

CHAPTER 311.

ADMINISTRATION AND ADMINISTRATORS.

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311.01 Administration of intestate estates. When any resident of this state shall die intestate letters of administration of his estate shall be granted by the county court of the county of which he was a resident. If any person not a resident of this state shall die, leaving estate to be administered in this state, administration thereof shall be granted by the county court of any county in which there is estate to be administered, and the administration first legally granted shall extend to all the estate in this state. Administration may also be granted upon the estate of any person who, at the time of his death, was a party to any action pending in any court of record, upon the application of any other party to such action, when it shall appear necessary to protect the rights of the party so applying. [1933 c. 190 s. 3]

Note: In the absence of proceedings for the administration of the mother's estate, it was permissible in the administration of the estate of the son to decree distribution of the one-half share of the mother therein directly to her nine surviving children, subject, however, to the payment of debts for which the estate of the mother would be liable, including the expense of her funeral and grave marker, and payments on account thereof were properly allowed the administrator in adjudging him liable for the amount of the children's share of the estate. *Cook v. Nelson*, 209 W 224, 244 NW 615.

Administrator of estate of deceased guardian of minors was not, by virtue of his appointment as administrator, entitled to act as guardian of such minors. *Rear v. Olson*, 219 W 322, 263 NW 357.

The interest of a deceased partner in the partnership property was personal property. [Section 123.05.] The administrator of a deceased partner had power to sell and dispose of the personal estate without order of court, and to pass good title thereto. *Blumer Brewing Corp. v. Mayer*, 223 W 540, 269 NW 693.

311.02 Who entitled to administration. Administration of the estate of an intestate shall be granted to one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order:

(1) The widow, widower or heirs, or both, as the county court may think proper, or such person as they may request, if suitable and competent to discharge the trust;

(2) If the widow, widower or heirs, or the person selected by them shall be unsuitable or incompetent, or if they shall not within thirty days after the death of the intestate apply for administration or request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if competent;

(3) If there be no widow, widower or heirs, or creditors competent and willing to take administration, the same may be committed to such other person as the county court may think proper;

(4) If there be no application for administration by the widow, widower or heirs, or any creditor for 60 days after the death of the intestate, anyone who has a cause of action or who has a right of appeal, which cannot be maintained without the appointment of an administrator, may apply for the appointment of an administrator. [1933 c. 190 s. 4; 1943 c. 261]

Note: The appointment of an administrator of the estate of an adopted child dying intestate without issue after the death of his adoptive parent, on appearance and waiver of notice by the heirs and next of kin of his natural parents, should have been set aside on petition of the heirs and next of kin of his adoptive parent. *Estate of Hood*, 206 W 227, 239 NW 448.

The guardian of an intestate's son by her first marriage was properly appointed administrator in preference to a surviving second husband without interest in the es-

tate other than fees to be earned, the son having the sole beneficial interest. *Estate of Bartz*, 207 W 639, 242 NW 171.

The administrator of the estate of a deceased sister of an intestate had a "cause of action" within the meaning of (4) and was properly appointed administrator of the estate of such intestate; such appointment was also justified by (3) providing that if there be no next of kin or creditor competent and willing to take administration the same may be committed to such other person as the court may think proper; and the county

court did not abuse its discretion in refusing to vacate the appointment on motion of a surviving brother and sister, neither of whom had applied for administration although a year and a half from the death had elapsed. One not named in the statute may be appointed administrator although there be a survivor therein named, if the appointee has interests to be protected superior or equal to the interests of such survivor. Estate of Reilly, 208 W 557, 243 NW 506.

See note to 245.03, citing Estate of Canon, 221 W 322, 266 NW 918.

In proceedings on the petition of heirs for

311.03 Notice of application for administration. When application is made for the appointment of an administrator the court shall appoint a time and place for hearing the application, and notice thereof shall be given as provided in section 324.18. [1933 c. 190 s. 5; Supreme Court Order, effective Jan. 1, 1940]

311.04 To give bond. (1) Every administrator before he enters upon the execution of his trust and before letters of administration shall be granted to him, shall give a bond to the judge of the county court, with one or more sureties, as the court shall approve, with substantially the same conditions as are required of executors by section 310.14, with such variations only as may be necessary to make it applicable to the case of an administrator. When two or more persons shall be appointed administrators of any estate, the county court may take a separate bond from each with one or more sureties or a joint bond from all, with sureties.

(2) Provided that where it appears that no property will come into the hands of the administrator excepting the proceeds of any claims arising from decedent's death, or for injuries inflicted upon him before his death, then the administrator shall not be required in the first instance to give any bond; but shall give a proper bond to be fixed by the court before any such proceeds shall be paid over to him. And the person or corporation against whom such claims exist after the amount of them in each case has been ascertained, either by settlement or judgment, shall not be required to make payment to the administrator until the bond in each case, last above provided for, shall be given and approved by the court. [1945 c. 509]

Note: In case of conflict between the terms of an administrator's bond and the statute prescribing its conditions and pursuant to which it was given, the statute prevails. Coolidge v. Rueth, 209 W 453, 245 NW 186. See note to 310.14, citing Juergens v. Ritter, 227 W 480, 279 NW 51.

