

IC 29-1-15

Chapter 15. Sales, Mortgages, Leases, Exchanges—Personal and Real Property

IC 29-1-15-1

Priorities; wills; orders of court

Sec. 1. In determining what property of the estate shall be sold, mortgaged, leased or exchanged for any purpose provided in section 3 of this chapter, there shall be no priority as between real and personal property, except as provided by the will, if any, or by order of the court or by the provisions of IC 29-1-17-3.

(Formerly: Acts 1953, c.112, s.1501.) As amended by Acts 1982, P.L.171, SEC.41.

IC 29-1-15-2

Powers under will; optional procedure

Sec. 2. When the personal representative, under the terms of any will, is given the power to sell, mortgage, lease or exchange property of the estate or is given any other power with respect to the administration of the estate, he may proceed in accordance with such power without order of the court or he may proceed under the provisions of this article, as he may determine.

(Formerly: Acts 1953, c.112, s.1502.) As amended by Acts 1982, P.L.171, SEC.42.

IC 29-1-15-3

Payment of claims, expenses, and taxes; distribution of estate

Sec. 3. Any real or personal property belonging to an estate may be sold, mortgaged, leased or exchanged under court order when necessary for any of the following purposes:

- (a) for the payment of claims allowed against the estate;
- (b) For the payment of any allowances made under IC 29-1-4-1;
- (c) For the payment of any legacy given by the will of the decedent;
- (d) For the payment of expenses of administration;
- (e) For the payment of any gift, estate, inheritance or transfer taxes assessed upon the transfer of the estate or due from the decedent or his estate;
- (f) For making distribution of the estate or any part thereof;
- (g) For any other purpose in the best interests of the estate.

(Formerly: Acts 1953, c.112, s.1503; Acts 1973, P.L.287, SEC.8.) As amended by Acts 1979, P.L.268, SEC.6.

IC 29-1-15-4

Order not granted; bond given by interested person

Sec. 4. An order authorizing a personal representative to sell, mortgage or lease real or personal property for the payment of obligations of the estate shall not be granted if any of the persons interested in the estate shall execute and file in the court a bond in such sum and with such sureties as the court may approve,

conditioned to pay all obligations of the estate to the extent that the other property of the estate is insufficient therefor, within such time as the court shall direct. An action may be maintained on such bond by the personal representative on behalf of any person interested in the estate who is prejudiced by breach of any obligation of the bond. (Formerly: Acts 1953, c.112, s.1504.)

IC 29-1-15-5

Credit sales

Sec. 5. In all sales of real or personal property, the court may authorize credit to be given by the personal representative for a term and for an amount of the purchase price each in the discretion of the court, the payment of which shall be secured by notes or bonds with approved sureties or by a purchase money mortgage. If credit is authorized, the order shall specify the time of payment, the minimum rate of interest on deferred payments and the manner in which such payments shall be secured. If the estate is solvent, credit may be extended by the personal representative for a time longer than one (1) year with the written consent of the distributees affected thereby.

(Formerly: Acts 1953, c.112, s.1505; Acts 1971, P.L.410, SEC.1.)

IC 29-1-15-6

Purchasers, mortgagees, pledgees, or lienors; allowance of claims

Sec. 6. At any sale of real or personal property upon which there is a mortgage, pledge or other lien, the holder thereof may become the purchaser and may apply the amount of his lien on the purchase price in the following manner. If no claim thereon has been filed or allowed, the court, at the hearing on the report of sale and for confirmation of the sale, may examine into the validity and enforceability of the lien or charge and the amount due thereunder and secured thereby and may authorize the personal representative to accept the receipt of such purchaser for the amount due thereunder and secured thereby as payment pro tanto. If such mortgage, pledge or other lien is a valid claim against the estate and has been allowed, the receipt of the purchaser for the amount due him from the proceeds of the sale is a payment pro tanto. If the amount for which the property is purchased, whether or not such claim was filed or allowed, is insufficient to defray the expenses and discharge his mortgage, pledge or other lien, the purchaser must pay an amount sufficient to pay the balance of such expenses and the amount credited to the payment of his claim shall be reduced accordingly. Nothing permitted under the terms of this section shall be deemed to be an allowance of a claim based upon such mortgage, pledge or other lien.

