

CHAPTER 316.

SALE OF LANDS BY EXECUTORS AND ADMINISTRATORS.

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316.01 Sale of lands of decedents. (1) When the available personal estate of any deceased person shall be insufficient to pay the expenses of administering his estate, and of his funeral, and all his debts, or if the sale of the personal property would be inimical to the interests of the estate, or if the sale of the real estate would be for the best interests of the estate, or his heirs, his executor or administrator may mortgage, lease or sell his real estate, in the manner and as provided in this chapter.

(2) No debt of or claim against any deceased person, which was not a lien upon his real estate before his death, shall be a lien upon or valid claim against any such real estate for the payment of which it can be sold by an executor or administrator after three years from the death of such decedent, except in the following cases:

(a) When such claim is created or charged upon such real estate by a will.

(b) When letters testamentary upon the will or of administration of the estate of such decedent issued in this state within such three years and such claim is duly presented to the county court which issued such letters.

(c) When delay in issuing letters is caused by an appeal from the county court which suspends the proceedings therein, the time of such delay shall not be counted as any part of said three years. [1931 c. 51 s. 1; 1933 c. 122; 1935 c. 176 s. 6; 1941 c. 77]

Note: Execution sale to estate, see 272.56.

Under this section, where there is a deficiency of personal assets in the hands of the administrator, land fraudulently conveyed by a decedent becomes an equitable asset for the payment of his debts, liable co-extensively with lands of which he died seized, within the three-year period of limitation therein contained. [Language in *Fisk v. Jenewein*, 75 W. 254, 44 NW 515, disapproved.] This section and 315.02 are construed as providing a clear title after the stated three-year period, and as barring all right to proceedings in the county court thereafter to embarrass that title. *Scholl v. Adams*, 206 W 174, 239 NW 452.

The widow and sole beneficiary of testator was not estopped from setting up three-year limitations barring liens on testator's realty after three years from his death because of her delay and maladministration while acting as executrix, since creditors, regardless of what widow did or omitted to do, could have proceeded to have testator's realty used for payment of their claims within three years after his death. *Estate of Koebel*, 225 W 342, 274 NW 262.

Chapter 316, Stats., has no application where the will under which the proceedings are had provides for equitable conversion of the real estate. *Ottstadt v. Jardine*, 229 W 85, 281 NW 644.

316.02 Petition for license. The executor or administrator shall present a verified petition to the county court, setting forth the amount of personal estate that has come to his hands and how much thereof is available and remains undisposed of; the amount of the expenses of administration, and of the funeral, and of the debts outstanding against the decedent, so far as such expenses and debts can be ascertained; or if it is so alleged then a statement showing how the sale of the personal property would be inimical to the interests of the estate; a description of all the real estate of which the decedent died seized and the condition and value of the respective parcels thereof; and the names of the heirs or legatees and devisees, designating those that are minors or incompetents, and if there be unknown parties interested stating the fact. [1931 c. 51 s. 2]

316.03 Sale of realty; order for hearing petition. If the petition shows that it is necessary to sell, mortgage or lease real estate the court shall fix the time for hearing the petition, and notice thereof shall be given as provided by section 324.18. The creditors need not be notified of the hearing unless the court so orders. [1931 c. 51 s. 3; *Supreme Court Order, effective Jan. 1, 1940*]

316.04, 316.05 [Repealed by *Supreme Court Order, effective Jan. 1, 1940*]

316.06 [Repealed by 1931 c. 51 s. 6]

316.07 Contesting claims, debts disputed, hearing adjourned. If on such hearing it shall appear that the heirs or devisees of the real estate in question or persons claiming under them contest the validity of any debt or claim which may be represented as existing against the estate, the hearing shall be postponed until the liability of the estate for such claim is finally determined. [1931 c. 51 s. 7]

316.08 [Repealed by 1931 c. 51 s. 8]

316.09 Order to mortgage or lease; term of lease. If it appear that money needed can be raised advantageously to such estate by lease or mortgage the court shall direct a mortgage or lease to be made. [1931 c. 51 s. 9]

