

1980

c 143 Estates Administration Act

Ontario

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CHAPTER 143

Estates Administration Act

1. In this Act,

Interpre-
tation

- (a) "court" means the Supreme Court ;
- (b) "judge" means a judge of the Supreme Court ;
- (c) "mental incompetency" means the condition of mind of a mentally incompetent person ;
- (d) "mentally incompetent person" means a person,
- (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
- (ii) who is suffering from such disorder of the mind,
- that he requires care, supervision and control for his protection and the protection of his property ;
- (e) "personal representative" means an executor, an administrator, or an administrator with the will annexed. R.S.O. 1970, c. 129, s. 1.

2.—(1) All real and personal property that is vested in a person without a right in any other person to take by survivorship, on his death, whether testate or intestate and notwithstanding any testamentary disposition, devolves to and becomes vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto, and, subject to the payment of his debts and so far as such property is not disposed of by deed, will, contract or other effectual disposition, it shall be administered, dealt with and distributed as if it were personal property not so disposed of.

(2) This section applies to property over which a person executes by will a general power of appointment as if it were property vested in him.

Idem.
where under
appoint-
ment

Exceptions

(3) This section does not apply to estates tail or to the personal property, except chattels real, of a person who, at the time of his death, is domiciled out of Ontario. R.S.O. 1970, c. 129, s. 2.

Application of enactments as to probate, etc.

3. The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealing with personal property before probate or administration and as respects the payment of costs of administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it is not lawful for some or one only of several joint personal representatives without the authority of a judge to sell or transfer real property. R.S.O. 1970, c. 129, s. 3.

Real and personal property assimilated in matters of administration

4. Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section alters or affects as respects real or personal property of which the deceased has made a testamentary disposition the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies. R.S.O. 1970, c. 129, s. 4.

Payment of debts out of residuary estate
R.S.O. 1980, c. 488

5. Subject to section 32 of the *Succession Law Reform Act*, the real and personal property of a deceased person comprised in a residuary devise or bequest, except so far as a contrary intention appears from his will or any codicil thereto, is applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration. R.S.O. 1970, c. 129, s. 5.

How far personal representatives to be deemed "heirs"

6. When any part of the real property of a deceased person vests in his personal representative under this Act, such personal representative, in the interpretation of any Act of the Legislature or in the construction of any instrument to which the deceased was a party or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, in respect of 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. R.S.O. 1970, c. 129, s. 6.

7. Where an estate or interest of inheritance in real property is vested on a trust or by way of mortgage in a person solely, it, on his death, notwithstanding any testamentary disposition, devolves to and becomes vested in his executor or administrator in like manner as if it were personal estate vesting in him, and accordingly all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with it belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if it were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers. R.S.O. 1970, c. 129, s. 7.

Trust estates and interests of mortgagors

8.—(1) Where there is no legal personal representative of a deceased mortgagor of freehold property, it is sufficient for the purposes of an action for the foreclosure of the equity of redemption in, or for the sale of such property that the person beneficially entitled under the last will and testament, if any, of the deceased mortgagor, or under Part II of the *Succession Law Reform Act*, to such property or the proceeds thereof be made defendant to such action, and it is not necessary that a legal personal representative of the deceased mortgagor be appointed or be made a defendant thereto unless it is otherwise ordered by the court in which the action is brought, but, if during the pendency of such action, the equity of redemption devolves upon and becomes vested in a legal personal representative of the mortgagor, he shall be made a party to the action.

Who to be defendants in action for foreclosure where no personal representative of mortgagor

R.S.O. 1980, c. 488

(2) In subsection (1), "mortgagor" includes the assignee of a mortgagor and any person entitled to or interested in the equity of redemption. R.S.O. 1970, c. 129, s. 9.

