

**1999 DRAFTING REQUEST**

**Bill**

Received: **12/3/98**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Gary Sherman**

By/Representing: **Boots (his office)**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Probate**

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Changing values for summary assignment and transfer by affidavit and filing a verified statement with the register in probate and an affidavit with the register of deeds

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	kahlepj 03/26/99	jgeller 03/26/99	martykr 04/1/99	_____	lrb_docadmin 04/1/99		Local

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typist</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For: 04/21/99.

<END>

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*13 4/12 jg 4/14*  
*4/14*

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*Handwritten notes:*  
 Under jgeller (03/26/99): 1/2 4/6 jg  
 Under hhagen (02/16/99): ch u-f  
 Under martykr (04/1/99): ch u-f  
 Under lrb\_docadmin (04/1/99): [Signature]

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typist</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

*1 3/26 jlg* *lmb 3/30* *lmb 3/31*

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*Delivered by office*

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<END>

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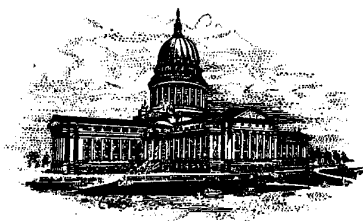
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1/?	kahlepj	1/11 12/25 JG	JS 12/29	JS/CH 12/29			

*DO  
Submit  
P/A*

FE Sent For:

<END>



# Wisconsin State Assembly

P.O. BOX 8952 • MADISON, WI 53708

TO: Pam Kahler  
LRB

FROM: Boots, 74<sup>th</sup> Assembly District  
266-7690

DATE: December 3, 1998

As per our earlier telephone conversation, Representative-Elect Gary Sherman would like to draft a bill as per attachment.

Create section 865.202, as follows:

**865.202 Transfer of property to heirs or devisees. (1)** A personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest which passes to heirs or devisees through the estate, either by will, trust or intestate succession. Valuations need not be set forth in the statement.

**(2)** Upon being filed with the probate registrar, the statement shall be presumed to be evidence of the facts recited and of the transfer of the interest to the named heirs or devisees as set forth therein, as if a final judgement in probate had been issued by the court under s. 863.27. If the statement describes an interest in real property or a debt which is secured by an interest in real property, a certified copy or duplicate original of the statement may be recorded in the office of the register of deeds in each county in this state in which real property is located. This statement does not release any death tax lien.

*what's this attempting to accomplish? where does this fit in?*

*What about inventory? (give me the problem & what the debts solve it) How does this fit w/ 865.16? is added to it?*

Amend section 867.01 (1) (b), as follows:

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

Amend section 867.02 (1), as follows:

**(1) AVAILABILITY.** The court shall summarily assign the estate of a deceased person without the appointment of a personal representative if the estate, less the amount of the debts for which any property in the estate is security, does not exceed ~~\$30,000~~ \$50,000 in value and the estate cannot be summarily settled under s. 867.01. An estate, administration of which has been commenced under ch. 856, or a summary settlement commenced under s. 867.01 may be terminated under this section at any time that it is found to meet the requirements of this section.

Amend section 867.03 (1), as follows:

**(1) GENERALLY.** When a decedent leaves solely owned property in this state which does not exceed ~~\$10,000~~ \$20,000 in value, any heir of the decedent may collect any money due the decedent, receive the property of the decedent if it is not an interest in or lien on real property and have any evidence of interest, obligation to or right of the decedent transferred to the affiant upon furnishing the person owing the money, having custody of the property or acting as registrar or transfer agent of the evidences of interest, obligation or right, with proof of prior mailed notice under sub. (1m) if applicable and with an affidavit in duplicate showing all of the following:

Renumber section 867.03 (3) to 867.03 (4).

Create section 867.03 (3), as follows:

**(3) RECORDING.** If the affidavit describes an interest in real property or a debt which is secured by an interest in real property, a certified copy or duplicate original of the affidavit may be recorded in the office of the register of deeds in each county in this state in which real property is located. This affidavit does not release any death tax lien.



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1108  
PJK.....

PI  
Jig

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

gen cat

1 AN ACT <sup>x</sup>; relating to: informal administration of estates and summary  
2 procedures for settling estates.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 30.541 (3) (d) 2. d. <sup>x</sup> of the statutes is amended to read:

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

History: 1987 a. 397; 1989 a. 56, 128; 1991 a. 269; 1997 a. 27.

