

CONSOLIDATION OF DEVOLUTION OF REAL PROPERTY ACT
R.S.N.W.T. 1988,c.D-5

(Current to: October 17, 2012)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

R.S.N.W.T. 1988,c.8(Supp.)

In force July 19, 1993: SI-008-93

S.N.W.T. 1997,c.8

Note: see s.9(3) of S.N.W.T. 1997,c.8 for transitional provisions.

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2010,c.4,s.17

s.17 in force March 23, 2010

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A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

TABLE OF CONTENTS

Definitions	1	
Devolution of real property on personal representative	2	(1)
Interest of testator		(2)
Personal representative		(3)
Probate or letters of administration		(4)
Personal representative as trustee	3	
Personal representative and real property	4	
Effect of appointment of personal representative	5	
Administration of real property	6	(1)
Effect of Act		(2)
Personal representative as heir of deceased	7	(1)
Exception		(2)
Conveyance by personal representative	8	(1)
Conveyance subject to charge		(2)
Failure to convey real property on request		(3)
Court order		(4)
Failure to convey, sell or dispose of real property		(5)
Court order		(6)
Sale of real property	9	(1)
Concurrence on sale		(2)
Sale for distribution only	10	(1)
Court approval of sale		(2)
Deemed concurrence		(3)
Approval of Public Trustee	11	
Division, partition and conveyance of real property	12	
Other powers of personal representative	13	(1)
Approval		(2)
Purchaser in good faith and for value	14	(1)
Debts of deceased owner		(2)
Liability of beneficiary		(3)
Several personal representatives	15	(1)
Several executors		(2)
Validity of disposition		(3)
Rights and immunities of personal representative	16	
Duties on real property	17	

DEVOLUTION OF REAL PROPERTY ACT

Definitions

1. In this Act,

"Court" means the Nunavut Court of Justice; (*tribunal*)

"mentally incompetent person" means a person in respect of whom there is in effect

- (a) a trusteeship order or a declaration of mental incompetence made under the *Guardianship and Trusteeship Act*, or
- (b) a certificate of mental incompetence issued under the *Mental Health Act*; (*incapable mental*)

"personal representative" means the executor, original or by representation, or administrator of a deceased person; (*représentant personnel*)

"Public Trustee" means the person appointed as Public Trustee under the *Public Trustee Act*. (*curateur public*)

S.N.W.T. 1997,c.8,s.9(2); S.Nu. 2010,c.4,s.17.

Devolution of real property on personal representative

2. (1) Notwithstanding any testamentary disposition, but subject to the *Land Titles Act*, real property to which a deceased person was entitled for an interest that does not cease on his or her death devolves on and becomes vested in his or her personal representative as if it were personal property on the death of the deceased.

Interest of testator

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

Personal representative

- (3) The personal representative is the representative of the deceased in regard to
- (a) the real property to which the deceased was entitled for an interest that did not cease on his or her death; and
 - (b) the personal property of the deceased.

Probate or letters of administration

(4) Probate or letters of administration may be granted in respect of real property only, although there is no personal property. R.S.N.W.T. 1988, c.8(Supp.),s.205.

Personal representative as trustee

- 3.** Except as otherwise provided in this Act,
- (a) the personal representative holds the real property as trustee for the persons beneficially entitled to it; and

- (b) the persons beneficially entitled to the real property have the same right to require a transfer of the real property as persons beneficially entitled to personal property have to require a transfer of the personal property.

Personal representative and real property

- 4.** Except as otherwise provided in this Act,
- (a) all enactments, rules of law, and jurisdiction of the Court in force before December 12, 1953, respecting the appointment of administrators, letters of administration, probate, dealings before probate in the case of personal property and costs and other matters in the administration of personal property, and
 - (b) all powers, duties, rights, equities, obligations and liabilities of a personal representative in force on December 12, 1953, respecting personal property,
- apply and attach to the personal representative and have effect with respect to real property vested in the personal representative.

Effect of appointment of personal representative

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

Administration of real property

- 6.** (1) In the administration of the assets of a deceased person, the real property of the deceased person 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.

Effect of Act

(2) Nothing in this Act alters or affects the order in which real and personal assets are now applicable, as between different beneficiaries, in or toward the payment of funeral and testamentary expenses, debts or legacies, or the liability of real property to be charged with payment of legacies.

Personal representative as heir of deceased

- 7.** (1) When any part of the real property of a deceased person vests in his or her personal representative under this Act, the personal representative shall be deemed to be

the heir of the deceased as regards that part of the real property in the interpretation of an Act or the construction of an instrument to which the deceased was a party or under which the deceased was interested, while the estate remains in the personal representative, unless a contrary intention appears.

Exception

(2) Nothing in subsection (1) affects the beneficial right to any property or the construction of words of limitation of any estate in or by a deed, will or other instrument.

