

UNEDITED

The Administrator of Estates of the Mentally Incompetent Act

being

Chapter 311 of *The Revised Statutes of Saskatchewan, 1953*
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

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 311

An Act respecting the Administration of Estates of the Mentally Incompetent

SHORT TITLE

Short title

1 This Act may be cited as *The Administrator of Estates of the Mentally Incompetent Act*.

R.S.S. 1953, c.311, s.1.

INTERPRETATION

Interpretation

2 In this Act:

“court”

1 “**court**” means Her Majesty’s Court of Queen’s Bench for Saskatchewan;

“hospital”

2 “**hospital**” means a mental hospital or a school for mental defectives within the meaning of *The Mental Hygiene Act*;

“judge”

3 “**judge**” means a judge of the said court;

“mentally incompetent”

4 “**mentally incompetent**” includes every person who is mentally defective or mentally ill within the meaning of *The Mental Hygiene Act*, and who is detained in a hospital;

“minister”

5 “**minister**” means the member of the Executive Council entrusted with the administration of this Act.

R.S.S. 1940, c.240, s.2; R.S.S. 1953, c.311, s.2.

ADMINISTRATOR

Appointment, duties and salaries of administrator and staff

3(1) There may be appointed an Administrator of Estates of the Mentally Incompetent, and such other officers, clerks, inspectors and employees as may be necessary for the proper conduct of the office of the administrator.

(2) The administrator shall, under the direction of the minister, manage, handle, administer and care for the property, whether real or personal, which is entrusted to him under this Act, and perform such other duties as may be assigned to him by the Lieutenant Governor in Council.

(3) The salaries of the administrator and other officers and employees and all other expenses incurred in administering this Act may be paid out of moneys appropriated by the Legislature for that purpose.

R.S.S. 1940, c.240, s.3; R.S.S. 1953, c.311, s.3.

c. 311**ESTATES OF MENTALLY INCOMPETENT****Administrator is committee**

4(1) The administrator shall by his name of office be the committee of the estate of any mentally incompetent person who has no other committee, when appointed by the Lieutenant Governor in Council to act as such committee.

(2) Where the administrator has been appointed to act as committee of an estate, the acting administrator may in the absence of the administrator or in case of a vacancy in the office exercise all the powers and perform all the duties of the administrator as committee of such estate.

R.S.S. 1940, c.240, s.4; R.S.S. 1953, c.311, s.4.

Appointment filed with registrar of court

5 The administrator shall forthwith, upon receipt of an order in council containing his file a duly certified copy thereof with the local registrar of the court for the judicial district in which the mentally incompetent person has his place of residence, as well as in every judicial district where any of his property, real or personal, is situated, and the registrar shall file the copy among his records without fee.

R.S.S. 1940, c.240, s.5; R.S.S. 1953, c.311, s.5.

No other committee appointed

6 During the continuance of the order in council no other committee or guardian shall be appointed by the court.

R.S.S. 1940, c.240, s.6; R.S.S. 1953, c.311, s.6.

POWERS AND DUTIES OF ADMINISTRATOR**Powers of administrator**

7 The administrator, while acting as committee of the estate of a mentally incompetent person, shall have all the powers of a committee or guardian appointed by the court.

R.S.S. 1940, c.240, s.7; R.S.S. 1953, c.311, s.7.

Removal of guardian

8 Where a committee or guardian has been appointed by the court to the estate of a mentally incompetent person, or was appointed to the estate of such person before his admission to the hospital, the administrator shall be entitled, on application to a judge in chambers, to an order removing such committee or guardian and vesting the estate in the administrator, upon such terms as to taking the accounts, remuneration of the committee or guardian and costs, as seem meet.

R.S.S. 1940, c.240, s.8; 1941, c.70, s.2; R.S.S. 1953, c.311, s.8.

Administrator deals with estate

9(1) The administrator, as committee of the estate of a mentally incompetent person, may, without applying to or petitioning the court for a declaration of lunacy or for an order affecting the estate or for a direction of the court, do all acts and take all proceedings necessary for the performance of his duties as set forth in section 3, and, without in any way limiting the generality of the foregoing, shall have power:

- (a) to sell, mortgage, partition, lease or lease with an option of purchasing, the personal property and real estate of such person, or any portion thereof;
- (b) to transfer or assign any mortgage, lease or agreement standing in the name of such person, to discharge such mortgage or surrender such lease; or to release the interest of such person in any land purchased under agreement of sale;
- (c) to execute transfers, conveyances, agreements for sale, partition agreements, mortgages, leases, transfers of mortgages and leases, discharges of mortgage, surrenders of lease, assignments of agreement, quit claim deeds, and other necessary documents;
- (d) to accept mortgages as security for the purchase money or any part thereof;
- (e) to draw, accept and endorse bills of exchange and promissory notes, to endorse bonds, debentures, coupons and other negotiable instruments and securities, and to assign lien notes or conditional sale agreements;
- (f) to exercise a power or give a consent required for the exercise of a power vested in a mentally incompetent person;
- (g) to exercise a right or obligation to elect belonging to or imposed upon a mentally incompetent person;
- (h) to maintain an action for injury to the person or property of a mentally incompetent person, whether he is mentally incompetent at the time of the injury or thereafter becomes mentally incompetent, to compromise, compound or otherwise settle any claim in respect of such injury and to enter into, give and execute such agreements, instruments or releases as may be necessary to give effect to such compromise, composition or other settlement.