8 SECTION 2. 214.37 (4) (k) 1. <sup>x</sup> of the statutes is amended to read:

9 214.37 (4) (k) 1. An affidavit stating that the person has standing under s.  
10 867.01 (3) <sup>✓</sup>(ac) or 867.02 (2) <sup>✓</sup>(ac) to petition for summary settlement or assignment

1 of a decedent's estate or that the person is an heir of the decedent, or was guardian,  
2 as defined in s. 880.01 (3), of the decedent at the time of the decedent's death, and  
3 may obtain transfer of property of a decedent under s. 867.03.

4 History: 1991 a. 221; 1995 a. 27; 1997 a. 27.

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

5 215.26 (8) (e) 1. Submits an affidavit stating that the person has standing  
6 under s. 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or  
7 assignment of a decedent's estate or that the person is an heir of the decedent, or was  
8 guardian, as defined in s. 880.01 (3), of the decedent at the time of the decedent's  
9 death, and may obtain transfer of property of a decedent under s. 867.03; and

10 History: 1971 c. 229; 1973 c. 291; 1975 c. 359 s. 16; 1975 c. 421; 1977 c. 140; 1977 c. 187 s. 135; 1979 c. 32 s. 92 (6); 1981 c. 192; 1983 a. 167 ss. 43, 44, 112; 1983 a. 192  
s. 304; 1983 a. 268; 1989 a. 313; 1991 a. 78, 280, 316; 1993 a. 425, 481; 1997 a. 27, 104, 336, 400; 1997 a. 27.

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

11 342.17 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse is  
12 proceeding under s. 867.03 (1g) and the total value of the decedent's solely owned  
13 property in the state, including the vehicles transferred under this paragraph, does  
14 not exceed ~~\$10,000~~ \$20,000.

15 History: 1971 c. 164 s. 82; 1973 c. 40, 243; 1977 c. 29 s. 1654 (7) (e); 1977 c. 273; 1985 a. 141; 1991 a. 125, 239; 1995 a. 338, 421; 1997 a. 27.

15 SECTION 5. 867.01 (1) (b) of the statutes is amended to read:

16 867.01 (1) (b) Whenever the estate, less the amount of the debts for which any  
17 property in the estate is security, does not exceed ~~\$30,000~~ \$50,000 in value and the  
18 decedent is survived by a spouse or one or more minor children or both.

renumbered 867.01 (3)(ac).

19 History: 1971 c. 40 s. 93; 1973 c. 42, 90; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27; 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7193b to 7194c, 9126 (19).

19 SECTION 6. 867.01 (3) (intro.) of the statutes is amended to read

20 867.01 (3) ~~PROCEDURE (intro.)~~ (ac) ~~Who may petition.~~ <sup>(title)</sup> A person who has  
21 standing to petition for administration of the estate under s. 856.07 has standing to  
22 petition for summary settlement.

History: 1971 c. 40 s. 93; 1973 c. 42, 90; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27; 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7193b to 7194c, 9126 (19).

CR;  
SECTION #. 867.01 (3)(ac)(title)

Handwritten notes: "2-3 CR's", "15-18", "19", "Fix component", "arrow pointing to section 6"

1 SECTION 7. 867.01 (3) (a) of the statutes is renumbered 867.01 (3) (am),<sup>✓</sup> and  
2 867.01 (3) (am) (title),<sup>✓</sup> as renumbered, is amended to read:.

3 867.01 (3) (am) (title)<sup>✓</sup> *Petition contents.*

History: 1971 c. 40 s. 93; 1973 c. 42, 90; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27; 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7193b to 7194c, 9126 (19).

4 SECTION 8. 867.02 (1)<sup>✓</sup> of the statutes is amended to read:

5 867.02 (1) AVAILABILITY. The court shall summarily assign the estate of a  
6 deceased person without the appointment of a personal representative if the estate,  
7 less the amount of the debts for which any property in the estate is security, does not  
8 exceed ~~\$30,000~~ \$50,000<sup>✓</sup> in value and the estate cannot be summarily settled under  
9 s. 867.01. An estate, administration of which has been commenced under ch. 856,  
10 or a summary settlement commenced under s. 867.01 may be terminated under this  
11 section at any time that it is found to meet the requirements of this section.

History: 1971 c. 40 s. 93; 1973 c. 90, 243; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27 ss. 2160w, 2170d, 3200 (47); 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7195b to 7196, 9126 (19).

