



Ontario

Ministry of
Consumer and
Commercial
Relations

Property
Rights
Division

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TO:
ALL LAND REGISTRARS

DEBTS OF AN ESTATE

THE LAND TITLES ACT

The purpose of this Bulletin is to clarify the situations where debts follow the estate of a deceased person.

1. Sale for the Payment of Debts under The Devolution of Estates Act

A purchaser who receives a conveyance from a personal representative selling for the purpose of paying debts under The Devolution of Estates Act, takes free and clear of the debts. However, in order to be shown on the parcel register free and clear of debts, an affidavit must accompany the conveyance stating that the sale is necessary for the purpose of paying debts and that the sale is bona fide and for value. These statements may be included in the land transfer tax affidavit, if sworn by the personal representative.

2. Sale for the Purpose of Distributing the Proceeds under The Devolution of Estates Act

A purchaser who receives a conveyance from a personal representative selling for the purpose of distributing the proceeds under The Devolution of Estates Act, takes free and clear of the debts. However, an affidavit must accompany the conveyance stating that the sale is for the purpose of distributing the proceeds amongst the beneficiaries and that the sale is bona fide and for value. This statement may be included in the land transfer tax affidavit, if sworn by the personal representative.

3. Conveyance for the Purpose of Dividing the Real Property in specie amongst the persons beneficially entitled thereto under The Devolution of Estates Act

a) Without a Court Order

Where real property is divided in specie by the personal representative amongst the persons beneficially entitled under The Devolution of Estates Act without a court order, the property remains subject to the debts of the estate. However, if the persons beneficially entitled convey to a purchaser within the three-year period from the death of the deceased and the purchaser buys in good faith and for value, then that purchaser is subject to the debts only for the remainder of the three-year period unless legal proceedings have been instituted to enforce a claim, and a lis pendens or caution has been registered against the land before the expiration of the three-year period. If the conveyance to the bona fide purchaser for value takes place after the three-year period from the death of the deceased, the reference to debts may be deleted by the Land Registrar, if he is satisfied by affidavit that the conveyance has in fact taken place after the three-year period and the purchaser has purchased in good faith and for value. This statement may also be included in the land transfer tax affidavit.

A sale to a person other than a bona fide purchaser for value, remains liable to the debts of the estate.

b) With a Court Order

Where real property is divided in specie by the personal representative amongst the persons beneficially entitled under The Devolution of Estates Act under a court order, the property remains subject to the debts of the estate, unless the court order provides otherwise. Where the court order does not declare the property free of debts, a

subsequent bona fide purchaser for value from the persons beneficially entitled will acquire the land free from debts. In this regard, an affidavit stating that the sale is bona fide and for value and that the transferor, who was beneficially entitled to the land received it from the personal representative of the deceased, by leave of the court must accompany the conveyance. This statement may be included in the land transfer tax affidavit.

4. Express Power of Sale under a Will

Where there is an express power of sale under a will, an executor can sell without the consent of the beneficiaries and a purchaser in good faith and for value will take free from the debts. As in the previous cases, an affidavit, which may be included in the land transfer tax affidavit, must accompany the conveyance and state that the sale is bona fide and for value.

5. Implied Power of Sale (for the purpose of paying debts)

Where an implied power of sale is being exercised, a bona fide purchaser for value will take free from debts. An affidavit stating that the sale is for the purpose of paying debts and that the sale is bona fide and for value will be required. These statements may be included in the land transfer tax affidavit, if sworn by the personal representative.

6. Bequest to beneficiary under the will and subsequent sale by that beneficiary

A specific bequest to a beneficiary is subject to debts. When that beneficiary conveys to a purchaser, that purchaser will take subject to debts unless evidence satisfactory to the Land Registrar accompanies the conveyance showing that the creditors of the deceased have been notified and that all known debts have been paid. This evidence may be included in the land transfer tax affidavit if sworn by the beneficiary-transferor.

7. Vesting in beneficiary at the end of the 3-year period after the death of the deceased under section 14 of The Devolution of Estates Act

Where property has vested in the beneficiary at the end of the 3-year period after the death of the deceased as provided in section 14 of The Devolution of Estates Act, an application may be made to the Land Registrar by the beneficiary to be registered as the owner, free of debts. If the beneficiary is unable to satisfy the Land Registrar that the creditors of the deceased have been notified and that all known debts have been paid, the parcel register will be marked "Subject to the unpaid debts, if any, of A.B., deceased". Where a parcel is so marked, a sale by the beneficiary to a purchaser in good faith and for value will be shown free from debts if both

(1) an affidavit stating that the property had vested in the transferor-beneficiary under section 14 of The Devolution of Estates Act and that the sale is bona fide and for value; and

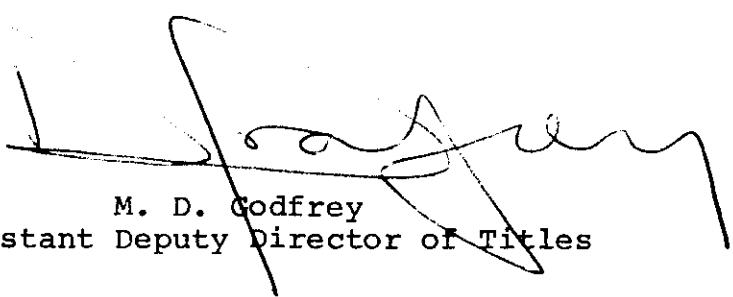
(2) an affidavit by the purchaser stating that he had no notice of any debts at the time of his purchase,

accompany the transfer. If the purchaser completes the land transfer tax affidavit he may include items (1) and (2) in the land transfer tax affidavit. If the transferor-beneficiary completes the land transfer tax affidavit, he may include item (1) in the land transfer tax affidavit and an additional affidavit by the purchaser will be necessary stating item (2).

A sale to a person other than a bona fide purchaser for value, remains liable to the debts of the estate.

NOTE: Where land is being marked "Subject to debts" in the register, the following notation should be made:

"Subject to the unpaid debts, if any, of (name), deceased".


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