CHAPTER 863

CLOSING ESTATES

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Cross−reference: See definitions in ch. 851.

863.01 Distribution of specific property to distributee and partial distribution before final judgment. Before final judgment has been rendered the personal representative may deliver to any distributee possession of any specific property to which the distributee is entitled under the terms of the will or any statute. The personal representative may make one or more partial distributions of the estate, provided that other distributees and claimants are not prejudiced thereby. The personal representative may require the distributees to give security for the return of such property.

History: 1993 a. 486.

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.

863.05 Execution and levies by creditors of distributees prohibited. Except as provided in s. 863.46, no garnishment, attachment or execution may issue against nor may any levy be made against any property of the estate under any judgment or cause of action against any distributee of the estate.

History: 1985 a. 29.

Cross−reference: Ch. 816 and s. 813.026 provide remedies for creditors through the appointment of a receiver.

863.07 Assignment by distributee. If any person interested in an estate assigns all or part of his or her interest in the estate, other than an interest not assignable by the specific language of the will, as collateral or otherwise and the assignee serves a copy of the assignment on the personal representative of the estate and files a copy with the court in which the estate is being administered before the entry of the final judgment and before the property or interest covered by the assignment has been distributed under s. 863.01, the court shall assign to the assignee in the final judgment the interest or part of the interest of the assignor included within the assignment to the extent that the assignment is valid as determined by the court, after giving effect to any credits to which the assignor may prove himself or herself entitled. A personal representative incurs no liability to an assignee of a person interested for any acts performed or distribution made by the personal representative prior to the time a copy of the assignment is received by the personal representative or he or she has actual knowledge of the assignment.

History: 1977 c. 449; 1999 a. 85.

863.08 Exchange by distributee and surviving spouse. In its final judgment or other order, the court shall assign items to the surviving spouse and distributee to conform with the exchange under s. 766.31 (3) (b) to the extent that the court approved the exchange.

History: 1987 a. 393; 2005 a. 216.

863.09 Allowance for tombstone and care of grave. **(1)** TOMBSTONE. In case no provision is made in the will for a tombstone or monument or marker at the grave of the decedent, and none has been erected, the personal representative may expend a reasonable sum for that purpose. The expenditure is subject to the approval of the court and is classed as funeral expense.

(2) CARE OF GRAVE. The court may order the personal representative to pay a suitable amount for the care of the grave of the decedent. The expenditure is classed as funeral expense.

History: 1989 a. 309.

Cross−reference: For court orders concerning perpetual care of graves, see ss. 157.11 and 157.125.

863.11 Order in which assets appropriated; abatement. Shares of distributees abate in accordance with the rules under s. 854.18.

History: 1983 a. 186; 1995 a. 225; 1997 a. 188.

A general direction to pay debts requires that the federal estate tax be deducted from the gross estate before computing the marital deduction as opposed to a contention that the full deduction be allowed since the tax should be paid from assets going to other heirs. Greene v. United States, 476 F.2d 116 (1973).

863.13 No exoneration of encumbered property. Specifically devised property that is subject to a mortgage or other encumbrance is subject to the rules under s. 854.05.

History: 1993 a. 486; 1997 a. 188.

Cross−reference: See s. 859.43 which deals with payment of debts which are secured by an encumbrance on property in the estate.

863.15 Debts to estate. If a distributee of an estate is indebted to the estate, the treatment of the debt is governed by s. 854.12.

History: 1993 a. 486; 2005 a. 216.

863.16 Value used in distribution of fractional shares. In distributing property to distributees who receive fractional shares of the estate under the statutes of descent and distribution or under provisions in a will, the personal representative shall divide the property among the distributees on the basis of the value of the property at the time of distribution unless the will provides otherwise.

863.17 Partition by agreement. Property passing to persons as joint tenants or tenants in common may be partitioned among those persons by the judgment of the court assigning the property, if a petition therefor signed by all persons interested in the property involved is filed with the court prior to the judgment. The petition must set out the manner in which the property is to be divided and the agreement of all persons interested in the property involved.

History: 1977 c. 449.

863.19 Valuation used in distribution of estate assets. If a general bequest of estate assets, including a pecuniary bequest, in a dollar amount fixed by formula or otherwise is satisfied by a distribution in kind, the distribution shall be made at current fair market values unless the will expressly provides that another value may be used. If the will requires or permits a different value to be used, all assets available for distribution, including cash, shall unless otherwise expressly provided be so distributed that the assets, including cash, distributed in satisfaction of the bequest will be fairly representative of the net appreciation or depreciation in the value of the available property on the dates of distribution. A provision in a will that the personal representative may fix values for the purpose of distribution does not of itself constitute authorization to fix a value other than current fair market value.