Interpretation

9.—(1) Real property not disposed of, conveyed to, divided or distributed among the persons beneficially entitled thereto under section 17 by the personal representative within three years after the death of the deceased is, subject to the *Land Titles Act* in the case of land registered under that Act and subject to subsections 48 (3) and (5) of the *Registry Act*, and subject as hereinafter provided, at the expir-

Vesting of real estate not disposed of within 3 years

R.S.O. 1980, cc. 230, 445

ation of that period, whether probate or letters of administration have or have not been taken, thenceforth vested in the persons beneficially entitled thereto under the will or upon the intestacy or their assigns without any conveyance by the personal representative, unless such personal representative, if any, has registered, in the proper land registry office, a caution in Form 1 under his hand, and, if a caution is so registered, the real property mentioned therein does not so vest for three years from the time of the registration of the caution or of the last caution if more than one was registered.

Verification (2) The execution of every caution shall be verified by the affidavit of a subscribing witness in the manner prescribed by the *Registry Act* or the *Land Titles Act*, as the case may be.

R.S.O. 1980,
cc. 445, 230

Effect (3) A caution registered or reregistered under this section or under section 11 is effectual only as to the real property mentioned in the caution.

Withdrawal of caution (4) The personal representative, before the expiration of the three years, may register a certificate in Form 2 withdrawing the caution in respect of the real property described in the certificate, and, upon registration of the certificate, the real property described therein shall be treated as if the caution had expired.

Verification (5) The certificate of withdrawal shall be verified by an affidavit of a subscribing witness in Form 3.

Renewal of caution (6) Before a caution expires it may be reregistered and so on from time to time as long as the personal representative considers it necessary, and every caution continues in force for three years from the time of its registration or reregistration. R.S.O. 1970, c. 129, s. 14.

Ordinary rights of executors, etc., preserved **10.** Nothing in section 9 derogates from any right possessed by an executor or administrator with the will annexed under a will or under the *Trustee Act* or from any right possessed by a trustee under a will. R.S.O. 1970, c. 129, s. 15.

R.S.O. 1980,
c. 512

Registration of caution after three years from death of testator **11.—**(1) Where a personal representative has not registered a caution within the proper time after the death of the deceased or has not reregistered a caution within the proper time, he may register or reregister the caution, as the case may be, provided he registers therewith,

- (a) the affidavit of execution ; and
- (b) a further affidavit stating that he finds or believes that it is or may be necessary for him to sell the real property of the deceased, mentioned in the caution or part thereof, under his powers and in fulfilment of his duties, and, as far as they are known to him, the names of all persons beneficially interested in the real property, and whether any, and, if so, which of them, are minors or mentally incompetent persons ; and
- (c) the consent in writing of every adult and of the Official Guardian on behalf of every infant and mentally incompetent person whose property or interest would be affected, and an affidavit verifying such consent ; or
- (d) in the absence and in lieu of such consent, an order of a judge of the Supreme Court or of the county or district court of the county or district in which the property or a part of it is situate, or the certificate of the Official Guardian authorizing the caution to be registered or reregistered, which order or certificate the judge or Official Guardian may make with or without notice on such evidence as satisfies him of the propriety of permitting the caution to be registered or reregistered, and the order or certificate to be registered does not require verification and shall not be rendered null by any defect of form or otherwise.

(2) This section extends to cases where a grant of probate of the will or of administration to the estate of the deceased may not have been made within the period after the death of the testator or intestate within which a caution is required to be registered. Application
of section

(3) Where a caution is registered or reregistered under this section, it has the same effect as a caution registered within the proper time after the death of the deceased and of vesting or revesting, as the case may be, the real property of the deceased in his personal representative, save as to persons who in the meantime have acquired rights for valuable consideration from or through a person beneficially entitled, and save also and subject to any equities of any non-consenting person beneficially entitled, or of a person claiming under him, for improvements made after the time within which the personal representative might, without any consent, order or certificate, have registered or reregistered a caution, if his real property is afterwards sold by the personal representative. Effect of
such regis-
tration

Signature to caution

(4) Where there are two or more personal representatives, it is sufficient if a caution or the affidavit mentioned in clause (1) (b) is signed or made by one of such personal representatives. R.S.O. 1970, c. 129, s. 16.

Effect of repealing enactment

12. Where a caution has been registered or reregistered under any enactment repealed and not re-enacted by this Act and is still in force, such caution has the same effect as if such enactment had not been repealed and may be registered in the manner provided by section 9. R.S.O. 1970, c. 129, s. 17.

