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c 113 Estates Tail Act

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CHAPTER 113.

An Act respecting the Assurance of Estates Tail.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as The Estates Tail Act. 10 Edw. VII. c. 52, s. 1.

2.—(1) In this Act,

(a) "Actual tenant in tail" shall mean exclusively the tenant of an estate tail which has not been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned into a right;

(b) "Base fee" shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred;

(c) "Estate" shall include an estate in equity as well as at law and any interest, charge, lien or incumbrance in, upon or affecting land, whether corporeal or incorporeal, and any undivided share thereof;

(d) "Estate tail" shall include a base fee into which an estate tail has been converted;

(e) "Land" shall include messuages, lands, tenements, rents and hereditaments of any tenure and whether corporeal or incorporeal, and any undivided share thereof;

(f) "Money subject to be invested in the purchase of land" shall include money, whether raised or to be raised, and whether the amount thereof is or is not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of land and the land to be purchased with such money or produce shall include land of any tenure outside of Ontario, where such land is within the scope
or meaning of the trust or power directing or authorizing the purchase;

(g) "Tenant in tail" shall include a person who, where an estate tail has been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred;

(h) "Tenant in tail entitled to a base fee" shall mean "Tenant in tail entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail.

(2) Every assurance already made or hereafter to be made, whether by deed, will, Act of this Legislature or otherwise, by which land heretofore has been or may hereafter be entailed, or agreed or directed to be entailed, shall be deemed a settlement.

(3) Every appointment made in exercise of any power contained in a settlement, or of any other power arising out of the power contained in a settlement, shall be considered as a part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement.

(4) Where such settlement is made by will the time of the death of the testator shall be considered the time when such settlement was made. 10 Edw. VII. c. 52, s. 2.

3. All warranties of land made or entered into by a tenant in tail thereof shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail. 10 Edw. VII. c. 52, s. 3.

4. Every actual tenant in tail, whether in possession, remainder, contingency or otherwise, may dispose of, for an estate in fee simple absolute, or for any less estate, the land entailed as against all persons, claiming the land entailed by force of any estate tail vested in or which might be claimed by or which, but for some previous act, would have been vested in, or might have been claimed by the person making the disposition at the time of his making the same, and also as against all persons, including His Majesty, whose estates are to take effect after the determination, or in defeasance of such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition is made, and the rights of all other persons except those against whom such disposition is, by this Act, authorized to be made. 10 Edw. VII. c. 52, s. 4.
5. The power of disposition hereinbefore contained shall not extend to tenants of estates tail who, by any Act, are restrained from barring their estates tail or to tenants in tail after possibility of issue extinct. 10 Edw. VII. c. 52, s. 5.

6. Where an estate tail has been barred and converted into a base fee the person who, if such estate tail had not been barred, would have been actual tenant in tail of land may dispose of such land as against all persons, including His Majesty, whose estates are to take effect after the determination, or in defeasance of the base fee into which the estate tail has been converted, so as to enlarge the base fee into a fee simple absolute, saving always the right of all persons, in respect of estates prior to the estate tail which has been converted into a base fee, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made. 10 Edw. VII. c. 52, s. 6.

7. Nothing in this Act shall enable any person to dispose of any land entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein. 10 Edw. VII. c. 52, s. 7

8. If a tenant in tail makes a disposition of the land under this Act, by way of mortgage, or for any other limited purpose, such disposition shall, to the extent of the estate thereby created, be an absolute bar to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected; but if the estate created by such disposition is only an estate pur autre vie, or for years absolute or determinable, or if, by a disposition under this Act by a tenant in tail, an interest, charge, lien or incumbrance is created without a term of years absolute or determinable, or any greater estate for securing or raising the same, then such disposition shall be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interests, lien, charge or incumbrance, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition is effected. 10 Edw. VII. c. 52, s. 8.

9. If at the time there is a tenant in tail of land under a settlement, and there is subsisting in the same land, or any part of it, under the same settlement, an estate for years, determinable on the dropping of a life or lives, or any greater estate, not being an estate for years, prior to the estate tail, then the person who is the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or who would have been the
owner if no absolute disposition thereof had been made, the
first of such prior estates, if more than one, being all for
the purposes of this Act deemed the prior estate, shall be
the protector of the settlement so far as regards the land in
which such prior estate is subsisting, and shall, for all the
purposes of this Act, be deemed the owner of such prior
estate although the same may have been charged or incum­
bered either by the owner thereof or by the settlor or other­
wise howsoever, and although the whole of the rents and
profits are exhausted, or are required for the payment of the
charges and incumbrances on such prior estate, and although
such prior estate may have been absolutely disposed of by
the owner thereof, or by or in consequence of the bankruptcy
or insolvency of such owner, or by any other act or default of
such owner; and an estate by the curtesy in respect of the
estate tail, or of any prior estate created by the same settle­
ment, shall be deemed a prior estate under the same settle­
ment within the meaning of this section; and an estate by
resulting use or trust to or for the settlor shall be deemed
an estate under the same settlement within the meaning of
this section. 10 Edw. VII. c. 52, s. 9.

10. Where two or more persons are owners, under a settle­
ment within the meaning of this Act, of a prior estate the
sole owner of which estate, if there had been only one, would,
in respect thereof, have been the protector of such settlement,
each of such persons, in respect of such undivided share as
he could dispose of, shall, for all the purposes of this Act,
be deemed the owner of a prior estate, and shall in exclusion
of the other or others of them be the sole protector of such
settlement to the extent of such undivided share. 10 Edw.
VII. c. 52, s. 10.

11. Where a married woman would, if single, be the pro­
tector of a settlement in respect of a prior estate which is
not thereby settled or agreed, or directed to be settled to her
separate use, she and her husband together shall, in respect
of such estate, be the protector of such settlement and shall
be deemed one owner; but if such prior estate has by such
settlement been settled or agreed, or directed to be settled
to her separate use, or is, by The Married Women’s Property
Act, her separate estate, she alone in respect of such estate
shall be the protector of such settlement. 10 Edw. VII.
c. 52, s. 11.

12. Except in the case of a lease hereinafter provided for, As to estates
where an estate is limited by a settlement, by way of con­
firmation, or where the settlement merely has the effect of
restoring an estate, such estate shall, for the purpose of this
Act, so far as regards the protector of the settlement be
deemed an estate subsisting under such settlement. 10 Edw.
VII. c. 52, s. 12.
Chap. 113. ASSURANCES OF ESTATES TAIL. Sec. 13.

13. Where a lease at a rent is created or confirmed by a settlement, the person in whose favour such lease is created or confirmed shall not, in respect thereof, be the protector of such settlement. 10 Edw. VII. c. 52, s. 13.

14. No woman in respect of her dower, and no bare trustee, heir, executor, administrator or assign, in respect of any estate taken by him as such shall be the protector of a settlement. 10 Edw. VII. c. 52, s. 14.

15. Where under a settlement there is more than one estate prior to an estate tail, and the person who is the owner, within the meaning of this Act, of such prior estate in respect of which, but for the last preceding two sections or one of them, he would have been the protector of the settlement, is by virtue of such sections, or either of them, excluded from being the protector, then the person, if any, who, if such estate did not exist, would be the protector of the settlement shall be such protector. 10 Edw. VII. c. 52, s. 15.

For protectors in cases of dispositions before July, 1846, and of settlements before January, 1834, see R.S.O. 1897, c. 122, ss. 17-19, not consolidated.

16. Any settlor entailing land may appoint, by the settlement by which the land is entailed, any number of persons in esse, not exceeding three, to be protector of the settlement in lieu of the person who would have been the protector if this section had not been enacted, and either for the whole or any part of the period for which such person might have continued protector; and, by means of a power to be inserted in such settlement, to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons in esse whom the donee of the power thinks proper, by deed, to appoint protector of the settlement in the place of any one person, or number of persons, who may die, or, by deed, relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person; but the number of the persons to compose the protector by virtue or means of any such appointment shall never exceed three. 10 Edw. VII. c. 52, s. 16.