(Formerly: Acts 1953, c.112, s.1506.)

IC 29-1-15-7

Collateral attack; irregularity in proceedings

Sec. 7. No proceedings for sale, mortgage, lease, exchange or

conveyance by a personal representative of property belonging to the estate shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the same had jurisdiction of the estate.

(Formerly: Acts 1953, c.112, s.1507.)

IC 29-1-15-8

Petition; stock; bonds; securities

Sec. 8. A personal representative may sell, mortgage or lease any personal property belonging to the estate upon filing a petition setting forth the reasons therefor and describing the property involved. The petition shall be heard without notice unless the court shall otherwise direct. After hearing the petition, the court may order the sale, mortgage or lease of the property described or any part thereof, at either public or private offering and upon such terms and conditions as the court may deem best for the interests of the estate. Where any part of the personal property consists of the corporate stocks, bonds or other securities of any corporation, public or private, which are listed or admitted to trading on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Coast Stock Exchange, or any other recognized stock exchange, or of securities which are obligations of the government of the United States, any of such securities may be sold for cash at the market price thereof at the time of sale whether such price be more or less than the appraised or inventoried value of such securities, and without notice and without any requirement for the reappraisalment of such securities.

(Formerly: Acts 1953, c.112, s.1508; Acts 1961, c.50, s.1.)

IC 29-1-15-9

Perishable properties; family allowance; title to property; approval

Sec. 9. Perishable property and other personal property which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept, and so much other other personal property as may be necessary to provide allowance to the surviving spouse and children pending the receipt of other sufficient funds, may be sold without notice, and title shall pass without prior authorization; but the personal representative shall be responsible for the actual value of the property unless, after making a report of such sale, and on a proper showing, the court shall approve the sale.

(Formerly: Acts 1953, c.112, s.1509.)

IC 29-1-15-10

Unit sales, mortgages, or leases

Sec. 10. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged or leased as a unit, but the provisions of this article with respect to the sale, mortgage or lease of real property shall apply so far as may be.

(Formerly: Acts 1953, c.112, s.1510.) As amended by Acts 1982, P.L.171, SEC.43.

IC 29-1-15-11

Petition; sale, mortgage, or lease of real property; order of court

Sec. 11. A personal representative may file a petition to sell, mortgage or lease any real property belonging to the estate. The petition shall set forth the reasons for the application and describe the property involved. He may apply for different authority as to separate parts of the property; or he may apply in the alternative for authority to sell, mortgage or lease. Upon the filing of the petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing, unless waived, shall be given to all heirs and lienholders, except holders of liens created by said heirs, whose liens are to be extinguished or transferred to the proceeds of said sale in case of intestacy and to all devisees and lienholders, except holders of liens created by said devisees, whose liens are to be extinguished or transferred to the proceeds of said sale in case of testacy, and the notice shall state briefly the nature of the application and shall be given as provided IC 1971, 29-1-1-12. However, as to any real property valued at not more than one thousand dollars (\$1,000.00) exclusive of any liens the court may, in its discretion, hear and act upon the petition without notice to heirs or devisees. At the hearing and upon satisfactory proofs, the court may order the sale, mortgage or lease of the property described or any part thereof. When a claim secured by a mortgage on real property is, under the provisions of this probate code, payable at the time of distribution of the estate or prior thereto, the court with the consent of the mortgagee may, nevertheless, order the sale of the real property subject to the mortgage, but such consent shall release the estate should a deficiency later appear.

(Formerly: Acts 1953, c.112, s.1511; Acts 1955, c.258, s.6; Acts 1961, c.15, s.1; Acts 1975, P.L.288, SEC.29.)

