

Chapter 11.56 RCW
SALES, EXCHANGES, LEASES, MORTGAGES, AND BORROWING

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RCW 11.56.005 Authority to exchange. Whenever it shall appear upon the petition of the personal representative or of any person interested in the estate to be to the best interests of the estate to exchange any real or personal property of the estate for other property, the court may authorize the exchange upon such terms and conditions as it may prescribe, which include the payment or receipt of part cash by the personal representative. If personal property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be; if real property of the estate is to be exchanged, the procedure required by this chapter for the sale of such property shall apply so far as may be. [1965 c 145 s 11.56.005.]

RCW 11.56.010 Authority to sell, lease or mortgage. The court may order real or personal property sold, leased or mortgaged for the purposes hereinafter mentioned but no sale, lease or mortgage of any property of an estate shall be made except under an order of the court, unless otherwise provided by law. [1965 c 145 s 11.56.010. Prior: 1917 c 156 s 122; RRS s 1492; prior: 1895 c 157 s 1; 1883 p 29 s 1; Code 1881 s 1486; 1854 p 284 s 97.]

RCW 11.56.020 Sale, lease or mortgage of personal property. The court may at any time order any personal property, including for purposes of this section a vendor's interest in a contract for the sale of real estate, of the estate sold for the preservation of such property or for the payment of the debts of the estate or the expenses of administration or for the purpose of discharging any obligation of the estate or for any other reason which may to the court seem right and proper, and such order may be made either upon or without petition therefor, and such sales may be either at public or private sale or by negotiation and with or without notice of such sale, as the court may determine, and upon such terms and conditions as the court may decide upon. No notice of petition for sale of any personal property need be given, except as provided in RCW 11.28.240, unless the court expressly orders such notice.

Where personal property is sold prior to appraisal, the sale price shall be deemed the value for appraisal. Personal property may be mortgaged, pledged or leased for the same reasons and purposes, and in the same manner as is hereinafter provided for real property. [1965 c 145 s 11.56.020. Prior: (i) 1917 c 156 s 123; RRS s 1493; prior: 1891 c 155 ss 29, 30; 1883 p 29 s 1; Code 1881 s 1488; 1854 p 284 s 99. (ii) 1955 c 205 s 12; RCW 11.56.025.]

Community property: Chapter 26.16 RCW.

Descent and distribution of real and personal estate: RCW 11.04.015.

Payment of claims where estate insufficient: RCW 11.76.150.

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of decedent's contract interest in land: RCW 11.56.180.

RCW 11.56.030 Sale, lease or mortgage of real estate—Petition—Notice—Hearing. Whenever it shall appear to the satisfaction of the court that any portion or all of the real property should be sold, mortgaged or leased for the purpose of raising money to pay the debts and obligations of the estate, and the expenses of administration, estate taxes, or for the support of the family, to make distribution, or for such other purposes as the court may deem right and proper, the court may order the sale, lease or mortgage of such portion of the property as appears to the court necessary for the purpose aforesaid. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and obligations of the estate and such other things as will tend to assist the court in determining the necessity for the sale, lease or mortgage

and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition for sale, lease or mortgage need be given, except as provided in RCW 11.28.240 hereof; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the purpose of determining whether it should order any of the property of the estate sold, leased or mortgaged. The absence of any allegation in the petition shall not deprive the court of jurisdiction to order said sale, lease or mortgage, and the court may, if it see fit, order such sale, lease or mortgage without any petition having been previously presented. [1990 c 180 s 2; 1965 c 145 s 11.56.030. Prior: 1937 c 28 s 3; 1917 c 156 s 124; RRS s 1494; prior: Code 1881 s 1493; 1854 p 285 s 103.]

RCW 11.56.040 Order directing mortgage. If the court should determine that it is necessary or proper, for any of the said purposes, to mortgage any or all of said property, it may make an order directing the personal representative to mortgage such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute and deliver his or her note or notes and secure the same by mortgage, and thereafter it shall be the duty of such personal representative to comply with such order. The personal representative shall not deliver any such note, mortgage, or other evidence of indebtedness until he or she has first presented same to the court and obtained its approval of the form. Every mortgage so made and approved shall be effectual to mortgage and encumber all the right, title, and interest of the said estate in the property described therein at the time of the death of the said decedent, or acquired by his or her estate, and no irregularity in the proceedings shall impair or invalidate any mortgage given under such order of the court and approved by it. [2010 c 8 s 2044; 1965 c 145 s 11.56.040. Prior: 1917 c 156 s 125; RRS s 1495; prior: Code 1881 s 1494; 1854 p 285 s 104.]