311.05 Summary settlement of small estates. Whenever it is established that the estate, exclusive of an exempt homestead, does not exceed the selections and allowances of the widow and minor children, and the amounts required for funeral expenses and last illness and the expenses of administration, the executor or administrator (regular or special) may under the directions of the court pay such allowances and preferred claims and distribute such estate accordingly. And such executor or administrator shall thereupon file his final account, the heirship shall be determined, the exempt homestead be assigned forthwith, and further proceedings in the estate ordered discontinued. (Stats. 1931 s. 311.075; 1933 c. 190 s. 6; 1945 c. 509)

311.06 Special administrator. Whenever it shall appear by petition to the county court that a resident of the county has died a special administrator may be appointed where one or more of the following circumstances are shown to exist:

(1) That the decedent has left no debts, or that his debts have been fully paid, or that there are no assets available for the payment of his debts and an act remains unperformed on the part of the deceased person, the performance of which affects or is of importance to the petitioner or any other person.

(2) That the final judgment in the estate has been rendered and an act remains unperformed in said estate, or that unadministered assets have come to said estate or have been found or may be found belonging to it.

(3) That it appears that the estate can be settled in accordance with the provisions of section 311.05.

(4) That it appears to be necessary to conserve or administer the estate of a decedent before letters testamentary or of administration can be issued.

(5) That the circumstances provided for in section 72.17 exist. [1945 c. 509]

311.07 Notice of hearing on petition for appointment of special administrator. The court shall determine whether notice of the hearing for the appointment of a special administrator shall be given. If the court shall deem notice of such hearing unnecessary, inexpedient, or if the appointment should be made without delay the court shall proceed to hear the matter without notice. If notice of hearing is required it shall be given pursuant to the provisions of section 324.18. [1945 c. 509]

the appointment of an administrator of the estate of an intestate, wherein it appeared that the one heir was an incompetent and that the only other heir was a nonresident lacking experience, the county court did not abuse its discretion in appointing as administrator a suitable third person not nominated by either petitioner. Estate of Edwards, 234 W 40, 289 NW 605.

The county court is not without jurisdiction to appoint an administrator because the decedent left no estate, and may appoint an administrator on the petition of a creditor. Guardianship of Rundle, 245 W 274, 13 NW (2d) 921.

311.075 [Renumbered section 311.04 by 1933 c. 190 s. 6]

311.075 When special administrator not liable to suit; appeal, when allowed. A special administrator appointed pursuant to the provisions of section 311.06 (4) shall not be liable to an action by any creditor or to be called upon in any way to pay the debts of the deceased and no appeal shall be allowed from the order appointing him. [1945 c. 509]

311.08 Bond of special administrator. The court shall in all cases where money or property shall come into his hands require the special administrator to give bond to the judge of said court in such sum and with such conditions and with such sureties as said court shall direct or approve. If it shall appear that no money, or property, or things of value will come into the hands of such special administrator the court may appoint such special administrator without bond. [1945 c. 509]

311.09 Powers, duties and liabilities of special administrator. (1) Such special administrator, if his appointment has been made pursuant to the provisions of either section 311.06 (1) or (2) shall have the following powers:

(a) To release or discharge a mortgage or judgment which remains undischarged of record;

(b) To convey lands pursuant to a contract for the conveyance of lands, the performance of which remains unfulfilled on the part of the decedent;

(c) To receive and distribute pursuant to the order of the court any unadministered assets of the estate;

(d) To perform such other acts as may be deemed necessary in the premises.

(2) Such special administrator, if his appointment has been made pursuant to section 311.06 (3) shall have the authority to carry out the duties imposed upon him by section 311.05.

(3) Such special administrator, if his appointment has been made pursuant to the provisions of section 311.06 (4) shall have the following powers:

(a) To collect all goods, chattels and credits of the deceased;

(b) To care for, gather and secure crops;

(c) With leave of the court to commence and maintain actions as such special administrator;

(d) With leave of the court to lease for a term not exceeding one year the real property of the deceased;

(e) With leave of the court to sell such personal property of the deceased as the court may direct;

(f) With leave of the court to carry on an existing business of the decedent until an executor or administrator is appointed;

(g) To do such other things as the court may direct for the best interests of the estate.

(4) Such special administrator, if his appointment has been made pursuant to the provisions of section 311.06 (5) shall have authority to discharge the duties imposed by section 72.17.

