

1970 Bill 54

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 54

An Act to amend The Devolution of Real Property Act

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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1970

An Act to amend The Devolution of Real Property Act

(Assented to _____, 1970)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Devolution of Real Property Act* is hereby amended.

2. Section 12 is amended by renumbering the section as subsection (1) and by adding the following subsection:

(2) A sale of real property made with the consent or approval of the Public Trustee or the court under this section is binding on the infant interested therein.

3. The following section is added after section 12:

12a. (1) Subject to the provisions of this section, the personal representative may grant an option to purchase real property in any case where he is empowered to sell that real property, if the period within which the option may be exercised is not longer than one year from the date on which the instrument granting the option is executed.

(2) A grant by the personal representative of an option to purchase real property is invalid unless he obtains

- (a) any concurrence of any person under section 10 or section 11, subsection (1), or
- (b) any order of the Court under section 11, subsection (2) or section 12, or
- (c) any consent or approval of the Public Trustee under section 12,

that he would be required to obtain if the granting of the option to purchase the real property were instead the sale of that real property.

(3) A concurrence, order, consent or approval to the granting of an option to purchase real property referred to in subsection (2) when made or given extends also to

Explanatory Notes

1. This Bill amends chapter 83 of the Revised Statutes.

2. Section 12 is quoted in the note to clause 3 of this Bill. The new subsection (2) is intended to expressly state that an infant interested in real property is bound by a sale of it with the approval of the Public Trustee or the court.

3. The new section 12a empowers an executor or administrator to grant an option to purchase real estate forming part of the estate of a deceased person if the period for exercising the option is not longer than one year. The exercise of the power to grant options will be subject to the same requirements as in the case of outright sales of real property.

The new section is added as a result of the recommendations of The Institute of Law Research and Reform in its Report entitled "Powers of Personal Representative to Grant Options" issued in June, 1969. The Report also recommended an amendment to The Wills Act, 1960 to provide that a power of sale of real property in a will includes a power to grant an option to purchase that property: See Bill 55 to amend The Wills Act, 1960.

Sections 10, 11 and 12 presently read:

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

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

(2) Where, in the sale of real property

(a) a mentally incompetent person is beneficially interested,

(b) adult beneficiaries do not concur in the sale,

(c) under a will there are contingent interests or interests not yet vested, or

(d) the persons who might be beneficiaries are not yet ascertained, the Court upon proof satisfactory to it that the sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested therein, may approve the sale, and any sale so approved is valid as respects the contingent interests and interests not yet vested, and is binding upon the mentally incompetent person, non-concurring persons and beneficiaries not yet ascertained.

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

12. No sale, where an infant is interested, is valid without the written consent or approval of the Public Trustee, or, in the absence of that consent or approval, without an order of the Court.

any sale of that property made upon the exercise of the option and in accordance with the instrument granting the option.

(4) Where a grant by a personal representative of an option to purchase real property is approved by an order of the Court, the grant is valid as respects the contingent interests and interests not yet vested, and is binding upon the mentally incompetent person, non-concurring persons and beneficiaries not yet ascertained and infants.

(5) If an adult beneficiary accepts a share of the consideration given for the grant of the option to purchase, knowing it to be such, he shall be deemed to have concurred in the grant of the option.

4. This Act comes into force on the day upon which it is assented to.

