

## CHAPTER 149 - NOTES, MORTGAGES AND LEASES

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### **LEASING**

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### **BORROWING MONEY AND MORTGAGING PROPERTY**

#### **SECTION 149.010 Authorization to borrow; purposes warranting borrowing; joint borrowing.**

1. If it appears to be to the advantage of the estate to borrow money upon a note or notes, unsecured or to be secured by a security agreement or other lien upon the personal property of the decedent or any part thereof, or to be secured by a mortgage upon the real property of the decedent or any part thereof, or to mortgage or create a security interest or other lien upon the property or any part thereof, in order to pay the debts of the decedent, or devise, or expenses or charges of administration, or to pay, reduce, extend or renew a security interest or agreement or lien or mortgage existing upon property of the estate, and as often as occasion arises in the administration of the estate, the court may direct the personal representative to borrow the money and to execute such note or notes and, in a proper case, to execute such mortgage, or to give other security by way of security interest or other lien, or may authorize, in a proper case, the execution of an extension agreement.

2. If property of the estate consists of an undivided fractional interest in real or personal property, and it appears to be to the advantage of the estate to borrow money in order to improve, utilize, operate or preserve the property jointly with the other co-owner or co-owners, or in order to pay, reduce, extend or renew some security interest or agreement, lien or mortgage existing upon the property, including the other undivided interest or interests therein, the court may direct the personal representative to borrow the money required for those purposes and to join with the owner or owners of the other undivided interest or interests in the property, or their duly authorized representatives or agents, in the execution of such joint and several note or notes as may be necessary, and to join with the owner or owners of the other undivided interest or interests in the property, or their duly authorized representatives or agents, in the execution of such security agreement, lien or mortgage as may be required to secure the payment of the note or notes.

#### **SECTION 149.020 Petition.**

1. The personal representative or an interested person shall file a petition showing:
  - (a) The particular purpose or purposes for which the order is sought.
  - (b) The necessity for or advantage to accrue from entry of the order.
  - (c) The amount of money proposed to be raised, if any.
  - (d) The rate of interest to be paid.
  - (e) The length of time the note or notes are to run.

(f) A general description of the property proposed to be mortgaged or subjected to the security agreement or other lien.

2. The clerk shall set the petition for hearing and the petitioner shall give notice of the hearing in the manner required by [SECTION 155.010](#) or as the court by order may require.

**SECTION 149.030 Hearing and order.**

1. At the time appointed, the court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition and any objection that may have been filed or presented. If, after a hearing, the court is satisfied that it will be to the advantage of the estate, it shall enter an order directing the personal representative to borrow the money and to execute the note or notes, and, in a proper case, to execute the mortgage or give other security by way of security interest or other lien.

2. The court may direct that a lesser amount than that named in the petition be borrowed, and may prescribe the maximum rate of interest and the period of the loan, and require that the interest and the whole or any part of the principal be paid, from time to time, out of the whole estate or any part thereof, and that the personal property to be subject to the security agreement or other lien, or any improvements on the premises to be mortgaged, are insured for the further security of the lender, and the premiums paid from the assets of the estate.

3. A certified copy of the order must be recorded in the office of the tribal court clerk.

**SECTION 149.040 Execution of instruments.** The personal representative shall execute, acknowledge and deliver the mortgage or other security, as directed, setting forth therein that it is made by authority of the order, giving the date of the order. The note or notes and mortgage or other security must be signed by the personal representative as such, and create no personal liability against him.

**SECTION 149.050 Effect of proceedings under [SECTION 149.010 to 149.050](#), inclusive.**

1. A mortgage or security agreement so made is effectual to mortgage or subject to the security agreement all right, title, interest and estate which the decedent had in the property described therein at the time of his death or previously and any right, title or interest in the property acquired by the estate of the decedent, by operation of law or otherwise, since the time of his death.

2. Jurisdiction of the court to administer the estate of the decedent is effectual to vest the court with jurisdiction to enter the order for the note or notes and mortgage or security agreement, and the jurisdiction conclusively inures to the benefit of the mortgagee named in the mortgage or the secured party named in the security agreement and the heirs, successors and assigns of the secured party.

3. No omission, error or irregularity in the proceedings impairs or invalidates them or the note or notes or mortgage or security agreement given in pursuance thereof, and the mortgagee or secured party and the heirs, successors and assigns of the secured party, have and possess the same rights and remedies on the note or notes and mortgage or security agreement as if it had been made by the decedent before his death, except that, upon any foreclosure or sale under the mortgage or security agreement, if the proceeds of the sale of the encumbered property are insufficient to pay the note or notes, the mortgage or security agreement, and the costs or expenses of sale, no judgment may be had or allowed except in cases where the note or notes or mortgage or security agreement was given to pay, reduce, extend or renew a lien, mortgage or security agreement existing at the time of the death of the decedent and the indebtedness secured thereby was an allowed and approved claim against the estate, in which case the part of the indebtedness remaining unsatisfied must be classed and paid with other allowed claims against the estate.

**LEASING**

**SECTION 149.060 Authorization to lease.** If it appears to be to the advantage of the estate to lease any real property of the decedent, and as often as occasion arises in the administration of the estate, the court may direct the personal representative to execute the lease.

**SECTION 149.070 Petition.**

1. To obtain such an order the personal representative or an interested person shall file a petition, showing the advantage to accrue from giving the lease, a general description of the property proposed to be leased, and the term, rental and general conditions of the proposed lease.

2. The clerk shall set the petition for hearing, and the petitioner shall give notice of the hearing in the manner required by [SECTION 155.010](#) or as the court by order may require.

**SECTION 149.090 Execution of lease; effect of omission, error or irregularity in proceedings.**

1. The personal representative shall execute, acknowledge and deliver the lease as directed, setting forth therein that it is made by authority of the order, giving the date of the order.

2. A lease so made is effectual to lease the property described, at the rent, for the term and upon the conditions therein prescribed.

3. Jurisdiction of the court to administer the estate of the decedent is effectual to vest the court with jurisdiction to enter the order for the lease, and that jurisdiction conclusively inures to the benefit of the lessee, his heirs, successors and assigns.

4. No omission, error or irregularity in the proceedings impairs or invalidates them or the lease made in pursuance thereof.

**SECTION 149.100 Lease without court order.** A personal representative may lease property without an order of court if the tenancy is from month to month, or for a term not to exceed 1 year.