

**Administration de bonis non.**

An. Code, sec. 70. 1904, sec. 69. 1888, sec. 70. 1798, ch. 101, sub-chs. 5, 14, secs. 2, 6.

71. If an executor or administrator shall die before administration is completed, letters *de bonis non* or *de bonis non cum testamento annexo* may be granted at the discretion of the court, giving preference, however, to the person entitled if he shall actually apply for the same; and the form of the letters shall be as hereinbefore directed, except that the words "not already administered" shall be added in their proper place; and the authority conferred thereby shall be to administer all things herein described as assets, not converted into money and not distributed and delivered or retained by the executor or former administrator, under the court's direction.

**When administrator d. b. n. will be appointed.**

Since distributees can only get title through an administration, an administrator *d. b. n.* will be appointed although estate has been entirely closed except to distribute. *Smith v. Dennis*, 33 Md. 449; *Lawson v. Burgee*, 121 Md. 208.

As to when letters *d. b. n.* will be granted, see also *Woelfel v. Evans*, 74 Md. 350; *Myers v. Forbes*, 74 Md. 362; *Smith v. Dennis*, 33 Md. 449; *Scott v. Fox*, 14 Md. 388; *Alexander v. Stewart*, 8 G. & J. 226. *Cf. Myers v. Safe Deposit Co.*, 73 Md. 424; *Lawson v. Burgee*, 121 Md. 208.

**Powers of administrator d. b. n.**

To administrator *d. b. n.* is committed only administration of property which remains *in specie*. He has nothing to do with assets wasted, misapplied or converted, and hence cannot sue for a *devastavit*. *Morrow v. Fidelity Co.*, 100 Md. 262; *Sibley v. Williams*, 3 G. & J. 63; *Neale v. Hagthorp*, 3 Bl. 563; *Hagthorp v. Neale*, 7 G. & J. 13; *Hagthorp v. Hook*, 1 G. & J. 274; *United States v. Walker*, 109 U. S. 258. And see *Ingle v. Jones*, 9 Wall, 486.

Where a will confers a power to sell real estate upon executor, administrator *d. b. n., c. t. a.* succeeds to power of sale under sec. 300; *contra*, however, if executor dies before testator, and hence power of sale never vests. If nothing remains to be done to complete administration, letters *d. b. n.* are nugatory. *Wilcoxon v. Reese*, 63 Md. 545.

**Generally.**

When an administration in orphans' court by an administrator *d. b. n., c. t. a.* is necessary to confer title upon a legatee. Jurisdiction of equity. Property inadvertently omitted from inventory and account. Property acquired after death of testator. *Myers v. Forbes*, 74 Md. 362.

This section construed in connection with secs. 31 and 32, requires that those entitled to notice be summoned before the letters *d. b. n.* are granted. *Thomas v. Knighton*, 23 Md. 325. And see *Wilcoxon v. Reese*, 63 Md. 545.

The term "person entitled" is not limited to those absolutely entitled as enumerated in sec. 32. The whole of art. 93 will be construed together. This section construed in connection with secs. 22, 23 and 29. *Kearney v. Turner*, 28 Md. 424.

If an executor dies without making a full distribution and delivery of assets of estate, it is necessary to have an administrator *d. b. n.*; executor's executor is not competent as a general rule to interfere with such assets or to render an account for deceased administrator. If fund has been lost, wasted or misapplied by deceased executors, equity, under facts of case at bar, would appoint trustee to sue for recovery of fund. *Lawson v. Burgee*, 121 Md. 208.

The appointment of an administrator *d. b. n.* is within jurisdiction of orphans' court, and personnel of appointee is a matter resting within its discretion. *Sharp v. State*, 135 Md. 559.

The party entitled having renounced, the appointment of the party next entitled, upheld—see notes to sec. 38. *Stocksdale v. Conaway*, 14 Md. 106.

This section referred to in discussing the limited discretion vested in the orphans' court. *Georgetown College v. Browne*, 34 Md. 458.