RCW 11.56.045 Order directing lease. If the court should determine that it is necessary or proper, for any of the said purposes to lease any or all of said property, it may make an order directing the personal representative to lease such thereof as it may determine upon, and such order shall contain the terms and conditions of such transaction and authorize the personal representative to execute the lease and thereafter it shall be the duty of the personal representative to comply with such order. The personal representative shall not execute such lease until he or she has first presented the same to the court and obtained its approval of the form. [2010 c 8 s 2045; 1965 c 145 s 11.56.045.]

RCW 11.56.050 Order directing sale. If the court should determine that it is necessary to sell any or all of the real estate for the purposes mentioned in this title, then it may make and cause to be entered an order directing the personal representative to sell so much of the real estate as the court may determine necessary for

the purposes aforesaid. Such order shall give a particular description of the property to be sold and the terms of such sale and shall provide whether such property shall be sold at public or private sale, or by negotiation. After the giving of such order it shall be the duty of the personal representative to sell such real estate in accordance with the order of the court and as in this title provided with reference to the public or private sales of real estate. [1994 c 221 s 49; 1965 c 145 s 11.56.050. Prior: 1917 c 156 s 126; RRS s 1496; prior: Code 1881 s 1494; 1854 p 285 s 104.]

Effective dates—1994 c 221: See note following RCW 11.100.035.

Abatement of assets: Chapter 11.10 RCW.

RCW 11.56.060 Public sales—Notice. When real property is directed to be sold by public sale, notice of the time and place of such sale shall be published in a legal newspaper of the county in which the estate is being administered, once each week for three successive weeks before such sale, in which notices the property ordered sold shall be described with proper certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered, publication shall also be made in a legal newspaper of that county. At the time and place named in such notices for the said sale, the personal representative shall proceed to sell the property upon the terms and conditions ordered by the court, and to the highest and best bidder. All sales of real estate at public sale shall be made at the front door of the courthouse of the county in which the lands are, unless the court shall by order otherwise direct. [1965 c 145 s 11.56.060. Prior: 1917 c 156 s 127; RRS s 1497; prior: 1888 p 187 s 1; Code 1881 s 1504; 1854 p 287 s 114.]

RCW 11.56.070 Postponement, adjournment of sale—Notice. The personal representative, should he or she deem it for the best interests of all concerned, may postpone such sale to a time fixed but not to exceed twenty days, and such postponement shall be made by proclamation of the personal representative at the time and place first appointed for the sale; if there be an adjournment of such sale for more than three days, then it shall be the duty of the personal representative to cause a notice of such adjournment to be published in a legal newspaper in the county in which notice was published as provided in RCW 11.56.060, in addition to making such proclamation. [2010 c 8 s 2046; 1965 c 145 s 11.56.070. Prior: 1917 c 156 s 128; RRS s 1498; prior: Code 1881 s 1505; 1854 p 287 s 115.]

RCW 11.56.080 Private sales of realty—Notice—Bids. When a sale of real property is ordered to be made at private sale, notice of the same must be published in a legal newspaper of the county in which the estate is being administered, once a week for at least two successive weeks before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty: PROVIDED, That where real property is located in a county other than the county in which the estate is being administered,

publication shall also be made in a legal newspaper of that county. The notice must state the day on or after which the sale will be made and the place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice and the sale must not be made before that day, but if made, must be made within twelve months thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice or delivered to the personal representative personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interest of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen, but not less than eight days from the first publication of the notice of sale, and the sale may be made to correspond with such order. [1965 c 145 s 11.56.080. Prior: 1917 c 156 s 129; RRS s 1499; prior: 1888 p 187 s 1; Code 1881 s 1504; 1854 p 287 s 114.]

RCW 11.56.090 Minimum price—Private sale—Sale by negotiation—Reappraisalment. No sale of real estate at private sale or sale by negotiation shall be confirmed by the court unless the gross sum offered is at least ninety percent of the appraised value thereof, nor unless such real estate shall have been appraised within one year immediately prior to such sale. If it has not been so appraised, or if the court is satisfied that the appraisalment is too high or too low, appraisers may be appointed, and they must make an appraisalment thereof in the same manner as in the case of the original appraisalment of the estate, and which appraisalment may be made at any time before the sale or the confirmation thereof. [1965 c 145 s 11.56.090. Prior: 1917 c 156 s 130; RRS s 1500; prior: 1891 c 155 s 31; Code 1881 s 1508; 1854 p 287 s 118.]