Conveyance by personal representative

8. (1) After the date of probate or letters of administration, the personal representative may convey the real property to any person entitled to it and may make the conveyance subject to any charge for the payment of money that the personal representative is liable to pay or without any charge.

Conveyance subject to charge

(2) Where a conveyance made under subsection (1) is subject to a charge for all moneys that the personal representative is liable to pay, all liabilities of the personal representative respecting the real property cease, except as to any acts done or contracts entered into by the personal representative before the conveyance.

Failure to convey real property on request

(3) After one year from the date of probate or letters of administration, if the personal representative has failed, on the request of a person entitled to any real property, to convey the real property to that person, that person may apply to the Court.

Court order

(4) On an application under subsection (3), the Court may, if it thinks fit 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 the person making the application as fully as might have been done by a conveyance of it from the personal representative.

Failure to convey, sell or dispose of real property

(5) After one year, if the personal representative has failed to convey all or part of the real property to the person entitled to it or to sell and dispose of it, any person beneficially interested may apply to the Court.

Court order

(6) On an application under subsection (5), the Court may order that all or part of the real property be sold on terms and within the period that may appear reasonable and in the event of the failure of the personal representative to comply with the order, may direct a sale of all or part of the real property on the terms as to cash or credit, or partly cash and partly credit, as the Court considers advisable.

Sale of real property

9. (1) The personal representative may sell the real property for the purpose of

- (a) paying debts of the estate; or
- (b) distributing the estate among the persons beneficially entitled to it, whether or not there are debts.

Concurrence on sale

(2) Where a sale is made under subsection (1), the concurrence of the persons beneficially entitled to the real property is not necessary unless the sale is made for the purpose of distribution only.

Sale for distribution only

10. (1) Except as otherwise provided in this Act, no sale of real property for the purpose of distribution only is valid as regards any person beneficially interested unless he or she concurs in the sale.

Court approval of sale

- (2) In the case of a sale of real property for the purpose of distribution only, where
- (a) adult beneficiaries do not concur in the sale, or
 - (b) under a will there are contingent interests or interests not yet vested or the persons who may be beneficiaries are not yet ascertained,

the Court may approve the sale on proof satisfactory to the Court that the sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested in that respect and the sale is valid as regards the contingent interests and the interests not yet vested and is binding on non-concurring adult beneficiaries and beneficiaries who are not yet ascertained.

Deemed concurrence

(3) An adult who accepts a share of the purchase money from a sale of real property, knowing it to be a share of the purchase money, shall be deemed to have concurred in the sale.

Approval of Public Trustee

11. No sale in which an infant or mentally incompetent person is interested is valid without

- (a) the written approval of the Public Trustee; or
- (b) an order of the Court, in the absence of the written consent or approval of the Public Trustee.

Division, partition and conveyance of real property

12. The personal representative may divide or partition and convey all or part of the real property of the deceased to or among the persons beneficially interested

- (a) with the concurrence of the adult persons beneficially interested; and
- (b) with the approval of the Public Trustee on behalf of minors or mentally incompetent persons beneficially interested.

Other powers of personal representative

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

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

Approval

(2) Where minors or mentally incompetent persons are interested, the approvals or order required by sections 11 and 12 in the case of a sale are required in the case of a mortgage made under paragraph (1)(c) for payment of debts or taxes on the real property to be mortgaged.

Purchaser in good faith and for value

14. (1) A person purchasing real property in good faith and for value from

- (a) a personal representative, or
- (b) a person beneficially entitled to it to whom it has been conveyed by the personal representative,

holds the real property

- (c) freed and discharged from any debts or liabilities of the deceased owner except debts or liabilities that are specifically charged on the property otherwise than by the will of the deceased owner, and
- (d) in the case of a purchase from the personal representative, freed and discharged from all claims of the persons beneficially interested.

Debts of deceased owner

(2) Real property that has been conveyed by the personal representative to a person beneficially entitled to it continues to be liable, as it would have been if it had remained vested in the personal representative, for the debts of the deceased owner so long as it remains vested in that person or any person claiming under that person who is not a purchaser in good faith and for value.

Liability of beneficiary

(3) If real property referred to in subsection (2) is sold or mortgaged in good faith and for value by the person beneficially entitled to it, he or she is personally liable for the debts of the deceased owner only to the extent to which the real property was liable when it was vested in the personal representative.

Several personal representatives

15. (1) Subject to subsection (2), 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 of all the personal representatives or an order of the Court.

Several executors

(2) 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, the proving executor or executors may make a conveyance, mortgage, lease or other disposition of the real property without an order of the Court.

Validity of disposition

(3) A disposition made under subsection (2) has the same effect as if all the persons named as executors had concurred in respect of the disposition.

Rights and immunities of personal representative

16. The rights and immunities conferred by this Act on a personal representative are in addition to and not in derogation of the powers conferred by any other Act or by the will.

Duties on real property

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