

## 1999 ASSEMBLY BILL 358

May 24, 1999 – Introduced by Representatives SHERMAN, BOCK, MUSSER, REYNOLDS, TURNER, RICHARDS, BOYLE, HUBER, POWERS, SYKORA, J. LEHMAN and HASENOHRL, cosponsored by Senator PLACHE. Referred to Committee on Judiciary and Personal Privacy.

1     **AN ACT to renumber** 867.01 (3) (intro.) (except 867.01 (3) (title)) and 867.02 (2)  
2           (intro.) (except 867.02 (2) (title)); **to renumber and amend** 867.01 (3) (a) and  
3           867.02 (2) (a); **to amend** 30.541 (3) (d) 2. d., 214.37 (4) (k) 1., 215.26 (8) (e) 1.,  
4           342.17 (4) (b) 4., 867.01 (1) (b), 867.02 (1) and 867.03 (1g) (intro.); and **to create**  
5           865.202, 867.01 (3) (ac) (title), 867.02 (2) (ac) (title) and 867.03 (2m) of the  
6           statutes; **relating to:** informal administration of estates and summary  
7           procedures for settling estates.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, estates below \$30,000 may be summarily settled or summarily assigned, without the need for formal probate administration. These summary procedures reduce the time, complexity and cost of settling an estate. This bill increases the maximum value of an estate that may be summarily settled or summarily assigned to \$50,000.

Under current law, if a decedent leaves solely owned property in this state that does not exceed \$10,000 in value, an heir of the decedent or the guardian of the decedent may have any of the decedent's property transferred to him or her by presenting to the person who has the property an affidavit that describes the property and that specifies the value of the property, as well as the total value of the decedent's property in this state. This transfer by affidavit procedure, however, may

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not be used to transfer an interest in or lien on real property. The bill increases to \$20,000 the maximum value of a decedent's solely owned property in this state for which the transfer by affidavit procedure may be used. In addition, the bill allows an interest in or lien on real property to be transferred by affidavit by recording the affidavit in the office of the register of deeds of the county in which the real property is located.

Finally, under current law, estates that fulfill certain criteria may be probated informally instead of formally. Under informal administration, a probate registrar rather than the court monitors the personal representative's administration of the estate. Current law authorizes the personal representative to close the estate by filing with the probate registrar a statement that summarizes the personal representative's administrative activities related to the estate and by sending a copy of the statement to all distributees and creditors or other claimants. Current law does not specifically address how real property, other than marital property or property in which the decedent had a joint tenancy or a life estate, is transferred when an estate is informally administered and closed. The bill provides that the personal representative may file with the probate registrar a verified statement that lists all of the decedent's property and specifies to whom the property is distributed. Upon filing, the statement is presumed to be evidence of the termination of the decedent's interest in the property listed and of the transfer of the interest in the property to the persons entitled to the interest, as if the court had issued a final judgment with respect to the distribution of the property. If the statement lists an interest in real property or a debt that is secured by an interest in real property, the statement must be recorded in the office of the register of deeds of the county in which the real property is located.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 30.541 (3) (d) 2. d. of the statutes is amended to read:

2           30.541 (3) (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse  
3 proceeds under s. 867.03 (1g) and the total value of the decedent's solely owned  
4 property in the state, including boats transferred under this subdivision, does not  
5 exceed \$10,000 \$20,000.

6           **SECTION 2.** 214.37 (4) (k) 1. of the statutes is amended to read:

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1           214.37 **(4)** (k) 1. An affidavit stating that the person has standing under s.  
2           867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or assignment  
3           of a decedent's estate or that the person is an heir of the decedent, or was guardian,  
4           as defined in s. 880.01 (3), of the decedent at the time of the decedent's death, and  
5           may obtain transfer of property of a decedent under s. 867.03.

6           **SECTION 3.** 215.26 (8) (e) 1. of the statutes is amended to read:

7           215.26 **(8)** (e) 1. Submits an affidavit stating that the person has standing  
8           under s. 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or  
9           assignment of a decedent's estate or that the person is an heir of the decedent, or was  
10          guardian, as defined in s. 880.01 (3), of the decedent at the time of the decedent's  
11          death, and may obtain transfer of property of a decedent under s. 867.03; and

12          **SECTION 4.** 342.17 (4) (b) 4. of the statutes is amended to read:

13          342.17 **(4)** (b) 4. The limit in subd. 3. does not apply if the surviving spouse is  
14          proceeding under s. 867.03 (1g) and the total value of the decedent's solely owned  
15          property in the state, including the vehicles transferred under this paragraph, does  
16          not exceed ~~\$10,000~~ \$20,000.

17          **SECTION 5.** 865.202 of the statutes is created to read:

18          **865.202 Transfer of interest in property. (1)** If the estate is closed under  
19          s. 865.16, the personal representative may file with the probate registrar a verified  
20          statement describing property in which the decedent had an interest other than an  
21          interest specified in s. 865.20 or 865.201, including the recording data, if any, of the  
22          document creating the interest, and specifying the persons to whom the property is  
23          distributed. Valuations need not be set forth in the statement.

24          **(2)** Upon being filed with the probate registrar, the statement shall be  
25          presumed to be evidence of the facts recited, of the termination of the decedent's

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1 interest in the property listed and of the transfer of the interest in the property to  
2 the persons entitled to the interest, as if a final judgment regarding the distribution  
3 of the property had been issued by the court under s. 863.27. If the statement  
4 describes an interest in real property or a debt that is secured by an interest in real  
5 property a certified copy or duplicate original of the statement shall be recorded in  
6 the office of the register of deeds in each county in this state in which the real  
7 property is located.

8 **SECTION 6.** 867.01 (1) (b) of the statutes is amended to read:

9 867.01 (1) (b) Whenever the estate, less the amount of the debts for which any  
10 property in the estate is security, does not exceed ~~\$30,000~~ \$50,000 in value and the  
11 decedent is survived by a spouse or one or more minor children or both.

12 **SECTION 7.** 867.01 (3) (intro.) (except 867.01 (3) (title)) of the statutes is  
13 renumbered 867.01 (3) (ac).

14 **SECTION 8.** 867.01 (3) (a) of the statutes is renumbered 867.01 (3) (am), and  
15 867.01 (3) (am) (title), as renumbered, is amended to read:

16 867.01 (3) (am) (title) *Petition contents.*

17 **SECTION 9.** 867.01 (3) (ac) (title) of the statutes is created to read:

18 867.01 (3) (ac) (title) *Who may petition.*

19 **SECTION 10.** 867.02 (1) of the statutes is amended to read:

20 867.02 (1) AVAILABILITY. The court shall summarily assign the estate of a  
21 deceased person without the appointment of a personal representative if the estate,  
22 less the amount of the debts for which any property in the estate is security, does not  
23 exceed ~~\$30,000~~ \$50,000 in value and the estate cannot be summarily settled under  
24 s. 867.01. An estate, administration of which has been commenced under ch. 856,

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1 or a summary settlement commenced under s. 867.01 may be terminated under this  
2 section at any time that it is found to meet the requirements of this section.

3 **SECTION 11.** 867.02 (2) (intro.) (except 867.02 (2) (title)) of the statutes is  
4 renumbered 867.02 (2) (ac).

5 **SECTION 12.** 867.02 (2) (a) of the statutes is renumbered 867.02 (2) (am), and  
6 867.02 (2) (am) (title) and 1., as renumbered, are amended to read:

7 867.02 (2) (am) (title) *Petition contents.* 1. A statement that the estate does  
8 not exceed ~~\$30,000~~ \$50,000 in value and cannot be summarily settled under s.  
9 867.01.

10 **SECTION 13.** 867.02 (2) (ac) (title) of the statutes is created to read:

11 867.02 (2) (ac) (title) *Who may petition.*

12 **SECTION 14.** 867.03 (1g) (intro.) of the statutes is amended to read:

13 867.03 (1g) **GENERALLY.** (intro.) When a decedent leaves solely owned property  
14 in this state which does not exceed ~~\$10,000~~ \$20,000 in value, any heir of the decedent  
15 or person who was guardian of the decedent at the time of the decedent's death may  
16 collect any money due the decedent, receive the property of the decedent ~~if it is not~~  
17 ~~an interest in or lien on real property~~ and have any evidence of interest, obligation  
18 to or right of the decedent transferred to the affiant upon furnishing the person owing  
19 the money, having custody of the property or acting as registrar or transfer agent of  
20 the evidences of interest, obligation to or right, or upon furnishing the register of  
21 deeds, if the property is an interest in or lien on real property, with proof of prior  
22 mailed notice under sub. (1m) if applicable and with an affidavit in duplicate showing  
23 all of the following:

24 **SECTION 15.** 867.03 (2m) of the statutes is created to read:

