

ESCHEAT ACT

CHAPTER 120

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Escheated land may be taken by Attorney General

- 1 If land in British Columbia escheats to the government because the person last seised or entitled to it dies intestate and without lawful heirs, or forfeits to the government, the Attorney General may take possession of the land in the name of the government.

Action for possession

- 2 The Attorney General may sue to recover possession of escheated land.

Escheat of estates

- 3 (1) If a person dies without an heir and intestate in respect of any real estate consisting of any estate or interest, whether legal or equitable, in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, whether devised or not devised to trustees by the will of that person, the law of escheat applies in the same manner as if that estate or interest were a legal estate in corporeal hereditaments.
- (2) If any beneficial interest in the real estate of any deceased person, whether the estate or interest of the deceased person in it was legal or equitable, is, because of the failure of the objects of the devise or other circumstances happening before or after the death of the deceased person, in whole or in part not effectually disposed of, the deceased person is deemed, for the purposes of this section, to have died intestate in respect of that part of the beneficial interest as is ineffectually disposed of.

Section 4

Escheat of land on dissolution of corporation

- 4
- (1) If a corporation is dissolved, land in British Columbia owned by or to which the corporation is entitled at the time of its dissolution escheats to the government.
 - (2) The law of escheat and the provisions of this Act apply in respect of that land in the same manner as if a natural person had been last seised or entitled to it and had died intestate and without lawful heirs.
 - (3) The Lieutenant Governor in Council must not, within 2 years from the date of the dissolution of a corporation, make any grant or other disposition of land of the corporation which escheats to the government.
 - (4) If, within 2 years from the date of its dissolution, a corporation is revived under any Act by order of a court, the order has effect as if the land of the corporation had not escheated to the government, and, subject to the terms of the order, the land vests in the corporation.
 - (5) On an application to revive a corporation made after the expiry of the 2 year period referred to in subsection (4), the Supreme Court may, if notice of the application has been served on the government, order that the land of the corporation that had escheated to the government under this section vest in the corporation.
 - (6) Land that is the subject matter of an order made under subsection (5) vests in the corporation at the time, in the manner and subject to the conditions set out in the order.
 - (7) The Supreme Court must make it a term of any order made under subsection (5) that the land must not vest in the corporation until the government has been reimbursed for any costs and expenses
 - (a) incurred by the government in relation to the land after it escheated to the government, and
 - (b) for which the government makes application for reimbursement at the time of the hearing.
 - (8) This section applies to real estate of a corporation consisting of any estate or interest, whether legal or equitable, in any incorporeal hereditament, or of any equitable estate or interest in any corporeal hereditament, in the same manner as if that estate or interest were a legal estate in corporeal hereditaments.

Power to restore land to legal or moral claimants

- 5
- The Lieutenant Governor in Council may, as to the Lieutenant Governor in Council seems proper,
- (a) restore land which has escheated or become forfeited, or any portion of or interest in it, to a person, or
 - (b) transfer it to a person

- (i) who has a legal or moral claim on the person to whom it had belonged,
- (ii) to carry into effect any disposition of it which the owner may have contemplated, or
- (iii) to reward a person who discovers the escheat or forfeiture.

Grant effective although person in adverse possession

- 6 (1) A grant under section 5 may be made without actual entry or investigation being first necessary, although the land is not in the actual possession of the government, and even though some person claims title to it adversely to a person to whom the land had belonged.
- (2) If possession of the land is withheld, the person to whom the grant is made is then entitled to sue for the recovery of the land.

Waiver of government rights

- 7 (1) If a forfeiture takes place of land or any interest in it the Lieutenant Governor in Council may waive or release any right that the government may have become entitled to, so as, by the waiver or release, to vest the property, either absolutely or otherwise, in the persons who would have been entitled but for the forfeiture.
- (2) The waiver or release may be either for valuable consideration or otherwise, and on the terms and conditions as to the Lieutenant Governor in Council seem proper.

Personal property

- 8 The Lieutenant Governor in Council may, as to the Lieutenant Governor in Council seems proper,
- (a) make any assignment of personal property to which the government is entitled because of
 - (i) the person last entitled to it having died intestate and without leaving any kin or other person entitled to succeed to it,
 - (ii) the property having become vested in the government as a thing that had no owner, or
 - (iii) the property having become forfeited to the government, or
 - (b) make an assignment of any portion of the personal property, for the purpose of
 - (i) transferring or restoring it to any person or persons having a legal or moral claim on the person to whom it had belonged,
 - (ii) carrying into effect any disposition of it which the person may have contemplated, or
 - (iii) rewarding the person making discovery of the right of the government to the property.

Section 9

Estate administration – escheat inquiry

- 9 (1) If administration is taken out under the provisions of the *Estate Administration Act*, Part 2, the Attorney General may apply to the Supreme Court for an order for the making of inquiries necessary to determine whether or not the government is entitled to any portion of the estate of the deceased on account of the deceased dying intestate and without heirs or next of kin or otherwise.
- (2) A judgment made on such inquiry is, unless reversed on appeal, final and conclusive.

