

# Real Property Act

CHAPTER 385 OF THE REVISED STATUTES, 1989

*as amended by*

2011, c. 42, s. 5



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CHAPTER 385 OF THE REVISED STATUTES, 1989  
amended 2011, c. 42, s. 5

**An Act Respecting the Law and  
Transfer of Real Property**

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**Short title**

**1** This Act may be cited as the *Real Property Act*. R.S., c. 385, s. 1.

**ALIENS**

**Power of alien to hold or transmit real property**

**2** Aliens, corporations and companies incorporated out of the Province may take, hold, convey and transmit real property situated in the Province. R.S., c. 385, s. 2.

**Title not invalid by alienage of former owner**

**3** No title to real property shall be invalid on account of the alienage of any former owner or holder thereof or because the same was formerly owned or held by a corporation or company incorporated out of the Province. R.S., c. 385, s. 3.

**Title invalid on March 31, 1854**

**4** Nothing in this Act shall have the effect of confirming or rendering valid the title or claim of any alien invalid or incapable of being enforced on account of alienage on the thirty-first day of March, 1854. R.S., c. 385, s. 4.

**JOINT TENANCY AND TENANCY IN COMMON**

**Tenancy in common and joint tenancy**

**5 (1)** Every estate granted or devised to two or more persons in their own right shall be a tenancy in common, unless expressly declared to be in joint tenancy but every estate vested in trustees or executors as such shall be held by them in joint tenancy.

**(2)** This Section shall apply as well to estates already created or vested as to estates hereafter to be granted or devised. R.S., c. 385, s. 5.

## ESTATES TAIL

**Abolition of fee tail**

**6** All estates tail are abolished and every estate, which before the second day of May, 1865, would have been adjudged a fee tail, shall on or after the second day of May, 1865, be adjudged a fee simple and may be conveyed and devised or descend as such. R.S., c. 385, s. 6.

## TRUST AND MORTGAGE ESTATES ON DEATH

**Devolution of trust or mortgage estate on death**

**7 (1)** Where an estate or interest in inheritance, or limited to the heir as special occupant in any lands, is vested on any trust or by way of mortgage in any person solely, the same shall on his death, notwithstanding any testamentary disposition by such person, devolve to and become vested in his personal representatives in like manner as if the same was a chattel real vesting in them, and accordingly all the like power to dispose of and otherwise deal with the same shall belong to the personal representatives of the deceased, with all the like incidents, but subject to the like rights, equities and obligations as if the same was a chattel real vesting in them.

**(2)** For the purposes of this Section, the personal representatives for the time being of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers.

**(3)** This Section does not apply in cases of death before the seventeenth day of April, 1889, and does not apply in any case where the deed, will or other instrument creating the trust expressly provides that it shall not. R.S., c. 385, s. 7.

## DEEDS OF BARGAIN AND SALE

**Creation of contingent use or power**

**8** Contingent uses and powers may be created by a deed of bargain and sale or by a covenant to stand seised to uses. R.S., c. 385, s. 8.

**Power created by deed of bargain and sale**

**9** Deeds, heretofore made or hereafter to be made in execution of powers created by deeds of bargain and sale, shall be as good and effectual, for the purpose of conveying the estate or interest purported to be conveyed thereby, as if the power was created by a feoffment. R.S., c. 385, s. 9.

**Conveyance to self jointly with another or to spouse**

**10** Freehold land may be conveyed by a person to himself jointly with another person, including his spouse, by the like means by which it might be conveyed by him to another person, and may in like manner be conveyed by a husband to his wife and by a wife to her husband, alone or jointly with another person. R.S., c. 385, s. 10.

## ASSETS FOR PAYMENT OF DEBTS

**Proceeds of sale of land in administration action**

**11** When any person dies seised of land and the same is sold by the Supreme Court or a judge thereof in an administration action, the proceeds thereof shall be personal assets in the Court, to be administered for the payment of the just debts of the person whose estate is being administered in said Court. R.S., c. 385, s. 11.

**Specialty debt no priority in administration of estate**

**12 (1)** In the administration of the estate of every person, no debt or liability of such person shall be entitled to any preference by reason merely that the same is secured by, or arises under, a bond or other instrument under seal, or is otherwise made or constituted a specialty debt, but all the creditors of such person, as well specialty as simple contract creditors, shall be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether the assets are legal or equitable, any statute or other law to the contrary notwithstanding.

**(2)** This Section shall not prejudice or affect any lien, charge or other security, which any creditor holds or is entitled to for the payment of his debt. R.S., c. 385, s. 12.

## EXECUTORS OF MORTGAGEES

**Release or assignment by executor of mortgagee**

**13** All releases of mortgages and assignments thereof heretofore or hereafter made by the executors or administrators of the mortgagee of lands shall be as good, valid and effective in law as if the heirs of the mortgagee had united in the release or assignment. R.S., c. 385, s. 13.

