

# MAINE STATE LEGISLATURE

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## CHAPTER 221

## LICENSE TO SELL REAL ESTATE

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### § 2051. Eligibility and application

Judges of probate who have jurisdiction of the estate may license the sale, mortgage, lease or exchange of real estate and any interests therein, in whatever county situated, in the following cases, on application:

**1. Executors and administrators for debts.** Of executors and administrators, including public administrators, for power to sell so much of such estate of the deceased as is necessary to pay debts, funeral charges, legacies, expenses of sale and administration and for the erection of a suitable marker or gravestone.

**2. Guardians.** Of the friends or guardians of minors and other incapacitated persons, that the guardians or some other

suitable persons may be authorized to sell real estate of their wards, or trees or timber standing thereon, for payment of debts, expenses of sale and of guardianship and for support and education of their wards, and to provide a reasonable sum in anticipation of accruing expenses, when there is not sufficient personal property therefor, exclusive of such as the judge deems proper to reserve for the use of said wards; or to sell the same and place the proceeds at interest: or to sell it for 2 or more of these purposes; or to lease such real estate for any term of years, including any term which may extend beyond the termination of the guardianship, or exchange it for other real estate, when it clearly appears that such sale, lease or exchange would be for the benefit of the wards. When sold in order to place the proceeds at interest, any part thereof may be used for support of the wards if it becomes necessary.

**3. Executors to sell without injury to residue.** Of executors, administrators, guardians or public administrators, when it appears by the petition and proof that the residue would be greatly depreciated by a sale of any portion under the foregoing authority, to sell the whole or such parts thereof as will not injure the residue.

**4. Husband or wife or guardian of incapacitated spouse.** Of a husband or guardian of an incapacitated wife, resident in the county, to sell or mortgage, on such terms and conditions as the judge thinks proper, for a sufficient consideration, any real estate held by him in right of his wife, or any of her right and interest by descent in any real estate owned by him; and of a wife or guardian of an incapacitated husband, resident in the county, to sell or mortgage in like manner the right and interest by descent, of such ward, in any real estate owned by his wife. For the purposes of this subsection, a mentally ill husband or wife who has been committed to an asylum for mentally ill persons within this state shall be deemed to remain a resident of the county in which he or she had a residence at the time he or she was committed, so long as he or she shall remain in such asylum by virtue of such commitment.

1959, c. 11; c. 242, § 8.

**5. Executors or administrators to sell wood and timber.** Of executors or administrators, to sell wood and timber standing on the real estate of their testator or intestate, for payment of debts, when it clearly appears to the judge to be for the advantage of those interested in the estate.

**6. Interest in real estate.** Of executors or administrators, to sell as real estate the interest which their testator or intestate had in a land warrant issued by virtue of an Act of Congress, when not disposed of by will, and to distribute the net proceeds there-of among those entitled by law to such interest.

**7. Guardians; release of ward's claim for damages.** Of guardians, when a highway, railroad or canal is authorized to be constructed through the lands of any ward, or a dam is constructed by which such lands are liable to be flowed, to give, for a reasonable compensation, a full release of such ward's claim for damages, which shall be binding on the ward and his heirs forever.

**8. Lands mortgaged or taken on execution.** Of executors or administrators, to sell real estate held in mortgage or taken on execution and the right of redemption foreclosed, when it appears to be for the benefit of the parties in interest, and to distribute the proceeds as in other cases of personal estate.

**9. Public administrators.** Of public administrators, after one year from the granting of administration, to sell any or all of the real estate of the deceased, when it appears to be for the interest of all concerned and that no heir or other person interested therein, except creditors, can be found in the United States.

**10. Heirs or devisees in different states or countries.** Of a part or all of the heirs or devisees living in different states or countries of a person deceased, who left real estate in this State undevisee, or real estate devisee in undivided shares to different persons, where the devisees reside in different states or countries, the owners of which cannot dispose of their separate interests without loss, that the executor, administrator or other suitable person be authorized to sell such estate and distribute the proceeds, after paying expenses, among such heirs or devisees, according to their respective rights therein as determined by the judge of probate; unless, after public notice, the first publication being 30 days prior to the hearing, or longer if the judge deems it necessary, any owner objects to such sale; and if so sold, the share of any absent owner shall be placed on interest until called for by him or his legal representatives.