(2) Notwithstanding anything in *The Homesteads Act*, if the wife of a mentally incompetent person refuses to sign a transfer, agreement of sale, lease, mortgage, or other instrument intended to transfer or charge the homestead of such mentally incompetent person or any interest therein, or if such wife cannot be found after diligent search and her whereabouts is unknown, the administrator may apply to a judge of the Court of Queen's Bench in chambers and the judge may thereupon make an order dispensing with the signature of the wife of the mentally incompetent person, or such other order and upon such terms and conditions as he may deem advisable.

R.S.S. 1940, c.240, s.9; R.S.S. 1953, c.311, s.9.

Registration of documents

10 The registrar of land titles for the registration district in which the land is situated, shall register such transfers, mortgages, leases, transfers of mortgages and leases and discharges of mortgage, upon the production and deposit of a duly certified copy of the order in council appointing the administrator to be committee of the mentally incompetent person's estate, and of a certificate of the minister certifying that the personal estate and the rents, profits and income of the real estate are insufficient for the maintenance of such person or his family, or for the education of his children; or that it is desirable in the interests of such person and his estate that the property should be sold or mortgaged or leased, or that the mortgages or leases should be transferred or assigned, or the mortgages discharged, as the case may be.

R.S.S. 1940, c.240, s.10; R.S.S. 1953, c.311, s.10.

Limitation of Actions Act not to apply

11 The time during which a mentally incompetent person is confined in a hospital shall not, as against him, be computed for the purposes of *The Limitation of Actions Act* or any other Act or law limiting a time within which an action is required to be commenced or proceeding taken; but the administrator may take action or proceed notwithstanding that the period limited for commencing action or proceeding would, but for this section, have elapsed subsequently to the date of the committal of the mentally incompetent person to the hospital.

R.S.S. 1940, c.240, s.11; 1941, c.70, s.3; R.S.S. 1953, c.311, s.11.

Investments

12 The administrator shall have and be deemed always to have had authority to invest the moneys of a mentally incompetent person of whom he is the committee, in securities in which trustees are by law authorized to invest trust funds.

R.S.S. 1940, c.240, s.12; R.S.S. 1953, c.311, s.12.

Agreements by administrator as committee binding

13(1) If the administrator enters into a contract on behalf of a mentally incompetent person while the latter is detained in a hospital, the contract shall be binding on that person after his discharge or escape from the hospital, in the same manner and to the same extent as if he himself had made it; and, if he fails to carry out his obligations thereunder after his discharge or escape, the administrator may do so in the same manner as he might have done if the mentally incompetent person had remained in detention.

(2) Where a sale of land has been made by the administrator while the owner was so detained, the administrator shall have power to convey title, notwithstanding that the owner is discharged before a transfer of the land so sold has been executed or registered.

R.S.S. 1940, c.240, s.13; 1941, c.70, s.4; R.S.S. 1953, c.311, s.13.

Notices of commitment

14(1) When a mentally incompetent person has been committed to the hospital the administrator shall forthwith send notice of his commitment by registered letter to every registrar of land titles, local registrar of the Court of Queen's Bench and clerk of the district court in the province.

(2) After receipt of the notice mentioned in subsection (1), no local registrar or clerk of the court shall enter judgment against the mentally incompetent person or his estate upon proceedings commenced before commitment, nor shall any writ of execution be issued upon a judgment previously obtained against him, unless it is established to the satisfaction of the local registrar or clerk of the court by affidavit that the notice required by section 17 has been duly given or unless the court or a judge otherwise orders.

(3) Upon receipt of the notice mentioned in subsection (1), every registrar of land titles shall file the same and enter it in his general register, and until he receives the further notice provided by section 15, he shall not accept for registration any instrument affecting the mentally incompetent person's lands, except an order of court, a certified copy of a writ of execution, a caveat, a notice under section 16 or any document subsequent thereto properly registerable in the course of proceedings for foreclosure or sale, unless such instrument is duly executed by the Administrator of Estates of the Mentally Incompetent, or the registration is authorized by the administrator in writing.