Vacating caution

13. Any person beneficially entitled to any real property affected by the registration or reregistration of a caution may apply to a judge to vacate the registration or reregistration, and the judge, if satisfied that the vesting of any such real property in such person or of any property of the deceased in any other of the persons beneficially entitled ought not to be delayed, may order that the registration or reregistration be vacated as to such property, and every caution, the registration or reregistration of which is so vacated, thereafter ceases to operate. R.S.O. 1970, c. 129, s. 18.

Land in two or more persons

14. Where real property becomes vested under this Act in two or more persons beneficially entitled under this Act, they take as tenants in common in proportion to their respective rights, unless in the case of a devise they take otherwise under the will of the deceased. R.S.O. 1970, c. 129, s. 19.

Sales where minors interested

15.—(1) Where a minor is interested in real property that but for this Act would not devolve on the personal representative, no sale or conveyance is valid under this Act without the written approval of the Official Guardian; or, in the absence of such consent or approval, without an order of a judge.

Local guardians

(2) A judge may appoint the local judge of a county or district or the local master therein as local guardian of minors in such county or district during the pleasure of the judge, with authority to give such written approval instead of the Official Guardian, and the Official Guardian and local guardian are subject to such rules as the court may make in regard to their authority and duties under this Act. R.S.O. 1970, c. 129, s. 20.

Power of personal representative over real property

16. Except as otherwise provided in this Act, the personal representative of a deceased person has power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but

subject to the like rights, equities and obligations, as if the real property were personal property vested in him. R.S.O. 1970, c. 129, s. 21.

17.—(1) The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case is it necessary that the persons beneficially entitled concur in any such sale except where it is made for the purpose of distribution only.

Powers of executors and administrators as to selling and conveying real estate

(2) Except with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein, including the Official Guardian acting on behalf of a minor or mentally incompetent person, no sale of any such real property made for the purpose of distribution only is valid as respects any person beneficially entitled thereto unless he concurs therein, but, where a mentally incompetent person is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of the Official Guardian it would be inconvenient to require the concurrence of such persons, the Official Guardian may, upon proof satisfactory to him that the sale is in the interest and to the advantage of the estate of the deceased person and the persons beneficially interested therein, approve the sale on behalf of such mentally incompetent person and non-concurring persons, and any such sale made with the written approval of the Official Guardian is valid and binding upon such mentally incompetent person and non-concurring persons, and for this purpose the Official Guardian has the same powers and duties as he has in the case of minors, but in any case a judge may dispense with the concurrence of the persons beneficially entitled or any or either of them.

Concurrence of heirs and devisees

(3) The personal representative has power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of minors or mentally incompetent persons, if any, so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein.

Powers of personal representative as to dividing estate among persons entitled

(4) Where a person beneficially entitled is a patient in a psychiatric facility under the *Mental Health Act* and the Public Trustee is committee of his estate, the concurrence and

Concurrence where person is a patient in a psychiatric facility
R.S.O. 1980, c. 262

approval required by subsections (2) and (3) may be given by the Public Trustee on behalf of such patient.

Distribution
by order
within
three years
from death

(5) Upon the application of the personal representative or of any person beneficially entitled, the court may, before the expiration of three years from the death of the deceased, direct the personal representative to divide or distribute the estate or any part thereof to or among the persons beneficially entitled according to their respective rights and interests therein.

Exercise of
power of
division
without
concur-
rence

(6) The power of division conferred by subsection (3) may also be exercised, although all the persons beneficially interested do not concur, with the written approval of the Official Guardian, which may be given under the same conditions and with the like effect as in the case of a sale under subsection (2).

Sections 16
and 17
not to
apply to ad-
ministrators
of personal
estate only

(7) Section 16 and this section do not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and do not derogate from any right possessed by a personal representative independent of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will except with the approval of a judge.