12 SECTION 9. 867.02 (2) (intro.)<sup>✓</sup> of the statutes is ~~amended to read~~ <sup>renumbered 867.02 (2) (ac).</sup>

13 ~~867.02 (2) PROCEDURE (intro.) (ac) Any person who has~~  
14 ~~standing to petition for administration of the estate under s. 856.07 has standing to~~  
15 ~~petition for summary assignment.~~

History: 1971 c. 40 s. 93; 1973 c. 90, 243; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27 ss. 2160w, 2170d, 3200 (47); 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7195b to 7196, 9126 (19).

16 SECTION 10. 867.02 (2) (a)<sup>✓</sup> of the statutes is renumbered 867.02 (2) (am),<sup>✓</sup> and  
17 867.02 (2) (am) (title) and 1., as renumbered, are amended to read:

18 867.02 (2) (am) (title)<sup>✓</sup> *Petition contents.*

19 1. A statement that the estate does not exceed ~~\$30,000~~ \$50,000<sup>✓</sup> in value and  
20 cannot be summarily settled under s. 867.01.

→ SECTION # CR; 867.02 (2) (ac) (title)<sup>✓</sup>

History: 1971 c. 40 s. 93; 1973 c. 90, 243; 1975 c. 331, 421; 1977 c. 449; 1985 a. 278; 1987 a. 27 ss. 2160w, 2170d, 3200 (47); 1989 a. 234; 1991 a. 220; 1993 a. 16, 437, 486; 1995 a. 27 ss. 7195b to 7196, 9126 (19).

21 SECTION 11. 867.03 (1g) (intro.)<sup>✓</sup> of the statutes is amended to read:

INS  
3-3  
(fr p.2)

Fix  
component

move





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

LRB-1108/7dn  
PJK.....

↑  
Ulg

(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 also comply with ss. 865.11 and 865.11? 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.

→ still check the estate under A. 865.16 or ch. 863

Pamela J. Kahler  
Senior Legislative Attorney  
266-2682

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

LRB-1108/P1dn  
PJK:jl:g: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.

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Pamela J. Kahler  
Senior Legislative Attorney  
266-2682

responses to D-writes;

For 1108/P1

(1) 865.202 to transfer RE to heirs

no procedure for transferring RE in 865  
is done by deed now



(Does 865 not deal w/ RE?)  
must be recorded is not an alternative

(2) ~~865.202~~ of say "shab"

proceeding can be

"recording is presentation"

rec of deed is transfer



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1108/24

PJK:jlgr:ijs

*rm is new*

*P2*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*Regenerate* ↓

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

---

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

This is a preliminary draft. An analysis will be provided in a later version.

---

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

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

8 30.541 (3) (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse  
9 proceeds under s. 867.03 (1g) and the total value of the decedent's solely owned  
10 property in the state, including boats transferred under this subdivision, does not  
11 exceed ~~\$10,000~~ \$20,000.

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

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

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

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

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

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

Insert 2-17

18 SECTION 5. 867.01 (1) (b) of the statutes is amended to read:

19 867.01 (1) (b) Whenever the estate, less the amount of the debts for which any  
20 property in the estate is security, does not exceed ~~\$30,000~~ \$50,000 in value and the  
21 decedent is survived by a spouse or one or more minor children or both.

22 SECTION 6. 867.01 (3) (intro.) <sup>(except 867.01 (3) (title))</sup> of the statutes is renumbered 867.01 (3) (ac).

23 SECTION 7. 867.01 (3) (a) of the statutes is renumbered 867.01 (3) (am), and  
24 867.01 (3) (am) (title), as renumbered, is amended to read:

25 867.01 (3) (am) (title) *Petition contents.*

1           **SECTION 8.** 867.01 (3) (ac) (title) of the statutes is created to read:

2           867.01 (3) (ac) (title) *Who may petition.*

3           **SECTION 9.** 867.02 (1) of the statutes is amended to read:

4           867.02 (1) **AVAILABILITY.** The court shall summarily assign the estate of a  
5           deceased person without the appointment of a personal representative if the estate,  
6           less the amount of the debts for which any property in the estate is security, does not  
7           exceed ~~\$30,000~~ \$50,000 in value and the estate cannot be summarily settled under  
8           s. 867.01. An estate, administration of which has been commenced under ch. 856,  
9           or a summary settlement commenced under s. 867.01 may be terminated under this  
10          section at any time that it is found to meet the requirements of this section.

