

# *The Devolution of Estates Act*

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Chapter 73 of *The Revised Statutes of Saskatchewan, 1920*  
(Assented to November 10, 1920).

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER 73

### An Act respecting the Devolution of Estates of Deceased Persons

#### SHORT TITLE

##### Short title

- 1 This Act may be cited as *The Devolution of Estates Act*.

1918-19, c.20, s.1; R.S.S. 1920, c.73, s.1.

#### INTERPRETATION

##### “Interpretation”

- 2 In this Act, unless the context otherwise requires, the expression:

##### “Issue”

1. “**Issue**” includes all lawful lineal descendants of the intestate;

##### “Personal”

2. “**Personal property**” extends to and includes leasehold estates and other chattels real and also moneys, shares of Government and other stocks or funds, securities for money, debts, choses in action, rights, credits, goods and all other property whatsoever other than real property as herein defined;

##### “Real property”

3. “**Real property**” extends to and includes messuages, lands, rents and hereditaments whether of freehold or any other tenure whatsoever and whether corporeal or incorporeal and any undivided share thereof and any estate, right or interest therein other than a chattel interest.

1918-19, c.20, s.2; R.S.S. 1920, c.73, s.2.

#### DEVOLUTION TO PERSONAL REPRESENTATIVES

##### All property goes to personal representatives

- 3(1) All real and personal property which is vested in any person without a right in any other person to take by survivorship shall, on his death, whether testate or intestate, and notwithstanding any testamentary disposition, devolve upon and become vested in his personal representative from time to time as trustee for the persons by law beneficially entitled thereto and, subject to the payment of his debts, and so far as such property is not disposed of by deed, will, contract or other effectual disposition, the same shall be administered, dealt with and distributed as if it were personal property not so disposed of.

- (2) This section shall apply to property over which a person executes by will a general power of appointment as if it were property vested in him.

- (3) This section shall not apply to the personal property, except chattels real, of any person who, at the time of his death, is domiciled out of Saskatchewan.

1918-19, c.20, s.3; R.S.S. 1920, c.73, s.3.

## ADMINISTRATION OF REAL PROPERTY

**Application of enactments as to probate**

4 The enactments and rules of law relating to the effect of probate or letters of administration as respects personal property and as respects the dealings with personal property before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate and the powers, rights, duties and liabilities of personal representatives in respect of personal estate, shall apply to real property vesting in them, so far as the same are applicable as if that real property were personal property, save that it shall not be lawful for some or one only of several joint personal representatives without the authority of the Court of King's Bench or a judge thereof to sell or transfer real property.

1918-19, c.20, s.4; R.S.S. 1920, c.73, s.4.

**Real and personal property assimilated in matters of administration**

5 Subject to the other provisions of this Act, in the administration of the assets of a deceased person, his real property shall be administered in the same manner, subject to the same liability for debts, costs and expenses and with the same incidents as if it were personal property, but nothing in this section shall alter or affect, as respects real or personal property of which the deceased has made a testamentary disposition, the order in which real and personal assets are now applicable to the payment of funeral and testamentary expenses, the costs and expenses of administration, debts or legacies, or the liability of real property to be charged with the payment of legacies.

1918-19, c.20, s.5; R.S.S. 1920, c.73, s.5.

## PAYMENT OF DEBTS OUT OF RESIDUE

**Payment of debts out of residuary estate**

6 Subject to the provisions of section 37 of *The Wills Act*, the real and personal property of a deceased person comprised in any residuary devise or bequest shall, except so far as a contrary intention appears from his will or any codicil thereto, be applicable rateably, according to their respective values, to the payment of his debts, funeral and testamentary expenses and the cost and expenses of administration.

1918-19, c.20, s.6; R.S.S. 1920, c.73, s.6.

**Personal representatives as heirs**

7 When any part of the real property of a deceased person vests in his personal representative under this Act such personal representative, in the interpretation of any Act of the Legislature, or in the construction of any instrument to which the deceased was a party, or under which he is interested, shall, while the estate remains in him, be deemed in law his heir, as respects such part, unless a contrary intention appears; but nothing in this section shall affect the beneficial right to any property, or the construction of words of limitation of any estate in or by any deed, will or other instrument.

