



BILL NO. 44

Government Bill

*1st Session, 62nd General Assembly
Nova Scotia
63 Elizabeth II, 2014*

An Act to Amend Chapter 379 of the Revised Statutes, 1989, the Public Trustee Act

CHAPTER 27
ACTS OF 2014

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 1, 2014**

The Honourable Lena Metlege Diab
Minister of Justice

*Halifax, Nova Scotia
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**An Act to Amend Chapter 379
of the Revised Statutes, 1989,
the Public Trustee Act**

Be it enacted by the Governor and Assembly as follows:

1 Subsection 8A(5) of Chapter 379 of the Revised Statutes, 1989, the *Public Trustee Act*, is repealed and the following subsections substituted:

(5) In subsection (6), “person” means a person placed in a continuing-care home or to be provided home-care services pursuant to Section 14 of the *Personal Directives Act* or pursuant to a decision of a delegate named in a personal directive to accept a placement in a continuing-care home or the provision of home-care services.

(6) Where the Public Trustee

(a) is unable to find a legally appointed guardian of the estate of a person;

(b) is unable to find an attorney appointed by a person under an enduring power of attorney; or

(c) is of the opinion that the Public Trustee’s continued intervention is appropriate with respect to a person,

the Public Trustee is deemed to be guardian of the property and financial affairs of the person.

2 Section 14A of Chapter 379, as enacted by Chapter 8 of the Acts of 2008, is amended by

(a) adding “(1)” immediately after the Section number;

(b) adding “Public Trustee is deemed to be the guardian of the property and financial affairs of the person and the” immediately after the first “the” in the twelfth line;

(c) adding “guardianship and” immediately after “Trustee’s” in the twelfth line;

(d) striking out “the Public Trustee or” in the second line of clause (e); and

(e) adding the following subsection:

(2) For greater certainty, where the Public Trustee is deemed guardian of the property and financial affairs of a person pursuant to subsection (1), the Public Trustee has the authority to mortgage, sell, convey or otherwise dispose of or deal with any property of the person upon such terms as the Public Trustee considers appropriate and to apply the proceeds so far as are necessary to the maintenance, support and best interest of the person.

3 Chapter 379 is further amended by adding immediately after Section 14A the following Sections:

14B Notwithstanding any other Act, where the Public Trustee has been appointed by the Supreme Court of Nova Scotia as guardian of an incompetent person pursuant to the *Incompetent Persons Act*, the Public Trustee has the authority, without obtaining a licence for sale from that court, to mortgage, sell, convey or otherwise dispose of or deal with any property of the incompetent person upon such terms as the Public Trustee considers appropriate and to apply the proceeds so far as are necessary to the maintenance, support and best interest of the incompetent person.

14C Where the Public Trustee mortgages, sells, conveys or otherwise disposes of or deals with any property pursuant to Section 14A or 14B, a memorandum reporting and setting out the details of the mortgage, sale, conveyance or disposal must be filed with the Supreme Court of Nova Scotia within thirty days of the transaction.

4 Chapter 379 is further amended by adding immediately after Section 15 the following Section:

15A (1) Notwithstanding subsection 15(3), where the gross value of the estate of the deceased as estimated by the Public Trustee does not exceed twenty-five thousand dollars, the Public Trustee, without obtaining any order or authority from the court or from the Governor in Council or otherwise, may, instead of obtaining letters of administration or letters of administration with will annexed, make an election in writing to administer the estate of the deceased person in priority to the next of kin of the deceased or any other person interested in the estate of the deceased and may

(a) out of the personal property give or distribute, in the Public Trustee's discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, where there are no family or relatives of the deceased, to such person or persons as the Public Trustee deems fit;

(b) sell property not dealt with under clause (a) and apply proceeds towards payment of sums due and debts incurred; and

(c) do all things necessary to complete the administration of the estate.

(2) A written election made under subsection (1) must

(a) set out the name, the residence and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person resided or within which the property within the Province is situated.

(3) When the election is filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

(4) No fee is payable to a court in respect of the filing of an election or the right to administer obtained by filing an election.

(5) A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all pur-

poses, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

(6) When the administration of the estate has been completed, the Public Trustee shall file in the office of the registrar of probate an account of the administration verified by oath.

