

**1973 Assembly Bill 1057**

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**CHAPTER 233, Laws of 1973**

AN ACT to amend 852.13, 853.21, 856.31, 859.33 (1), 861.11 (3), 861.33 (1), 863.47, 879.03 (2) (a) and (c) and (3), 879.15 (1), 879.23 and 879.25; and to create 879.03 (5) of the statutes, relating to revisions in the probate code.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 852.13 of the statutes is amended to read:

**852.13 Right to renounce intestate share.** Any person to whom property would otherwise pass under s. 852.01 may renounce all or part of the property. A renunciation shall be made by filing a signed declaration of renunciation with the court and serving a copy on the personal representative, if any, within 180 days from granting of letters to the personal representative 6 months after the date of the decedent's death. For cause shown the court may grant additional time by order entered within or after such 180-day 6-month period. No interest in the property renounced vests in such person, but the renounced property passes as if such person had predeceased the decedent. However, a renunciation is invalid to the extent that the person renouncing has prior to filing the renunciation effectively assigned or contracted to assign the renounced property, if prior to entry of the final judgment, or earlier distribution by the personal representative in reliance on the renunciation, the assignee files with the court a copy of the assignment or contract and serves a copy on the personal representative.

SECTION 2. 853.21 of the statutes is amended to read:

**853.21 Renunciation of gift under will.** Any person to whom property is given by the terms of a will may renounce all of the property, or any part of such property unless the will expressly prohibits partial renunciation. In addition to other methods, a renunciation may be made, by filing a signed declaration of renunciation with the probate court and serving a copy on the personal representative, if any, within 180 days from admission of the will to probate 6 months after the date of the decedent's death. For cause shown, the court may grant additional time by order entered within or after the 180-day 6-month period. Property includes rights of a beneficiary of a trust under the will, including right to receive discretionary or contingent distributions; and any provision in the will attempting to restrict alienability of the interest of a beneficiary, whether under a trust or otherwise, does not restrict the power to renounce such interest under this section. Unless the will provides otherwise, no interest in the property renounced vests in such person, but the renounced property passes as if such person had predeceased the testator. However, a renunciation is invalid to the extent that the person renouncing has prior to filing the renunciation effectively assigned or contracted to assign the renounced property, if prior to entry of the final judgment, or earlier distribution by the personal representative in reliance on the renunciation, the assignee files with the probate court a copy of the assignment or contract and serves a copy on the personal representative.

SECTION 3. 856.31 of the statutes is amended to read:

**856.31 Selection of attorney to represent estate.** Whenever a corporate fiduciary is granted letters to administer an estate appointed as the sole personal representative, the person receiving the largest majority interest from the estate shall name may within 30 days after the date of the appointment select the attorney who shall represent the estate personal representative in all proceedings of any kind or nature, unless good cause is shown before the court why this selection should not be done so made, or unless the testator's will names the attorney or firm who shall represent his personal representative. In case several persons receive a similar interest and no person receives a larger interest, the attorney named by the majority shall represent the estate, and if such persons are equally divided in their selection, the personal representative shall select one of those named as attorney. The corporate fiduciary shall notify the persons

who are entitled to name the attorney of this right within 5 days after appointment. In case of persons who are under guardianship disability, their court appointed guardian, if any, shall make the selection, except that in act for them under this section. In the case of minors having a natural guardian surviving, their a minor who has no court appointed guardian, his natural guardian shall make the selection, if any, shall act for him. "Interest", as used in this section, means beneficial interest whether legal or equitable.

