance of the missing person;
 - (ii) absence of communication with persons who would be likely to hear from the missing person, including last known correspondence or communication; and
 - (iii) the length of time since the disappearance;



- (b) the date on which the missing person was last heard from by any person;
 - (c) evidence of advertising for information concerning the whereabouts of the missing person, including where relevant, evidence of using the internet and social media to obtain such information, unless there are exceptional reasons for not doing so, explained by the applicant;
 - (d) where relevant and practicable, evidence from a search organisation that confirms that attempts were made to locate the missing person but were fruitless;
 - (e) the full background relating to the disappearance of the missing person, including the missing person's age and physical and mental health;
 - (f) where relevant and practicable, evidence of corroboration from a family member of the missing person (if the applicant is not a family member);
 - (g) where relevant, the next-of-kin entitled to distribution of the assets of the missing person on the death of the missing person; and
 - (h) a declaration by the applicant of the applicant's belief that the missing person is dead.
- (3) A presumption of death order may be made by the court where the court is satisfied that —
- (a) the missing person has not been known to be alive for a period of at least seven years; or
 - (b) in respect of the missing person, the circumstances of the person having gone missing indicate that the person's death is —
 - (i) virtually certain; or
 - (ii) highly probable.
- (4) In determining whether a presumption of death order is to be made under this section, the court shall take into account all the circumstances surrounding the disappearance and absence of the missing person, including the following —
- (a) the time, location, and circumstances of the disappearance;
 - (b) where relevant, the abandonment of valuable property;
 - (c) where relevant and practicable, the extent and nature of post-disappearance searches;
 - (d) the presence or absence of a motive for the missing person to remain alive but disappear;
 - (e) where relevant, evidence suggesting that the disappearance was a consequence of foul play;
 - (f) where relevant, the time between a life assurance policy being obtained on the life of the missing person and the missing person's disappearance; and
 - (g) where relevant, any prior history of fraud involving the missing person.

- (5) Without prejudice to the rebuttable presumption in subsection (6), and subject to the requirements of this section, an application for a presumption of death order may be made —
- (a) where the application is to the effect that where, by reason of absence from the Islands or otherwise, it remains uncertain for a period of at least seven years as to whether a missing person is alive;
 - (b) where the application is to the effect that death is virtually certain, at any time after a person has gone missing and such application shall not be subject to a minimum waiting period; or
 - (c) where the application is to the effect that death is highly probable, no earlier than one year after the person has gone missing.
- (6) Where, by reason of absence from the Islands or otherwise, it remains uncertain for a period of at least seven years as to whether a missing person is alive, it shall continue to be presumed that the person is dead.
- (7) Where the court makes a presumption of death order and is satisfied that the missing person has died on a specific date, the presumption of death order shall include a finding as to the date and time of death.
- (8) Where the court makes a presumption of death order but is uncertain when, within any period of time, the missing person died, the presumption of death order shall provide that the missing person died at the end of that period.
- (9) Where the court makes a presumption of death order and is satisfied that the missing person has not been known to be alive for a period of at least seven years, the presumption of death order shall include a finding that the missing person died at the end of the day occurring seven years after the date on which the missing person was last known to be alive.
- (10) An applicant may —
- (a) in the case of proceedings determined by the summary court, appeal to the Grand Court; and
 - (b) in the case of proceedings determined by the Grand Court, appeal to the Court of Appeal,
- in accordance with Rules of Court against a presumption of death order within twenty-one days after the making of the order or such longer period as may be provided by Rules of Court.
- (11) Subsections (7), (8) and (9) and section 5 shall apply only if —
- (a) there has been no appeal against the presumption of death order and the period for bringing an appeal has ended; or
 - (b) there has been an appeal against the presumption of death order and the appeal, and any further appeal, has been unsuccessful.
- (12) For the purposes of subsection (11), an appeal has been unsuccessful if —



- (a) it has been dismissed or withdrawn; and
- (b) any period for bringing a further appeal has ended.

General effects of presumption of death order

5. (1) Subject to section 4(11), a presumption of death order has the same effect in law as arises from the registration of a death under the *Births and Deaths Registration Law (2007 Revision)*.
- (2) A presumption of death order has the effect of ending a marriage to which the missing person is a party.
- (3) A presumption of death order is effective against all persons and for all purposes, including for the purposes of the acquisition of an interest in any property.