11          **SECTION 10.** 867.02 (2) (intro.) <sup>(except 867.02(2)(title))</sup> of the statutes is renumbered 867.02 (2) (ac). ✓

12          **SECTION 11.** 867.02 (2) (a) of the statutes is renumbered 867.02 (2) (am), and  
13          867.02 (2) (am) (title) and 1., as renumbered, are amended to read:

14          867.02 (2) (am) (title) Petition contents. <sup>ND</sup>

15          1. A statement that the estate does not exceed ~~\$30,000~~ \$50,000 in value and  
16          cannot be summarily settled under s. 867.01.

17          **SECTION 12.** 867.02 (2) (ac) (title) of the statutes is created to read:

18          867.02 (2) (ac) (title) *Who may petition.*

19          **SECTION 13.** 867.03 (1g) (intro.) of the statutes is amended to read:

20          867.03 (1g) **GENERALLY.** (intro.) When a decedent leaves solely owned property  
21          in this state which does not exceed ~~\$10,000~~ \$20,000 in value, any heir of the decedent  
22          or person who was guardian of the decedent at the time of the decedent's death may  
23          collect any money due the decedent, receive the property of the decedent ~~if it is not~~  
24          ~~an interest in or lien on real property~~ and have any evidence of interest, obligation  
25          to or right of the decedent transferred to the affiant upon furnishing the person owing

1 the money, having custody of the property or acting as registrar or transfer agent of  
2 the evidences of interest, obligation to or right, with proof of prior mailed notice  
3 under sub. (1m) if applicable and with an affidavit in duplicate showing all of the  
4 following:

5 SECTION 14. 867.03 (2m) of the statutes is created to read:

6 867.03 (2m) RECORDING OF AFFIDAVIT. <sup>(a)</sup> If an affidavit under sub. (1g) describes  
7 an interest in real property ~~of a debt that is secured by an interest in real property,~~  
8 a certified copy or duplicate original of the affidavit ~~may~~ <sup>shall</sup> be recorded in the office of  
9 the register of deeds in each county in this state in which the real property is located.

10

(END)

Insert 4-9

note



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1108/P2ins  
PJK:jlg:ijs

INSERT 2-17

(END OF INSERT 2-17)

SECTION 1. 865.202 of the statutes is created to read:

**865.202 Transfer of interest in property.** (1) A personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest other than an interest specified in s. 865.20 or 865.201, including the recording data, if any, of the document creating the interest. Valuations need not be set forth in the statement.

(2) Upon being filed with the probate registrar, the statement shall be presumed to be evidence of the facts recited, 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 a final judgment regarding the distribution of the property had been issued by the court under s. 863.27. If the statement describes an interest in real property or a debt that is secured by an interest in real property a certified copy or duplicate original of the statement shall be recorded in the office of the register of deeds in each county in this state in which the real property is located. This statement does not release any death tax lien.

*History* 1975 c. 331, 1981 c. 376, 1987 a. 27.

INSERT 4-9

(b) For purposes of a transfer under this section of an interest in real property, the register of deeds constitutes the person acting as transfer agent under sub. (1g) of the evidence of the interest, and the recording of the affidavit copy or duplicate original constitutes the transfer to the affiant under sub. (1g) of the evidence of the interest in real property.

SECTION 2. Initial applicability.

(1) This act first applies to deaths occurring on the effective date of this subsection. ✓

(END OF INSERT 4-9)

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1108/P2dn  
PJK:jlgijs

(On the other hand, perhaps final judgments and deeds are both recorded currently.)

1. Would new s. 865.202 be used only if the estate is closed under s. 865.16 rather than under ch. 863? It wouldn't make sense to record a statement under s. 865.202, as well as a final judgment under s. 863.27, with respect to the same property. Is preparing a statement under s. 865.202, filing it with the probate registrar and then recording it in the office of the register of deeds a less cumbersome process than preparing and recording a deed?

2. Do you think that the language in s. 865.202 (2) about the statement not releasing a death tax lien is necessary? Without that language, would one assume that recording the statement releases a death tax lien? If not, I would prefer to remove the language. Including it raises questions about other sections that do not contain the language.

3. Notice the language I added in s. 867.03 (2m) (b). It seemed necessary because the language in s. 867.03 (1g) does not ~~seem to apply to~~ transfers of real property.

4. Notice the initial applicability provision that I added. Is it okay or do you want to specify a different "event" for initial applicability? *Not all provisions in the bill need to have the same initial applicability.*

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

NO # Notice also that I changed "debt that is secured by real property" in s. 867.03 (2m)(a) to "lien on real property".

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

LRB-1108/P2dn  
PJK:jlg:hmh

Tuesday, February 16, 1999

1. Would new s. 865.202 be used only if the estate is closed under s. 865.16 rather than under ch. 863? It wouldn't make sense to record a statement under s. 865.202, as well as a final judgment under s. 863.27, with respect to the same property. (On the other hand, perhaps final judgments and deeds are both recorded currently.) Is preparing a statement under s. 865.202, filing it with the probate registrar and then recording it in the office of the register of deeds a less cumbersome process than preparing and recording a deed?

2. Do you think that the language in s. 865.202 (2) about the statement not releasing a death tax lien is necessary? Without that language, would one assume that recording the statement releases a death tax lien? If not, I would prefer to remove the language. Including it raises questions about other sections that do not contain the language.

3. Notice the language I added in s. 867.03 (2m) (b). It seemed necessary because the language in s. 867.03 (1g) does not fit transfers of real property. Notice also that I changed "debt that is secured by real property" in s. 867.03 (2m) (a) to "lien on real property".

4. Notice the initial applicability provision that I added. Is it okay or do you want to specify a different "event" for initial applicability? Not all provisions in the bill need to have the same initial applicability.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us



REPRESENTATIVE GARY E. SHERMAN  
74th Assembly District

PJK  
→

State Capitol  
P.O. Box 8953  
Madison, WI 53708  
(608) 266-7690  
Toll-free: 1-888-534-0074  
Fax: (608) 282-3674  
E-mail: rep.sherman@legis.state.wi.us

District Address:  
11800 Sherman Road  
P.O. Box 157  
Port Wing, WI 54865  
715-774-3113

TO: Pam Kahler  
FROM: Rep. Gary Sherman  
  
DATE: March 25, 1999  
  
RE: LRB-1108/P2

1. Yes – only if closed under ch865.  
Perhaps is no less cumbersome, but no more so, and more accurate and descriptive of what is going on.
2. Go ahead and remove the language if you wish. It merely tracks the HT 110 language.
3. I see your point, but is there other language that could be used other than “transfer agent” that will scare RODs.
4. OK



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1108/12

PJK:jlg:hmh

*r m is run*

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

*Regen*

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.

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

~~This is a preliminary draft. An analysis will be provided in a later version.~~

✓  
*Insert  
A*

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

8 SECTION 1. 30.541 (3) (d) 2. d. of the statutes is amended to read:  
9 30.541 (3) (d) 2. d. The limit in subd. 2. c. does not apply if the surviving spouse  
10 proceeds under s. 867.03 (1g) and the total value of the decedent's solely owned

1 property in the state, including boats transferred under this subdivision, does not  
2 exceed ~~\$10,000~~ \$20,000.

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

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

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

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

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

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

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

21 **865.202 Transfer of interest in property.** (1) ~~a~~ personal representative  
22 may file with the probate registrar a verified statement describing property in which  
23 the decedent had an interest other than an interest specified in s. 865.20 or 865.201,  
24 including the recording data, if any, of the document creating the interest.  
25 Valuations need not be set forth in the statement.

*If the estate is closed under s. 865.16, the*

1           (2) Upon being filed with the probate registrar, the statement shall be  
2 presumed to be evidence of the facts recited, of the termination of the decedent's  
3 interest in the property listed and of the transfer of the interest in the property to  
4 the persons entitled to the interest, as if a final judgment regarding the distribution  
5 of the property had been issued by the court under s. 863.27. If the statement  
6 describes an interest in real property or a debt that is secured by an interest in real  
7 property a certified copy or duplicate original of the statement shall be recorded in  
8 the office of the register of deeds in each county in this state in which the real  
9 property is located. ~~This statement does not release any death tax lien.~~

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

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

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

16           **SECTION 8.** 867.01 (3) (a) of the statutes is renumbered 867.01 (3) (am), and  
17 867.01 (3) (am) (title), as renumbered, is amended to read:

18           867.01 (3) (am) (title) *Petition contents.*

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

20           867.01 (3) (ac) (title) *Who may petition.*

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

22           867.02 (1) **AVAILABILITY.** The court shall summarily assign the estate of a  
23 deceased person without the appointment of a personal representative if the estate,  
24 less the amount of the debts for which any property in the estate is security, does not  
25 exceed ~~\$30,000~~ \$50,000 in value and the estate cannot be summarily settled under



1 s. 867.01. An estate, administration of which has been commenced under ch. 856,  
2 or a summary settlement commenced under s. 867.01 may be terminated under this  
3 section at any time that it is found to meet the requirements of this section.