Conveyance
by personal
representa-
tive without
an order

(8) The powers of a personal representative under subsection (2), (3) or (6) have heretofore been and shall hereafter be exercisable during the period of three years from the death of the deceased without an order of a judge, provided that,

- (a) real property conveyed, divided or distributed by virtue of such powers to or among the persons beneficially entitled thereto, shall be deemed to have been and to be liable for the payment of the debts of the deceased owner as if no conveyance, division or distribution had been made, even though it has subsequently during such three-year period been conveyed to a purchaser or purchasers in good faith and for value, but, in the case of such purchaser or purchasers, such liability shall only continue after the expiry of such three-year period if some action or legal proceeding has been instituted by the creditor, his assignee or successor to enforce the claim and a *lis pendens* or a caution has, before such expiry, been registered against the property; and that
- (b) although such liability has applied and shall apply as aforesaid in respect of real property so con-

veyed, divided or distributed, any such purchaser, in good faith and for value, shall be deemed to have had and to have a right to relief over against the persons beneficially entitled, and where such conveyance, division or distribution was made by the personal representative with knowledge of the debt in respect of which claim is made, or without due advertisement for creditors, then against such personal representative; and that

- (c) upon the expiration of such three-year period where no *lis pendens* or caution has been registered, subsection 20 (2) and section 22 apply as if such real property had become vested in the person beneficially entitled thereto under section 9. R.S.O. 1970, c. 129, s. 22.

18. The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative that has been made without the written approval of the Official Guardian, where such approval is required, is a confirmation of the sale as to him. R.S.O. 1970, c. 129, s. 23.

Effect of accepting share of purchase money

19. A person purchasing in good faith and for value real property from a personal representative in a manner authorized by this Act is entitled to hold it freed and discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and is not bound to see to the application of the purchase money. R.S.O. 1970, c. 129, s. 24.

Protection of purchasers from personal representatives

20.—(1) A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of a judge, is entitled to hold it freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, but nothing in this section affects the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative.

Protection of purchasers from beneficiary

(2) Real property that becomes vested in a person beneficially entitled thereto under section 9 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 faith and for valuable consideration, as it would have been if it had remained

Extent to which real property remains liable to debts and personal liability of beneficiary

vested in the personal representative, and in the event of a sale thereof in good faith and for value by such person beneficially entitled he is personally liable for such debts to the extent of the proceeds of such real property. R.S.O. 1970, c. 129, s. 25.

Powers of personal representative as to leasing and mortgaging

21.—(1) The powers of a personal representative under this Act include,

- (a) power to lease from year to year while the real property remains vested in him;
- (b) power, with the approval of the majority of the persons beneficially entitled thereto representing together not less than one-half of all the interests therein including the Official Guardian acting on behalf of a minor or mentally incompetent person, to lease for a longer term;
- (c) power to mortgage for the payment of debts.

Approval of Official Guardian

(2) The written approval of the Official Guardian to mortgaging is required where it would be required if the real property were being sold. R.S.O. 1970, c. 129, s. 26.

Rights of purchaser in good faith against claims of creditors

22.—(1) A purchaser in good faith and for value of real property of a deceased owner that has become vested under section 9 in a person beneficially entitled thereto is entitled to hold it freed and discharged from the claims of creditors of the deceased owner except such of them of which he had notice at the time of his purchase.

Liability of personal representative

(2) Nothing in subsection (1) affects the right of the creditor against the personal representative personally where he has permitted the real property to become vested in the person beneficially entitled to the prejudice of the creditor or against the person beneficially entitled. R.S.O. 1970, c. 129, s. 27.

Search for children born outside marriage

23.—(1) A personal representative shall make reasonable inquiries for persons who may be entitled by virtue of a relationship traced through a birth outside marriage.

Liability of personal representative

(2) A personal representative is not liable for failing to distribute property to a person who is entitled by virtue of a relationship traced through a birth outside marriage where,

- (a) he makes the inquiries referred to in subsection (1) and the entitlement of the person entitled was not

known to the personal representative at the time of the distribution; and

- (b) he makes such search of the records of the Registrar General relating to parentage as is available for the existence of persons who are entitled by virtue of a relationship traced through a birth outside marriage and the search fails to disclose the existence of such a person.