1918-19, c.20, s.7; R.S.S. 1920, c.73, s.7.

## TRUST ESTATES

**Trustee's death**

**8** Where an estate or interest of inheritance in real property is vested on any trust in any person solely, the same shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or administrator in like manner as if the same were personal estate vesting in him and, accordingly, all the like powers for one only of several joint executors or administrators as well as for a single executor or administrator and for all the executors and administrators together to dispose of and otherwise deal with the same, shall belong to the deceased's executor or administrator with all the like incidents but subject to all the like rights, equities and obligations as if the same were personal estate vesting in him, and for the purposes of this section the executor or administrator of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers.

1918-19, c.20, s.8; R.S.S. 1920, c.73, s.8.

## POWERS OF PERSONAL REPRESENTATIVE

**Sales where infants interested**

**9** Where an infant is interested in real property which but for this Act would not devolve on the personal representative, no sale or conveyance shall be valid under this Act without the written consent or approval of the Official Guardian, or, in the absence of such consent or approval, without an order of a judge of the Court of King's Bench.

1918-19, c.20, s.9; R.S.S. 1920, c.73, s.9.

**Power over realty**

**10** Except as herein otherwise provided the personal representative of a deceased person shall have power to dispose of and otherwise deal with the real property vested in him by virtue of this Act, with the like incidents, but subject to the like rights, equities and obligations, as if the same were personal property vested in him.

1918-19, c.20, s.10; R.S.S. 1920, c.73, s.10.

**Powers of selling and conveying realty**

**11(1)** The powers of sale conferred by this Act on a personal representative may be exercised for the purpose not only of paying debts, but also of distributing or dividing the estate among the persons beneficially entitled thereto, whether there are or are not debts, and in no case shall it be necessary that the persons beneficially entitled shall concur in any such sale except where it is made for the purpose of distribution only.

**(2)** No sale of any of the real property mentioned in section 10 made for the purpose of distribution only shall be valid as respects any person beneficially entitled thereto unless he concurs therein; but where a lunatic is beneficially entitled or where there are other persons beneficially entitled whose consent to the sale is not obtained by reason of their place of residence being unknown or where in the opinion of a judge of the Court of King's Bench it would be inconvenient to require the concurrence of such persons, he may, upon proof satisfactory to him that such sale is in the interest and to the advantage of the estate of the deceased and the persons beneficially interested therein, approve such sale on behalf of such lunatic and nonconcurring persons, and any such sale made with such approval shall be valid and binding upon such lunatic and nonconcurring persons.

(3) The personal representative shall also have power, with the concurrence of the adult persons beneficially entitled thereto, and with the written approval of the Official Guardian on behalf of infants, and in the case of a lunatic, with the approval of his committee or of the Administrator of Lunatics' Estates, as the case may be, if any infants or lunatics are so entitled, to convey, divide or distribute the estate of the deceased person or any part thereof among the persons beneficially entitled thereto according to their respective shares and interests therein.

(4) Section 10 and this section shall not apply to an administrator where the letters of administration are limited to the personal property, exclusive of the real property, and shall not derogate from any right possessed by a personal representative independently of this Act, but an executor shall not exercise the powers conferred by this section until he has obtained probate of the will unless with the approval of the Court of King's Bench or a judge thereof.

1918-19, c.20, s.11; R.S.S. 1920, c.73, s.11.

**Effect of accepting share of money**

**12** The acceptance by an adult of his share of the purchase money in the case of a sale by a personal representative which has been made without the written approval required by subsection (3) of section 11, shall be a confirmation of the sale as to him.

1918-19, c.20, s.12; R.S.S. 1920, c.73, s.12.

***Bona fide* purchase from personal representative**

**13** A person purchasing in good faith and for value real property from the personal representative in manner authorised by this Act shall be entitled to hold the same freed and representative discharged from any debts or liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will, and from all claims of the persons beneficially entitled thereto, and shall not be bound to see to the application of the purchase money.

1918-19, c.20, s.13; R.S.S. 1920, c.73, s.13.