(5) It shall be the duty of the special administrator to preserve the property of the deceased for such purpose and in such manner as the court may direct or as required by law. Such special administrator shall execute his duties with diligence and he shall make to said court without delay a full report of his acts under such appointment and such further reports as the court shall require. Upon filing of such report such further proceedings shall be had and such further order may be made by said court as it shall deem necessary or proper in the premises according to law.

(6) Such special administrator shall exercise no powers except those expressly granted to him by law or by the order of the court, which order may expressly limit his authority and powers.

(7) Such special administrator shall be allowed all necessary expenses incurred in the care and management of the estate and for his services \$2.50 per day and such further compensation as the court shall judge to be reasonable. [1945 c. 509]

Note: On an appeal by a special administrator, substituted as appellant. Estate of McLean, 219 W 222, 262 NW 707.

311.10 Termination of authority and discharge of special administrator. (1) The court may at any time require such special administrator to make a report. It may instruct him, at any time, concerning his duties and obligations. It may revoke his appointment whenever it shall be deemed best.

(2) Such special administrator shall be entitled to be discharged whenever the court shall be satisfied that he has properly performed his duties. Such discharge may be granted with or without notice as the court may determine. If notice of hearing upon the application for discharge is required such notice shall be given pursuant to the provisions of section 324.18.

(3) Upon the granting of letters testamentary, or of administration of the estate

of the decedent, the power of the special administrator shall cease and such special administrator shall forthwith deliver to the executor or administrator all the goods, chattels, moneys and affects of the deceased in his hands. The court may accept the receipt in writing of the duly appointed executor or administrator of the estate as evidence of such delivery. If it is satisfied that he has properly performed his duties the court may discharge such special administrator, with or without notice. If notice of hearing upon the application for discharge is required it shall be given pursuant to the provisions of section 324.18. [1931 c. 75; Supreme Court Order, effective Jan. 1, 1934; 1945 c. 509]

Note: Where it did not appear that a decedent left no debts or that final judgment in her estate had been rendered, the county court had no jurisdiction under 311.10 (1), Stats. 1941, to appoint a special administrator to settle the account of the decedent as guardian of an incompetent, and a judgment purporting to settle the account of the deceased guardian as presented by such special administrator is accordingly reversed on the appeal of the surety of the deceased guardian therefrom. Guardianship of Rundle, 245 W 274, 13 NW (2d) 921.

311.11 Power of administrator acting in place of executor. An administrator appointed in place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers and shall proceed in settling the estate in the same manner as the former executor or administrator would or should have done; and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of such former executor or administrator.

311.12 When administration revoked. If, after granting letters of administration by any county court on the estate of any deceased person as an intestate, a will of such deceased person shall be duly proved in and allowed by said court such letters of administration shall be revoked by order of and surrendered to said court; and the powers of the administrator shall cease, and he shall thereupon render an account of his administration within such time as the court shall direct.

311.13 Power of executor on revocation. The executor of the will shall in such case be entitled to demand, sue for and collect all the goods, chattels, rights and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any action commenced by the administrator before the revocation of his authority, and may have execution on any judgment recovered in the name of such administrator.

311.14 Effect of revocation. All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

311.15 [Renumbered section 253.32 by 1933 c. 190 s. 7]

311.16 Public administrators; emergency administrator, guardian. (1) When any person shall die intestate, leaving property in this state, but leaving no widow, widower or heir known to the county court, living therein, or when any administrator or executor or guardian shall be removed, resign or refuse to act, or when upon the final settlement of an estate and the assignment thereof there shall be minor or incompetent heirs, devisees or legatees entitled to any part thereof, and no person entitled to apply shall, within thirty days after such removal, resignation or refusal to act or within thirty days after such final settlement and assignment, apply for the appointment of an administrator or guardian, or when in any case there is no person entitled to apply for administration or guardianship within the county, known to the county court, and no valid application is made, and it appears to the court necessary that administration or guardianship should be granted without delay in order to protect and preserve such estate, the county court having jurisdiction of such estate or of such minor or incompetent person or his estate shall, upon its own motion or upon the application of the public administrator, grant administration of such estate or guardianship of the estate of such minor or incompetent person to the public administrator, and he shall thereupon take possession of the estate and protect and preserve the same, and proceed with the administration and with the care and management of the estate, as the case may require, until administration or guardianship shall be granted to some other person.

(2) If such decedent or minor or incompetent person be a nonresident, administration or guardianship of his estate shall be granted to the public administrator of the county where property may be found, and the administration or guardianship first granted shall extend to all the property in this state. Such administration or guardianship may be revoked at any time upon the appointment and qualification of an administrator or guardian, or when for any other cause the court shall deem it just or expedient; but such revocation shall not impair the public administrator's rights to receive from the estate his legal charges and disbursements, to be determined by the county court. This section does not apply to Milwaukee county. [1933 c. 190 s. 8]

Cross Reference: For duty of public administrator as to inheritance taxes, see 72.17.

311.17 [Repealed by 1935 c. 213 s. 13]