R.S.S. 1940, c.240, s.14; 1941, c.70, s.5; R.S.S. 1953, c.311, s.14.

Notice that administration ended

15(1) Upon the release or discharge of the mentally incompetent person, the administration having been for the purposes of this Act completed, or at any time when for any reason the minister considers a continuation of the administration no longer necessary or desirable, the administrator shall forward by registered letter to the officials mentioned in section 14, a notice that the administration is at an end, and thereupon the restrictions contained in that section shall cease to apply, and the local registrars, clerks of the court and registrars of land titles shall deal with documents and proceedings in their respective offices as if the notice given under section 14 had not been received.

(2) Notwithstanding the release or discharge of a mentally incompetent person, the administration shall continue as long as the minister considers it necessary or desirable in the interest of such person or his estate.

R.S.S. 1940, c.240, s.15; R.S.S. 1953, c.311, s.15.

ACTIONS AND PROCEEDINGS

Notice of action or proceeding

16(1) No action, suit or proceeding judicial or extra judicial, whether at law or otherwise, and no proceeding by way of seizure or distress whether at law or otherwise, against a mentally incompetent person or affecting or which may affect the real or personal property of a mentally incompetent person shall be brought or taken unless thirty days' notice of intention to bring or take the action, suit or proceeding has been given to the administrator in writing setting out fully the cause of the proposed action, suit or proceeding with particulars.

(2) In case of an intended action, suit or proceeding in court, or proceeding in a land titles office, a copy of the notice shall forthwith be filed with the local registrar, clerk of the court or registrar of land titles, as the case may be.

(3) The administrator may in any particular case, either before or after an action, suit or proceeding is brought or taken, dispense with the notice required under subsection (1).

1943, c.51, s.1; R.S.S. 1953, c.311, s.16.

No judgment or execution without notice

17 No judgment shall be entered against a mentally incompetent person upon proceedings taken against him before commitment, nor shall execution be issued upon a judgment obtained against him before commitment, unless thirty days' previous notice of intention to enter such judgment or issue such execution has been given in writing to the administrator by the other party to the action or proceeding.

R.S.S. 1940, c.240, s.17; R.S.S. 1953, c.311, s.17.

ADMINISTRATION ON DEATH OF MENTALLY INCOMPETENT PERSON**Administrator to retain possession of estate**

18 When a person, of whose estate the administrator is committee, dies the administrator shall retain possession of the lands, personal estate and effects of the deceased.

R.S.S. 1940, c.240, s.18; R.S.S. 1953, c.311, s.18.

Application for letters of administration

19 On the death of a person of whose estate the administrator is committee or was entitled immediately prior to the death to be appointed under section 4 to act as committee, the administrator may apply to the proper surrogate court for letters of administration or letters of administration with the will annexed, and, upon payment of the proper fees and otherwise complying with the practice and procedure of the court in so far as applicable, he shall be entitled to such letters in priority to the next of kin of the deceased or any other person interested in the deceased's estate; but the administrator shall not be required to give security.

R.S.S. 1940, c.240, s.19; R.S.S. 1953, c.311, s.19.

Same

20 Where the administrator is committee of the estate of a mentally incompetent person who:

- (a) is a beneficiary under the will of a deceased person and there is no executor or the executor has renounced probate; or
- (b) is entitled to the estate or a portion of the estate of a deceased intestate;

the administrator may apply to the proper surrogate court for letters of administration or letters of administration with the will annexed, and upon payment of the proper fees and otherwise complying with the practice and procedure of the court in so far as applicable, he shall be entitled to such letters in priority to the next of kin of the deceased or any other person interested in the deceased's estate; but he shall not be required to give security.

R.S.S. 1940, c.240, s.20; R.S.S. 1953, c.311, s.20.

Powers of acting administrator

21 Where letters of administration or letters of administration with the will annexed have been granted to the administrator under section 19 or 20, or have been otherwise granted to him, the acting administrator may in the absence of the administrator or in case of a vacancy in the office exercise all the powers and perform all the duties of the administrator pursuant to the grant to him of such letters.

R.S.S. 1940, c.240, s.21; R.S.S. 1953, c.311, s.21.

Administration of estates in Saskatchewan of persons deceased in other province

22(1) An official of any other province of Canada, appointed by the Lieutenant Governor in Council under section 25 to administer the estate in this province of a mentally incompetent person who is detained in an asylum or other public institution in that other province, may apply to the proper surrogate court in this province for letters of administration or letters of administration with the will annexed of the estate in Saskatchewan of a deceased person of whose estate in such other province the applicant is administrator; and, upon payment of the proper fees and otherwise complying with the practice and procedure of the court, in so far as applicable, he shall be entitled to such letters in priority to the next of kin of the deceased or any other person interested in the deceased's estate; but he shall not be required to give security.

