

Uniform Devolution of Real Property Act

(1962 Consolidation, page 88)

1. In this Act

Interpretation

- (a) "lunatic" includes an idiot and a person of unsound mind;
- (b) "court" means the Court of or a judge thereof; and
- (c) "personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person.

2. This Act applies only in cases of death after its commencement. Application

3. (1) Real property to which a deceased person was entitled for an interest not ceasing on his death, on his death, notwithstanding any testamentary disposition, devolves upon and becomes vested in his personal representative from time to time as if it were personal property vesting in him. Real property in which deceased had continuing interest

(2) A testator shall be considered to have been entitled at his death to any interest in real property passing under any gift contained in his will that operates as an appointment under a general power to appoint by will. Assumption

(3) The personal representative is the representative of the deceased in regard to his real property to which he was entitled for an interest not ceasing on his death as well as in regard to his personal property. Idem

(4) Probate and letters of administration may be granted in respect of real property only, although there is no personal property. Probate

4. Subject to the powers, rights, duties and liabilities hereinafter mentioned, the personal representative of a deceased person holds the real property as trustee for the persons by law beneficially entitled thereto, and those persons have the same right to require a transfer of real property as persons beneficially entitled to personal property have to require a transfer of such personal property. Trust of real property for persons entitled

5. Subject to the provisions hereinafter contained,

- (a) all enactments and rules of law;

Applicable rules, jurisdiction, rights and duties

- (b) all jurisdiction of any court with respect to
 - (i) the appointment of administrators or to probate or letters of administration,
 - (ii) dealings before probate in the case of personal property, and
 - (iii) costs and other matters in the administration of personal property,

in force before the commencement of this Act; and

- (c) all powers, duties, rights, equities, obligations, and liabilities of a personal representative in force at the commencement of this Act with respect to personal property,

apply and attach to the personal representative and have effect with respect to real property vested in him.

Rules, interests, procedures and rights not affected by appointment of personal representative

6. Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real property does not, except as hereinafter provided, affect

- (a) any rule as to marshalling or as to administration of assets;
- (b) the beneficial interest in real property under any testamentary disposition;
- (c) any mode of dealing with any beneficial interest in real property or the proceeds of the sale thereof; or
- (d) the right of any person claiming to be interested in the real property to take proceedings for the protection or recovery thereof against any person other than the personal representative.

Administration of real property as personal property

7. In the administration of the assets of a deceased person his real property shall be administered in the same manner, subject to the same liabilities for debts, costs and expenses and with the same incidents, as if it were personal property, but nothing in this section alters or affects

- (a) the order in which real and personal assets respectively are now applicable as between different beneficiaries, in or toward the payment of funeral and testamentary expenses, debts or legacies; or
- (b) the liability of real property to be charged with payment of legacies.

8. When any part of the real property of a deceased person vests in his personal representative under this Act, the personal representative, in the interpretation of any Act of this Legislature or in the construction of any instrument to which the deceased was a party or under which he was interested, shall, while the estate remains in the personal representative, be deemed in law the heir of the deceased, as respects such part, unless a contrary intention appears; but nothing in this section affects the beneficial right to any property or the construction of words of limitation of any estate in or by any deed, will or other instrument.

Personal representative deemed to be heir of deceased

9. (1) At any time after the expiration of one year from the date of probate or of letters of administration, if the personal representative has failed, on the request of the person entitled to any real property, to convey the real property to that person, the court may, if it thinks fit, on the application of that person and after notice to the personal representative, order that the conveyance be made, and in default may make an order vesting the real property in such person as fully and completely as might have been done by a conveyance thereof from the personal representative.

Failure to convey

(2) If, after the expiration of such year, the personal representative has failed, with respect to the real property or any portion thereof, either to convey the same to a person entitled thereto or to sell and dispose of it, the court may, on the application of any person beneficially interested, order that the real property or portion be sold on such terms and within such period as may appear reasonable; and, on the failure of the personal representative to comply with the order, may refer the matter to the (*Master in Chambers or local master, or as the case may be*) directing a sale of the real property or portion upon such terms of cash or credit, or partly one and partly the other, as may be deemed advisable.

10. The personal representative may sell the real property for the purpose not only of paying debts but also of distributing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and it is not necessary that the persons beneficially entitled concur in any such sale except where it is made for the purpose of distribution only.