316.10 Order for sale; lands platted. If it shall appear that the money required cannot be raised by mortgage or lease, advantageously to the estate, the court shall order a sale of so much of the real estate as shall be sufficient with the available personal estate to pay such expenses and debts and legacies. The court may direct the executor or administrator, either alone or together with other owners of such real estate, to make, acknowledge and record a plat of such real estate in manner and form prescribed in chapter 236. [1931 c. 51 s. 10]

316.11 Mortgaged homestead sold; proceeds, applied. (1) Whenever the homestead of the decedent is part only of a tract of land which was subject to a mortgage at the time of his death, and all other real estate and personal property of the decedent has been applied to the payment of his debts and the expenses specified in section 316.01, or is insufficient therefor and the part of the mortgaged premises not included in the homestead cannot be sold separately therefrom without injury to the interests of the parties, the court may order the sale of the whole tract; or if a part of the tract can be sold separately, and only a part is necessary to be sold in connection with the homestead to prevent such injury, then an order to first sell the part which can be so separately sold, and the remainder afterwards, may be made. The order, in either case, shall direct that the entire estate, including the interest of the mortgagee, be sold; but no such order to sell shall be made when the mortgage debt is not wholly due unless the mortgagee shall consent in writing thereto; if such consent is given and the sale is made for less than the amount of such debt with interest and costs of sale, the mortgagee shall have the same right to proceed, in an independent action, against every party who may be personally liable for the debt secured by the mortgage and to a personal judgment for any deficiency against such party as if such sale had not been made.

(2) The proceeds of the sale shall, under the direction of the court, be applied in the following order: The expenses of the sale shall first be paid; the mortgage debt shall next be paid; the court shall next ascertain and set apart the value of the homestead sold, irrespective of the mortgage thereon; if there be any residue, the same shall be applied to the payment of the expenses and debts specified in section 313.16 and in the order there enumerated.

(3) The sum set apart as the value of the homestead shall thereafter be applied to the payment of the expenses and debts specified in section 316.01 and in the order there enumerated, so far as such homestead shall be chargeable therewith. The remainder of the sum set apart as the value of the homestead shall be paid to the owners thereof. If some of them be minors, in which case the court may, if it can be justly done, separate the amount belonging to such minors and pay the same to their guardian, and pay the amount belonging to any person of full age to such person; or if such separation of the funds cannot be made with certainty and with justice to the interests of such minors, the court may order the whole invested until such minors reach majority or such separation of the fund can be made, and meantime apply the income from such investment to the use of the persons entitled thereto. The proceeds of such homestead shall possess all the privileges and exemptions which appertained by law to the homestead before such sale. [1931 c. 51 s. 11]

316.12 Dower, contract for sale. (1) Whenever an order shall be made for the sale of any real estate for the payment of the debts of the decedent and charges of administration and the widow has dower in such real estate, the executor or administrator may contract with the widow to accept in lieu of dower one-third of the amount realized on the sale, which contract shall be witnessed by two witnesses, be acknowledged and be filed with the county court.

(2) If the contract is approved by the court, her dower in the real estate shall be sold with the rest of the title and the deed given pursuant to such sale shall pass her estate to the purchaser. The executor or administrator shall pay the widow one-third of the net proceeds and shall file with the county court her receipt therefor. [1931 c. 51 s. 12]

316.13 Bond to prevent sale. No license to mortgage, lease or sell real estate shall be granted if any person interested in the estate shall give bonds to the judge of the county court in such sum and with such sureties as he shall direct and approve, with conditions to pay all the debts and the expenses of administration, so far as the goods and chattels, rights and credits of the decedent shall be insufficient therefor, within such time as the county court shall direct. Such bond shall be for the security, and may be prosecuted for the benefit, of the creditors as well as the executor or administrator. [1931 c. 51 s. 13]