(3) Nothing in this section prejudices the right of any person to follow the property, or any property representing it, into the hands of any person other than a purchaser in good faith and for value, except that where there is no presumption or court finding of the parentage of a person born outside marriage until after the death of the deceased, a person entitled by virtue of a relationship traced through the birth is entitled to follow only property that is distributed after the personal representative has actual notice of an application to establish the parentage or of the facts giving rise to a presumption of parentage. 1977, c. 40, s. 50 (2). Saving rights

24.—(1) If a child of an intestate has been advanced by the intestate by settlement or portion of real or personal property or both, and the same has been so expressed by the intestate in writing or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal property of the intestate to be distributed under this Act, and if the advancement is equal to or greater than the amount of the share that the child would be entitled to receive of the real and personal property of the intestate, as so reckoned, then the child and his descendants shall be excluded from any share in the real and personal property of the intestate. Cases of children advanced by settlement, etc.

(2) If the advancement is less than the share, the child and his descendants are entitled to so much only of the real and personal property as is sufficient to make all the shares of the children in the real and personal property and advancement to be equal, as nearly as can be estimated. If advancement is not equal

(3) The value of any real or personal property so advanced shall be deemed to be that, if any, which has been acknowledged by the child by an instrument in writing, otherwise the value shall be estimated according to the value of the property when given. Value of property advanced, how estimated

(4) The maintaining or educating of, or the giving of money to, a child without a view to a portion or settle- Education, etc., not advancement

ment in life shall not be deemed an advancement within the meaning of this Act. R.S.O. 1970, c. 129, s. 29.

Distribution
not to be
made for
one year
R.S.O. 1980,
c. 512

25. Subject to section 53 of the *Trustee Act*, no such distribution shall be made until after one year from the death of the intestate, and every person to whom in distribution a share is allotted shall, if any debt owing by the intestate is afterwards sued for and recovered or otherwise duly made to appear, refund and pay back to the personal representative his rateable part of that debt and of the costs of suit and charges of the personal representative by reason of such debt out of the part or share so allotted to him, thereby to enable the personal representative to pay and satisfy such debt, and shall give bond with sufficient sureties that he will do so. R.S.O. 1970, c. 129, s. 33.

Rules of
procedure

26. Rules regulating the practice and procedure to be followed in all proceedings under this Act and a tariff of fees to be allowed and paid to solicitors for services rendered in such proceedings may be made by the Rules Committee, subject to the approval of the Lieutenant Governor in Council. R.S.O. 1970, c. 129, s. 34.

Appointment
of deputy
Official
Guardian
pro tem

27. The Lieutenant Governor in Council may appoint a deputy *pro tempore* of the Official Guardian for the purposes of this Act who shall have all the powers of the Official Guardian for such purposes. R.S.O. 1970, c. 129, s. 35.

Affidavits

28. Affidavits may be used in proceedings taken under this Act. R.S.O. 1970, c. 129, s. 36.

FORM 1

Estates Administration Act

(Section 9 (1))

CAUTION

I,, executor of (or administrator with the will annexed of, or administrator of), who died on or about the.....day of....., 19....., certify that it may be necessary for me under my powers and in fulfilment of my duty as executor (or administrator) to sell the real property of the said.....as hereinafter described, or part thereof, and of this all persons concerned are hereby required to take notice.

The real property to be affected by this caution is described as follows: (*Describe the real property in a manner sufficient for registration under the Land Titles Act or the Registry Act, as the case may be.*)

R.S.O. 1970, c. 129, Form 1.

FORM 2

Estates Administration Act

(Section 9 (4))

CERTIFICATE OF WITHDRAWAL

I,, executor (or administrator) of, hereby withdraw the caution heretofore registered with respect to the real property hereinafter described: (*Describe the real property in a manner sufficient for registration under the Land Titles Act or the Registry Act, as the case may be.*)

R.S.O. 1970, c. 129, Form 2.

FORM 3

Estates Administration Act

(Section 9 (5))

AFFIDAVIT OF WITNESS

I,, of, etc., make oath and say: that I am well acquainted withnamed in the above certificate; that I was present and did see the said certificate signed by the said.....; that I am a subscribing witness to the said certificate, and that I believe the said..... is the person who registered the caution referred to in the said certificate.

Sworn, etc.

R.S.O. 1970, c. 129, Form 3.