(2) The provisions of subsection (1) shall come into force with regard to any official therein referred to at such time as may be fixed by order of the Lieutenant Governor in Council.

R.S.S. 1940, c.240, s.22; R.S.S. 1953, c.311, s.22.

POWERS OF LIEUTENANT GOVERNOR IN COUNCIL**Advances**

23 The Provincial Treasurer may advance to the administrator, by way of temporary loan from the consolidated fund, such sums of money for such period and upon such terms and conditions as are deemed requisite for the advantageous administration of any estate in his hands.

R.S.S. 1940, c.240, s.23; R.S.S. 1953, c.311, s.23.

Fees

24(1) The Lieutenant Governor in Council may make regulations for determining what fees shall be charged for the administration of the estates of mentally incompetent persons under this Act, for allowing interest on the moneys of such estates when in the hands of the administrator, and generally for all or any matters connected with the conduct of the administration not specifically provided for by this Act.

(2) All fees received by the administrator shall form part of the consolidated fund.

R.S.S. 1940, c.240, s.24; R.S.S. 1953, c.311, s.24.

Administration of estates in Saskatchewan of persons detained in other provinces

25(1) Where a mentally incompetent person who is detained in an asylum or other public institution in any other province of Canada has estate situated in this province, the Lieutenant Governor in Council may appoint an official of that other province who is charged with the duty of managing, handling, administering or caring for the estate of the mentally incompetent person in that other province to be administrator of the estate of such person in this province, and the order in council making the appointment shall be conclusive proof that all the conditions precedent necessary to the appointment have been fulfilled.

(2) The appointee under an order in council issued under subsection (1) shall possess the same rights, powers, privileges and immunities as are conferred by this Act upon the Administrator of Estates of the Mentally Incompetent for Saskatchewan, and he shall be subject to the same obligations and shall perform the same duties; the provisions of this Act shall apply to him with the necessary modifications in the same manner as to the Administrator of Estates of the Mentally Incompetent for Saskatchewan, and all courts, court officials and registrars of land titles shall be bound by the order in council appointing him in the same manner and to the same extent as they are bound by an order in council appointing the Administrator of Estates of the Mentally Incompetent for Saskatchewan to be committee of an estate under this Act.

(3) The certificate required to be produced under the provisions of section 10 shall be sufficiently signed if purporting to be signed by the minister or acting minister in charge of the administration of estates of mentally incompetent persons in any province an official of which has been appointed in accordance with subsection (1).

(4) Section 27 does not apply to an administrator appointed under this section.

R.S.S. 1940, c.240, s.25; R.S.S. 1953, c.311, s.25.

GENERAL**Lien for expenses**

26(1) When moneys have been expended in connection with the administration of the estate of a mentally incompetent person, a statement over the signature of the minister, certifying what moneys have been so expended, may be registered in any or all of the land titles offices, and from the time of registration the statement shall bind and form a lien and charge for the amount certified on all the lands of such person in the several land registration districts where the statement is registered, to the same extent as if the lands were charged in writing by an owner of land under his hand and seal; and after registration of the statement the minister may, if he deems it expedient to do so, proceed in court to realize upon the lien and charge thereby created.

(2) Every such statement when registered shall have the same force and effect whether the mentally incompetent person is alive or dead, and whether he is confined in, has been discharged, or has escaped from the hospital.

(3) Every such statement shall be entered by the registrar in the execution register in the same manner as a writ of execution or certified copy thereof forwarded by the sheriff or other duly qualified officer.

(4) The charge created by such statement shall be subject to all equities, charges or encumbrances existing against the owner in or upon the land at the date of registration.

(5) The lien or charge created by a statement may be discharged by the registration in the same office of a discharge executed by the minister.

R.S.S. 1940, c.240, s.26; R.S.S. 1953, c.311, s.26.

Annual audit and report

27(1) The Provincial Auditor shall make an annual audit of the books, accounts and vouchers of the administrator.

(2) The Provincial Treasurer shall lay before the Legislature within fifteen days of the opening of the session in each year the report of the auditor upon the administrator's accounts.

(3) The administrator shall pay the Provincial Treasurer for the audit of his accounts such fees as may be determined by the Lieutenant Governor in Council, and may be allowed the same as expenses necessarily incurred on behalf of the estate.

R.S.S. 1940, c.240, s.27; R.S.S. 1953, c.311, s.27.

Administration of estates on death, etc., of administrator

28 On the death, resignation or removal from office of the administrator all estates under his administration by virtue of an order or grant of the court, or an order of the Lieutenant Governor in Council, shall be administered by his successor in office without any further order or grant of the court or order of the Lieutenant Governor in Council.

1944, c.72, s.1; R.S.S. 1953, c.311, s.28.

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