316.14 Executor's bond if sale ordered. When the executor or administrator is authorized to mortgage, lease or sell any real estate for the payment of debts he shall, before the sale, give bond to the judge of the county court, with sufficient sureties, to account for all the proceeds of the sale and to dispose of the same according to law, unless it shall appear to the court that the bond previously filed is ample security, in which case no further or additional bond shall be required. [1931 c. 51 s. 14]

316.15 What lands first sold. The order shall specify the lands to be sold, and may direct the order in which parcels shall be sold. If any part of such real estate or any interest therein has been devised and not charged in such devise with the payment of debts the county court shall order that part not devised to be first sold; and if it appear that any lands devised or descended have been sold by the devisees or heirs then the lands remaining shall be sold first. [1931 c. 51 s. 15]

316.16 Time allowed for sale. The order for mortgaging, leasing or selling real estate shall authorize the executor or administrator, to mortgage, lease or sell the real estate as therein directed, within one year after the date of the order. But the court may, on application of the executor or administrator and for good cause shown, extend the time for making a sale of real estate but not longer than two years after the date of the original order. [1931 c. 51 s. 16]

316.17 Summary proceedings for sale. (1) A sale of real estate pursuant to this chapter may be private or public, as the court shall by order direct.

(2) If the court shall authorize a private sale, the executor or administrator shall attempt such a sale and may enter into a contract of sale subject to the approval of the court; and the court may confirm a land contract made in advance of the order authorizing the sale, if he shall conclude that the contract is for the best interests of the estate. Upon the confirmation of the contract by the court the executor or administrator shall execute and deliver a deed of the real estate sold, as directed by the order of confirmation.

(3) Where a public sale shall have been ordered as provided by law and it shall later appear to the court that no sufficient or satisfactory bid was received, although the property was offered at public sale as directed, the court may then authorize a private sale pursuant to this section precisely as it might have done originally and with the same effect as though no public sale had been ordered. [1931 c. 51 s. 17]

Revisor's Note, 1931: This section is modified of wards, in particular 296.11. (Bill No. 53 S, eled after the statutes for the sale of lands s. 17)

316.18 Notices of sale. When a public sale is ordered notice of the time and place of holding the same shall be posted in three of the most public places in the town, village or ward in which the land is situated and shall be published in a newspaper, as provided in section 324.20, once in each week for three successive weeks before the day fixed for the sale, and the first insertion shall not be more than forty days before such day, in which notice the lands to be sold shall be described with reasonable certainty. [1931 c. 51 s. 18]

316.19 Place of sale; notice when lands in several counties. A public sale shall be in the county where the lands are situated, at auction, between nine o'clock in the morning and sundown of the same day. But where the lands adjoin and lie in two or more counties the sale may be had in either, but the court shall by order designate in which; and if there be a newspaper printed in more than one of said counties, the court shall direct in which of such newspapers the notice of sale shall be published, and when so published it shall be sufficient. [1931 c. 51 s. 19]

316.20 Proof of notice. An affidavit of any person having knowledge of the fact that notice of any such sale was posted together with proof of the publication of the notice as provided in this chapter, filed in the county court, shall be evidence of the time, place and manner of giving such notice. [1931 c. 51 s. 20]

316.21 Adjournment and notice of. If at the time appointed for any such sale the executor or administrator shall deem it for the interest of all persons concerned therein he may adjourn the same from time to time, not exceeding in all three months. In case

of such adjournment notice thereof shall be given by a public declaration at the time and place first fixed for the sale. If the adjournment shall be for more than one day further notice shall be given by posting or publishing the same, or both, as the time and circumstances may admit. [1931 c. 51 s. 21]

316.22 Sale on credit; security. On such sale the executor or administrator may give such length of credit, not exceeding three years and for not more than three-fourths of the purchase money, as shall seem best calculated to produce the highest price and as shall have been directed or shall be approved by the county court, and shall take such security for the amount of the credit given upon the premises sold as the court shall direct and approve. [1931 c. 51 s. 22]

316.23 Report; confirmation or vacation of sale. (1) The executor or administrator shall make prompt return of his doings upon the order of sale to the court. The court shall examine the proceedings and may examine the executor, administrator or any other person on oath touching the same. If the court shall be of the opinion that the proceedings were unfair or that the sum obtained is disproportionate to the value of the land sold and that a greater sum, exclusive of the expense of a new sale, may be obtained, said court may vacate such sale and direct another to be had, as provided in section 316.17. If it shall appear to the court that the sale was legally made and fairly conducted and that the sum bid thereon was not disproportionate to the value of the property sold, or if disproportionate that a greater sum cannot be obtained, said court shall confirm such sale and direct conveyances to be executed.