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

6 SECTION 12. 867.02 (2) (a) of the statutes is renumbered 867.02 (2) (am), and  
7 867.02 (2) (am) (title) and 1., as renumbered, are amended to read:

8 867.02 (2) (am) (title) *Petition contents*. 1. A statement that the estate does  
9 not exceed ~~\$30,000~~ \$50,000 in value and cannot be summarily settled under s.  
10 867.01:

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

12 867.02 (2) (ac) (title) *Who may petition*.

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

14 867.03 (1g) **GENERALLY**. (intro.) When a decedent leaves solely owned property  
15 in this state which does not exceed ~~\$10,000~~ \$20,000 in value, any heir of the decedent  
16 or person who was guardian of the decedent at the time of the decedent's death may  
17 collect any money due the decedent, receive the property of the decedent ~~if it is not~~  
18 ~~an interest in or lien on real property~~ and have any evidence of interest, obligation  
19 to or right of the decedent transferred to the affiant upon furnishing the person owing  
20 the money, having custody of the property or acting as registrar or transfer agent of  
21 the evidences of interest, obligation to or right, <sup>→ pursuant 4-21 ✓</sup> with proof of prior mailed notice  
22 under sub. (1m) if applicable and with an affidavit in duplicate showing all of the  
23 following:

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



1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1108/lins  
PJK:jlghmh

INSERT A

Under current law, estates below \$30,000<sup>✓</sup> 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 value of an estate that may be summarily settled or summarily assigned to \$50,000<sup>✓</sup>.

Under current law, if a decedent leaves solely owned property in this state that does not exceed \$10,000<sup>✓</sup> 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 not be used to transfer an interest in or lien on real property. The bill increases to \$20,000<sup>✓</sup> 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 that, 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.

(END OF INSERT A)

INSERT 4-21



or upon furnishing the register of deeds, if the property is an interest in or lien on real property.

(END OF INSERT 4-21)

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

*DJK*

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 4/1/99

**To:** Representative Sherman

**Relating to LRB drafting number:** LRB-1108

**Topic**

Changing values for summary assignment and transfer by affidavit and filing a verified statement with the register in probate and an affidavit with the register of deeds

**Subject(s)**

Probate

1. **JACKET** the draft for introduction \_\_\_\_\_

in the **Senate** \_\_\_\_ or the **Assembly** \_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached  \_\_\_\_\_

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction  \_\_\_\_\_

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney  
Telephone: (608) 266-2682



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1108/1  
PJK:jlg:km

**1999 BILL**

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.

---

***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 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

**BILL**

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 ~~upon filing~~, 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.

and specifies to whom the property was distributed.

***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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8 867.01 (3) (ac) or 867.02 (2) (ac) to petition for summary settlement or assignment

**BILL**

1 of a decedent's estate or that the person is an heir of the decedent, or was guardian,  
2 as defined in s. 880.01 (3), of the decedent at the time of the decedent's death, and  
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4 **SECTION 3.** 215.26 (8) (e) 1. of the statutes is amended to read:

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9 death, and may obtain transfer of property of a decedent under s. 867.03; and

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

11 342.17 (4) (b) 4. The limit in subd. 3. does not apply if the surviving spouse is  
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15 **SECTION 5.** 865.202 of the statutes is created to read:

16 **865.202 Transfer of interest in property.** (1) If the estate is closed under  
17 s. 865.16, the personal representative may file with the probate registrar a verified  
18 statement describing property in which the decedent had an interest other than an  
19 interest specified in s. 865.20 or 865.201, including the recording data, if any, of the  
20 document creating the interest. Valuations need not be set forth in the statement.

21 (2) Upon being filed with the probate registrar, the statement shall be  
22 presumed to be evidence of the facts recited, of the termination of the decedent's  
23 interest in the property listed and of the transfer of the interest in the property to  
24 the persons entitled to the interest, as if a final judgment regarding the distribution  
25 of the property had been issued by the court under s. 863.27. If the statement

Shouldn't language like that circled also go  
where indicated in sub. 1?



**BILL**

1 describes an interest in real property or a debt that is secured by an interest in real  
2 property a certified copy or duplicate original of the statement shall be recorded in  
3 the office of the register of deeds in each county in this state in which the real  
4 property is located.