IC 29-1-15-12

Conflicting titles; process and notice

Sec. 12. Upon any petition to sell or mortgage real property the court shall have power to investigate and determine all questions of conflicting and controverted title, remove clouds from any title or interest involved, and invest purchasers or mortgagees with a good and indefeasible title to the property sold or mortgaged. When the petition to sell or mortgage seeks such relief notice shall be given as in civil actions of like nature and the court is authorized to issue appropriate process and notices in order to obtain jurisdiction to so proceed against adverse parties.

(Formerly: Acts 1953, c.112, s.1512.)

IC 29-1-15-13

Court order; description of property; sequence of parcels; private sale, public auction; terms

Sec. 13. The order shall describe the property to be sold, mortgaged or leased and may designate the sequence in which the several parcels shall be sold, mortgaged or leased. An order for sale

shall direct whether the property shall be sold at private sale or public auction, and, if the latter, the place or places of sale. If real property is to be sold at private sale it shall direct that the same shall not be sold for less than the fair market value, or if at public sale for not less than two-thirds (2/3) of the fair market value; or if real property is to be leased, it shall direct that the same shall not be leased for less than the fair market rental value. An order of sale shall direct whether the sale shall be for cash or for cash and deferred payments, and the terms on which such deferred payments are to be made. If real property is to be mortgaged, it shall fix the maximum amount of principal, the maximum rate of interest, the earliest and latest date of maturity, and shall direct the purpose for which the proceeds shall be used. An order for sale, mortgage or lease shall remain in force until terminated by the court, but no sale or lease shall be made after one (1) year from the date of the order unless the real property or rental value thereof shall have been reappraised under order of the court within three (3) months preceding the sale or lease.

(Formerly: Acts 1953, c.112, s.1513; Acts 1975, P.L.288, SEC.30.)

IC 29-1-15-14

Fair market value; appraisal; reappraisal

Sec. 14. The value of the property for the purposes of a sale of real property pursuant to section 3 and subsequent sections of this chapter shall be the fair market value filed with the inventory unless the court directs that the property be appraised or reappraised, as the case may be. In the event appraisal is ordered by the court, or in the case of a lease pursuant to such sections of the probate code, the property shall be appraised at its fair market value or its fair market rental value, as the case may be, in a manner considered appropriate by the court.

(Formerly: Acts 1953, c.112, s.1514; Acts 1975, P.L.288, SEC.31.)

IC 29-1-15-15

Real property sales; notice

Sec. 15. In all sales of real property the sale may be made with or without notice as directed by the court. Where notice is ordered the personal representative shall give such notice as the court orders.

(Formerly: Acts 1953, c.112, s.1515; Acts 1955, c.258, s.7; Acts 1975, P.L.288, SEC.32.) As amended by Acts 1978, P.L.132, SEC.9.

IC 29-1-15-16

Repealed

(Repealed by P.L.238-2005, SEC.63.)

IC 29-1-15-16.5

Acquisition of beneficial interest in real property of estate by personal representative

Sec. 16.5. (a) This section applies to a supervised or an unsupervised estate.

(b) Unless authorized by:

- (1) a will;
- (2) a trust;
- (3) the consent of all heirs, legatees, or beneficiaries; or
- (4) an adjudicated compromise agreement approved by the court under IC 29-1-9;

any sale (including an auction sale), encumbrance, lease, or rental of real property that is an asset of the estate is void if the sale, encumbrance, lease, or rental of the real property causes the personal representative to directly or indirectly acquire a beneficial interest in the real property.

(c) This section does not prohibit a personal representative from enforcing or fulfilling any enforceable contract or agreement:

- (1) executed during the decedent's lifetime; and
- (2) between the decedent and the personal representative in the personal representative's individual capacity.

As added by P.L.238-2005, SEC.13.

IC 29-1-15-17

Execution of conveyance or lease; certified copy of order; power given under will

Sec. 17. Whenever a personal representative executes a deed, mortgage, lease or other conveyance under a power given the personal representative in any will, a certified copy of the will giving such power and a certified copy of the personal representative's letters may be recorded with the deed, mortgage, lease, or other instrument executed by the personal representative pursuant to and in accordance with such power, and such certified copies shall be prima facie evidence of the due appointment and qualification of the personal representative and the personal representative's authority to execute said deed, mortgage, lease, or other instrument.