Sale of real property

11. (1) Subject to the provisions hereinafter contained, no sale of real property for the purpose of distribution only is valid as respects any person beneficially interested, unless he concurs therein.

Concurrence where sale for purpose of distribution

Idem

- (2) Where, in the case of such a sale,
 - (a) a lunatic is beneficially interested;
 - (b) adult beneficiaries do not concur in the sale; or
 - (c) where under a will
 - (i) there are contingent interests or interests not yet vested, or
 - (ii) the persons who may be beneficiaries are not yet ascertained,

the court may, upon proof satisfactory to it that the sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested therein, approve the sale, and a sale so approved is valid as respects such contingent interests and interests not yet vested, and is binding upon the lunatic, non-concurring persons and beneficiaries not yet ascertained.

Acceptance of share of purchase money

(3) If an adult accepts a share of the purchase money knowing it to be such, he shall be considered to have concurred in the sale.

Consent of Official Guardian

12. No sale, where an infant is interested, is valid without the written consent or approval of the Official Guardian (*or, where there is no Official Guardian, of the proper officer*) or, in the absence of such consent or approval, without an order of the court.

(NOTE: Any jurisdiction desiring to do so may insert a provision exempting small estates from the operation of this section.)

Division and conveyance of real property

- 13.** The personal representative may,
- (a) with the concurrence of the adult persons beneficially interested;
 - (b) with the approval of the Official Guardian (*or other proper officer*) on behalf of infants; and,
 - (c) in the case of a lunatic, with the approval of

if any infants or lunatics are so interested, divide or partition and convey the real property of the deceased person, or any part thereof, to or among the persons beneficially interested.

Leasing and mortgage powers of personal representative

14. (1) The personal representative may, from time to time, subject to the provisions of any will affecting the property,

- (a) lease the real property or any part thereof for any term not exceeding one year;
- (b) lease the real property or any part thereof, with the approval of the court, for a longer term; and
- (c) raise money by way of mortgage of the real property or any part thereof for
 - (i) the payment of debts,
 - (ii) the payment of taxes on the real property to be mortgaged, and
 - (iii) with the approval of the court,
 - (A) the payment of other taxes,
 - (B) the erection, repair, improvement or completion of buildings,
 - (C) the improvement of lands, or
 - (D) any other purpose beneficial to the estate.

(2) Where infants or lunatics are interested, the approvals or order required by sections 11 and 12 in case of a sale are required in the case of a mortgage under subsection (1)(c) for payment of debts or payment of taxes on the real property to be mortgaged. Idem

15. (1) A person purchasing real property in good faith and for value from Title of purchaser and of person beneficially entitled to property

- (a) the personal representative; or
 - (b) a person beneficially entitled to it to whom it has been conveyed by the personal representative,
- holds the real property freed and discharged
- (c) from all debts or liabilities of the deceased owner except such as are specifically charged thereon otherwise than by his will; and
 - (d) where the purchase is from the personal representative, from all claims of the persons beneficially interested.

(2) Real property that has been conveyed by the personal representative to a person beneficially entitled thereto continues to be liable to answer the debts of the deceased owner so long as it remains vested in such person or in any person claiming under him not being a purchaser in good Liability of personal representative

faith and for value, as it would have been if it had remained vested in the personal representative, and in the event of a sale or mortgage thereof in good faith and for value by such person beneficially entitled he is personally liable for such debts to the extent to which such real property was liable when vested in the personal representative but not beyond the value thereof.

Two or more ex-
ecutors

16. Where there are two or more personal representatives, a conveyance, mortgage, lease or other disposition of real property devolving under this Act shall not be made without the concurrence therein of all such representatives or an order of the court; but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance, mortgage, lease or other disposition of the real property may be made by the proving executor or executors for the time being, without an order of the court, and is as effectual as if all the persons named as executors had concurred therein.

Powers addi-
tional

17. The rights and immunities conferred by this Act upon personal representatives are in addition to, and not in derogation of, the powers conferred by any other Act, or by the will.

Duties

18. Nothing in this Act alters any duty payable in respect of real property or imposes any new duty thereon.

Dower pro-
tected

19. This Act is subject to (*the Dower Act or any Act of the kind*).