R.S.1954, c. 163, § 1; 1959, c. 11; c. 242, § 8.

## § 2052. Notice

No license shall be granted for the sale of any such real estate, of the value of more than \$50, unless by written consent of

all persons interested therein, until after public or personal notice of the time and place of hearing to all such persons to appear and object if they see cause; but such notice, when public, may be published in a consolidated form and shall contain the name of the estate or the title of the case, the names of the petitioner and the name of the municipality where such real estate is situated; but such notice need contain no other description of the real estate. If any party interested resides without the State, or the real estate is situated in a county other than the county in which the proceedings are pending, such special notice may be given as the court directs.

R.S.1954, c. 163, § 5.

**§ 2053. No license if parties give bond**

No such license shall be granted if any of the parties interested in such estate gives bond to the executor, administrator or guardian in a sum and with sureties, resident in this State, or with a surety company authorized to do business in the State, as surety, approved by the court to pay all sums, for the payment of which license is asked, so far as the goods and chattels, rights and credits of the deceased or ward are insufficient therefor, but such bond shall not bar any future application for the same purposes, if the obligors, on reasonable notice and demand, fail to perform its condition.

R.S.1954, c. 163, § 6.

**§ 2054. Certification of judge to Superior Court**

Every application for the sale of any estate, made to the Superior Court under section 2051, subsection 3, shall be accompanied by a certificate from the judge of probate of the county where such estate was inventoried showing the value of the real and personal estate of the deceased or ward, and the amount of his just debts or legacies, if the case requires it, and the opinion of such judge, whether it is necessary that the whole or a part of the estate should be sold and, if part only, what part. In all applications before said court, by guardians of minors under section 2051, subsection 2, a certificate must likewise be produced from the judge of probate in the county where such minor's estate was inventoried, stating that in his opinion it would be for the interest of such minor that the whole or a part of said estate should be sold for the purpose specified and, if part only, what part.

R.S.1954, c. 163, § 8.



**§ 2055. Examination under oath**

Any court authorized to grant licenses may examine, under oath, the petitioner or any other person, whether interested or not, touching the truth of the facts set forth in the petition.

R.S.1954, c. 163, § 9.

**§ 2056. Licenses limited; renewable**

No license granted under this chapter, except when otherwise provided, remains in force for more than one year from its date; but when that time has expired, a new license may be granted, with or without new notice, at the discretion of the judge, for the sale of all or part of the same real estate upon filing a new bond.

R.S.1954, c. 163, § 18.

**§ 2057. Lands in other counties**

When the real estate, for the sale of which license is necessary, lies in 2 or more counties, the Superior Court or the probate court in either of said counties may grant licenses for the sale of the whole or any part thereof in any other county.

R.S.1954, c. 163, § 20.

**§ 2058. Designation of lands to be sold**

Any court, granting license to sell real estate for the payment of debts, legacies or expenses of administration, may prescribe therein what particular portions thereof shall be sold, and in what order, according to the last will of the testator or the principles of equity.

R.S.1954, c. 163, § 21.

**§ 2059. Estate of deceased liable to sale; effect of deed**

Lands of which the deceased died seized in fee simple or fee tail, general or special, and all that he had fraudulently conveyed or of which he was colorably disseized to defraud creditors are liable to sale for payment of debts, under any license granted under this chapter. Any deed, executed and recorded in due form of law, for adequate consideration, in pursuance of such license, is effectual to pass to the purchaser all the estate, right, title and interest in the granted premises which the deceased had therein, free from the right of descent of the widow or widower.

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The executor or administrator shall pay to the widow or widower  $\frac{1}{3}$  of the sale price thereof in lieu of the  $\frac{1}{3}$  interest in such real estate which descended to such party free from the payment of debts. Such widow or widower shall be given such personal notice of the proposed sale as the court may order.

R.S.1954, c. 163, § 22.

**§ 2060.    Costs when license contested**

When the granting of a license is contested, if the petition or objection to it appears unreasonable, the court may award costs to the prevailing party.

R.S.1954, c. 163, § 25.

