

CHAPTER 860

PROBATE — SALE, MORTGAGE AND LEASE OF PROPERTY

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Cross-reference: See definitions in ch. 851.

860.01 Power of personal representative to sell, mortgage and lease. A personal representative to whom letters have been issued by the court and whose letters have not been revoked may sell, mortgage or lease any property in the estate without notice, hearing or court order.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 not 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.

History: 1977 c. 449.

An executor's trust is not discharged by selling at the appraised price unless there is evidence to show that it was the best price that could be obtained in the exercise of reasonable diligence. *State v. Hartman*, 54 Wis. 2d 47, 194 N.W.2d 653 (1972).

The loss of future profits to an estate through disposal of a parcel is damage chargeable to a trustee or personal representative only if the parcel was not needed for liquidation. *In re Estate of Meister*, 71 Wis. 2d 581, 239 N.W.2d 52 (1976).

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.

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 the personal representative personally or on the estate of the decedent.

History: 1993 a. 486.

860.09 Contract of decedent to sell or lease land.

(1) **GENERALLY.** If 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 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 the decedent's lifetime but do not bind the personal representative personally.

History: 1977 c. 449; 1993 a. 486.

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 the personal representative's duty to the persons interested if the personal representative 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 the personal representative's duty to the specific beneficiary if the personal representative 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 the personal representative's duty to the persons interested if the personal representative sells, mortgages or leases such property.

(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.

History: 1993 a. 486.

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

History: 2005 a. 387.

This section gives a circuit court authority to approve a sale of estate property to a personal representative, but it does not list any criteria for the court to apply in making that decision. When a statute grants a circuit court broad authority to act, without constraining the court's authority in any way, it makes sense to review the court's decision for an erroneous exercise of discretion. *Piette v. Horn*, 2015 WI App 41, 361 Wis. 2d 484, 864 N.W.2d 900, 14–1688.

The circuit court appropriately considered the following factors when approving a sale subject to this section: 1) the likelihood that the sale price would be higher than the personal representative's offer if the property were offered for public sale, balanced against the attendant delay and increased holding costs that would result from publicly listing the property for sale; 2) the relative interests of the parties in the proceeds of the sale; 3) the property's highest and best use; 4) the property's physical characteristics and improvements; 5) the various appraisals, and the expertise and credibility of the appraisers; and 6) the lack of evidence of self-dealing by the personal representative. *Piette v. Horn*, 2015 WI App 41, 361 Wis. 2d 484, 864 N.W.2d 900, 14–1688.