Supreme Court order for inquiry

- 10 (1) If a person dies in possession of or entitled to real estate in British Columbia, intestate as to such real estate, without any known heirs, the Attorney General may apply to the Supreme Court for an order for the making of inquiries necessary to determine whether or not the government is entitled to any portion of the real estate of the deceased on account of his or her dying intestate and without heirs.
- (2) A judgment or order given on such inquiry is, unless reversed on appeal, final and conclusive.
- (3) If the Attorney General is entitled to apply under subsection (1), the Attorney General may bring an action, either in the name of the Attorney General, on behalf of the government or in the name of the government, to recover possession of the real estate of the deceased.
- (4) In an action under this section the government is entitled to judgment and process to recover possession, unless the person claiming adversely shows that the deceased did not die intestate as to the real estate, or that the deceased left heirs or that some other person is entitled to the real estate.

Sale of escheated land

- 11 The Lieutenant Governor in Council may
- (a) sell any land escheated to the government under this Act, at the price and on the terms as may be determined, and
 - (b) give a preference, in making any such sale, to a person who has a legal or moral claim on the person to whom the land had belonged.

Powers of Lieutenant Governor in Council to dispose of land

- 12 If any property or any interest, legal or equitable, in it, has escheated or become forfeited to the government, the Lieutenant Governor in Council may do one or more of the following:
- (a) appoint a person to take possession of it, or of any part of it, and manage it for the time the Lieutenant Governor in Council thinks proper;
 - (b) rent it or any part of it;

- (c) sell it or any part of it by private sale;
- (d) advertise it or any part of it for sale by tender;
- (e) cause it or any part of it to be sold by public auction under the conditions the Lieutenant Governor in Council considers proper.

Money under section 12 free from claims

- 13
- (1) Any money arising from the exercise of the powers conferred by section 12 is freed from any claims on it, whether legal, equitable or moral, and must be paid into the consolidated revenue fund.
 - (2) If the Lieutenant Governor in Council is satisfied that a person had a legal, equitable or moral claim on money paid into the consolidated revenue fund under subsection (1), the Lieutenant Governor in Council may authorize the Minister of Finance and Corporate Relations to pay to that person out of the consolidated revenue fund an amount of money the minister considers appropriate.

Property Crown granted that has escheated

- 14
- (1) This section applies to property that has been Crown granted under the provisions of the *Mineral Tenure Act*, or under any ordinance or Act affecting minerals, precious or base, or under the *Land Act*, or any other statute providing for the granting of land by the government.
 - (2) The Lieutenant Governor in Council may direct the Surveyor General to cancel the survey, field notes and official plan of survey of a property and the property is for all purposes deemed to be Crown land within the meaning of the *Land Act* if
 - (a) it is property referred to in subsection (1) that has escheated to the government under this Act,
 - (b) the property so escheated has not been restored to any legal or moral claimant, sold, leased or released, and
 - (c) for any reason it is inconvenient or not advisable to deal with it under section 11 or 12.
 - (3) All the provisions of the *Land Act* and the *Mineral Tenure Act* apply to land referred to in subsection (2) and to its sale, lease, staking or other disposition to the same extent as if no grant of the land had been issued.
 - (4) The Surveyor General, when so directed, must,
 - (a) by notice in the Gazette, cancel the survey, field notes and official plan of survey of the property so escheated, and
 - (b) forward a notice of the cancellation to the registrar of the land title district in which the land is located.

- (5) The registrar of land titles must file the notice and, if the title to the land is registered, make a reference to it in the appropriate register against the title to the land to which the notice relates.

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ESCHEAT — HISTORICAL TABLE

Legislative History

ESCHEAT ACT

RSBC 1996, chapter 120

Section	History
1	RS1979-111-1.
2	RS1979-111-1, 2.
3	RS1979-111-3.
4	RS1979-111-4; 1992-32-5.
5	RS1979-111-5; 1982-46-15.
6	RS1979-111-6.
7	RS1979-111-7.
8	RS1979-111-8.
9	RS1979-111-9.
10	RS1979-111-10.
11	RS1979-111-11.
12	RS1979-111-12.
13	RS1979-111-13; 1985-51-17.
14	RS1979-111-14; 1988-5-68; 1989-64-1.

EXPLANATORY NOTE

Amendments Not in Force: If there are any legislative changes to the Act that are not in force as of December 31, 1996, these are identified in *italics* at the beginning of the historical table. The "Section" column identifies the affected provisions of the Act. The "Citation" column identifies the amending legislation by its citation in the 1996 Statute Revision Supplement.

Legislative History: The second part of the table provides a legislative history of each section of the Act between the 1979 Statute Revision and the 1996 Statute Revision. The "Section" column identifies all sections of the Act in force on December 31, 1996. The "History" column for each section begins with the citation of the section immediately before the 1996 Statute Revision. This is followed by a list of citations for the legislation that enacted or amended the section between the 1979 Statute Revision and the 1996 Statute Revision (if a section was repealed and replaced during that period, these last citations begin at the most recent replacement).

Legislative citations have the format of "year-chapter-section".

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