17.—(1) Every deed by which a protector is appointed under a power in a settlement, and every deed by which a protector relinquishes his office shall be void unless registered in the registry office of the registry division wherein the land referred to lies, within six months after the execution thereof.
Sec. 19. ASSURANCES OF ESTATES TAIL. Chap. 113.

(2) The person who, but for the next preceding section, would have been sole protector of the settlement may be one of the persons to be appointed protector under that section, if the settlor thinks fit, and shall, unless otherwise directed by the settlor, act as sole protector, if the other persons constituting the protector have ceased to be so by death or relinquishment of the office by deed, and no other person has been appointed in their place. 10 Edw. VII. c. 52, s. 17.

18.—(1) If any person, protector of a settlement,

(a) Is a lunatic, idiot, or of unsound mind, whether he has or has not been so found; or

(b) Is convicted of treason or felony; or

(c) Not being the owner of a prior estate under a settlement is an infant; or,

(d) If it is uncertain whether he is living or dead,

the Supreme Court shall be the protector of the settlement in lieu of such person.

(2) If any settlor entailing land declares, in the settlement by which the land is entailed, that the person who, as owner of a prior estate under such settlement, would be entitled to be protector of the settlement shall not be the protector, and does not appoint any person to be protector in his stead, the Supreme Court shall, as to the land in which the prior estate is subsisting, be the protector of the settlement during the continuance of such estate.

(3) If in any other case there is subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate is sufficient to qualify the owner thereof to be protector of the settlement, and there happens at any time to be no protector of the settlement as to the land in which the prior estate is subsisting, the Supreme Court shall, while there is no such protector and the prior estate is subsisting, be the protector of the settlement as to such land.

19. If at the time when any person, actual tenant in tail of land under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, is desirous of making, under this Act, a disposition of the land entailed, there is a protector of such settlement, then the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the land entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the land entailed, which shall be good against all persons
who, by force of any estate tail vested in or which might be claimed by, or which, but for some previous act or default, would have been vested in or might have been claimed by the person making the disposition at the time of his making the same, may claim the land entailed. 10 Edw. VII c. 52, s. 19.

20. Where an estate tail has been converted into a base fee, so long as there is a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the land in respect of which there is such protector, the power of disposition hereinbefore contained. 10 Edw. VII, c. 52, s. 20.

21. Any advice, shift, or contrivance by which it is attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and no Court shall control or interfere to restrain the exercise of his power of consent or treat his giving consent as a breach of trust. 10 Edw. VII, c. 52, s. 21.

22. The rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised shall not apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act. 10 Edw. VII, c. 52, s. 22.

23.—(1) Where a tenant in tail of land under a settlement has created in such land, or any part thereof, a voidable estate in favour of a purchaser for valuable consideration and afterwards, by an assurance other than a lease not requiring registration under section 26, makes a disposition, under this Act, of the land in which such voidable estate has been created, or any part thereof, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector of the settlement, or by the tenant in tail alone, if there be no such protector, have the effect of confirming such voidable estate in the land thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act.

(2) If, at the time of making such disposition, there is a protector of the settlement, and such protector does not
consent to the disposition, and the tenant in tail is not without such consent capable under this Act of confirming the voidable estate to its full extent, then such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this Act of confirming the same without such consent.

(3) If such disposition is made to a purchaser for valuable consideration, not having express notice of the voidable estate, the voidable estate shall not be confirmed as against such purchaser and the person claiming under him. 10 Edw. VII. c. 52, s. 23.

24. If a base fee in any land and the remainder or reversion in fee in the same land are united in the same person, and there is no intermediate estate between the base fee and the remainder or reversion, the base fee shall not merge, but shall be ipso facto enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this Act, if such remainder or reversion had been vested in any other person. 10 Edw. VII. c. 52, s. 24.

25.—(1) Every disposition of land under this Act by a tenant in tail thereof shall be effected by some one of the methods whereby such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute, and no disposition by a tenant in tail shall be of any force, under this Act, unless made or evidenced by deed.

(2) No disposition by a tenant in tail resting only in contract, either expressed or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force, under this Act, notwithstanding such disposition is made or evidenced by deed. 10 Edw. VII. c. 52, s. 25.

