

MAINE STATE LEGISLATURE

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FIFTH REVISION.

THE
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED SEPTEMBER 1, 1903, AND TAKING EFFECT JANUARY 1, 1904.

BY THE AUTHORITY OF THE LEGISLATURE.



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CHAPTER 73.

SALES OF REAL ESTATE BY LICENSE OF COURT.

LICENSES TO SELL ESTATES OF RESIDENT OWNERS.

SEC. 1. Judges of probate, in the counties where the applicants herein-after named were appointed, may license the sale, lease or exchange of real estate and any interests therein, in whatever county situated, in the following cases, on application: (a)

I. Of executors or administrators, including public administrators, for power to sell so much of such estate of the deceased as is necessary to pay debts, legacies and expenses of sale and of administration.

II. 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 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 two or more of these purposes; or to lease such real estate for any term of years, 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. But 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.

III. Of executors, administrators or guardians, 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.

IV. Of a husband or guardian of an insane wife resident in the county, to sell, 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 title by descent in any real estate owned by him.

V. 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.

VI. 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 thereof among those entitled by law to such interest.

VII. 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.

VIII. 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.

Sale, lease or exchange of real estate, when to be licensed.
R. S., c. 71, § 1.

By executors and administrators.
See c. 8, § 77;
c. 71, § 7.
96 Me., 573.

On application of friends or guardians of minors.
See c. 75, § 7.

For sale of whole property, by such representatives.
63 Me., 250.
96 Me., 573.

By husband or guardian of insane wife.
1899, c. 4.

For sale of wood and timber.

Of land warrants.

Release of damages by highway, railroad or canal.
See c. 51, § 31.

Mortgages; executions.
See c. 67, § 28;
c. 92, § 13.

(a) 8 Me., 222; 20 Me., 395; 44 Me., 47; 52 Me., 195; 62 Me., 543; 96 Me., 573.

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For sales by
public ad-
ministrators.

Heirs or
devises, in
different
states.

IX. Of public administrators, after three years 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.

X. Of a part or all of the heirs or devisees living in different states, of a person deceased, who left real estate in this state undevise, or real estate devised in undivided shares to different persons, where the devisees reside in different states, 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; unless, after public notice, the first publication being thirty 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.

SALES AT AUCTION.

Sales to be
at auction;
appeal.
—jurisdiction
of supreme
court.
R. S., c. 71, § 3.
8 Me., 222.

Bond.
R. S., c. 71, § 4.
1899, c. 86, § 2.
39 Me., 18.
50 Me., 75.
93 Me., 272.
94 Me., 562.

Notice,
previous to
granting
license.
R. S., c. 71, § 6.

No license
shall issue, if
parties give
bond and
fulfil it.
R. S., c. 71, § 7.

Notice of
sale, how to
be given.
R. S., c. 71, § 8.

SEC. 2. All sales aforesaid shall be at public auction, except as herein-after provided, and the decision of the judge on such applications may be appealed from, as in other cases; and the supreme judicial court shall have original and concurrent jurisdiction with the probate court in all cases aforesaid.

SEC. 3. Persons licensed as aforesaid, before proceeding to make such sales, leases or exchanges, except executors exempted therefrom by the provisions of section ten of chapter sixty-six, shall give bond to the judge for a sum, and with sureties to his satisfaction, with the following conditions:

I. That they will observe all provisions of law for the sale, leasing or exchange of such real estate or interests therein, and use due diligence in executing the trust.

II. That they will truly apply and account for the proceeds of sale or lease according to law.

SEC. 4. No license shall be granted for the sale of any such real estate, of the value of more than fifty dollars, 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. If any party interested resides without the state, such special notice may be given as the court directs.

SEC. 5. Nor shall such license 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, 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.

SEC. 6. Every person licensed as aforesaid, previous to such sale, shall give thirty days' notice thereof, by posting notifications in some public place in the town where the estate lies, and in two 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 three weeks successively in such newspaper as the court, author-

izing the sale, orders; the first publication being thirty days before the sale.

SEC. 7. Every application for the sale of any estate, made to the supreme judicial court, under the third specification of section one, 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; also 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; and in all applications before said court, by guardians of minors under the second specification of section one, 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.

SEC. 8. 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.

SEC. 9. No license to sell the estate of any ward, not a minor or insane, shall be granted, unless the applicant produces to the court a certificate under the hands of the overseers of the poor of the town where the ward resides, if in the state, giving their consent to the sale, and their opinion as to the amount proper to be raised thereby, excluding debts contracted by gambling; and if applicable to the case, whether it is necessary to sell a greater amount in value of land to prevent injury to the residue.