***Bona fide* purchase from beneficiary**

**14** A person purchasing real property in good faith and for value from a person beneficially entitled, to whom it has been conveyed by the personal representative, by leave of the Court of King's Bench or a judge thereof, shall be entitled to hold the same freed and discharged from any debts and liabilities of the deceased owner, except such as are specifically charged thereon otherwise than by his will; but nothing in this section shall affect the rights of creditors as against the personal representative personally, or as against any person beneficially entitled to whom real property of a deceased owner has been conveyed by the personal representative.

1918-19, c.20, s.14; R.S.S. 1920, c.73, s.14.

**Other powers**

**15(1)** The powers of a personal representative under this Act shall include:

- (a) power to lease from year to year while the real property remains vested in him;
  - (b) power, with the approval of the Court of King's Bench or a judge thereof, to lease for a longer term;
  - (c) power to mortgage for the payment of debts.
- (2) Where infants or lunatics are concerned, the approval required by subsection (3) of section 11 in the case of a sale shall be required in the case of a mortgage under clause (c) of subsection (1) of this section.

1918-19, c.20, s.15; R.S.S. 1920, c.73, s.15.

**DISTRIBUTION OF ESTATES OF INTESTATES****Intestate leaving widow and children**

**16(1)** If an intestate dies leaving a widow and one child, one-half of his real and personal property shall go to each.

(2) If he dies leaving a widow and children, one-third of his real and personal property shall go to his widow and the remaining two-thirds to his children in equal shares.

(3) In the last mentioned case, if a child has died leaving issue, the distributive share of such child shall go to those who legally represent him, such representatives to take in equal proportions.

(4) If there is no child of the intestate living at the time of his death but a child has died leaving issue, the share of the property which would otherwise go to his child or children shall go to the lineal descendants of the intestate. If all such descendants are in the same degree of kindred to the intestate they shall take the property equally, otherwise they shall take according to the right of representation.

1918-19, c.20, s.16; R.S.S. 1920, c.73, s.16.

**Widow and no children**

**17** If an intestate dies leaving a widow and no issue, his whole estate, real and personal, shall go to his widow.

1918-19, c.20, s.17; R.S.S. 1920, c.73, s.17.

**Issue and no widow**

**18** If an intestate dies leaving a child or children or issue and no widow, his whole estate, real and personal, shall go to his child or children in equal shares, and if any of the children shall have died leaving issue such issue shall take according to their right of representation.

1918-19, c.20, s.18; R.S.S. 1920, c.73, s.18.

**Neither widow nor issue**

**19** If an intestate dies leaving no widow or issue, his whole estate, real and personal, shall go to his father.

1918-19, c.20, s.19; R.S.S. 1920, c.73, s.19.

**No widow, issue or father**

**20** If an intestate dies leaving no widow, issue or father, his whole estate, real and personal, shall go to his mother.

1918-19, c.20, s.20; R.S.S. 1920, c.73, s.20.

**No widow, issue, father or mother**

**21** If an intestate dies leaving no widow or issue or father or mother, his whole estate, real and personal, shall go to his brothers and sisters in equal shares, and, if any of his brothers or sisters be dead, the children of such deceased brother or sister shall take the parent's share.

1918-19, c.20, s.21; R.S.S. 1920, c.73, s.21.

**No widow, issue, father, mother, brother, sister or children of any brother or sister**

**22** If an intestate dies leaving no widow, issue, father, mother, brother or sister or children of any brother or sister, his estate, real and personal, shall go in equal shares to his next of kin in equal degrees, excepting that where there are two or more collateral kindred in equal degrees but claiming through different ancestors those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote; but in no case shall representatives be admitted among collaterals after brother's and sister's children.

1918-19, c.20, s.22; R.S.S. 1920, c.73, s.22.

**Minor child dying unmarried**

**23(1)** If an intestate dies leaving several children or one child and the issue of one or more other children, and any surviving child dies under age and not having been married, all the property, real and personal, that came to the deceased child by inheritance from such deceased parent shall go in equal shares to the other children of the same parent and to the issue of any such other children who have died, by right of representation.