26. No assurance by which any disposition of land is effected under this Act by a tenant in tail thereof, except a lease for any term not exceeding 21 years, to commence from or within twelve months from the date of such lease when such a lease is at rack-rent or not less than five-sixth parts of rack-rent, and except a lease made under the powers conferred by section 33 of The Settled Estates Act, shall have any operation under this Act unless it is registered in the registry office of the registry division wherein the land referred to lies within six months after the execution thereof. 10 Edw. VII. c. 52, s. 26; 1 Geo. V. c. 17, s. 40.

27.—(1) The consent of a protector of a settlement when the disposition under this Act of a tenant in tail shall be given either by the same assurance by which the disposition be given.
is effected or by a deed distinct from the assurance, and executed either on or at any time before the day on which the assurance is made, otherwise the consent shall be void.

(2) If the protector of a settlement gives his consent to the disposition of a tenant in tail by a distinct deed it shall be considered that such protector has given an absolute and unqualified consent, unless, in such deed, he refers to the particular assurance by which the disposition is effected, and confines his consent to the disposition thereby made.

(3) The protector of a settlement who, under this Act, has given his consent to the disposition of a tenant in tail shall not revoke such consent.

(4) A married woman being, either alone or jointly with her husband, protector of a settlement may, under this Act, in the same manner as if she were a feme sole, give her consent to the disposition of a tenant in tail.

(5) The consent of the protector of a settlement to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition is effected, be void unless such deed is registered in the registry office of the registry division wherein the land referred to lies, either at or before the time of the registration of the assurance.

10 Edw. VII. c. 52, s. 27.

28.—(1) In the case of a disposition of land under this Act by the tenant in tail thereof, and in the case of a consent by the protector of a settlement to such a disposition, the equitable jurisdiction of the Courts in regard to the specific performance of contracts and the supplying of defects in the execution of the powers of disposition given by this Act to tenants in tail, or the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement, which before the passing of The Administration of Justice Act of 1873 would not, in a Court of Law, be an effectual disposition or consent; within the meaning of this Act shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration or otherwise.

(2) No disposition of land under this Act by a tenant in tail thereof in equity, and no consent by a protector of a settlement to such a disposition, shall be of any force unless such disposition or consent would have been, in case of an estate tail at law, before The Administration of Justice Act of 1873, an effectual disposition or consent within the meaning of this Act in a Court of Law. 10 Edw. VII. c. 52, s. 28.
29. Where the Supreme Court is the protector of a settlement such Court, while protector of the settlement, shall, on motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition under this Act by such tenant in tail; and the disposition to be made by such tenant in tail upon such motion or petition shall be such as may be approved of by the Court, and the Court may make such orders in the matter as may be thought necessary; and if the Court, in lieu of any person is protector of a settlement, and there is another person protector of the same settlement jointly with such first mentioned person, the disposition by the tenant in tail, though approved of by the Court, shall not be valid unless such other person, being protector, consents thereto in the manner in which the consent of the protector is, by this Act, required to be given. 10 Edw. VII. c. 52, s. 29.

30. Where the Supreme Court is the protector of a settlement no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition is made. 10 Edw. VII. c. 52, s. 30.

31. Land to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof is subject to be invested in the purchase of land to be settled so that any person, if the land were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of land to be settled so that any person, if the land were purchased, would have an estate tail therein, shall, for all the purposes of this Act, be treated as the land to be purchased, and be considered subject to the same estates as the land to be purchased would, if purchased, have been actually subject to; and all the previous sections in this Act, so far as circumstances will admit, shall, in the case of the land to be so sold, apply to such land in the same manner as if the land to be purchased with the money to arise from the sale were directed to be freehold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of land to be so settled, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold land, and such land were actually purchased and settled; except that, where under this section a disposition is to be made of leasehold land for years absolute or determinable, so circumstanced, or of money so circumstanced, such leasehold land or money shall, as to the person in whose favour or for whose benefit the disposition is made, be treated as personal estate, and the assurance by which the disposition of such leasehold land or money is effected shall be an assignment by deed which shall have no operation under this Act unless registered in the registry office of the registry division in which the land therein referred to lies within six months after the execution thereof. 10 Edw. VII. c. 52, s. 31.