**§ 2061.    Proof by parol when certificate not returned**

When a person so licensed has taken the oath formerly required by law, but no certificate thereof has been returned to the judge of probate, parol evidence may be received that such oath was administered in the trial of any action respecting the estate so sold; and if proved, it has the same effect as if a certificate thereof had been returned, filed and recorded.

R.S.1954, c. 163, § 27.

**§ 2062.    Neglect or misconduct of person licensed**

If a person, interested in any estate sold as aforesaid, suffers damage by neglect or misconduct of the executor, administrator or guardian in such proceedings, he may recover compensation therefor in a civil action on the probate bond or otherwise as the case may require.

R.S.1954, c. 163, § 28; 1961, c. 317, § 526.

SUBCHAPTER II

**BOND**

Sec.

2101. Conditions.

2102. Compliance and account.

**§ 2101.    Conditions**

Persons so licensed before proceeding to make such sales, leases, mortgages or exchanges, except executors exempted there-

from by section 109, shall give bond to the judge for a sum, and with sureties, resident in the State, or with a surety company authorized to do business in the State, as surety, to his satisfaction, with the following conditions:

**1. Observe laws and use diligence.** That they will observe all provisions of law for the sale, leasing, mortgaging or exchange of such real estate or interests therein, and use diligence in executing the trust.

**2. Apply and account for proceeds.** That they will truly apply and account for the proceeds of sale, lease or mortgage according to law.

R.S.1954, c. 163, § 3.

### § 2102. Compliance and account

Persons so licensed shall be deemed to have performed the conditions of the bond when they have complied with all its terms and conditions and shall have charged themselves with the amount received from the sale, lease or mortgage of said real estate in an account duly filed and allowed by the judge of probate in and for the county having jurisdiction of the estate; which account must be filed within one year from the sale, lease or mortgage of the said real estate, and shall have given an additional bond to the said judge of probate, if required by him, to cover the balance of property found in their hands upon the settlement of said account, unless the bond of such person is exempted by sections 109 and 1552. Thereafter said persons shall be liable on said bond or bonds for the amount so received from the sale of said real estate as shown in said account.

R.S.1954, c. 163, § 4.

## SUBCHAPTER III

### NONRESIDENT OWNERS

Sec.

2151. Sale of estate of deceased nonresidents or out-of-state minors.

2152. Proof of appointment.

### § 2151. Sale of estate of deceased nonresidents or out-of-state minors

The Superior Court and the probate court may grant licenses to continue in force for 3 years to executors and administrators of

persons dying out of the State or in a foreign country, guardians of wards living out of the State or in a foreign country, conservators of the property of persons living out of the State, committee of the person or property or any person acting under official appointment by whatever name called, or some other suitable person on their petition to sell and convey real estate or any interest therein, including rights by descent, in the State, as if such deceased persons had died and such wards or persons lived in the State, and such executors, administrators, conservators or guardians had been here appointed. All proceedings in such cases before any probate court shall be had before the judge of probate for the county where the real estate or any part thereof lies, and the bond required shall be given to him. The person so licensed shall, within 6 months from any such sale, render an account to the probate court, and after payment of expenses and evidence that there are no debts due within the State and that all inheritance taxes due the State, if any, have been paid, on petition the court may decree that the balance of such an account may be transmitted to the foreign representative of the estate, and all future liability of surety or sureties on bond for sale of real estate shall terminate.

R.S.1954, c. 163, § 14.

### § 2152. Proof of appointment

A duly authenticated copy of the appointment of such executor, administrator, conservator, guardian or committee of the person or property, or any similar official of whatever title, wherever appointed by any court of competent authority having jurisdiction in any state of the United States or any foreign country, filed, examined and allowed by any judge of probate in this State is sufficient proof of appointment to entitle such official to the benefit of section 2151.

R.S.1954, c. 163, § 15.

## SUBCHAPTER IV

### PUBLIC OR PRIVATE SALE

Sec.

- 2201. Auction required; appeals; jurisdiction.
- 2202. Private sales and sales on offer.
- 2203. Notice of sale.
- 2204. —Proof of.
- 2205. Adjournment.
- 2206. Surplus distributed as real estate.