PART 3 – VARIATION ORDER

Persons who may apply for a variation order and consequences of return of missing person

6. (1) The following persons may apply to the Grand Court for a variation order, revoking or varying the effects of a presumption of death order —
- (a) a missing person in respect of whom a presumption of death order has been made; or
 - (b) an applicant.
- (2) Subject to this section —
- (a) a variation order shall not have any effect on rights to, or in, any property acquired as a result of a presumption of death order; and
 - (b) a variation order shall not revive a marriage that was brought to an end by virtue of a presumption of death order.
- (3) The Grand Court shall, when making a variation order, make such further order, if any, in relation to any rights to, or in, any property acquired as a result of a presumption of death order as it considers reasonable in all the circumstances.
- (4) Without prejudice to the generality of subsection (3) —
- (a) a variation order shall have no effect on any income accrued between the time of the making of a presumption of death order and the variation order; and
 - (b) where a third party acquires rights to, or in, the property of the missing person, in good faith and for value, the missing person who has returned may not bring a claim for the property against the third party.
- (5) Subject to subsection (6) and except as otherwise required by subsection (2) —

- (a) where a variation order varies a presumption of death order, section 5 shall have effect in relation to the presumption of death order as varied by the variation order; and
 - (b) where a variation order revokes a presumption of death order, section 5 shall cease to have effect in relation to the presumption of death order.
- (6) An applicant or the missing person who has returned may appeal to the Court of Appeal in accordance with the Rules of Court against a variation order within twenty-one days after the grant of the variation order or such longer period as may be provided by the Rules of Court and subsection (5) shall apply only if —
- (a) there has been no appeal against the variation order and the period for bringing an appeal has ended; or
 - (b) there has been an appeal against the variation order and the appeal, and any further appeal, has been unsuccessful.
- (7) Notwithstanding section 5(2), where a presumption of death order has been made in respect of a missing person who was in a marriage that was subsisting at the time that the person went missing, the missing person or the person who was party to the marriage at the time that the missing person went missing may apply to the Grand Court for a declaration deeming the person to be a spouse for the purposes of the *Matrimonial Causes Law (2005 Revision)* in respect of whom a decree of divorce has been granted under that Law.
- (8) In making a declaration under subsection (7), the court may modify or restrict its effect in any way as, in its view, accords with the interests of justice.
- (9) A declaration under subsection (7) —
- (a) shall only apply from the date of any variation order granted under this section; and
 - (b) shall not take effect until the time for making any appeal has ended or any appeal, or any further appeal, has been unsuccessful.
- (10) Other than in exceptional circumstances, an application for a declaration under subsection (7) shall be brought at the same time as an application for a variation order under subsection (1).
- (11) Other than in exceptional circumstances, an application for a variation order under subsection (1) cannot be made after the expiry of a period of seven years from the making of a presumption of death order.
- (12) For the purposes of subsection (6), an appeal has been unsuccessful if —
- (a) it has been dismissed or withdrawn; and
 - (b) any period for bringing a further appeal has ended.



PART 4 – FURTHER PROVISIONS ABOUT ORDERS

Insurance against claims: trustees

7. (1) If the court so directs, the trustee of a trust affected by a presumption of death order shall as soon as reasonably practicable take out an insurance policy in respect of any claim which may arise by virtue of any order as to property further to the presumption of death order.
- (2) For the purposes of this section, a trust is affected by a presumption of death order if —
 - (a) the trust arises as a result of the presumption of death order; or
 - (b) property held under the trust is affected by the presumption of death order.
- (3) A premium payable by the trustee in accordance with a direction under this section may be paid out of money or other property held under the trust.

Insurance against claims: insurers paying capital sums

8. (1) Where a presumption of death order has been made, the applicant shall, unless the court otherwise directs, as soon as practicable, effect a policy of insurance in respect of any claim which may arise by virtue of a variation order.
- (2) Any premium payable by the applicant in respect of a policy of insurance effected under subsection (1) shall be a proper charge on the estate of the missing person.
- (3) Where a presumption of death order has been made, an insurer may, before making payment of any capital sum, other than in respect of an annuity or other periodical payment, to any person as a result of such order, require that person to effect in that person's own name for the benefit of that insurer a policy of insurance to satisfy any claim which that insurer may establish in the event of a variation order being made.

