

ACT 260

H.B. NO. 2058-80

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 531-29, Hawaii Revised Statutes, is amended to read:

“Sec. 531-29 Confirmation of sales of real property by personal representatives. Any personal representative or guardian selling real property of the estate shall obtain from the court an order of confirmation of the sale before making conveyance of the real property sold. The order confirming the sale shall be given upon affirmative proof that the selling price was a fair and just price for the property sold and that the sale complied with the order of the court authorizing the sale.

If a sale being presented to the court for confirmation is a private sale, the court shall require a notice of the sale to be posted in an appropriate place in the courthouse of the circuit wherein the matter is pending and also of the circuit wherein the property is located, if they are different, at least fifteen days prior to considering the confirmation, the notice to set forth a description of the property, including the tax key number, the proposed sale price including the terms of payment, a description of any encumbrances thereon, the date of the confirmation hearing and a solicitation for sealed bids thereon or any other information required by the court. The court may also require that the notice be published at least twice in a newspaper in the circuit where the property is located, the last publication to be at least fifteen days prior to considering the confirmation. If a written offer in an amount at least ten per cent more on the first \$10,000 of the selling price and five percent more on the amount of the selling price in excess of \$10,000 is made to the court by a responsible person, who may be the original offeror, prior to the hour scheduled for the hearing of confirmation, the court upon the hearing of confirmation, shall permit the original and subsequent offerors to make a further offer, and if any new offer shall be in an amount at least five per cent more than the highest written offer made to the court, then the court shall, in such manner as it shall determine, permit the original and subsequent offerors to make additional higher offers and shall confirm the sale to the one making the highest offer acceptable to the estate finally received.

Upon the confirmation of any sale, the court may fix the compensation for the services to the estate of the personal representative or guardian, his attorney, or the real estate agent securing the original offeror. In case of a sale on an increased bid made at the time of confirmation to a purchaser other than the original offeror, the court shall also fix the compensation payable by the estate to the agent, if any, producing the successful bidder, but the total compensation payable by the estate in that case shall not exceed the amount of the commission payable on the amount for which the sale is confirmed.”

SECTION 2. Chapter 531, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“Sec. 531- Petition to sell real property. In cases where the will of the decedent does not specifically authorize the personal representative to sell real property, a personal representative or guardian shall present to the court having jurisdiction of the estate a petition setting forth the condition of the estate, and the facts and circumstances tending to show the necessity or expediency of the sale of real property. If it appears to the court either that it is necessary or that it would be advisable and for the benefit of the estate that the real property or any part thereof be sold, and that sufficient notice of the proposed sale has been given to interested persons as

defined in section 560:1-201(24), the court may authorize the personal representative or guardian to sell the real property either at private sale or at public auction on such terms as the court shall order.”

SECTION 3. Section 560:3-715, Hawaii Revised Statutes, is amended to read:

“Sec. 560:3-715 Transactions authorized for personal representatives; exceptions. Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to sections 531- and 531-29, and the priorities stated in section 560:3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) Receive assets from fiduciaries, or other sources;
- (3) Perform, compromise or refuse performance of the decedent’s contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other courses of action, may:
 - (i) Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser’s note for the sum remaining due secured by a mortgage or deed of trust on the land; or
 - (ii) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
- (5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;
- (6) Acquire or, subject to sections 531- and 531-29, dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;
- (8) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate

- easements to public use without consideration;
- (9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
 - (10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
 - (11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in a condition that it is of no benefit to the estate;
 - (12) Vote stocks or other securities in person or by general or limited proxy;
 - (13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
 - (14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
 - (15) Insure the assets of the estate against damage, loss and liability and himself against liability as to third persons;
 - (16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
 - (17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
 - (18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
 - (19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
 - (20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;
 - (21) Employ persons, including attorneys, auditors, appraisers, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
 - (22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;
 - (23) Subject to sections 531- and 531-29, sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
 - (24) Continue any unincorporated business or venture in which the decedent was engaged at the time of his death (i) in the same business form for a

period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will; (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

- (25) Incorporate any business or venture in which the decedent was engaged at the time of his death;
- (26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
- (27) Satisfy and settle claims and distribute the estate as provided in this chapter.”

SECTION 4. Section 560:3-704, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 560:3-704 Personal representative to proceed without court order; exceptions. A personal representative shall proceed expeditiously with the settlement and distribution of a decedent’s estate and, except as otherwise provided in section 560:3-504, in Part 10 hereof, or in sections 531- and 531-29, or as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction of the court, in proceedings authorized by this chapter, to resolve questions concerning the estate or its administration.”

