

CHAPTER 54  
FORMERLY  
HOUSE BILL NO. 63

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO GUARDIANSHIP.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3951, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3951. Sale of real estate ~~of~~ owned by a person with a disability.

~~(a) If it appears to the Court of Chancery that it is proper to sell any real estate of a person with a disability, whether the real estate is held in severalty, joint tenancy, coparcenary or in common or in possession, reversion or remainder or any part of it, the Court may order it to be sold by the guardian of the property or by a trustee to be appointed for that purpose. If the guardian of the property of a person with a disability wishes to sell real estate owned by the person with a disability, then the guardian shall apply to the Court of Chancery for the authority to sell the property. For purposes of this section, the term "real estate" shall encompass any ownership interest in real estate, including, but not limited to real estate held in fee simple, in severalty, as a joint tenancy, as a tenant in common, as a tenant in possession, or as a reversionary or remainder interest.~~

~~(b) The guardian shall give notice of the application to all potentially interested parties, including those identified in the Petition for the Appointment of a Guardian. The notice shall inform the interested parties that they may appear and object to the application or otherwise participate in the proceeding. Any party who does not appear or object within twenty days after the date of the notice will be deemed to have waived any objection to the disposition of the application as determined by the Court.~~

~~(b) Whenever application for such a sale is made by a guardian, (c) If there appears preliminarily to be good cause to sell the real estate, then the Court shall appoint~~ enter an order appointing an appraiser of real estate, licensed and certified pursuant to Delaware law, to perform an appraisal of the real property to be sold. The appraiser appointed shall be independent of the parties to the sale and disinterested in the as to any proposed transaction. The appraised value shall be used by the Court as a guideline, in a manner set forth more fully in the rules of the Court, when considering an application for the sale of real estate by a guardian of a person with a disability and the Court shall determine in its discretion, based on the appraisal and all other relevant circumstances, whether the requested sale is in the best interest of the person with a disability.

~~(d) Based on the appraisal and all other relevant information, the Court shall determine in its discretion whether the requested sale is in the best interest of the person with a disability. The appraised value shall be considered by the Court as a guideline and is not determinative of the outcome of the application or the fairness of the price.~~

~~(e) Upon any such sale, the guardian or trustee shall~~ (e) If the Court approves a sale, then the guardian shall be authorized to make a deed to for the benefit of the purchaser which shall may convey as full a title to the land as the person with a disability had at the time of sale, unless the Court determines it is in the interest of the person with a disability to convey a lesser estate.

~~(d) (f) The Court may order that the real estate be sold free and clear and discharged of any lien or incumbrance thereon~~ encumbrance existing at the time of sale created by or recovered against the person with a disability and in such case the Court shall direct in the order of sale that reasonable notice of the sale be given to the holders of such lien or incumbrance by newspaper advertisement or otherwise. Any such order may be entered only if reasonable notice of the application and the sale has been given to the holder of the affected lien or encumbrance. The lien or incumbrance encumbrance shall, without change of priority, be transferred to the proceeds of sale.

~~(g) If the Court approves a sale, the guardian shall submit a return of sale within thirty days after the sale of the property or as otherwise directed by the Court.~~

(h) The Court may appoint a trustee to conduct the sale in lieu of the guardian.

(i) The Court may rule on the application in whole or part after holding a hearing or based on the documents submitted.

Approved June 26, 2015