**Deed by executor under foreclosure suit**

**14** All deeds of lands heretofore or hereafter made under suits for the foreclosure of mortgages brought by the executors or administrators of mortgagees shall be as good, valid and effective in law as if the heirs-at-law of the mortgagee were parties to such suits. R.S., c. 385, s. 14.

## SALES BY THE COURT

**Powers of Supreme Court to order sale**

**15** The Supreme Court or any judge thereof shall have the power to order the sale of real property in all cases in which any court or a judge in England has power to order a sale of real property. R.S., c. 385, s. 15.

**Sale by sheriff upon order of Court**

**16** Where an order is made, whether in court or in chambers, directing any land to be sold, the same shall be sold, unless the Court or a judge otherwise

orders, by the sheriff of the county in which the land or part of the land lies. R.S., c. 385, s. 16.

**Execution and effect of deed**

17 In every such case, the deed shall be executed by the person authorized to make the sale, and the deed, when delivered to the purchaser, shall convey the land ordered to be sold. R.S., c. 385, s. 17.

**Validity of former unconfirmed sales and deeds**

18 All sales and deeds of land ordered to be sold before the fifteenth day of April, 1890, made by any person authorized by the Court or a judge to make the same, shall be deemed good and effective for vesting in the purchaser such land, although the sales, and deeds were not confirmed by the Court or a judge. R.S., c. 385, s. 18.

**Parties to action purchasing at sale**

19 Any of the parties to the action or proceeding in which an order directing a sale of land is made may purchase at the sale, unless the Court or judge otherwise orders. R.S., c. 385, s. 19.

**Substitute conducting sale**

20 If the sheriff or person authorized to sell land ceases to be sheriff or becomes incapable of acting, the Court or a judge may appoint another person to make the sale or, if the sale has been made but not completed, to complete the sale, and to execute the deed conveying the land to the purchaser. R.S., c. 385, s. 20.

**Deed as evidence**

21 Every deed of land made by any person authorized by the Court or a judge to sell the same shall be presumptive evidence of

- (a) the regularity of the sale;
- (b) the validity of the order under which the sale was made; and
- (c) the regularity of the proceedings on which the order was founded. R.S., c. 385, s. 21.

**Conveyance deceased was liable to perform**

22 If any person at the time of his death was liable to perform any contract for the sale and conveyance of any real property, the court of probate or a judge of the Supreme Court shall have power to declare the administrator trustee thereof, so far as is necessary for performing such contract, and thereupon the administrator may execute the necessary conveyances for the performance of the contract and shall hold the purchase money, subject to the same rules of descent and distribution, as if the conveyance had been made and the consideration received in the lifetime of the deceased. R.S., c. 385, s. 22.

**Conveyance by administrator de bonis non**

**23** If any trustee or executor, empowered by any last will and testament to sell and convey land of the testator, has entered into any contract for the sale thereof, but has died before the payment of the purchase money and without having executed a conveyance, and there is no executor or administrator of the testator, the administrator *de bonis non* of the testator, may upon payment to him of the purchase money, or any balance thereof, execute a conveyance of the lands to the purchaser, or any other person entitled thereto. R.S., c. 385, s. 23.

**Recovery by administrator de bonis non**

**24** If the trustee or executor has brought an action on the contract against the purchaser, and obtained a judgment therein, the administrator *de bonis non* of the testator may take proceedings to recover the amount due on the judgment under the rules of the Supreme Court relating to executors and shall for that purpose be held to represent the trustee or executor. R.S., c. 385, s. 24.

**Validity of foreclosure deed**

**25 (1)** Where by reason of any of the rules of the Supreme Court, providing that it shall not be necessary in certain cases to make encumbrancers, beneficiaries, widows, devisees or heirs parties to actions for foreclosure and sale of mortgaged lands, such persons are not made parties, such lands are sold in any such action, and a deed thereof executed, the deed shall be effective to convey to the grantee all the interest in the land so sold of all such encumbrancers, beneficiaries, widows, devisees and heirs-at-law as if they had been parties to the action.

**(2)** No sale or deed of land made before the fifteenth day of April, 1890, shall be deemed invalid by reason only that any such person mentioned in this Section was not made a party to the action, and every such deed shall be deemed to have vested in the grantee all the interest of any such person in the land sold. R.S., c. 385, s. 25.

**Purchase to protect estate and sale by administrator**

**26 (1)** Where the executors or administrators of an estate holding a mortgage or judgment, whether taken by the deceased or by themselves, in order to protect the interests of the estate, purchase land at a sale under a foreclosure order or an execution, the land shall be held by them in joint tenancy and not as tenants in common.

**(2)** Upon the death of the survivor of the representatives or of a sole representative, the land shall become vested in an administrator with the will annexed, or an administrator *de bonis non*, of the estate, who shall have the same power and authority to sell and convey the land as the representatives of the estate would have, and it shall not be necessary for the heirs of the deceased representative to become parties to any deed for the conveyance of the land. R.S., c. 385, s. 26.

**Disposal of certain interests by deed**

**27 (1)** A contingent, an executory and a future interest, and a possibility coupled with an interest in land, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent into or upon land, may be disposed of by deed.