Notice of application

9. (1) Prior to making an order under section 4 or 6, the court shall require the applicant or the missing person to provide evidence, whether by way of affidavit or otherwise, that notice of the relevant application has been served on any person who may be affected by the making of the order.
- (2) The court shall not make an order under section 4 or 6 unless it is satisfied that the applicant or the missing person has complied with the requirements of subsection (1).

Jurisdiction of courts and venue

10. (1) Subject to this section, the summary court shall, concurrently with the Grand Court, have jurisdiction to hear and determine proceedings under section 4.

- (2) The Grand Court shall have exclusive jurisdiction to hear and determine proceedings under section 6.
- (3) Where the market value of any land to which an application for a presumption of death order relates exceeds twenty thousand dollars, the summary court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, transfer the proceedings to the Grand Court, but any declaration or decision made in the course of such proceedings before the transfer shall be valid unless discharged or varied by the Grand Court.
- (4) The summary court may hear and determine an application for a presumption of death order —
 - (a) if the missing person was legally and ordinarily resident in the Islands or carried on any business, profession or occupation in the Islands before the person went missing; or
 - (b) the applicant is legally and ordinarily resident in the Islands or carries on any profession, business or occupation in the Islands at the time an application is made for a presumption of death order.
- (5) Where the applicant is the Attorney General or other person acting on behalf of the Government as set out in section 3(e), jurisdiction under this section shall lie exclusively with the Grand Court.
- (6) Where the jurisdiction criteria set out in subsection (4) do not apply, the Grand Court shall have jurisdiction under this Law where —
 - (a) the missing person was domiciled in the Islands before the person went missing;
 - (b) the applicant is domiciled in the Islands at the time an application for a presumption of death order is made; or
 - (c) the application relates to a missing person where that missing person is a victim of violence, or of domestic violence as defined by section 3 of the *Protection from Domestic Violence Law, 2010*.

PART 5 – REGISTER OF PRESUMED DEATHS

Register of Presumed Deaths

11. (1) The Registrar-General shall keep and maintain a register which is to be called the “Register of Presumed Deaths”.
- (2) The Register of Presumed Deaths shall be kept and maintained in the Registry —
 - (a) in such form as the Registrar-General considers appropriate; and
 - (b) in accordance with the Schedule.



PART 6 - GENERAL

Regulations

12. (1) The Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary to be prescribed for giving effect to the purposes of this Law.
- (2) Notwithstanding the generality of subsection (1) —
- (a) regulations made under this section may provide for such exceptions, limitations and conditions, and make such supplementary, incidental, consequential or transitional provisions as the Cabinet considers necessary; and
 - (b) regulations prescribing matters that are required to be prescribed for the purposes of paragraphs 1, 2 and 3 of the Schedule shall be made by the Cabinet, after consultation with the Registrar-General.

Amendment of Schedule

13. The Cabinet may by Order amend the Schedule.

Rules of Court

14. (1) The Rules Committee of the Grand Court may make such rules for giving effect to court proceedings and court matters under this Law as appears to the Rules Committee to be necessary.
- (2) The rules made under subsection (1) may, in particular, make provision —
- (a) with respect to the procedure to be followed in any relevant proceedings, including the manner in which any application is to be made or other proceedings commenced;
 - (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;
 - (c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings; and
 - (d) for the service outside the Islands of any notice of proceedings in such circumstances and in such manner as may be prescribed by the rules.
- (3) For the purposes of this section, “**relevant proceedings**” means any application made, or proceedings brought, under this Law, and any part of such proceedings.
- (4) The power under this section to make Rules of Court are not to be construed as limiting any other power of the Rules Committee of the Grand Court.

Law binds the Crown

- 15.** (1) Subject to subsection (2), this Law binds the Crown.
- (2) An application may not be made under this Law for a presumption of death order in respect of Her Majesty.