**Where all children dead prior to such death**

(2) If at the death of such child who dies under age and not having been married all the other children of his parent are also dead and any of them shall have left issue all the property, real or personal, that came to such child by inheritance from his parent shall descend to all the issue of the other children of the same parent; and if all the issue are in the same degree of kindred to such child they shall take such property equally, otherwise they shall take according to the right of representation.

1918-19, c.20, s.23; R.S.S. 1920, c.73, s.23.

## APPLICATION BY WIDOW FOR RELIEF

**Application to court**

**24** An application may be made to the Court of King's Bench for relief by the widow of a man who dies leaving a will by the terms of which his said widow would, in the opinion of the judge before whom the application is made, receive less than if he had died intestate leaving a widow and children.

1918-19, c.20, s.24 (redrawn); R.S.S. 1920, c.73, s.24.



**By notice of motion**

**25** The application may be made by notice of motion in the matter of the estate of the deceased.

1918-19, c.20, s.25; R.S.S. 1920, c.73, s.25.

**Service of**

**26** The notice of motion shall be served upon the executors named in the will or upon any person to whom a grant of letters of administration with will annexed has been made six clear days before the notice is returnable.

1918-19, c.20, s.26; R.S.S. 1920, c.73, s.26.

**Practice and procedure upon motion**

**27** The court may direct any other person to be served with notice of the application and the practice and procedure of the Court of King's Bench upon applications in chambers shall so far as the same are found to be applicable apply to proceedings under sections 24 to 34, save as herein otherwise provided.

1918-19, c.20, s.27; R.S.S. 1920, c.73, s.27.

**Affidavit**

**28** The application shall be supported by an affidavit of the applicant setting forth fully all the facts entitling her to relief under sections 24 to 34.

1918-19, c.20, c.28; R.S.S. 1920, c.73, s.28.

**Other evidence**

**29** The court may direct such other evidence to be given in addition to the evidence adduced by the parties to the application and in such manner as shall seem necessary or proper.

1918-19, c.20, s.29; R.S.S. 1920, c.73, s.29.

**Amount of allowance, how determined**

**30** On any such application the court may make such allowance to the applicant out of the estate of her husband disposed of by will as shall in the opinion of the judge be equal to what would have gone to such widow under this Act had her deceased husband died intestate leaving a widow and children.

1918-19, c.20, s.30; R.S.S. 1920, c.73, s.30.

**Payment of allowance**

**31** Any such allowance may be by way of an amount payable annually or otherwise or of a lump sum to be paid or of certain property to be conveyed or assigned either absolutely or for life or for a term of years to the applicant or for her use and benefit, as the court may see fit; and, in the event of a conveyance of property being ordered, the court may give all necessary and proper directions for the execution of the conveyance or conveyances either by the executors or administrators with the will annexed, or such other person as the court may direct or may grant a vesting order.

1918-19, c.20, s.31; R.S.S. 1920, c.73, s.31.

**Defences available**

**32** Any answer or defence that would have been available to the husband of the applicant in any suit for alimony shall equally be available to his executors or administrators with the will annexed in any application made under the provisions of sections 24 to 34.

1918-19, c.20, s.32; R.S.S. 1920, c.73, s.32.

**Enforcement of order**

**33** Any order made by the court upon the application may be enforced against the estate of the deceased husband in the same way and by the same means as any other judgment or order of the court against the estate of the deceased may be enforced, and the court may make such order or direction or interim order or direction as shall seem necessary to secure to the applicant payment out of the estate of such sum or sums as she shall be found entitled to.

1918-19, c.20, s.33; R.S.S. 1920, c.73, s.33.

**Time limit for application**

**34** No application shall be entertained under sections 24 to 34 after six months from the grant of probate of the husband's will or of administration with the will annexed, unless the judge before whom the application is made is of opinion that in view of all the circumstances such application may be proceeded with and such relief granted to the extent provided for in said sections, or to any lesser extent, without causing injustice or undue hardship to other parties interested in the estate.

1918-19, c.20, s.34; R.S.S. 1920, c.73, s.34.

## MARRIED WOMEN

**Distribution of property of intestate**

**35(1)** The real and personal property of a married woman dying intestate shall be distributed in the same proportions and in the same manner as the real and personal property of a husband dying intestate.