(2) No sale of real estate shall be confirmed without five days' notice of application therefor to all parties who appeared at the hearing upon the petition for sale or other disposition of the real estate. [Court Rule XVI s. 4; Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective Jan. 1, 1940]

316.24 Purchaser to assume lien, exception. All sales of land made pursuant to this chapter, except as otherwise provided in section 316.11, shall be subject to all liens and mortgages thereon existing at the time of the death of the decedent, where such mortgage or lien is upon a single lot or tract of land. In case the estate shall be liable for the amount secured by any such mortgage or lien such sale shall not be confirmed until the purchaser shall execute a bond to the executor or administrator as required in section 316.28. But in case the mortgage or lien is upon two or more lots or parcels of land, greater in value than the amount of said mortgage or lien, the court, on being satisfied that it would be most beneficial to the parties interested in said land that the same be sold freed from such incumbrances, may so order; in which case sufficient of the moneys made by the sale shall be appropriated or invested by order of the court, on confirming the sale, to pay and satisfy said incumbrances. [1931 c. 51 s. 24]

316.25 Proceeds of sale; liability for. The proceeds arising from mortgage, lease or sale of real estate or interest therein of any deceased person as provided in this chapter shall be deemed assets in the hands of the executor or administrator, and he and the sureties on his administration bond shall be accountable and liable therefor. [1931 c. 51 s. 25]

316.26 Sale to pay legacy. When any legacy is a charge upon the real estate and the personal property shall be insufficient to pay such legacy, and the debts, and charges of administration, a sale, mortgage or lease of real estate for that purpose may be made in the same manner and upon the same terms and conditions as are prescribed for the payment of debts. [1931 c. 51 s. 26]

316.27 Sale of land contract. If a person, at the time of his death, was possessed of a contract for the purchase or sale of land, his interest in such land may be sold in the same cases and in the same manner as if he had died seized of such land; and the same proceedings may be had for that purpose as are prescribed in this chapter in respect to lands of which he died seized, except as herein otherwise provided in case he was the purchaser. [1931 c. 51 s. 27]

316.28 Sale of land contract, terms; bond. Such sale shall be made subject to all payments that may thereafter become due on such contract; and shall not be confirmed until the purchaser shall execute a bond to the court for the benefit of the persons entitled to the interest of the decedent in the lands, in double the amount of payments thereafter to become due on such contract, with such sureties as the court shall approve, with condition that such purchaser will make all payments for such land that shall become due after the date of such sale and will indemnify the executor or administrator and the person so entitled against all demands, costs, charges and expenses by reason of any covenant or agreement contained in such contract. [1931 c. 51 s. 28]

316.29 Assignment of land contract; rights under. Upon the confirmation of such sale the executor or administrator shall execute to the purchaser an assignment of such

contract, which assignment shall vest in the purchaser, his heirs and assigns all the right, interest and title of the person entitled to the interest of the decedent in the lands at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the decedent would have were he living. [1931 c. 51 s. 29]

316.30 License to foreign executors, etc. A foreign executor or administrator of the estate of any person dying a nonresident of this state (where no executor or administrator thereon shall be appointed in this state) may upon filing an authenticated copy of his appointment in the county court of any county in which there may be real estate of the decedent and making application therefor be licensed by such court to mortgage, lease or sell real estate or any interest therein, for the payment of debts or legacies and charges of administration in the same manner and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this state. [1931 c. 51 s. 30]

