

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1108/P1dn  
PJK:jlg:ijs

December 29, 1998

(1) This is a preliminary draft. It does not include s. 865.202, which was proposed in the drafting instructions. I'm not sure what the purpose of s. 865.202 is. I do not know how it is supposed to fit into current law. Does it supplement current law or replace something now in current law? Why is it needed? What is the intent behind it? I appreciate your providing proposed language for the draft; in addition, an explanation of what the proposed language is intended to accomplish, or what the problem is that necessitates the change, would be helpful.

Section 865.202 is patterned after ss. 865.20 and 865.201. Each of those sections, however, is an alternative procedure to another procedure. Is s. 865.202 supposed to be an alternative procedure to another procedure? If so, which one(s)? If a person uses the procedure under s. 865.202, must the person still close the estate under s. 865.16 or ch. 863? It seems to me that the information provided under s. 865.202 is already provided in the inventory under s. 865.11. Do you want the statement under s. 865.202 to specify to whom the property was transferred? Why is it discretionary (may file)?

(2) I see some possible problems with s. 867.03 (2m) in the bill draft. The provision is discretionary (may record) rather than mandatory (shall record). Recording a document that evidences an interest in real property should be required. What if more than one heir prepares an affidavit with respect to a parcel of property and one records the affidavit but the others do not? Is the one who recorded the affidavit the "true" owner? The provision does not specify who may record, the preparer or the receiver of the affidavit. If the preparer does the recording, more than one affidavit with respect to one parcel of property may be prepared and recorded or attempted to be recorded. Does the real estate then become the property of the heir who gets to the register of deeds office first? Since real estate is not physically in the possession of anyone, who is the affidavit presented to? In other words, who is the transferor? Is it the register of deeds? It seems to me that many problems are created by allowing for transfer of real property by affidavit without oversight by a court or a personal representative. If there is more than one heir, you can be pretty sure that problems will arise.

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