

IC 32-22

ARTICLE 22. CONVEYANCE LIMITATIONS OF REAL PROPERTY

IC 32-22-1

Chapter 1. Limitations on Persons Who May Convey Real Property

IC 32-22-1-1

Mentally incompetent persons and minors

Sec. 1. Except as provided in section 3 of this chapter, a:

- (1) mentally incompetent person; or
- (2) person less than eighteen (18) years of age;

may not alienate land or any interest in land.

As added by P.L.2-2002, SEC.7.

IC 32-22-1-2

False representation; good faith purchaser

Sec. 2. (a) This section does not apply to any sale or contract made and entered into before September 19, 1881.

(b) In all sales of real estate by a person less than eighteen (18) years of age, the person may not disaffirm the sale without first restoring to the purchaser the consideration received in the sale, if the person falsely represented himself or herself to the purchaser to be at least eighteen (18) years of age and the purchaser acted in good faith, relied upon the person's representations in the sale, and had good cause to believe the person to be at least eighteen (18) years of age.

As added by P.L.2-2002, SEC.7.

IC 32-22-1-3

Application of law

Sec. 3. Any person who is:

- (1) less than eighteen (18) years of age; and
- (2) married to a person who is at least eighteen (18) years of age;

may convey, mortgage, or agree to convey any interest in real estate or may make any contract concerning the interest, with the consent of the circuit, superior, or probate court of the county where the person resides, upon payment of the fee required under IC 33-37-4-4.

As added by P.L.2-2002, SEC.7. Amended by P.L.98-2004, SEC.117.

IC 32-22-1-4

Rights of infant; consent of judge

Sec. 4. A judge may give consent under section 3 of this chapter to a conveyance or mortgage and to any note secured by the mortgage, agreement, or contract if the judge determines that it would benefit the person described in section 3 of this chapter and that it would be prejudicial to the spouse of the person if the execution of the instrument were prevented. The judge shall endorse the judge's consent on the instrument and sign it, and the instrument so certified

is valid for all purposes as if the married person were at least eighteen (18) years of age. However, the judge has the power, in the judge's discretion, to examine witnesses concerning the propriety or necessity of executing the instrument.

As added by P.L.2-2002, SEC.7.

IC 32-22-1-5

Certification by judge

Sec. 5. (a) If a person owning real estate desires to sell the real estate or a part of the real estate and the person's spouse is, at the time, mentally incompetent, the person, upon complying with this section, may sell and convey the real estate by deed without the joinder of the mentally incompetent spouse. The conveyance has the same effect as would the joint deed of both spouses.

(b) Before a deed is made under this section, the owner intending to sell the real estate shall, by petition, apply to the court having probate jurisdiction in the county where the real estate or a part of the real estate to be sold is situated, alleging that the owner's spouse is mentally incompetent and that the incompetency is probably permanent. Upon the filing of the petition, notice shall be given to the person alleged to be mentally incompetent, either by service of process, as provided by law for service of process against incompetent persons in other civil actions, or, if the person alleged to be incompetent is by affidavit shown to be a nonresident of Indiana, by publication.

(c) After notice and upon or after the return day of the notice, the legally appointed guardian, if any, of the person alleged to be mentally incompetent or, if there is no guardian, a guardian ad litem for the person appointed by the court, shall make any proper defense to the application. The matter of the petition shall be submitted to the court, and if the allegations are proved to the satisfaction of the court, the court shall make and enter a finding that the person alleged to be incompetent is incompetent, and that the incompetency is probably permanent.

(d) Upon the filing by the petitioner with the clerk of the court of a bond, in an amount and with surety approved by the court, that is payable to the state and conditioned to:

- (1) keep the mentally incompetent spouse from becoming a county charge; and
- (2) account to the spouse, upon restoration to competency, if the spouse demands it, fifty percent (50%) of the purchase money received for the real estate upon sale;

the court shall enter an order authorizing the whole title to be conveyed by the petitioner without the joinder of the mentally incompetent spouse.

(e) A deed made under an order of court under this section has the same effect as the deed of an unmarried person competent to convey real estate.

(f) If it is shown to the satisfaction of the court having probate jurisdiction in the county in which lands authorized to be sold under

this section are located that:

- (1) the lands were sold under an order authorizing the sale;
- (2) the entire proceeds of the sale were invested in other real estate located in Indiana;
- (3) the land purchased with the proceeds of the sale was of no less value than the land sold under the order;
- (4) the title to the land purchased with the proceeds of the sale was taken in the name of the person having a mentally incompetent spouse; and
- (5) the mentally incompetent spouse will not suffer any loss as a result of the investment described in subdivision (2);

the court shall enter an order discharging the bond described in subsection (d) and releasing the sureties from all liabilities on the bond.

As added by P.L.2-2002, SEC.7.