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## Upon Information and Belief

Dicta Editorial Board

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## ***Upon Information and Belief***

My, my, such a business. Here we have always thought that one should not put off until tomorrow what can be done today—especially when the greens and fairways might be covered with snow tomorrow. And what with the deer season just closing and the dück season just opening and us trying to get in one more fishing trip before the season ends. And not only that, but here comes our client—the client, if you please—and wants us to try his case. Well, you can readily appreciate how difficult it has been to get out DICTA for this month. But here we are.

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Health and accident insurance under a group plan is now available to members of the Denver Bar Association. At the last meeting of the association the legislative committee reported that both the plan and the company proposing the plan had been investigated and the committee recommended that the plan be adopted. The report of the committee was approved by the association. Full particulars will be mailed to each member of the association within the next few days.

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## **1941 Amendments to Statutes Relating to Sale of Real Estate in Probate Proceedings**

By ROYAL C. RUBRIGHT\*

The old procedure to sell real estate was contained in the 1935 Colorado Statutes Annotated, Chapter 176, Sections 160 to 193. Many of these sections were amended by the 1941 Session Laws, Chapter 235. Of course, these sections present a very detailed method of procedure and should be carefully examined.

It is possible to say, in a general way, that the amendments liberalize and simplify the procedure. For example, the personal representative

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\*Of the Denver bar.

may sell only a portion of the real estate in the estate and in his petition for sale he need only describe such portions as he wishes to mortgage or sell.

Another major change is that the Notice of Hearing of Sale fixes the time not less than ten days, nor more than ninety days after the filing of the petition. A streamlined provision is contained by which all persons in interest may waive service of notice and petition and the sale may be held forthwith, that is, in less than ten days and no publication need be had. The statute now specifically permits a guardian *ad litem* to waive notice of hearing on the petition to sell real estate. The amendment now permits the personal representative to exchange property in the estate for other property, which he was formerly unable to do. If sale is made upon credit, the requirements are liberalized so that credit may be given for three-fourths of the purchase price instead of one-half as formerly. The procedure by which a non-resident guardian or conservator sells property in Colorado is somewhat changed by the amended statute.

Most of the difficulties arise in the following manner: The old statute required that the administrator's deed should, "recite in substance the order of the court." Under this statute it was the common practice to copy in full the order for sale in the administrator's deed. This deed was usually supported by a certified copy of the order for sale, the order confirming sale and the letters of administration or letters testamentary. All of these were recorded. The new statute provides that the conveyance "shall recite the order of court *confirming* the sale." It will be seen that the requirement is mandatory and the only order which should appear in the administrator's deed is the order confirming the sale. The printing companies have recognized this situation and they have printed new forms which contain a space for the order confirming sale and have omitted from such forms any space for the order for sale. It is the judgment of many attorneys that the use of the old form is no longer sufficient to comply with the statute. It is, therefore, important that the new form of administrator's or executor's deed be used in any conveyance in real estate under the statutory sale proceedings, since the effective date of the new law, which is April 17, 1941.

It might be pertinent to point out that the new statute makes such a deed, containing the order of court confirming the sale, *prima facie* evidence that such sale is made and the proceedings were had in conformity with the statute. Many attorneys are of the opinion that this language dispenses with the necessity of recording certified copies as was formerly the practice. It would seem that under the amended statute, the administrator's or executor's deed containing the proper order, together with the certified copy of letters of administration or letters testamentary, are all that need be recorded to show a proper conveyance of real estate out of an estate.