PRIVATE SALES, AND SALES ON OFFER.

SEC. 10. 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; but 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; and 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.

SALES BY GUARDIANS AND WIVES OF INCAPACITATED WARDS.

SEC. 11. When the guardian of an incapacitated person is duly licensed to sell the interest of his ward in any estate held by him in right of his wife, she may, for a sufficient consideration, join with the guardian in the deed thereof, and it shall be as effectual as if made with her husband when under no disability; and when licensed to sell the real estate of his ward, she may release her right and interest by descent therein to the purchaser, by a deed duly executed solely or jointly with the guardian, and she shall thus be forever barred of such interest in the premises.

SEC. 12. The guardian, with consent of the judge to whom he accounts, may agree in writing with such wife how to invest or otherwise dispose of a part of the proceeds of the sale of the whole estate for her sole use, equivalent to her interest therein; and the supreme judicial court may enforce such agreement in equity, as a trust.

Judge shall certify to supreme court in certain cases.
R. S., c. 71, § 9.

Parties may be examined under oath.
R. S., c. 71, § 10.

Overseers of the poor shall consent in certain cases.
R. S., c. 71, § 11.

Licenses to sell at private sale, and on offer.
R. S., c. 71, § 12.
1895, c. 77.
96 Me., 575.

—proceedings.

Wife of incapacitated ward may join in deed with guardian, or may release interest by descent.
R. S., c. 71, § 13.
See c. 77, § 9.

Guardian may invest proceeds of her interest; trust to be enforced.
R. S., c. 71, § 14.

SALES OF ESTATES OF NON-RESIDENT OWNERS.

Sale of estate of deceased persons or of minors out of the state.
R. S., c. 71, § 15.
11 Me., 101.

SEC. 13. The supreme judicial and probate courts may grant licenses to continue in force for three years, to executors and administrators of persons dying out of the state, guardians of wards living out of the state, or some other suitable person on their petition, to sell and convey real estate or any interest therein in the state, as if such deceased persons had died, and such wards lived in the state, and such executors, administrators or guardians, had been here appointed; and 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.

Proof of appointment in another state.
R. S., c. 71, § 16.

SEC. 14. A certified copy of the appointment of such executor, administrator or guardian, by any court of probate having jurisdiction in any other of the United States, examined and allowed by any judge of probate in this state, and filed and recorded in his county, is sufficient proof of appointment to entitle him to the benefit of the preceding section.

LICENSES TO CARRY INTO EFFECT CONTRACTS OF DECEASED PERSONS.

Judge of probate may authorize conveyance on contract made by deceased.
R. S., c. 71, § 17.
3 Me., 51.
51 Me., 424.
57 Me., 400, 401.

SEC. 15. When it appears to the judge of probate having jurisdiction, that any deceased person had made a legal contract to convey real estate and was prevented by death from so doing, or that such deceased person, had made such a contract to convey an estate upon a condition, which in its nature could not be fully performed before his decease, and that in either case the person contracted with, or petitioner, has performed or is ready to perform the conditions required of him by the terms thereof, he may, on petition of such person, his heirs, assigns or legal representatives, authorize the executor or administrator, or special administrator of the deceased, or when there is no executor or administrator, the guardian of the heirs of the deceased, to execute deeds to carry said contract into effect; and when such conveyance is made to an executor or administrator, he shall stand seized of such estate to the same uses as in case of real estate set off to him on execution.

—when conveyance is made to executor or administrator.

Notice shall be given, and bond required.
R. S., c. 71, § 18.

SEC. 16. Before granting such authority, the judge shall cause due notice to be given to the heirs and all other parties interested, and require the person authorized to make conveyance, to give bond with sufficient sureties to account for whatever he receives therefor.

GENERAL PROVISIONS.

Licenses, limited to one year; renewable.
R. S., c. 71, § 19.
19 Me., 151.
22 Me., 329.
36 Me., 576.

SEC. 17. 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.

Sales may be adjourned.
R. S., c. 71, § 20.
63 Me., 251.

SEC. 18. Any sale, duly appointed and notified, may be adjourned within the period prescribed by the license, not exceeding fourteen days in all, at the discretion of the person licensed, by giving such reasonable notice thereof as circumstances permit.

Licenses may include lands in other counties.
R. S., c. 71, § 21.

SEC. 19. When the real estate, for the sale of which license is necessary, lies in two or more counties, the supreme judicial or probate court, in either of said counties, may grant licenses for the sale of the whole, or any part thereof, in any other county.

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SEC. 20. 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.