SCHEDULE

(section 11)

Register of Presumed Deaths

Entries in Register of Presumed Deaths

1. (1) Where an appeal is not brought against the making of a presumption of death order within the time allowed for appeal or an appeal against the making of a presumption of death order is brought and the appeal, or any further appeal, is unsuccessful, the court shall send to the Registrar-General —
 - (a) a copy of the presumption of death order; and
 - (b) any prescribed information.
- (2) On receipt of a copy of a presumption of death order in accordance with sub-paragraph (1), the Registrar-General shall —
 - (a) make an entry in the Register of Presumed Deaths containing the name of the missing person and such other information as may be prescribed in relation to that person's presumed death;
 - (b) ensure that the entry made in the Register of Presumed Deaths is included in the index of the general register of deaths; and
 - (c) make traceable the connection between the entry in the Register of Presumed Deaths and the index of the general register of deaths.

Amendment and cancellation of entries in Register

2. (1) Where an appeal is not brought against the making of a variation order within the time allowed for appeal or an appeal against the making of a variation order is brought and the appeal, or any further appeal, is unsuccessful, the court shall send to the Registrar-General —
 - (a) a copy of the variation order; and
 - (b) any prescribed information.
- (2) Where the variation order varies a presumption of death order, on receipt of a copy of the variation order in accordance with sub-paragraph (1), the Registrar-General shall —
 - (a) amend the entry in the Register of Presumed Deaths in relation to the missing person; and
 - (b) amend any entry relating to that person made in the index of the general register of deaths in accordance with paragraph 1(2)(b).

- (3) Where the variation order revokes a presumption of death order, on receipt of a copy of the variation order in accordance with sub-paragraph (1), the Registrar-General shall —
 - (a) cancel the entry in the Register of Presumed Deaths relating to the missing person; and
 - (b) cancel any entry relating to that person made in the index of the general register of deaths in accordance with paragraph 1(2)(b).

Inspection of the Register of Presumed Deaths and certified copies

3. (1) The Registrar-General shall make available for inspection by any person the Register of Presumed Deaths —
 - (a) upon payment of the prescribed inspection fee for each inspection; and
 - (b) subject to such conditions as the Registrar-General may impose.
- (2) The Registrar-General shall, subject to sub-paragraph (3) —
 - (a) upon application in the prescribed form; and
 - (b) upon payment of the prescribed fee,issue to a person a certified copy of an entry in the Register of Presumed Deaths.
- (3) Where the Registrar-General has reasonable grounds to suspect that a certified copy of an entry in the Register of Presumed Deaths may be used for an unlawful purpose, the Registrar-General may refuse to issue the certified copy.
- (4) Where the Registrar-General issues a certified copy of an entry in the Register of Presumed Deaths, the certified copy shall be sealed or stamped with the seal of the Registry.
- (5) A certified copy of an entry in the Register of Presumed Deaths shall not be of any force or effect unless it is sealed or stamped in accordance with sub-paragraph (4).
- (6) Section 60(4) of the *Births and Deaths Registration Law (2007 Revision)* applies in relation to a certified copy of an entry in the Register of Presumed Deaths as it applies in relation to a certified copy of an entry in a register under that Law.

Proof of death

4. A certified copy of an entry in the Register of Presumed Deaths in relation to a person shall be received as evidence of the person's death, without further or other proof, if it purports to be sealed or stamped in accordance with paragraph 3(4).

Correction and annotation of Register of Presumed Deaths

5. (1) Where it appears to the Registrar-General that there is a clerical error in the Register of Presumed Deaths, the Registrar-General may authorise a person to correct the error.



- (2) Where it appears to the court that there is an error in the Register of Presumed Deaths, the court may direct the Registrar-General to ensure that the error is corrected.
- (3) The Registrar-General may annotate, or cancel the annotation of, any entry in the Register of Presumed Deaths.
- (4) Where it appears to the Registrar-General that the death of a missing person to whom an entry in the Register of Presumed Deaths relates —
 - (a) has been registered in the general register of deaths made under the *Births and Deaths Registration Law (2007 Revision)*; or
 - (b) has been recorded in a register kept or maintained under the law of a country or territory outside the Islands corresponding in nature to the register in sub-subparagraph (a),the Registrar-General shall annotate the relevant entry in the Register of Presumed Deaths accordingly.

Interpretation

6. In this Schedule “**the index of the general register of deaths**” means the index of the general register of deaths kept by the Registrar-General in the Registry in accordance with the *Births and Deaths Registration Law (2007 Revision)*.

Passed by the Legislative Assembly the 20th day of May, 2020.

Hon. Barbara Conolly
Deputy Speaker

Zena Merren-Chin
Clerk of the Legislative Assembly