SECTION 4. 859.33 (1) of the statutes is amended to read:

859.33 (1) HOW CONTEST INITIATED. The following persons may contest a claim or assert an offset or counterclaim in probate court: a) the personal representative, b) a guardian ad litem or c) a person interested who has the approval of the court. They may do so only by mailing a copy of the objection, offset or counterclaim to the claimant or personally serving the same upon the claimant and filing the same with the court. Such objection, offset or counterclaim shall may be served at any time prior to entry of judgment on the claim, but if a copy of the claim has been served under s. 859.01 (2) upon the personal representative or the attorney for the estate, such objection, offset or counterclaim shall be served upon or mailed to the claimant and filed with the court within 60 days after the last date for filing claims or 60 days after a copy of the claim has been served upon the personal representative or the attorneys for the estate, whichever expires last. The personal representative shall not be obligated to assert any offset or counterclaim in probate court and may, if he deems it to be in the best interests of the estate, assert the offset or counterclaim in any separate action otherwise authorized by law outside the probate court proceedings. Any offset or counterclaim so asserted shall be deemed denied by the original claimant.

SECTION 5. 861.11 (3) of the statutes is amended to read:

861.11 (3) TIME FOR FILING. The election must shall be filed within one year of the filing of the petition for probate of the will 6 months after the date of decedent's death, except that the period may be extended by the court upon petition filed by the surviving spouse, during but not after such one year 6-month period, the period may be extended by the court, for additional time as the court deems just, in event of the filing of a petition for appointment of a guardian for an incompetent spouse within such one-year 6-month period, a contest of the will, a proceeding to obtain a judicial construction of the will, or other special circumstances justifying the delay in filing an election. In the event a will is admitted to probate later than 4 months after the date of the decedent's death, the period may be extended by the court for additional time as the court deems just, upon petition by the surviving spouse made within 6 months after the date of admission.

SECTION 6. 861.33 (1) of the statutes is amended to read:

861.33 (1) Subject to this section in addition to all allowances, and distributions, the surviving spouse may file with the court a written selection of the following personal property, which shall thereupon be transferred to the spouse by the personal representative: (a) decedent's wearing apparel and jewelry held for personal use, (b) automobile, (c) household furniture, furnishings and appliances, and (d) other tangible personalty not used in trade, agriculture or other business, not to exceed \$1,000 in inventory value. The above selection may not include items specifically bequeathed except that the surviving spouse may in every case select the normal household furniture, furnishings and appliances necessary to maintain the home; for this purpose any antiques, family heirlooms and collections which are specifically bequeathed are not classifiable as normal household furniture or furnishings.

SECTION 7. 863.47 of the statutes is amended to read:

**863.47 Order of discharge of personal representative.** Upon proof of the recording of certified copies of the final judgment or abridgements thereof, if required by s. 863.29, and upon the filing of receipts from the distributees for all other property assigned in the final judgment, or other evidence of transfer satisfactory to the court, the court shall enter an order finding those facts, discharging the personal representative and canceling his bond. ~~The order of discharge operates as a release of the personal representative from his duties and constitutes a bar to any suit against the personal representative and his sureties unless suit is commenced within 6 years from the date of the order of discharge.~~

SECTION 8. 879.03 (2) (a) and (c) of the statutes are amended to read:

879.03 (2) (a) Any Each person interested unless he is represented by a guardian ad litem or guardian of the estate or unless he is represented by another person under the doctrine of virtual representation under s. 879.23 (4).

(c) The attorney general where a ~~public~~ charitable trust, as defined in s. 701.01 (3), is involved, and in all cases mentioned in s. 852.01 (3).

SECTION 9. 879.03 (3) of the statutes is amended to read:

879.03 (3) DOMICILIARY OF A FOREIGN COUNTRY. If the petition for administration shows, or if it appears, that any person interested is a domiciliary of a foreign country and the address of the person is unknown, the court shall cause the notice of hearing of the petition or of any subsequent proceeding that may then be pending to be given the consul, vice consul or consular agent of the foreign country by mailing a copy of the notice in a sealed envelope, postage prepaid, addressed to the consul, vice consul or consular agent at his post-office address, at least 20 days before the hearing. If it is shown to the court that there is no consul, vice consul or consular agent of the foreign country, the court may direct that the notice be so mailed to the public administrator.

SECTION 10. 879.03 (5) of the statutes is created to read:

879.03 (5) UNKNOWN PERSONS OR ADDRESSES. Where the post-office address of a person interested is not known or reasonably ascertainable, or the names of persons interested are unknown, the notice shall so state and such statement shall be included in the publication thereof.

