

**LDIR#212**  
**ART. III**  
**PART 6**  
**ADMINISTRA-**  
**TION**  
**MANAGEMENT**

6.  
Part VI. Management

3.8  
Sec. 7-01. GENERAL POWERS AND DUTIES. A personal representative shall take possession of all the real and personal property of the decedent except the homestead and exempt property of the surviving spouse and minor children. He shall pay the taxes on and collect the rents and earnings of this property until the estate is settled or until it is delivered by court order to the distributees. He shall keep in repair, and protect from loss or deterioration, and may protect by insurance the property under his control. He may maintain an action for the possession of real property or to determine title to it.

SOURCE: Model, Sec. 124; Mo., Sec. 106; Cal. Prob. C.A., Sec. 571; Sec. 61-6-1, ACLA 1949.

COMMENT:

At ~~the~~ common law, title and right to possession of real property passed on the decedent's death to the heirs or devisees of the decedent, and title and right to possession of personal property passed to the personal representative. Model, Sec. 124, comment; 2 Woerner, Sec. 185. The Alaska statute (Sec. 61-6-1, ACLA 1949) provides that the personal representative is entitled to possession and control of the property, and it seems that title has passed to the heirs or devisees, although this is not explicit. Kohn v. McKinnon (D.C. 1898); 90 F 623.

The provision that the personal representative must take possession goes a step further than the Alaska law, which merely entitled him to take possession. The Model Code recommends imposition of the duty to take possession, presumably as the best way of avoiding dissipation of the assets before the purposes of administration have been accomplished. Model, Sec. 124, comment.

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keep it in ~~reasonable repair~~ <sup>repair and maintain</sup> protect <sup>From loss or deterioration</sup>  
the ~~buildings and fixtures~~ <sup>Property</sup> under his control. He may maintain

an action for the possession of ~~the~~ real property or to

determine ~~the~~ title to it.

Source: Mod. sec 124, Mo. sec 106, Cal. sec 571. sec 61-6-

*inclusion B  
exclusion A?  
exclusion.*

*How is*

Sec. 7.02. Assets subject to creditors' claims. The ~~assets~~ <sup>and</sup>  
~~assets~~ property liable for the payment of debts of a decedent  
includes property transferred by him with intent to defraud  
one or more creditors or transferred by any legally fraudulent  
conveyance, and the personal representative shall recover this  
property insofar as necessary to pay the debts of the  
decedent. Recovered property becomes part of the general assets  
for the payment of all creditors, ~~and~~ <sup>transferred</sup> No property so ~~recovered~~  
~~which~~ may be taken from a bona fide purchaser.

Source: Mod. Sec. 125, *ALR* 61-7-21; 61-7-22  
61-7-23.

Comment: Uncertainty and consequent litigation make  
necessary this statement of the rule, which is consistent  
with the Uniform Fraudulent Conveyances Act, and supplementary  
to it.

Check 91 *ALR* 133  
132 *ALR* 7353

Can be referred to *ALR* 22-4-1 (No amendments)

Sec. 7.03 Compromise. When it appears to be in the best interests of the estate, the personal representative may on court order effect a reasonable compromise with any debtor or other obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. A personal representative holding a mortgage, pledge, or other lien upon property of another person may, instead of foreclosing, accept a conveyance or transfer of the encumbered ~~property~~ property from ~~the~~ its owner in satisfaction of the indebtedness secured ~~if~~ it appears to be in the best interests of the estate and if the court shall so order. Without the prior authorization or subsequent approval of the court, no compromise ~~shall~~ binds the estate.

Source: Mod. 126, Mo. 110, Cal. 578.

Comment: This section is a counterpart of sec. 147 and that part of sec. 149 which provides for the conveyance by the personal representative of ~~the~~ estate property to the ~~holder~~ holder of an encumbrance in satisfaction of the encumbrance.

*not what the legislature intended at the time of the compromise law*  
The power to compromise is thought advisable to 2 Waeners

See 7.07 Comment.

Ordinarily it is not within the scope of the authority of a personal representative to carry on the decedent's trade or business, unless specifically authorized by will. 2 Woerner § 328. However, there are times when the exigencies of business are such as to make a liquidation undesirable, and it is thought desirable to have the will provide for retention of the business for a limited time to benefit the estate, as has been done to a limited extent in a number of states. 2 Woerner § 328.

Provision is made for notifying all interested persons, and for placing appropriate restrictions upon the order. Subsec. (4)

maintaining the rest intact. Sec. 6  
places limits upon <sup>the extent</sup> which the personal  
representative may make himself or  
the estate liable <sup>in</sup> for future undertakings.

Sec 7.08. Contract to convey or lease land.

(a) General. When any person legally bound to make a conveyance or lease dies before making it, the court, with or without notice, may direct the personal representative to make it according to the agreement. A petition for specific performance may be made by ~~him~~ a person claiming to be entitled to the conveyance or lease, by the personal representative, or by any other interested person. ~~It must describe the land and the facts upon which the claim for conveyance or lease is based.~~ ~~The court shall order~~ <sup>proe.</sup> The personal representative <sup>may by order of the court only</sup> deliver a deed or lease to the person <sup>the</sup> entitled, upon ~~his~~ performance of the contract.

(b) Warranties and recording. When warranties are required by the contract for a conveyance, the deed given by the personal representative shall contain the promised warranties, which shall be as binding upon the estate as if made by the decedent but shall not bind the personal representative personally. A certified copy of the order to convey <sup>shall</sup> ~~may~~ be recorded with the deed in the office of the register of

A conveyance made pursuant to this section is as )

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Sec. 7.01. General powers and duties. Every personal representative shall have a right to, and shall take, possession of all the real and personal property of the decedent except the homestead and exempt property of the surviving spouse and minor children. He shall pay the taxes and collect the rents and earnings thereon until the estate is settled or until delivered by order of the court to the distributees. He shall keep in tenable repair the buildings and fixtures under his control and may protect the same by insurance. He may maintain an action for the possession of the real property or to determine the title to the same.

Source:

Comment: