

75-2-606 Nonademption of specific devises -- Unpaid proceeds of sale, condemnation, or insurance -- Sale by conservatory or agent.

- (1) A specific devisee has a right to the specifically devised property in the testator's estate at death and:
 - (a) any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;
 - (b) any amount of a condemnation award for the taking of the property unpaid at death;
 - (c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;
 - (d) property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;
 - (e) real or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real or tangible personal property; and
 - (f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by Subsections (1)(a) through (e).
- (2) If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.
- (3) The right of a specific devisee under Subsection (2) is reduced by any right the devisee has under Subsection (1).
- (4) For the purposes of the references in Subsection (2) to a conservator, Subsection (2) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.
- (5) For the purposes of the references in Subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:
 - (a) "incapacitated principal" means a principal who is an incapacitated person;
 - (b) no adjudication of incapacity before death is necessary; and
 - (c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

Amended by Chapter 324, 2010 General Session