RCW 11.56.100 Confirmation of sale—Approval—Resale. The personal representative making any sale of real estate, either at public or private sale, or sale by negotiation shall within ten days after making such sale file with the clerk of the court his or her return of such sale, the same being duly verified. In the case of a sale by negotiation the personal representative shall publish a notice in one issue of a legal newspaper of the county in which the estate is being administered; such notice shall include the legal description of the property sold, the selling price and the date after which the sale can be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published. At any time after the expiration of ten days from the publication of such notice, in the case of sale by negotiation, and at any time after the expiration of ten days from the filing of such return, in the case of public or private sale the court may approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. But if the court shall be of the opinion that the proceedings were unfair, or that the sum obtained was disproportionate to the value of the property sold, or if made at private sale or sale by negotiation that it did not sell for at least ninety percent of the appraised value as

in RCW 11.56.090 provided, and that a sum exceeding said bid by at least ten percent exclusive of the expense of a new sale, may be obtained, the court may refuse to approve or confirm such sale and may order a resale. On a resale, notice shall be given and the sale shall be conducted in all respects as though no previous sale had been made. [2010 c 8 s 2047; 1965 c 145 s 11.56.100. Prior: 1917 c 156 s 131; RRS s 1501; prior: 1891 c 155 s 31; Code 1881 s 1508; 1854 p 287 s 118.]

RCW 11.56.110 Offer of increased bid—Duty of court. If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his or her bid in the form of cash, money order, cashier's check, or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his or her bid, the bidder whose bid was accepted shall be informed of such increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him or her at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation. Instead of such a direction, the court, upon application of the personal representative, may direct the reception of sealed bids. Thereupon the personal representative shall mail notice by registered or certified mail to all those who have made bids on such property, informing them that sealed bids will be received by the clerk of the court within ten days. At the expiration of such period the personal representative, in the presence of the clerk of the court, shall open such bids as shall have been submitted to the clerk within the time stated in the notice (whether by previous bidders or not) and shall file a recommendation of the acceptance of the bid which he or she deems best in view of the requirements of the particular estate. The court may thereupon direct a sale to the bidder whose bid is deemed best by the court and a sale made pursuant to such direction shall need no confirmation: PROVIDED, HOWEVER, That the court shall consider the net realization to the estate in determining the best bid. [2010 c 8 s 2048; 1967 ex.s. c 106 s 2; 1967 c 168 s 18; 1965 c 145 s 11.56.110. Prior: 1955 c 154 s 1; 1917 c 156 s 132; RRS s 1502.]

Effective date—1967 ex.s. c 106: "The provisions of this act shall take effect on July 1, 1967." [1967 ex.s. c 106 s 5.]

Effective date—1967 c 168: See note following RCW 11.02.070.

RCW 11.56.115 Effect of confirmation. No petition or allegation thereof for the sale of real estate shall be considered jurisdictional, and confirmation by the court of any sale shall be absolutely conclusive as to the regularity of all proceedings leading up to and including such sale, and no instrument of conveyance of real

estate made after confirmation of sale by the court shall be open to attack upon any grounds whatsoever except for fraud, and the confirmation by the court of any such sale shall be conclusive proof that all statutory provisions and all orders of the court with reference to such sale have been complied with. [1965 c 145 s 11.56.115. Prior: 1917 c 156 s 134; RCW 11.56.130; RRS s 1504; prior: Code 1881 s 1510; 1854 p 287 s 120.]

Real estate sold by executor, etc., limitation of action: RCW 4.16.070.

RCW 11.56.120 Conveyance after confirmation of sale. Upon the confirmation of any such sale the court shall direct the personal representative to make, execute and deliver instruments conveying the title to the person to whom such property may be sold, and such instruments of conveyance shall be deemed to convey all the estate, rights and interests of the testator or intestate at the death of the deceased and any interest acquired by the estate. [1965 c 145 s 11.56.120. Prior: 1917 c 156 s 133; RRS s 1503; prior: Code 1881 s 1510; 1854 p 287 s 120.]

RCW 11.56.180 Sale of decedent's contract interest in land. If the deceased person at the time of his or her death was possessed of a contract for the purchase of lands, his or her interest in such lands under such contract may be sold on the application of his or her personal representative in the same manner as if he or she died seized of such lands; and the same proceedings may be had for that purpose as are prescribed in this title in respect to lands of which he or she died seized, except as hereinafter provided. [2010 c 8 s 2049; 1965 c 145 s 11.56.180. Prior: 1917 c 156 s 139; RRS s 1509; prior: Code 1881 s 1519; 1854 p 289 s 129.]

Performance of decedent's contracts: Chapter 11.60 RCW.

