

## CHAPTER 314.

## Assignments of Homesteads.

**Editor's Note:** The legislative histories which follow are the histories of the three sections of ch. 314 through 1969, including the effects of ch. 339, Laws 1969. One section (314.06) is restated in a new probate code, effective April 1, 1971, and is cited in the editor's note printed in this volume ahead of the histories for ch. 851.

**314.05 History:** R. S. 1878 s. 3873; Stats. 1898 s. 3873; 1925 c. 4; Stats. 1925 s. 314.05; Court Rule XVII; Sup. Ct. Order, 212 W xxx; Stats. 1933 s. 314.05, 314.055; 1935 c. 176 s. 4, 4a; Stats. 1935 s. 314.05; Sup. Ct. Order, 232 W viii; 1949 c. 245; 1969 c. 339.

**314.06 History:** 1913 c. 596; Stats. 1913 s. 3871m; 1925 c. 4; Stats. 1925 s. 314.06; 1969 c. 339.

See note to 313.08, citing Kleinschmidt v. Kleinschmidt, 167 W 450, 167 NW 827.

The rule, where it has not been changed by statute, is that an annuity created either by contract or by will is not apportionable, except in some instances where the provision was made for the support of the beneficiary. Will of Petit, 246 W 620, 18 NW (2d) 339.

**314.07 History:** Court Rule XXXI; Sup. Ct. Order, 212 W xix; Stats. 1933 s. 314.07; 1969 c. 339.

## CHAPTER 315.

## Determination of Descent of Lands.

**Editor's Note:** The legislative histories which follow are the histories of the several sections of ch. 315 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 315 are restated in a new probate code, effective April 1, 1971. For more detailed information concerning the effects of ch. 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 851.

**315.02 History:** 1881 c. 286 s. 2, 3; Ann. Stats. 1889 s. 3873a sub. 2, 3; Stats. 1898 s. 3873b; 1917 c. 88; 1925 c. 4; Stats. 1925 s. 315.02; 1927 c. 47; 1949 c. 363; 1969 c. 339.

**Comment of Advisory Committee, 1949:** Application to determine descent of lands cannot be made under present 315.02 except where there is no personal property, and then only after 6 months from the death of the decedent, no administration having been granted. The proceeding is frequently used many years after decedent's death and careful examiners of title might question whether there had been personal property. Why should a petitioner for determination of descent have to wait 6 months from the decedent's death, and why should the proceeding depend upon the existence or nonexistence of personal property? A possible reason for the wait of 6 months is to give a reasonable time for application for administration or to see if a will is proposed for probate. But 311.02 allows 30 days for heirs to apply for administration and allows creditors 60 days. Thereafter others interested in probating an intestate

estate may apply. When 315.02 was created (ch. 286, Laws 1881), the problem did not involve inheritance taxes. The proposed amendment changes the word "application" to "petition," a more appropriate term. It provides that the petition may be made 60 days after decedent's death, whether or not there was personal property. It authorizes a dual proceeding to determine both the heirs and the question of inheritance taxes. [Bill 413-S]

**315.03 History:** 1881 c. 286 s. 4; Ann. Stats. 1889 s. 3873a sub. 4; 1895 c. 354; Stats. 1898 s. 3873c; 1917 c. 566 s. 50; 1925 c. 4; Stats. 1925 s. 315.03; 1935 c. 176 s. 7; Sup. Ct. Order, 232 W viii; 1969 c. 339.

**315.04 History:** 1881 c. 286 s. 5; Ann. Stats. 1889 s. 3873a sub. 5; Stats. 1898 s. 3873d; 1925 c. 4; Stats. 1925 s. 315.04; 1969 c. 339.

**Editor's Note:** Will of Knoepfle, 243 W 572, 11 NW (2d) 127, the court intimates (without deciding) that there is no warrant in the law for the prevalent practice of appointing a guardian ad litem for unknown minors or incompetents, and that if appointed he has no standing in court.

**315.05 History:** 1881 c. 286 s. 6; Ann. Stats. 1889 s. 3873a sub. 6; Stats. 1898 s. 3873e; 1925 c. 4; Stats. 1925 s. 315.05; 1969 c. 339.

**315.06 History:** 1881 c. 286 s. 7; Ann. Stats. 1889 s. 3873a sub. 7; Stats. 1898 s. 3873f; 1925 c. 4; Stats. 1925 s. 315.06; 1937 c. 34; 1943 c. 514; 1943 c. 553 s. 39; 1969 c. 339.

## CHAPTER 316.

## Sale of Lands by Executors and Administrators; Specific Performance.

**Editor's Note:** The legislative histories which follow are the histories of the several sections of ch. 316 through 1969, including the effects of ch. 339, Laws 1969. Sections 316.45, 316.46, 316.48, 316.49 and 316.50 are redesignated as secs. 296.50 to 296.58, effective April 1, 1971. Various other provisions of ch. 316 are restated in a new probate code, effective April 1, 1971. For more detailed information concerning the effects of ch. 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 851.

**316.01 History:** R. S. 1849 c. 65 s. 1; R. S. 1858 c. 94 s. 1; R. S. 1878 s. 3874; 1881 c. 286 s. 1; Ann. Stats. 1889 s. 3837a sub. 1, 3874; Stats. 1898 s. 3873a, 3874; 1901 c. 112; Supl. 1906 s. 3874a; 1913 c. 480; 1917 c. 566 s. 49; 1919 c. 162; 1925 c. 4; Stats. 1925 s. 315.01, 316.01; 1931 c. 51 s. 1; 1933 c. 122; 1935 c. 176 s. 6; Stats. 1935 s. 316.01; 1941 c. 77; 1957 c. 198; 1959 c. 450; 1969 c. 339.

The fact that the homestead was sold without authority will not avoid a distinct sale of another tract made at the same time. *Mohr v. Porter*, 51 W 487, 8 NW 364.

A sale by a foreign probate court of the property of a living person as the property of one deceased does not affect the rights of the owner. *Walker v. Daly*, 80 W 222, 49 NW 812.

Where a woman dies leaving children, her homestead cannot be sold to pay the expenses