(Formerly: Acts 1953, c.112, s.1517.) As amended by Acts 1982, P.L.171, SEC.45; P.L.238-2005, SEC.14.

IC 29-1-15-18

Forms for conveyances

Sec. 18. (a) Whenever a personal representative shall be ordered by the court to execute a conveyance of the real estate of a decedent, a conveyance subscribed by the personal representative shall vest in the grantee all the title in the real estate ordered by the court to be conveyed as completely as if all the proceedings of the court preliminary to such conveyance has been fully recited therein, if such conveyance includes substantially the following:

"A.B., as personal representative of C.D., deceased, by order of the _____ Court of _____ County, Indiana, dated _____, for good and sufficient consideration, conveys to E.F. the following real estate: (insert description)."

(b) Whenever the personal representative, by the provisions contained in the will, shall be required or authorized, without the intervention of a court, to execute a conveyance of the real estate of

a decedent, a conveyance subscribed by the personal representative shall be sufficient to convey all the title in the real estate to the grantee, if such conveyance includes substantially the following:

"A.B., as personal representative of C.D., deceased, by virtue of the decedent's said will, for good and sufficient consideration, conveys to E.F. the following described real estate: (insert description)."

*(Formerly: Acts 1953, c.112, s.1518; Acts 1975, P.L.288, SEC.33.)
As amended by Acts 1979, P.L.268, SEC.7; P.L.130-1992, SEC.9.*

IC 29-1-15-19

Irregularity or defect in proceedings; guardians; good faith purchasers

Sec. 19. (a) No sale of any real estate made by a personal representative or guardian under the provisions of IC 29-1, shall be voided on account of any irregularity or defect in the proceedings, if it shall appear:

- (1) that the sale was authorized by the court having the jurisdiction of the parties and the subject-matter;
- (2) that notice of the time and place of sale was given in the manner provided by law; and
- (3) that the premises were sold accordingly and are held by or under one who purchased them in good faith.

(b) No sale of any real estate, made by a personal representative pursuant to a power given him by any will, shall be voided on account of any irregularity or defect if it shall appear:

- (1) that the personal representative acted in substantial conformity with the terms and conditions of the power given him by the will; and
- (2) that the premises are held by or under one who purchased them in good faith.

(c) No sale involving real estate that is made by an unsupervised personal representative under IC 29-1-7.5 is voided on account of any irregularity or defect if it appears that:

- (1) the personal representative acted in substantial conformity with the terms and conditions of the power given in IC 29-1-7.5; and
- (2) the premises are held by or under one who purchased them in good faith.

(Formerly: Acts 1953, c.112, s.1519.) As amended by Acts 1978, P.L.132, SEC.10.

IC 29-1-15-20

Lien of state for inheritance or estate taxes

Sec. 20. The lien of the state for inheritance or estate taxes shall not extend to any interest acquired by a purchaser, mortgagee, or lessee through any transfer made by a personal representative under a power contained in a will, under IC 29-1-7.5-3, or under order of the court.

(Formerly: Acts 1953, c.112, s.1520.) As amended by Acts 1976,

P.L.125, SEC.7.

IC 29-1-15-21

Fees and expenses

Sec. 21. In connection with the sale, mortgage, lease or exchange of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneers' and brokers' fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith.

(Formerly: Acts 1953, c.112, s.1521.)

IC 29-1-15-22

Platting real property

Sec. 22. When it is for the best interests of the estate in order to dispose of real property, the court upon application by the personal representative or any other interested person, may authorize the personal representative, either alone or together with other owners, to plat any land belonging to the estate in accordance with the statutes in regard to platting.

(Formerly: Acts 1953, c.112, s.1522.)

IC 29-1-15-23

Exchange of property; terms and conditions

Sec. 23. Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which may include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the proceedings required for the sale of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure for the sale of such property shall apply so far as may be.

(Formerly: Acts 1953, c.112, s.1523.)