SECTION 5. Section 560:3-719, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 560:3-719 Compensation of the personal representative. (a) A personal representative is entitled to reasonable compensation for his services, as set forth in subsection (b) of this section, which compensation shall be set forth in his final accounts and shall be approved by the court as provided in section 560:3-1001 or 560:3-1003. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, he may renounce the provision before qualifying and be entitled to reasonable compensation, as set forth in subsection (b) of this section. A personal representative also may renounce his right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

(b) A personal representative is entitled to a reasonable fee for the ordinary services rendered by him to an estate at the following rates computed on the value of the probate assets as of the date of the death of the decedent as finally determined for federal estate tax purposes or, if none, for state inheritance tax purposes: four per cent of the first \$15,000, three per cent of the next \$85,000, two per cent of the next \$900,000, one and one-half per cent of the next \$2,000,000, one per cent of the excess over \$3,000,000. In addition, the personal representative shall be entitled to receive seven per cent of the first \$5,000 of income received by the estate each year,

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and five per cent of the income of the estate received each year in excess of \$5,000. In addition, the personal representative shall be entitled to such further allowances as the court deems just and reasonable for services performed in connection with sales, leases, or management of real estate; contested or litigated claims against the estate; the preparation, adjustment, and payment of estate, inheritance, and income taxes and the return therefor; the carrying on of the decedent's business; litigation or settlement of disputes in regard to the estate; and such other special services as may be necessary for the personal representative to perform, prosecute, or defend."

SECTION 6. Section 560:3-721, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 560:3-721 Compensation of employees of estate. (a) Except as set forth in subsection (b) of this section, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for his own special services, may be reviewed by the court or the registrar at the time of its approval of the final account. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

(b) The attorney employed by the personal representative shall be entitled to a fee for the attorney's ordinary services to the estate equal to that paid the personal representative under section 560:3-719 for the personal representative's ordinary services, except that the attorney shall not be allowed a fee based upon the income of the estate. The attorney shall be entitled to reasonable compensation for extraordinary services rendered to the estate."

SECTION 7. Section 560:3-901, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 560:3-901 Successors' rights. The heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Heirs and devisees may establish title by conveyance document executed by the personal representative or by the order of distribution which shall itself operate to pass title without the necessity of further action by the personal representative unless the court orders any such further action. Persons entitled to property by homestead allowance or exemption may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption."

SECTION 8. Section 560:5-424, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 560:5-424 Powers of guardian of the property in administration. Subject to the restrictions of sections 531-29, 560:5-408(4), and 560:5-422:

(a) A guardian of the property has all of the powers conferred herein and any additional powers conferred by law on trustees in this State. In addition, an individual

guardian of the property of an unmarried minor, as to whom no one has parental rights, has the duties and powers of a guardian of the person of a minor described in section 560:5-209 until the minor marries, but the parental rights so conferred on a guardian of the property do not preclude appointment of a guardian of the person as provided by Part 2.

(b) A guardian of the property has power without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(c) A guardian of the property, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:

- (1) Collect, hold, and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he is personally interested;
- (2) Receive additions to the estate;
- (3) Continue or participate in the operation of any business or other enterprise;
- (4) Acquire an undivided interest in an estate asset in which the guardian of the property, in any fiduciary capacity, holds an undivided interest;
- (5) Invest and reinvest estate assets in accordance with subsection (b);
- (6) Deposit estate funds in a bank including a bank operated by the guardian of the property;
- (7) Acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
- (8) Make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
- (9) Subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;
- (10) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the guardianship;
- (11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (12) Grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;
- (13) Vote a security, in person or by general or limited proxy;
- (14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (15) Sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (16) Hold a security in the name of a nominee or in other form without disclosure

of the guardianship so that title to the security may pass by delivery, but the guardian of the person is liable for any act of the nominee in connection with the stock so held;

- (17) Insure the assets of the estate against damage or loss, and the guardian of the property against liability with respect to third persons;
- (18) Borrow money to be repaid from estate assets or otherwise; to advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets and the guardian of the property has a lien on the estate as against the protected person for advances so made;
- (19) Pay or contest any claim; to settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;
- (20) Pay taxes, assessments, compensation of the guardian of the property, and other expenses incurred in the collection, care, administration, and protection of the estate;
- (21) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (22) Pay any sum distributable to a protected person or his dependent, without liability to the guardian of the property by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;
- (23) Employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the guardian of the property to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;
- (24) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the guardian of the property in the performance of his duties; and
- (25) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the guardian of the property.”

SECTION 9. Section 560:3-303, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

- (1) The application is complete;
- (2) The application states that the value of the estate is \$40,000 or less;
- (3) The applicant has made oath or affirmation that the statements contained in the application are accurate and complete to the best of his knowledge and belief;

- (4) The applicant appears from the application to be an interested person as defined in section 560:1-201(24);
- (5) Any requested statutory allowances or exempt property are proper;
- (6) The person nominated as personal representative has priority and is qualified to serve as such;
- (7) On the basis of the statements in the application, venue is proper;
- (8) An original, duly executed and apparently unrevoked will or a certified copy of one probated elsewhere is in the registrar's possession;
- (9) Notice required by sections 560:3-204 and 560:3-301 has been given;
- (10) The application is not within section 560:3-304; and
- (11) It appears from the application that the time limit contained in section 560:3-108 either has not expired or, in the case of an ancillary proceeding, is not applicable."

SECTION 10. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 11. This Act shall become effective upon its approval and shall apply to all pending probate proceedings in which an Order Approval Final Accounts or other order closing the administration of the estate has not been filed.

(Approved June 13, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.