SECTION 11. 879.15 (1) of the statutes is amended to read:

879.15 (1) A minor or incompetent person shall appear by his guardian ad litem, ~~who shall be an attorney,~~ or by the guardian of his estate, who may appear by attorney, or by another person under the doctrine of virtual representation as provided in s. 879.23 (4);

SECTION 12. 879.23 of the statutes is amended to read:

**879.23 Guardian ad litem. (1) (title) VIRTUAL REPRESENTATION.** A guardian ad litem shall be appointed for any person interested who is a minor or incompetent and

has no guardian of his estate, or where the guardian of his estate fails to appear on his behalf or where the interest of the ~~person who is a minor or incompetent~~ is adverse to that of the guardian of his estate. ~~Where the interests of a minor or incompetent are represented by an attorney of record the court shall, except upon good cause stated in the record, appoint that attorney as the guardian ad litem. Upon a determination by the court of his qualifications the court may appoint a surviving parent as guardian ad litem.~~ A guardian ad litem may be appointed for persons not in being or presently unascertainable ~~and for persons having successor or contingent interest.~~ A guardian ad litem shall not be appointed or appear in the same matter for different persons whose interest are conflicting.

(2) (title) TIME OF APPOINTMENT. The court may appoint the guardian ad litem at the time of making the order for hearing the matter, and require notice of the appointment and of the hearing to be served upon the guardian ad litem; or the guardian ad litem may be appointed on the day of the hearing and before any proceedings are had.

(3) (title) DURATION OF APPOINTMENT. The guardian ad litem shall continue to act throughout the proceeding in relation to the same estate or matter until proper distribution has been made to or for the benefit of the ~~minor or incompetent has been completed~~ person he represents, unless earlier discharged by the court, ~~but if~~ A guardian ad litem shall be discharged by the court when it appears that the minority or incompetency has terminated or when it appears that the person he represents no longer has an interest in the estate or matter. If a will creates a testamentary trust, a guardian ad litem appointed in the administration of the estate has no responsibility in regard to the administration of the testamentary trust unless reappointed for that purpose.

(4) (title) WHO MAY SERVE. The guardian ad litem ~~may~~ shall be an attorney admitted to practice in this state ~~and shall be allowed compensation and necessary expenditures to be fixed or, upon a determination by the court of his qualifications, a parent of the person he represents.~~ The guardian ad litem may be allowed reasonable compensation and reimbursement for necessary disbursements which amount shall be set by the court and paid out of the estate, but an attorney shall not appear or be appointed as guardian ad litem for different persons in the same matter or proceeding, whose interests and rights in relation to the matter or proceeding are conflicting. ~~A guardian ad litem shall be discharged by the court at any time that it appears that his ward no longer has an interest in the estate.~~

(5) (title) VIRTUAL REPRESENTATION. The court may dispense with or terminate the appointment of a guardian ad litem for a an interested person having a successor or contingent interest who is legally a minor, incompetent, unborn not in being or presently unascertainable, if there is a living person, sui juris, ~~having in the judge's opinion a substantially identical interest,~~ who is a party to the proceeding and ~~whose interest is not adverse~~ has a substantially identical interest in it.

SECTION 13. 879.25 of the statutes is amended to read:

**879.25 Attorney for person in military service.** At the time of filing a petition for administration of an estate, an affidavit shall be filed setting forth facts showing whether or not any of the persons interested in the matter are actively engaged in the military service of the United States. Whenever it appears by the affidavit or otherwise that any person in the active military service of the United States is interested in any administration and is not represented by an attorney, the judge shall appoint an attorney to represent the person and protect his interest and no further proceedings shall be had until such appointment has been made. The attorney for a

person in the military service shall be an attorney admitted to practice in this state and shall be allowed compensation and necessary expenditures to be fixed by the court and paid out of the estate, ~~but an attorney shall not appear or be appointed for different persons in the same matter or proceeding, whose interests and rights in relation to the matter or proceeding are conflicting.~~

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