Sale of vendor's interest in contract for sale of real estate: RCW 11.56.020.

RCW 11.56.210 Assignment of decedent's contract. Upon the confirmation of such sale, the personal representative shall execute to the purchaser an assignment of the contract and deed, which shall vest in the purchaser, his or her heirs and assigns, all the right, title, and interest of the persons entitled to the interest of the deceased in the land sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands as the deceased would have had if living. [2010 c 8 s 2050; 1965 c 145 s 11.56.210. Prior: 1917 c 156 s 142; RRS s 1512; prior: Code 1881 s 1522; 1854 p 289 s 132.]

RCW 11.56.220 Redemption of decedent's mortgaged estate. If any person die having mortgaged any real or personal estate, and shall not have devised the same, or provided for any redemption thereof by will, the court, upon the application of any person interested, may order the personal representative to redeem the estate out of the assets, if

it should appear to the satisfaction of the court that such redemption would be beneficial to the estate and not injurious to creditors. [1965 c 145 s 11.56.220. Prior: 1917 c 156 s 143; RRS s 1513; prior: Code 1881 s 1523; 1854 p 289 s 133.]

RCW 11.56.230 Sale or mortgage to effect redemption. If it shall be made to appear to the satisfaction of the court that it will be to the interest of the estate of any deceased person to sell or mortgage other personal estate or to sell or mortgage other real estate of the decedent than that mortgaged by him or her to redeem the property so mortgaged, the court may order the sale or mortgaging of any personal estate, or the sale or mortgaging of any real estate of the decedent which it may deem expedient to be sold or mortgaged for such purpose, which sale or mortgaging shall be conducted in all respects as other sales or mortgages of like property ordered by the court. [2010 c 8 s 2051; 1965 c 145 s 11.56.230. Prior: 1917 c 156 s 144; RRS s 1514; prior: 1895 c 157 s 11; 1888 p 185 s 1.]

RCW 11.56.240 Sale of mortgaged property if redemption inexpedient. If such redemption be not deemed expedient, the court shall order such property to be sold at public or private sale, which sale shall be with the same notice and conducted in the same manner as required in other cases of real estate or personal property provided for in this title, and shall be sold subject to such mortgage, and the personal representative shall thereupon execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title, and interest which the deceased had in the property, and the purchase money, after paying the expenses of the sale, shall be applied to the residue in due course of administration. [1965 c 145 s 11.56.240. Prior: 1917 c 156 s 145; RRS s 1515; prior: Code 1881 s 1524; 1873 p 296 s 211; 1854 p 290 s 134.]

RCW 11.56.250 Sales directed by will. When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and without any notice, and it shall not be necessary under such circumstances to make any application to the court with reference to such sales or have the same confirmed by the court. [1965 c 145 s 11.56.250. Prior: 1917 c 156 s 146; RRS s 1516; prior: Code 1881 s 1527.]

RCW 11.56.265 Broker's fee and closing expenses—Sale, mortgage or lease. In connection with the sale, mortgage or lease of property, the court may authorize the personal representative to pay, out of the proceeds realized therefrom or out of the estate, the customary and reasonable auctioneer's and broker's fees and any necessary expenses for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection therewith. [1965 c 145 s 11.56.265.]

Allowance of necessary expenses to personal representative: RCW 11.48.050.

RCW 11.56.280 Borrowing on general credit of estate—Petition—

Notice—Hearing. Whenever it shall appear to the satisfaction of the court that money is needed to pay debts of the estate, expenses of administration, or estate taxes, the court may by order authorize the personal representative to borrow such money, on the general credit of the estate, as appears to the court necessary for the purposes aforesaid. The time for repayment, rate of interest and form of note authorized shall be as specified by the court in its order. The money borrowed pursuant thereto shall be an obligation of the estate repayable with the same priority as unsecured claims filed against the estate. It shall be the duty of the personal representative to present a petition to the court giving a description of all the property of the estate and its character, the amount of the debts, expenses and tax obligations and such other things as will tend to assist the court in determining the necessity for the borrowing and the amount thereof. Unless the court shall by order expressly so provide, no notice of the hearing of such petition need be given, except to persons who have requested notice under the provisions of RCW 11.28.240; if, however, the court should order notice of such hearing, it shall determine upon the kind, character and time thereof. At the hearing of such petition the court may have brought before it such testimony or information as it may see fit to receive, for the foregoing purpose. The absence of any allegation in the petition shall not deprive the court of jurisdiction to authorize such borrowing. [1990 c 180 s 3; 1965 c 145 s 11.56.280.]

Order of payment of debts: RCW 11.76.110.