**Substitution of terms**

(2) For the purposes of this section the word "husband" shall be substituted for the word "widow" and the word "her" for the word "his" where such words respectively occur in sections 16, 17, 18, 19, 20, 22 and 29; and the word "mother" for the word "father" in section 39.

1918-19, c.20, s.35; R.S.S. 1920, c.73, s.35.

## DESERTION AND ADULTERY

**Adultery by wife**

**36** If a wife has left her husband and has lived in adultery after leaving him she shall take no part of his real or personal estate.

1918-19, c.20, s.36; R.S.S. 1920, c.73, s.36.

**By husband**

**37** If a husband has left his wife and has lived in adultery after leaving her he shall take no part of her real or personal estate.

1918-19, c.20, s.37; R.S.S. 1920, c.73, s.37.

## GENERAL PROVISIONS

**No distinction of half blood**

**38** For the purposes of this Act degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

1918-19, c.20, s.38; R.S.S. 1920, c.73, s.38.

**Posthumous children**

**39(1)** Descendants and relatives of the intestate begotten before his death but born, thereafter shall in all cases inherit in the same manner as if they had been born in the lifetime of the intestate and had survived him.

(2) Any child born after the death of his father for whom no provision is made in the will of the father shall have the like interest in the real and personal property of his father as if the father had died intestate; and all the devisees and legatees under such will shall abate in proportion their respective devises and bequests.

(3) The share of such posthumous child shall be set out and assigned by the Court of King's Bench or other court having jurisdiction so as to affect as little as possible the disposition made by the testator of his property.

1918-19, c.20, s.39; R.S.S. 1920, c.73, s.39.

**Advance to child of intestate**

**40(1)** If any child of an intestate has been advanced by the intestate by settlement or by portion of real or personal property or both of them and the same has been so expressed by the intestate in writing or so acknowledged in writing by the child, the value thereof shall be reckoned for the purposes of this section only as part of the real and personal property of such intestate distributable according to law; and, if such advancement is equal or superior to the amount of the share which such child would be entitled to receive of the real and personal property of the deceased as above reckoned, then such child and his descendants shall be excluded from any share in the real and personal property of the intestate.

(2) If such advancement is not equal to such share such child and his descendants shall be entitled to receive so much only of the personal property and real property of the intestate as is sufficient to make all the shares of the children in such real and personal property and advancement to be equal as nearly as can be estimated.

1918-19, c.20, s.40; R.S.S. 1920, c.73, s.40.

**Value of property advanced how estimated**

**41** The value of any real or personal property so advanced shall be deemed to be that which has been expressed by the intestate or acknowledged by the child in any instrument in writing, otherwise such value shall be estimated according to the value of the property when given.

1918-19, c.20, s.41; R.S.S. 1920, c.73, s.41.

**Education or gift not advancement**

**42** The maintaining or educating or the giving of money to a child without a view to a portion or settlement in life shall not be deemed an advancement within the meaning of this Act.

1918-19, c.20, s.42; R.S.S. 1920, c.73, s.42.

**Estate not devised**

**43** All such property, real and personal, as is not devised by will shall be distributed as if the testator had died intestate.

1918-19, c.20, s.43; R.S.S. 1920, c.73, s.43.

**DOWER****No dower; no tenancy by the curtesy**

**44** No widow shall be entitled to dower in the land of her deceased husband and no husband shall be entitled to any estate by the curtesy in the land of his deceased wife.

1918-19, c.20, s.44; R.S.S. 1920, c.73, s.44.

**SPECIAL PROVISIONS RESPECTING ILLEGITIMATE CHILDREN****Inherit through mother**

**45** Illegitimate children shall inherit from the mother as if they were legitimate and through the mother if dead any real or personal property which she would if living have taken by purchase, gift, demise or descent from any other person.

1918-19, c.20, s.45; R.S.S. 1920, c.73, s.45.

**Illegitimate intestate**

**46** If an intestate being an illegitimate child dies leaving no widow or husband or issue the whole of such intestate's property, real and personal, shall go to his or her mother.

1918-19, c.20, s.46; R.S.S. 1920, c.73, s.46.