**(2)** Every deed, in actions brought after the twenty-third day of April, 1909, shall be deemed to have effectually passed any such interest, possibility or right of entry which the grantor had into or upon the land mentioned in such deed, as if subsection (1) had always been the law in the Province. R.S., c. 385, s. 27.

## RELEASES AND DISCHARGES BY THE COURT

**Encumbrances**

**28 (1)** In this Section,

(a) “Court” means the Trial Division of the Supreme Court and includes a judge or a local judge thereof whether sitting in court or in chambers;

(b) “encumbrance” includes a claim, lien, charge, mortgage or judgment which renders land liable as security for the payment of money or any liability and any interest arising under an agreement for lease, sale or option of land.

**(2)** Where the holder of an encumbrance cannot be found or is dead and there is no duly authorized personal representative available to act or where from any other cause a proper release or discharge of the encumbrance cannot be obtained or cannot be obtained without undue delay or expense, the court may, upon application,

(a) where there is money owing upon the encumbrance,

(i) permit payment into court of the amount due and order a release or discharge of the encumbrance, or

(ii) where by the terms of the encumbrance the money is payable by instalments, some of which is not yet due, appoint a trust company or the Public Trustee to receive the payments due under the encumbrance and authorize the trustee to give a release or discharge of the encumbrance upon fulfillment of the terms of the encumbrance; or

(b) where all money due on the encumbrance has been paid to the person entitled to receive the money or where in any other case it appears that all the money due on the encumbrance has been paid, order the release or discharge of the encumbrance.

(3) The Court may require notice to be given by advertisement or in such other manner as it deems appropriate of an application made pursuant to subsection (2).

(4) Where the amount admitted to be due upon an encumbrance appears to be open to question, the Court may, as a condition of making the order, require payment into court of a sum in excess of the amount admitted to be due or may order the giving of such other security as it deems appropriate.

(5) A person, entitled to money paid into court or paid to a trust company or the Public Trustee pursuant to an order made under this Section, may apply to the Court for an order directing payment to him of the principal and accrued interest and the Court may make such order as it deems appropriate, including provision for fees, expenses and costs of the trustee and the application out of the money held by the trustee.

(6) An order releasing or discharging an encumbrance and any release or discharge authorized by that order is as good, valid and effective as if the holder of the encumbrance had executed a discharge or release of the encumbrance. R.S., c. 385, s. 28.

#### VARIATION OR TERMINATION OF INTERESTS IN REAL PROPERTY

##### Interpretation

**29** In Sections 30 to 32,

- (a) “court” means the Supreme Court of Nova Scotia;
- (b) “prescribed” means prescribed by the regulations. 2011, c. 42, s. 5.

##### Contingent interests

**30** Sections 31 and 32 apply to

- (a) every contingent interest in real property arising before or after the coming into force of those Sections, other than
  - (i) a contingent interest in real property held on a trust under any will, settlement or other disposition, or
  - (ii) a prescribed contingent interest in real property in prescribed circumstances; and
- (b) a prescribed vested interest in real property in prescribed circumstances. 2011, c. 42, s. 5.

##### Court application

**31 (1)** A person interested in real property may apply to the court for an order varying or terminating an interest in the real property to which this Section

applies, whether the interest arose before or after the coming into force of this Section.

- (2) An applicant shall give notice of the application to
- (a) the person who holds the interest in the real property that is the subject of the application; and
  - (b) any person with a legal or beneficial interest in the real property, regardless of whether the interest is vested or contingent.
- (3) The court may, where it considers it appropriate, require the applicant to
- (a) give notice of the application to the municipality in which the real property is situate; and
  - (b) make reasonable efforts to ascertain, locate and give notice to all persons with an interest in the real property.
- (4) Upon hearing the application and being satisfied that the reasonable use of the real property will be impeded, without practical benefit to others, if the interest is not varied or terminated, the court may make an order varying, including advancing or postponing the vesting of, or terminating the interest in the real property.
- (5) In making a determination pursuant to subsection (4), the court shall have regard to
- (a) the length of time that the interest has remained or could be expected to remain contingent;
  - (b) the intention, if ascertainable, of the grantor of the interest and, where the grantee was a *bona fide* purchaser for value, the grantee; and
  - (c) the position of any person appearing before the court on the application.
- (6) An order made pursuant to subsection (4) may be subject to such terms as the court considers just under the circumstances and, without limiting the generality of the foregoing, the order may provide for compensation for any loss, injury, interference or damage suffered by any person arising from the variation or termination of the interest in the real property. 2011, c. 42, s. 5.

### Regulations

- 32 (1) The Governor in Council may make regulations
- (a) prescribing types of contingent interests in real property and the circumstances under which Section 31 does not apply to such interests;

(b) prescribing types of vested interests in real property and the circumstances under which Section 31 applies to such interests;

(c) deeming a vested interest in real property to which Section 31 is applicable to be a contingent interest and providing for a means of determining the length of time that the interest has remained or could be expected to remain contingent for the purpose of clause 31(5)(a).

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2011, c. 42, s. 5.

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