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

6 867.01 (1) (b) Whenever the estate, less the amount of the debts for which any  
7 property in the estate is security, does not exceed ~~\$30,000~~ \$50,000 in value and the  
8 decedent is survived by a spouse or one or more minor children or both.

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

11 **SECTION 8.** 867.01 (3) (a) of the statutes is renumbered 867.01 (3) (am), and  
12 867.01 (3) (am) (title), as renumbered, is amended to read:

13 867.01 (3) (am) (title) *Petition contents.*

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

15 867.01 (3) (ac) (title) *Who may petition.*

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

17 867.02 (1) **AVAILABILITY.** The court shall summarily assign the estate of a  
18 deceased person without the appointment of a personal representative if the estate,  
19 less the amount of the debts for which any property in the estate is security, does not  
20 exceed ~~\$30,000~~ \$50,000 in value and the estate cannot be summarily settled under  
21 s. 867.01. An estate, administration of which has been commenced under ch. 856,  
22 or a summary settlement commenced under s. 867.01 may be terminated under this  
23 section at any time that it is found to meet the requirements of this section.

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

**BILL**

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

3           867.02 (2) (am) (title) *Petition contents.* 1. A statement that the estate does  
4 not exceed ~~\$30,000~~ \$50,000 in value and cannot be summarily settled under s.  
5 867.01.

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

7           867.02 (2) (ac) (title) *Who may petition.*

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

9           867.03 (1g) **GENERALLY.** (intro.) When a decedent leaves solely owned property  
10 in this state which does not exceed ~~\$10,000~~ \$20,000 in value, any heir of the decedent  
11 or person who was guardian of the decedent at the time of the decedent's death may  
12 collect any money due the decedent, receive the property of the decedent ~~if it is not~~  
13 ~~an interest in or lien on real property~~ and have any evidence of interest, obligation  
14 to or right of the decedent transferred to the affiant upon furnishing the person owing  
15 the money, having custody of the property or acting as registrar or transfer agent of  
16 the evidences of interest, obligation to or right, or upon furnishing the register of  
17 deeds, if the property is an interest in or lien on real property, with proof of prior  
18 mailed notice under sub. (1m) if applicable and with an affidavit in duplicate showing  
19 all of the following:

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

21           867.03 (2m) **RECORDING OF AFFIDAVIT.** (a) If an affidavit under sub. (1g)  
22 describes an interest in or lien on real property a certified copy or duplicate original  
23 of the affidavit shall be recorded in the office of the register of deeds in each county  
24 in this state in which the real property is located.





State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1108/~~f~~<sup>2</sup>  
PJK:jlg:km

*v m is run*

**1999 BILL**

*Reger*

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.

---

***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 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

*maximum* ✓

**BILL**

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.

NO # specifies to whom the property was distributed.

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 ~~that~~ 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.

***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
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**BILL**

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19 interest specified in s. 865.20 or 865.201, including the recording data, if any, of the  
20 document creating the interest. <sup>→ insert 3-20 ✓</sup> Valuations need not be set forth in the statement.

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22 presumed to be evidence of the facts recited, of the termination of the decedent's  
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**BILL**

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**BILL**

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11 or person who was guardian of the decedent at the time of the decedent's death may  
12 collect any money due the decedent, receive the property of the decedent ~~if it is not~~  
13 ~~an interest in or lien on real property~~ and have any evidence of interest, obligation  
14 to or right of the decedent transferred to the affiant upon furnishing the person owing  
15 the money, having custody of the property or acting as registrar or transfer agent of  
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20           **SECTION 15.** 867.03 (2m) of the statutes is created to read:

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23 of the affidavit shall be recorded in the office of the register of deeds in each county  
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**1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1108/2ins  
PJK;jlg:km

**INSERT 3-20**

**#20**, and specifying the persons to whom the property was distributed **#20**

**(END OF INSERT 3-20)**

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

LRB-1108/2dn

PJK:jlg:km

→ Let me know if, instead of specifying in the verified statement the persons to whom the property was distributed, you want the personal representative to specify only that the property was distributed to the persons entitled to the property.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

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

LRB-1108/2dn  
PJK;jlg:ch

April 8, 1999

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Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us

