

OTS 3.10

3.10 CONVEYANCES – BY EXECUTOR OR OTHER FIDUCIARY

Problem A:

Can an executor validly convey title, under an express power of sale in the will, immediately after the admission of the will to probate and the filing of the certificate of service required under Ohio Revised Code Section 2107.19?

Standard A:

Yes, when conveyed in good faith and provided proceedings to contest the will have not been commenced and assuming no rights of spouse under Ohio Revised Code Section 2106.16 have been exercised, at the date the deed is delivered. Good faith is ordinarily presumed.

Comment A:

Ohio Revised Code Section 2113.39 makes clear that a power of sale authorizes a sale for any purpose considered by the executor to be in the best interest of the estate unless the power is expressly limited by the will. Ohio Revised Code Section 2113.23 provides that, notwithstanding any subsequent revocation of authority or removal of the executor, all previous sales made lawfully and in good faith by the executor and with good faith of the purchaser shall be valid as to such executor and purchaser.

(Amended April 27, 2018; amended May 18, 1994; amended May 18, 1972; originally effective November 1, 1952)

Problem B:

Is a conveyance defective because a fiduciary signs and acknowledges as an individual?

Standard B:

No. *See*, Ohio Revised Code Section 5301.071(D)

(Amended April 27, 2018; originally effective May 21, 1953)