5 Section 22 of Chapter 379, as amended by Chapter 8 of the Acts of 1999 (Second Session) and Chapter 32 of the Acts of 2012, is further amended by striking out “the gross value of which as estimated by the Public Trustee exceeds twenty-five thousand dollars” in the second, third and fourth lines.

6 Chapter 379 is further amended by adding immediately after Section 22 the following Section:

22A (1) Notwithstanding subsection 22(1), where the gross value of the estate of the deceased as estimated by the Public Trustee does not exceed twenty-five thousand dollars, the Public Trustee, without obtaining any order or authority from the court or otherwise, may, instead of obtaining letters of administration, make an election in writing to administer the estate of the deceased person.

(2) Where the Public Trustee intends to make an election to administer the estate and knows of any person resident in the Province who

(a) would be entitled to letters of administration prior to the exercise of the powers conferred on the Public Trustee by this Section; and

(b) has not renounced the right to apply for letters of administration,

the Public Trustee shall give notice to that person by registered mail of the Public Trustee’s intention to make an election in writing to administer the estate.

(3) Where notice referred to in subsection (2) is required, the Public Trustee shall not make the election until the expiration of one month from the mailing of such notice.

(4) Where within the time referred to in subsection (3) an application for letters of administration has been made by another person, the Public Trustee may not make an election to administer the estate unless the person’s application is refused.

(5) Upon making an election in writing to administer the estate of the deceased person, the Public Trustee may

(a) out of the personal property give or distribute, in the Public Trustee’s discretion, wearing apparel and articles of personal use or ornament to or among one or more of the family and relatives of the deceased, and, where there are no family or relatives of the deceased, to such person or persons as the Public Trustee deems fit;

(b) sell property not dealt with under clause (a) and apply proceeds towards payment of sums due and debts incurred; and

(c) do all things necessary to complete the administration of the estate.

(6) A written election made under subsection (1) must

(a) set out the name, the residence and the extent of the estate of the deceased person, and contain an election to administer the estate; and

(b) be filed in the office of the registrar of probate for the district within which the deceased person resided or within which the property within the Province is situated.

(7) When the election is filed, the Public Trustee is constituted administrator of the estate of the deceased person and the filing of the election is conclusive proof of the right of the Public Trustee to do all things necessary to complete the administration of the estate.

(8) No fee is payable to a court in respect of the filing of an election or the right to administer obtained by filing an election.

(9) A copy of an election certified as a correct copy by the registrar of probate is equivalent to an exemplification of letters of administration for all purposes, and no fee under any rule of court or under the *Probate Act* is payable in respect thereof except a fee of one dollar.

(10) When the administration of the estate has been completed, the Public Trustee shall file in the office of the Registrar of Probate an account of the administration verified on oath.

7 Subsection 13(2) of Chapter 2 of the Revised Statutes, 1989, the *Adult Protection Act*, as amended by Chapter 13 of the Acts of 2013, is amended by striking out “Where” in the first line and substituting “Subject to Section 14A of the *Public Trustee Act*, where”.

8 Subsection 59(2) of Chapter 208 of the Revised Statutes, 1989, the *Hospitals Act* as amended by Chapter 42 of the Acts of 2005, is further amended by striking out “Where” in the first line and substituting “Subject to Section 14A of the *Public Trustee Act*, where”.

9 Section 12 of Chapter 218 of the Revised Statutes, 1989, the *Incompetent Persons Act*, is amended by adding “or under the Public Trustee’s authority pursuant to Section 14B of the *Public Trustee Act*” immediately after “sell” in the first line.

10 Chapter 218 is further amended by adding immediately after Section 12 the following Section:

12A Subject to Section 14B of the *Public Trustee Act*, where the Public Trustee is appointed by the court as guardian of the incompetent person pursuant to this Act, the Public Trustee is not required to obtain from the court a licence for the sale of the incompetent person’s real property pursuant to subsection 11(2) and is deemed to have the authority to sell real property.

11 For greater certainty, this Act applies to all estates where the Public Trustee is authorized to manage or is managing a person's estate regardless of whether the authorization was obtained by the Public Trustee before, on or after the coming into force of this Act.
