

## **RULE 4:94. Sale Or Mortgage Of Minor's And Mentally Incapacitated Person's Lands**

### **4:94-1. Action for Sale**

A general guardian of the person or property of a minor or mentally incapacitated person or, if the general guardian shall fail to act or has an adverse interest or other good cause exists, a guardian ad litem appointed by the court after notice to the general guardian, or any person having a vested interest in lands in which a minor, mentally incapacitated person, or person not in being has an interest, may bring an action in the Superior Court for the sale or other disposition of the property of the minor, mentally incapacitated person or person not in being. Nothing in these rules shall be deemed to authorize the sale or other disposition of any property contrary to the provisions of any will or conveyance by which the same were bequeathed, devised or granted to or for the benefit of the minor or mentally incapacitated person.

Note: Source-R.R. 4:84-1 (first sentence), 4:84-2 (fifth sentence). Amended July 7, 1971 to be effective September 13, 1971; amended July 22, 1983 to be effective September 12, 1983; former R. 4:66-1 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; R. 4:94 caption amended, and text of R. 4:94-1 amended July 12, 2002 to be effective September 3, 2002.

### **4:94-2. Complaint; Supporting Affidavits; Notice**

The complaint shall state the age and residence of the ward, a description of the property proposed to be sold or otherwise disposed of, a statement of the encumbrances, if any, thereon, and the reasons why the sale or other disposition would be in the ward's best interests. The complaint shall be verified by affidavit made pursuant to R. 1:6-6 and have annexed thereto affidavits of at least two persons, stating the situation, assessed value, if any, and fair market value of the property proposed to be sold or otherwise disposed of, and if real estate, of each separate lot or parcel. If the property is real estate located in New Jersey, the affidavits shall be made by a certified real estate appraiser or licensed real estate appraiser as defined by *N.J.S.A. 45:14F-5* and *-6*, respectively, and required by *N.J.S.A. 45:14F-21(c)*. If the real estate is located outside this state, the affidavits shall be made by a real estate appraiser certified or licensed by the jurisdiction in which the property is located if that jurisdiction has a certification or licensing requirement. If the minor or mentally incapacitated person owns a fractional portion of real estate having a value not in excess of \$10,000 as shown by one affidavit, the court may dispense with the requirement of a second affidavit as to value. Unless the court otherwise orders, no notice of the action need be given to the ward.

Note: Source -- R.R. 4:84-1 (second and third sentences); former R. 4:66-2 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002; amended July 28, 2004 to be effective September 1, 2004.

### **4:94-3. Order to Sell**

Upon presentation of the complaint and affidavit to the court, it may in its discretion require proof by way of oral testimony or additional affidavits in support of the statements therein. If from the complaint, affidavits and oral proofs, if any, the court is satisfied that the best interests of the ward would thereby be substantially promoted and the rights of other persons interested in the property would not be harmed, it may order the guardian or guardian ad litem to sell or otherwise dispose of the property, or such part thereof, as it deems proper. The order may fix the terms and conditions of the sale or other disposition, and may establish a price below which the property shall not be sold.

Note: Source-R.R. 4:84-2 (first, second, third sentences). Amended July 7, 1971 to be effective September 13, 1971; amended July 14, 1972 to be effective September 5, 1972; amended July 22, 1983 to be effective September 12, 1983; former R. 4:66-3 amended and rule redesignated June 29, 1990 to be effective September 4, 1990.

#### **4:94-4. Bond**

If sale or other disposition is made by a guardian ad litem, the proceeds thereof shall not be paid to him or her, but to the guardian who has filed a bond in an adequate amount. The court on directing the sale or other disposition of property shall examine the sufficiency of the bond previously given by the general guardian or the special guardian for real or personal property within this State of the nonresident minor or mentally incapacitated person, and if in the court's judgment the same is insufficient, or if no bond has been previously given, the court shall require the guardian or special guardian to give an additional bond approved by it before the confirmation of the sale, or as it directs. If the guardian or special guardian was appointed by a court other than the Superior Court of New Jersey, then before the confirmation there shall be presented a certificate of such appointing court, certifying that a good and sufficient bond, of a stated amount, has been filed with it.

Note: Source-R.R. 4:84-2 (fourth sentence), 4:84-3; former R. 4:66-4 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002.

#### **4:94-5. Confirmation of Sale; Conveyance**

The report, notice and order for the confirmation of a sale or other disposition of property shall be in accordance with R. 4:65-6 dealing with real estate, except that the order to sell may dispense with a confirmation of the sale in case of a private sale. If the report is filed within 6 months after the hearing or application under R. 4:94-3, it need not have annexed to it affidavits as to the value of the property sold. The conveyance to be made pursuant to the order confirming sale, when duly executed and delivered, shall vest in the purchaser as good an estate in the property as the minor or mentally incapacitated person could have conveyed if at the time of conveyance such person were of full age and sound mind.

Note: Source-R.R. 4:84-4; former R. 4:66-5 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002.

#### **4:94-6. Mortgage of Lands**

Actions in the Superior Court under any statute providing for the borrowing of money on the security of, or the exchange of, any real estate of a minor, mentally incapacitated person or other person, shall be commenced by filing a verified complaint of the guardian or other person authorized to proceed under the statute, and shall conform with the provisions of R. 4:94 insofar as they are applicable. If the action is to mortgage land, the court shall also ascertain the manner in which it is proposed to meet the interest to accrue upon the mortgage. If it appears that the best interests of the minor, mentally incapacitated person or other person would be promoted by selling the real estate rather than by mortgaging it, the court in its discretion may direct the guardian or other designated person to take such proceedings to sell the whole or any part of the same.

Note: Source-R.R. 4:84-5; amended July 26, 1984 to be effective September 10, 1984; former R. 4:66-6 amended and rule redesignated June 29, 1990 to be effective September 4, 1990; amended July 12, 2002 to be effective September 3, 2002.

#### **4:94-7. Costs and Expenses of Proceedings**

The costs and expenses of proceedings under R. 4:94 shall be taxed and paid out of the proceeds of the sale or mortgage.

Note: Source-R.R. 4:84-6; former R. 4:66-7 amended and redesignated June 29, 1990 to be effective September 4, 1990.