The valuation of assets for distribution is the current market value at the time of distribution. Estate of Naulin, 56 Wis. 2d 100, 201 N.W.2d 599 (1972).

863.21 Construction of will, notice. Notice of hearing upon a petition for the construction of a will shall be given under s. 879.05. If a petition for final judgment contains a request for construction of a will, the notice of hearing on such petition shall include, or be accompanied by, specific notice of the request for construction, the reasons therefor and a copy of the petition or the part thereof requesting construction.

History: 1975 c. 331.

When the proposed final decree uses language different from that appearing in the will or construes the will in the sense of ascertaining the meaning of the testator rather than following express, clear instructions, a record of the reasons for the construction should be made, a special notice of the proposed construction of the will should be given to the parties interested, and a copy of the petition for construction should accompany the notice. Estate of MacLean, 47 Wis. 2d 396, 177 N.W.2d 874 (1970).

When a will mistakenly assumed that the homestead was in joint tenancy when it was solely owned by the testator, the homestead did not pass by intestacy, but fell into the residue. Estate of Sneeberger, 54 Wis. 2d 657, 196 N.W.2d 662 (1972).

Courts may not apply the doctrine of probable intent, which would allow a court to receive extrinsic evidence, irrespective of the presence or absence of an ambiguity, to ascertain the likely intention of the testator. Estate of Connolly, 65 Wis. 2d 440, 222 N.W.2d 885 (1974).

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.

863.23 Determination and proof of heirship. In every administration of an estate in which notice to creditors is required, except in proceedings under ch. 865, the persons who are the heirs of the decedent shall be determined by the court after hearing. Proof and determination of heirship may be had under this section in an estate administered informally under ch. 865 if desired by the personal representative or interested persons. Notice of the hearing is required except in summary assignment under s. 867.02. Notice shall be given under s. 879.03 but shall include notice by publication under s. 879.05 (4). Determination of heirship shall not be made until after the testimony or deposition of one or more witnesses is reduced to writing and filed. A petition for determination of heirship may be included in the petition for administration, petition for approval of final account and final judgment or in a separate petition; and the notice may be included in the notice of hearing on any of the petitions, or in the notice to creditors.

History: 1971 c. 40; 1973 c. 39; 1975 c. 331.

Cross−reference: See s. 856.15 which provides for proof of heirship outside the county.

NOTE: Under s. 867.02 no notice to heirs is required if the estate is under $50,000. Notice to creditors is still required under s. 867.02 (2) (d).

Construing the authority of a personal representative under s. 767.45 (1) (e) [now s. 767.80 (1) (e)] to bring a motion to determine paternity in a way that allows preventing the definitive determination of heirs would undermine the principle that property of intestate decedents should descend to kindred of the blood and defeat a court's responsibility under s. 863.23 that persons who are the heirs of the decedent shall be determined by the court. DiBenedetto v. Jaskolski, 2003 WI App 70, 261 Wis. 2d 723, 661 N.W.2d 869, 01−2189.

863.25 Petition for final judgment. Except where final settlement is by sworn statement under s. 865.16, after the payment of the allowances, debts, taxes, funeral expenses and expenses of administration and when, if necessary, a fund has been withheld from distribution for the payment of contingent claims, for meeting possible tax liability or for any other reasonable purpose, the personal representative shall, if the estate is in a condition to be closed, file the final account and at the same time petition the court for hearing on the final account and for final judgment assigning the estate to the persons entitled to the same. Notice of hearing shall be given under s. 879.03. If the petition requests the construction of a will, the notice shall comply with the requirements under s. 863.21.

History: 1973 c. 39; 1975 c. 331, 421.

863.27 Contents of final judgment. In the final judgment the court shall approve the final account, designate the persons to whom assignment and distribution are being made, and assign to each of them the property or proportions or parts of the estate or the amounts to which each is entitled. The findings of fact which support the judgment shall include a determination of the heirs of the decedent; facts showing that all jurisdictional requirements have been met; the date of death of the decedent and the decedent's testacy or intestacy; facts relating to the payment of state death tax, state income tax, and claims and charges against the estate. If immediately before death the decedent had an estate for life or an interest as a joint tenant in any property in regard to which a certificate of termination has not been issued under s. 867.04 or an interest in marital property for which a certificate has not been issued under s. 865.201 or 867.046, the findings of fact which support the judgment shall set forth the termination of the life estate, the right of survivorship of any joint tenant, or the decedent's interest in marital property and, upon the petition of the decedent's spouse, the confirmation of the one−half interest held by the surviving spouse in marital property immediately before the death of the decedent spouse. In addition, the findings of fact shall, upon petition of a designated person, trust, or other entity under s. 766.58 (3) (f) or of a TOD beneficiary under s. 705.15, set forth the confirmation of an interest in property passing by nontestamentary disposition under s. 705.15 or 766.58 (3) (f). Every tract of real property in which an interest is assigned or terminated shall be specifically described. If a fund is withheld from distribution for the payment of contingent claims, for meeting possible tax liability, or for any other reasonable purpose, the judgment shall provide for the distribution of the fund if all or a part of it is not needed.