**§ 2201. Auction required; appeals; jurisdiction**

All sales shall be at public auction, except as otherwise provided, and the decision of the judge on such applications may be appealed from as in other cases. The Superior Court shall have original and concurrent jurisdiction with the probate court in all cases aforesaid.

R.S.1954, c. 163, § 2.

**§ 2202. Private sales and sales on offer**

In all cases where the courts may license a person to sell real estate at auction, they may license him to sell from time to time at private sale, or to accept any advantageous offer for such estate or any part of it and to convey the same accordingly, if it appears to be for the interest of all concerned. When so licensed, he may sell at auction by complying with all the requirements of law for sales at auction and with the particular conditions of his license, and he shall give bond as if he were licensed to sell at auction. The court shall decide what notice, if any, shall be given of such sale and, if any is required, it shall be inserted in the license and given accordingly.

R.S.1954, c. 163, § 10.

**§ 2203. Notice of sale**

Every person so licensed, previous to such sale, shall give 30 days' notice thereof, by posting notifications in some public place in the town where the estate lies and in 2 adjoining towns, and in the town where said deceased last dwelt or where the ward resides, if within the State, or by causing an advertisement thereof to be published 3 weeks successively in such newspaper as the court, authorizing the sale, orders, the first publication being 30 days before the sale.

R.S.1954, c. 163, § 7.

**§ 2204. —Proof of**

The affidavit of any person so licensed, or of any person employed by him, made within 18 months after the sale and filed in the probate office with one of the original advertisements of the time, place and estate to be sold, or with a copy of such advertisement, and recorded, or such an affidavit made afterwards by any person, and filed and recorded with such copy by permission of the court, upon satisfactory evidence that the notice

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was given as ordered, is sufficient proof that such notice was given and a copy of such affidavit certified by the register is competent evidence thereof.

R.S.1954, c. 163, § 26.

§ 2205.    **Adjournment**

Any sale, duly appointed and notified, may be adjourned within the period prescribed by the license, not exceeding 14 days in all, at the discretion of the person licensed, by giving such reasonable notice thereof as circumstances permit.

R.S.1954, c. 163, § 19.

§ 2206.    **Surplus distributed as real estate**

In all sales of real estate or any part or interest therein, by virtue of licenses granted under this chapter, the surplus proceeds of sale, remaining on final settlement of the accounts of such proceeds, shall be considered real estate and distributed among the same persons and in the same proportions as real estate would be.

R.S.1954, c. 163, § 23.

SUBCHAPTER V

**ACTIONS TO CONTEST VALIDITY OF SALE**

Sec.

2251. Limitation of action to recover lands sold by license.

2252. Requisites for valid sale as against persons claiming under deceased or ward.

2253. Validity of sale as against those claiming adversely to title sold.

§ 2251.    **Limitation of action to recover lands sold by license**

No action shall be brought to recover an estate sold under this chapter, nor entry be made thereon, except by judgment of law, with a view to avoid the sale by persons claiming under the deceased or by the ward or persons claiming under him, unless it is done within 5 years after the sale or the termination of the guardianship, except that persons out of the State or under legal disability at said times are limited to 5 years after their return to the State or the removal of the disability.

R.S.1954, c. 163, § 29.

**§ 2252. Requisites for valid sale as against persons claiming under deceased or ward**

In an action brought to contest the validity of any such sale, by the heir or others claiming under the deceased; by the wife or her heirs, in case of a sale of her estate by her husband; or by the ward or person claiming under him; no such sale shall be avoided on account of any irregularity in the proceedings, if it appears:

**1. License granted; deed executed and recorded.** That the license was granted by a court of competent jurisdiction and that the deed was duly executed and recorded;

**2. Bond and notice.** That the person licensed gave the bond and notice of the time and place of sale required by law;

**3. Premises sold as authorized; purchaser in good faith.** That the premises were sold in such manner and within such time as the license authorized and are held by one who purchased them in good faith.

R.S.1954, c. 163, § 30.

**§ 2253. Validity of sale as against those claiming adversely to title sold**

If the validity of such sale is contested by one claiming adversely to the title of the wife, ward or deceased, or by a title not derived through either, the sale is not void on account of any irregularity in the proceedings, if it appears that the license was granted by a court of competent jurisdiction and the deed duly executed and recorded.

R.S.1954, c. 163, § 31.