

CHAPTER 860

SALE, MORTGAGE AND LEASE OF PROPERTY

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860.01 Power of personal representative to sell, mortgage and lease. A personal representative to whom letters have been issued by the probate court and whose letters have not been revoked has complete power to sell, mortgage or lease any property in the estate without notice, hearing or court order. The rights and title of any purchaser, mortgagee or lessee from the personal representative are in no way affected by any provision in a will of the decedent or any procedural irregularity or jurisdictional defect in the administration of the decedent's estate. A transfer agent or a corporation transferring its own securities incurs no liability to any person by making a transfer of securities in an estate as requested or directed by a personal representative.

An executor's trust is not discharged by selling at the appraised price unless there is evidence to show it was the best price that could be obtained in the exercise of reasonable diligence. *State v. Hartman*, 54 W (2d) 47, 194 NW (2d) 653

Fiduciary and estate liability in contract and in tort. *Dubis*, 55 MLR 297

860.05 Free of creditor's claims. If property in an estate is sold, mortgaged or leased by a personal representative, title passes subject to the rights of creditors having a secured interest in the property sold but free and clear of any right of creditors which is based on the filing and allowance of a claim in the estate. The filing and allowance of a claim in an estate does not make one a secured creditor.

Cross reference: See 72.25 (2) which provides that property sold from an estate by a personal representative passes free of any inheritance tax lien.

860.07 No warranties. Except as under s. 860.09 (2), a personal representative has no power to give warranties in any sale, mortgage or lease of property which are binding on himself personally or on the estate of the decedent.

860.09 Contract of decedent to sell or lease land. (1) **GENERALLY.** When any person legally bound to make a conveyance or lease dies before making the same and the personal

representative fails or refuses to perform in accordance with the decedent's contract, any person claiming to be entitled to the conveyance or lease may petition the probate court for specific performance of the contract. Upon satisfactory proof the court may order the personal representative to make a conveyance or lease or may by its own order make a conveyance or lease to the person entitled thereto upon the performance of the contract.

(2) **WARRANTIES.** If the contract for a conveyance required the decedent to give warranties, any instrument given by the personal representative or order by the court shall contain the warranties required. The warranties are binding on the estate as though made by the decedent during his lifetime but do not bind the personal representative personally.

860.11 Special provisions in will; personal representative's duty to persons interested. (1) **RESTRICTION.** Except as under sub. (4) if the will of the decedent contains provisions which restrict the freedom of the personal representative to sell, mortgage or lease property, the personal representative breaches his duty to the persons interested if he sells, mortgages or leases the property other than in accordance with the restrictions.

(2) **SPECIFIC BEQUEST.** Except as under sub. (4) if the will of the decedent contains a specific bequest of property, the personal representative breaches his duty to the specific beneficiary if he makes a lease of the property for a period which exceeds one year or mortgages or sells the property unless the specific beneficiary joins in the lease, mortgage or sale.

(3) **PROHIBITION.** Except as under sub. (4) if the will of the decedent contains provisions which prohibit the sale, mortgage or lease of property by the personal representative, the personal representative breaches his duty to the persons interested if he sells, mortgages or leases such property.

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(4) COURT MAY ORDER SALE, MORTGAGE OR LEASE. If the will of the decedent contains limitations described in sub. (1), (2) or (3) and the personal representative is unable to pay the allowances, expenses of administration and claims while complying with the limitations in the will, the court shall order the personal representative to sell, mortgage or lease the property in accordance with the appropriate terms and conditions of an order made after petition and hearing on notice given under s. 879.03 to all persons interested and all creditors of the estate.

The personal representative may not be interested as a purchaser, mortgagee or lessee of any property in the estate unless the purchase, mortgage or lease is made with the written consent of the persons interested and of the guardian ad litem for minors and incompetents or with the approval of the court after petition and hearing on notice given under s. 879.03 to all persons interested, or unless the will of the decedent specifically authorizes the personal representative to be interested as a purchaser, mortgagee or lessee.

860.13 Who not to be purchaser, mortgagee or lessee without court approval.