SEC. 21. 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; and 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, the ward, or other person on whose account the license was granted, might convey by a like deed, if living and not incapacitated.

SEC. 22. 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.

SEC. 23. All heirs apparent or presumptive of the ward, shall be considered interested in the estate, and may appear and answer to the petition of any guardian or other person for the sale of his estate; and when personal notice is required, they shall be notified.

SEC. 24. 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.

SEC. 25. The affidavit of any person licensed as aforesaid, or of any person employed by him, made within eighteen 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 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.

SEC. 26. When a person, licensed as aforesaid, has taken the oath formerly required by law, but no certificate thereof has been returned to the judge of probate, parole 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.

SEC. 27. 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 suit on the probate bond or otherwise, as the case may require.

ACTIONS TO TRY THE TITLE OF LANDS SOLD BY LICENSE.

SEC. 28. 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 five 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 five years after their return to the state, or the removal of the disability.

License may prescribe the land to be sold.
R. S., c. 71, § 22.
84 Me., 95.

What estate of deceased is liable to sale; effect of deed.
R. S., c. 71, § 23.
3 Me., 286.
4 Me., 8.
22 Me., 330.
61 Me., 294.
71 Me., 67.
80 Me., 487.
81 Me., 228.

Surplus proceeds to be distributed as real estate.
R. S., c. 71, § 24.

Who must be notified; who may appear.
R. S., c. 71, § 25.
39 Me., 386.
86 Me., 101.

Costs, when license is contested.
R. S., c. 71, § 26.

Proof of notice of sale, certificate and record.
R. S., c. 71, § 27.
1889, c. 262.
63 Me., 251.

Proof by parole, when certificate is not returned.
R. S., c. 71, § 28.
63 Me., 251.
See 1893, c. 143, § 2.

Remedy for neglect or misconduct of person licensed.
R. S., c. 71, § 29.

Process to recover land sold by license, limited to five years.
R. S., c. 71, § 30.
14 Me., 346.
58 Me., 558.
85 Me., 139.
88 Me., 314.

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Requisites for valid sale, as against persons claiming under deceased or ward.
R. S., c. 71, § 31.
1893, c. 143, § 2.

SEC. 29. 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:

I. That the license was granted by a court of competent jurisdiction, and that the deed was duly executed and recorded.

II. That the person licensed gave the bond and notice of the time and place of sale required by law.

III. 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.

As against such as claim adversely to the title sold.
R. S., c. 71, § 32.
53 Me., 204.

SEC. 30. If the validity of such sale is contested by one claiming adversely to the title of the wife, ward or deceased aforesaid, 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.

Note. Sales of settlers' lots purchased of the state, for payment of debts, c. 7, § 39. Sales of real estate, subject to contingent remainder, executory devise or power of appointment, c. 75, § 4.

CHAPTER 74.

PROBATE BONDS AND REMEDIES THEREON.

WHAT BONDS ARE SUFFICIENT.

No bond is sufficient, unless approved by the judge.
R. S., c. 72, § 1.

SEC. 1. No bond required to be given to the judge of probate, or to be filed in the probate office, is sufficient, until it has been examined by the judge, and his approval written thereon.

WHEN SURETIES MAY BE DISCHARGED AND NEW BONDS REQUIRED.

Insufficient, new required.
R. S., c. 72, § 2.
See c. 66, § 50;
c. 69, § 22; c. 70,
§ 3; c. 72, § 30.

SEC. 2. When the sureties in any such bond are insufficient, on petition of any person interested, and notice to the principal, the judge may require a new bond, with sureties approved by him.

Surety on bond may be discharged by judge of probate.
R. S., c. 72, § 3.
1899, c. 85.

SEC. 3. On application of any surety or principal in such bond, the judge, on due notice to all parties interested may, in his discretion, discharge the surety or sureties from all liability for any subsequent, but not for any prior breaches thereof, and may require a new bond of the principal, with sureties approved by him.

Principal, to give new bond, or be removed.
R. S., c. 72, § 4.

SEC. 4. In either case, if the principal does not give the new bond within the time ordered by the judge, he shall be removed, and another appointed.

ACTIONS ON BONDS.

Suits on bonds, shall be in the name of judge.
R. S., c. 72, § 5.
69 Me., 234.

SEC. 5. Suits on probate bonds of any kind payable to the judge, shall be originally commenced in the supreme judicial court for the county where said judge belongs, and in his name or that of his successor at the time; and they shall not abate by the death of the plaintiff, his resignation, or the expiration of his term of office, but the process may be amended and prosecuted, without notice, in the name of his successor; but no costs shall be awarded against the judge therein.