History: 1971 c. 40 s. 93; 1977 c. 449; 1985 a. 37; 1987 a. 27; 2005 a. 206.

NOTE: See notes in 1985 Wis. Act 37, marital property trailer bill.

863.29 Recording final judgment. (1) RECORDING REQUIRED. Whenever the final judgment assigns an interest in real property, assigns a debt which is secured by an interest in real property or shows the termination of a life estate or an interest as a joint tenant in real property or in a debt which is secured by an interest in real property, the final judgment, a certified copy of the final judgment or a certified abridgment thereof as described in sub. (2) shall be recorded by the personal representative in the office of the register of deeds in each county in this state in which the real property is located.

(2) ABRIDGED FINAL JUDGMENT. In lieu of a certified copy of the final judgment assigning the estate, the personal representative may record an abridgment of the final judgment including the portions that relate to and affect title to real property in the county in which the abridgment is recorded. The accuracy of the abridgment shall be certified by the judge or the register in probate of the court which assigned the estate.

863.31 Conclusiveness of final judgment. (1) GENERALLY. The final judgment is a conclusive determination of the persons who are the successors in interest to the estate of the decedent and of the extent and character of their interests therein, subject only to the right of appeal and the right to reopen the judgment. It operates as an assignment or final adjudication of the transfer of the right, title and interest of the decedent to the distributees therein designated.

(2) AS TO PURCHASERS FOR VALUE FROM DISTRIBUTEES. After the final judgment has been recorded in the office of the register of deeds in the county in which the real estate is located, purchasers for value of real estate which is described in the final judgment from distributees or their successors in title may rely on the final

judgment as conclusive insofar as it purports to transfer to the distributees any title which the decedent held in the real estate at the time of the decedent's death, except to the extent that there has been a transfer of an interest in the real estate by the personal representative under ch. 860 or s. 863.01 of which the purchaser has actual notice or of which the purchaser has constructive notice because of recording in the office of the register of deeds in the county in which the real estate is located.

History: 1993 a. 486.

863.33 Estates to be completed promptly. All estates are to be completed as soon as reasonably possible and without unnecessary delay.

863.35 Dormant estates. (1) If under formal administration final judgment is not entered in an estate within 18 months after filing of the petition for administration and the estate is not open pursuant to an order extending time, the judge shall order the attorney and the personal representative for the estate to show cause why final judgment has not been entered and shall proceed under s. 857.09.

(2) If under informal administration under ch. 865 the estate has not been closed by sworn affidavit within 18 months after filing of the petition for administration and the estate is not open pursuant to an order extending time, the probate registrar shall order the personal representative for the estate to show cause why the estate has not been closed. If cause is not shown the probate registrar shall appoint a new personal representative acceptable to all interested parties other than creditors of the deceased who shall proceed under ch. 865.

History: 1971 c. 40; 1973 c. 39.

863.37 Distribution of money or other property where payment or transfer is prohibited. (1) If the laws, executive orders or regulations of the United States prohibit payment, conveyance, transfer, assignment or delivery of property to a legatee, devisee, ward or beneficiary of an estate or trust, or to any person on his or her behalf, the court, after notice to the person under s. 879.03, may by judgment or decree authorize such disposition of the property as is or may be permissible under or in conformity with the laws, executive orders or regulations of the United States.

(2) (a) Whenever payment of a legacy or a distributive share cannot be made to the person entitled to payment or it appears that the person may not receive or have the opportunity to obtain payment, the court may, on petition of a person interested or on its own motion, order that the funds be paid or delivered to the secretary of revenue for deposit as provided under s. 177.23. Claims on the funds may be made under s. 863.39 within 10 years after the date of publication under s. 177.18. When a claimant to the funds resides outside the United States or its territories the court may require the personal appearance of the claimant before the court.

(b) Notwithstanding par. (a), whenever moneys arising from an unclaimed legacy or unclaimed intestate property have been deposited with the state treasurer on or after April 1, 1971, but before April 30, 1980, claims may be made for the property under s. 863.39 within 10 years after April 30, 1980.

History: 1977 c. 449; 1979 c. 221; 1983 a. 408; 1997 a. 188; 2013 a. 20.

863.39 Escheats. (1) GENERALLY. If any legacy or intestate property is not claimed by the distributee within 120 days after entry of final judgment, or within the time designated in the judgment, it shall be converted into money as close to the inventory value as possible and paid to the secretary of revenue for deposit as provided under s. 177.23. Claims for the money shall be made under sub. (3).