316.31 Foreign executor, when to give bond. When it shall appear to the court that such foreign executor or administrator is bound with sufficient surety in the state, territory or country in which he was appointed to account for the proceeds of such mortgage, lease or sale, and a copy of such bond, duly authenticated, shall be filed in such county court no further bond shall be required of him. If a copy of such bond shall not be filed as aforesaid, or if his bond shall be insufficient, such executor or administrator, before making such mortgage, lease or sale, shall give bond with sufficient sureties to the judge of the county court with condition to account for and dispose of the proceeds of such mortgage, lease or sale for the payment of the debts or legacies of the decedent and the charges of administration, according to the law of the state, territory or country in which he was appointed. [1931 c. 51 s. 31]

316.32 Foreign executor, same subject. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies and charges of administration, as before provided for in this chapter, he shall, before making the sale, give bond, with sufficient sureties, to the judge of the county court with condition to account to such court for all the proceeds of the sale that shall remain after payment of the said debts, legacies and charges and to dispose of the same according to law. [1931 c. 51 s. 32]

316.33 Sales validated; purchaser's title. When any sale shall have been made by virtue of any order of any county court by any person acting as an executor or administrator, the title of any purchaser in good faith at such sale shall not be invalidated by reason of any omission or error in the appointment of such executor or administrator or by reason of any defect or irregularity in the proceedings before such court, except in the manner and for the causes that the same could be invalidated in case such sale had been made pursuant to the order or judgment of a court of general jurisdiction. [1931 c. 51 s. 33]

316.34 Deed under land contract. (1) When any person who is bound by contract in writing to convey any real estate shall die before making the conveyance the county court may make an order or judgment authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto in all cases where such deceased person, if living, might be compelled to execute such conveyance.

(2) This section is applicable where a deceased vendor has made an assignment of such a contract but did not deed to his assignee the title to the premises covered by the contract. [1931 c. 51 s. 34]

316.35 Deed on land contract; petition and notice. On the presentation of a petition by the executor or administrator, general or special, or by any person claiming to be entitled to such conveyance from any executor or administrator, or by any person interested in the real estate sought to be deeded or the title thereto, setting forth the facts upon which the petition is predicated, the court shall appoint a time and place of hearing such petition and shall order notice of the time and place of hearing to be given as provided in section 324.18. [1931 c. 51 s. 35; *Supreme Court Order, effective Jan. 1, 1940*]

Note: The will did not require the executors, in taking action on a land contract on which a legatee was indebted to the testator, to resort to strict foreclosure, but the executors had the same rights and remedies which the vendor would have if living, and they could elect to sue for the unpaid purchase price of the land covered by the contract. On breach of the conditions of a land contract, the vendor may elect to sue for the unpaid purchase money, or to sue for specific performance of the contract, or to declare the contract at an end. *Estate of Greenway, 236 W 503, 295 NW 761.*

316.36 [Repealed by 1931 c. 51 s. 36]

316.37 Same subject; when conveyance ordered. After a hearing upon such petition, if the court shall be satisfied from the evidence that the petitioner is entitled to a conveyance of the real estate described in his petition, it shall order the executor or administrator to make and execute a conveyance thereof to such petitioner and may direct the

reasonable expenses of such application and conveyance to be paid out of the estate of such deceased person. [1931 c. 51 s. 37]

316.38 Same subject; conveyance; order recorded. If no appeal be taken from such order or if such order be affirmed on appeal it shall be the duty of the executor or administrator to execute the conveyance according to such order; and a certified copy of the order shall be recorded with the deed in the office of the register of deeds of the county where the lands lie, and shall be evidence of the correctness of the proceedings and of the authority of the executor or administrator to make the conveyance. Every such conveyance shall be effectual to pass the estate contracted as fully as if the contracting party himself were still living and then executed the same. No appeal shall lie from such order unless notice of intention to appeal shall be filed with the court within ten days after date of the order. [1931 c. 51 s. 38]

316.39 Sale of land contract without license. Whenever any executor or administrator shall assign any contract made by a decedent for the sale of real estate, he may convey, without license therefor, to the assignee all the right, title and interest which the decedent had in such real estate at the time of his decease, subject to the contract. [1931 c. 51 s. 38a]

316.40 Appraisal; how made. The county court may, in its discretion, authorize an executor or administrator to have the lands which he may be licensed to sell, appraised by three disinterested freeholders of the county in which the lands or some part thereof lie. The appraisal shall specify the whole value of such lands, and separately the value of each lien and incumbrance thereon, and the net value of such lands after deducting all liens and incumbrances as appraised by them. Such appraisal shall be under oath, which oath and appraisal shall be certified in the usual form and filed in the court from which said license was issued. The appraisal of such lands made pursuant to section 312.01 shall be taken as the appraised value thereof, if no additional appraisal be had under the provisions of this section. [1931 c. 51 s. 39]

316.41 Who not to purchase. The executor, administrator or guardian making the sale or the guardian of any heir of the decedent shall not be interested in the purchase of any part of the real estate sold. But this section shall not prohibit such purchase by a guardian for the benefit of his ward. [1931 c. 51 s. 40]

316.43 Proceeds realty; how disposed of. In all cases of a sale by an executor or administrator of real estate under a license granted by any county court, the surplus of the proceeds of the sale remaining on the final settlement of the accounts shall be considered as real estate and disposed of among the persons and in the same proportions as the real estate would have been if it had not been sold. [1931 c. 51 s. 41]

316.45 Limitation of action to recover estate sold. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter shall be maintained by any heir or other person claiming under the deceased testator or intestate unless it be commenced within five years next after the sale; and no action for the recovery of any estate sold by a guardian shall be maintained by the ward or by any person claiming under him unless it be commenced within five years next after the termination of the guardianship, excepting only that minors and others under legal disability to sue at the time when the cause of action shall accrue may commence their action at any time within five years next after the removal of the disability. [1931 c. 51 s. 42; 1931 c. 79 s. 31]

316.46 When sale not avoided. A sale of real estate by an executor, administrator or guardian shall not be avoided an account of any irregularity in the proceedings; provided, it shall appear that he was licensed to make the sale by the county court having jurisdiction; that he gave a bond which was approved by the county court before the sale if a bond was required; that he gave the notice of the time and place of sale as prescribed by law; that the premises were sold accordingly and the sale confirmed by the court, and that they are held by one who purchased them in good faith. [1931 c. 51 s. 43]

316.47 Deed of mortgagor's title. In any case where the court may find, upon application made for the purpose, that it is for the best interest of the estate of the deceased that the property incumbered with mortgage be conveyed to the holder of the mortgage, so as to avoid foreclosure and possible judgment for deficiency, the court may authorize the administrator or executor to make such a deed. [1933 c. 190 s. 35]

316.48 Liability for neglect. If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in an action on the bond of such executor, administrator or guardian or otherwise, as the case may require. [1931 c. 51 s. 45]

316.49 When sale valid. The validity of a sale made by an executor, administrator or guardian shall not be questioned by any person claiming under any title that is not

derived from or through the deceased persons or the ward, on account of any irregularity in the proceedings; provided, it shall appear that the executor, administrator or guardian was licensed to make the sale by a court having jurisdiction and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises. [1931 c. 51 s. 46]

316.50 Liability for fraud. Any executor, administrator or guardian who shall fraudulently sell any real estate of his testator, intestate or ward, contrary to the provisions of law, shall be liable in double the value of the land sold as damages, to be recovered in an action by any person having an inheritance therein. [1931 c. 51 s. 47; 1931 c. 79 s. 32]

316.51 Sales validated. No sale of lands in proceedings pursuant to this chapter made since the repeal of sections 316.39 to 316.44 of the Statutes of 1927 shall be held invalid if such sale would have been valid had said sections been in force at the time of the sale; and no such sale shall be held invalid because not made at public vendue. This is a curative act, the purpose of which is to validate titles acquired upon sales in county court under this chapter, whenever such titles may be questioned upon the ground that since said repeal there was no authority in the court to authorize private sales. [1931 c. 51 s. 48]