

## Probate Code Amendments

The comments on Amended House Bill No. 33, as originally introduced, by the Ohio State Bar Association Committee on Probate and Trust Law, appear in 21 Ohio Bar 527 (issue of January 3, 1949). An address by Montgomery County Probate Judge Rodney M. Love of Dayton, *Analysis of Proposed Amendments to the Probate Code*, appears in 24 Ohio Bar 366 (issue of September 19, 1949). These articles should be consulted for comprehensive treatment of the numerous changes effected by this law. The following discussion will attempt only a general survey of the major changes.

General Code, Section 10506-65. The amendment permits the court, in its discretion, to appoint a guardian who is a non-resident of the county. However, he must be a resident of the state.

General Code, Section 10509-89. Extensive changes have been made in this section, dealing with the right of a surviving spouse to elect to purchase property.

(1) An attempt has been made to reduce the possibility of purchases of personal property at inadequate prices, principally by requiring notice to interested persons.

(2) A provision has been added relative to requiring or dispensing with additional bond when the surviving spouse elects to purchase real estate.

(3) An amendment provides expressly that the death of the surviving spouse prior to the entry fixing terms and conditions of payment shall nullify the election and terminate the right of election.

(4) Another amendment makes it clear that the application or petition must be filed within one month after the approval of the inventory, and that failure to file in time destroys the right of election.

Ohio General Code, Section 10509-102. This section relates to certificates of transfer of real estate. The principal amendments are as follows:

(1) The last paragraph of the amended section explicitly authorizes the transfer of the interest of a deceased vendor in a contract for the sale of real estate. Applications for such transfers had been refused on the theory that the vendor's interest must be deemed to be personal property, because of the doctrine of equitable conversion, and was therefore incapable of transfer under this section.

(2) An amendment suggested by the Senate Judiciary Committee authorizes the transfer of Ohio real estate by foreign ad-

ministrators when no ancillary proceedings in Ohio have been had.

General Code, Sections 10509-194 and 10509-195 provide for the distribution of unclaimed money to heirs, creditors, etc. The 1949 amendments simplify and clarify these sections.

General Code, Sections 10509-224 and 10509-225, relating to the completion, alteration and cancellation of land contracts, have been re-arranged so that Section 10509-224 now relates solely to completion, whereas 10509-225 relates solely to alteration and cancellation. Different procedures are prescribed in the two sections, the completion procedure having been considerably simplified.

General Code, Section 10510-10 permits the sale of the entire interest in real estate although the interest of the decedent or ward was only fractional. Heretofore the section provided that the fees of the attorney for the fiduciary should be borne entirely by the estate of the decedent or ward. The 1949 amendment causes such attorney fees to be borne proportionately by all the owners of fractional interests. This was accomplished by incorporating language from Section 12050, in the Partition chapter.

General Code, Section 10510-31 relates to the requirement of additional bond in land sale proceedings. Due to the phraseology of the section, there was often uncertainty as to whether the court could dispense with additional bond, and as to the amount of additional bond. The amendments would seem to make it clear that in computing the total bond to be required, the court should not include *all* the real estate, but only that to be sold.

R. L. W.