(2) FOREIGN DISTRIBUTEE. If notice is given to a distributee domiciled in a foreign country under s. 879.03 and the distributee is not heard from within 120 days after entry of final judgment of distribution, or within a longer time designated in the judgment, the property which the distributee would take shall not escheat, but shall descend as intestate property.

(3) RECOVERY OF MONEY. (a) Within 10 years after the date of publication under s. 177.18, any person claiming any amount deposited under sub. (1) may file in the probate court in which the estate was settled a petition alleging the basis of his or her claim. The court shall order a hearing upon the petition, and 20 days' notice of the hearing and a copy of the petition shall be given by the claimant to the department of revenue and to the attorney general, who may appear for the state at the hearing. If the claim is established it shall be allowed without interest, but including any increment which may have occurred on securities held, and the court shall so certify to the department of administration, which shall audit the claim. The secretary of revenue shall pay the claim out of the appropriation under s. 20.566 (4) (j). Before issuing the order distributing the estate, the court shall issue an order determining the death tax due, if any. If real property has been adjudged to escheat to the state under s. 852.01 (3) the probate court which made the adjudication may adjudge at any time before title has been transferred from the state that the title shall be transferred to the proper owners under this subsection.

(b) Notwithstanding par. (a), whenever moneys arising from an unclaimed legacy or unclaimed intestate property have been deposited with the state treasurer on or after April 1, 1971, but before April 30, 1980, claims may be made for the property under this section within 10 years after April 30, 1980.

History: 1979 c. 221; 1983 a. 408; 1987 a. 27 s. 3200 (47); 1993 a. 486; 2013 a. 20.

Cross−reference: See ch. 24 for procedure for handling escheated lands.

Cross−reference: See s. 895.42 as to deposit of undistributed money and property with public administrator or bank with trust powers.

The personal representative of a known deceased person is a proper party to claim an unclaimed legacy. The court can determine the date of death to determine entitlement to the fund. Estate of Rosenstein, 47 Wis. 2d 494, 177 N.W.2d 372 (1970).

863.41 Receipts to be filed. Within 120 days after the final judgment is signed the personal representative shall file with the court receipts from distributees for all personal property assigned in the final judgment, unless the court extends the time.

863.43 Distribution to ward; notice. At least 10 days prior to distribution of a share or legacy for the benefit of a minor or individual adjudicated incompetent for whom a guardian of the estate has been appointed, the personal representative shall notify the court appointing the guardian of the estate, in writing, the total property to be distributed to the guardian of the estate for the benefit of the guardian's ward. An affidavit of mailing the notice shall be filed before making the distribution.

History: 1993 a. 486; 2005 a. 387.

863.45 Receipts from guardians. If a distributee of an estate is a minor or an individual adjudicated incompetent and has within this state a guardian of his or her estate, the personal representative shall deliver the money or other property to the guardian of the estate, take a receipt from the guardian of the estate, and file the receipt with the court. The court shall transmit a certified copy of the receipt to the court which appointed the guardian of the estate.

History: 1977 c. 449; 2005 a. 387.

Cross−reference: See s. 54.12, which describes the situations in which a guardian is not required for a minor or incompetent.

Cross−reference: See s. 54.64 (6), which provides procedure for payment to and receipt by a foreign guardian.

863.46 Remedy of creditors of certain heirs and legatees; service of citation. (1) If any legacy or distributive share of any estate belongs to any debtor who has absconded from or is a nonresident of this state, any of his or her creditors may petition to intervene in the probate proceedings to compel the application of the legacy or distributive share to the payment of his or her debt.

(2) If the appearance of the debtor is necessary for the proceedings, the creditor may serve the debtor with a citation in the manner provided by s. 879.05.

(3) Upon proof of service, the court shall consider the petition at the time fixed in the citation. The court may grant such relief

as it determines is just. Any order, judgment or determination made in the proceedings is binding on the debtor. If the claim is not a judgment and any issue arises in the proceedings related to the debt, the court may stay the proceedings pending the final determination of the issue. The court may at any time require the petitioner to give a bond in such sum and with such sureties for costs and damages as it deems proper.

History: 1985 a. 29.

863.47 Order of discharge of personal representative. Upon proof of the recording of certified copies of the final judgment or abridgments thereof, if required by s. 863.29, and upon the filing of receipts from the distributees for all other property assigned in the final judgment, or other evidence of transfer satisfactory to the court, the court shall enter an order finding those facts, discharging the personal representative and canceling the personal representative's bond.

History: 1973 c. 233; 1993 a. 486.

863.49 Inactive estates; summary discontinuance. The court may by order upon its own motion and without notice summarily discontinue any administration in which no paper has been filed for more than 5 years and may cancel the bond.

History: 1977 c. 449.