**SUBMITTAL  
FORM**

**LEGISLATIVE REFERENCE BUREAU**  
**Legal Section Telephone: 266-3561**  
**5th Floor, 100 N. Hamilton Street**

*PJK*

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

**Date:** 4/8/99

**To:** Representative Sherman

**Relating to LRB drafting number:** LRB-1108

**Topic**

Changing values for summary assignment and transfer by affidavit and filing a verified statement with the register in probate and an affidavit with the register of deeds

**Subject(s)**

Probate

1. **JACKET** the draft for introduction \_\_\_\_\_

in the **Senate** \_\_\_\_ or the **Assembly** \_\_\_\_ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached *Pamela J. Kahler*  
A revised draft will be submitted for your approval with changes incorporated. *see pages 2+3.*

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction *Pamela J. Kahler*

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney  
Telephone: (608) 266-2682

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

LRB-1108/2dn  
PJK:jlg:ch

April 8, 1999

Let me know if, instead of specifying in the verified statement the persons to whom the property was distributed, you want the personal representative to specify only that the property was distributed to the persons entitled to the property. *That would*

*defeat the purpose. The statement closing the estate says that all was distributed.*

*This statement*

*is the distribution itself. Real property is*

*distributed by recording a document. This is the*

*document that makes the distribution. That is the point.*

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: Pam.Kahler@legis.state.wi.us



## 1999 BILL

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

**BILL**

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 ~~was~~ 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
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- 5           exceed ~~\$10,000~~ \$20,000.
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**BILL**

1           214.37 (4) (k) 1. An affidavit stating that the person has standing under s.  
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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.

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**BILL**

1 interest in the property listed and of the transfer of the interest in the property to  
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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,

**BILL**

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:



## Kahler, Pam

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**From:** Sherman, Gary  
**Sent:** Monday, April 12, 1999 12:08 PM  
**To:** Kahler, Pam  
**Subject:** RE: LRB-1108

While it will be likely true that the transfer of personal property will not require documentation in most cases, there are some cases where it might be useful to the recipient to have proof, like a bill of sale, of where the property came from and that the transfer was legitimate. In such cases, this procedure could be used. In any case, it is optional for the PR to decide what procedure to use to distribute. This at least gives the PR an option.

This is in no manner duplicative of what is already provided in the statement to close estate. This is a document that actually can convey property. No other available document does that. This is no more a duplicate than the statement that terminates joint tenancies and marital property relationships. I don't see why it is confusing. The PR uses the statement to terminate the J/Ts and then says on the statement to close estate that all such things are completed. This is exactly the same. The PR uses this statement to transfer property to heirs, if necessary, and then says on the statement to close estate that all such tasks are completed.

*Gary E. Sherman*  
74th Assembly District

-----Original Message-----

**From:** Kahler, Pam  
**Sent:** Friday, April 09, 1999 12:51 PM  
**To:** Sherman, Gary  
**Subject:** LRB-1108

Representative Sherman:

I have your redrafting instructions for LRB-1108/2. The particular issue in this draft that is the subject of the redrafting has bothered me from the beginning because the statement created in s. 865.202 seems so duplicative of what the PR already files in an informal proceeding (inventory and sworn statement to close estate). Because your aim was to avoid having to prepare and record a deed, I had wondered (but never asked) if you wanted the statement created in s. 865.202 limited to real property. Before I make any changes to the current version, I want to ask you that question. I have no problem with changing the "was" to an "is", although it is not really accurate, as you state, that the statement distributes the property. It may be only real property that is actually distributed by the statement.

Before I redraft the bill, let me know if you want only the "was" changed to "is" or if, in addition, you want the statement limited to real property.

Pam Kahler



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-1108/3  
PJK:jlg:km  
rm is run

1999 BILL

pp 2+3

Reger

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

**BILL**

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 ~~was~~ 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:

**BILL**

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 ~~was~~  
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



**BILL**

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,

**BILL**

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:

**BILL**

1           867.03 (2m) RECORDING OF AFFIDAVIT. (a) If an affidavit under sub. (1g)  
2 describes an interest in or lien on real property a certified copy or duplicate original  
3 of the affidavit shall be recorded in the office of the register of deeds in each county  
4 in this state in which the real property is located.

5           (b) For purposes of a transfer under this section of an interest in or lien on real  
6 property, the recording of the affidavit copy or duplicate original constitutes the  
7 transfer to the affiant under sub. (1g) of the evidence of the interest in or lien on real  
8 property.

9           **SECTION 16. Initial applicability.**

10           (1) This act first applies to deaths occurring on the effective date of this  
11 subsection.

12

(END)

