

## CHAPTER 312.

## INVENTORY AND COLLECTION OF EFFECTS:

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**312.01 Inventory and appraisal; oath of appraisers.** Every executor and administrator shall, within three months after his appointment, make and return to the court a true inventory of all the property of his decedent which shall come to his possession or knowledge. The inventoried property shall be appraised by disinterested persons, appointed by the court, who shall be sworn to a faithful discharge of their duty. When the estate consists solely of money or securities listed on recognized stock exchanges or both there need be no appraisal. The appraisers shall set down opposite to each item, in such inventory, the value thereof, and certify the same. A separate inventory shall be made of the household furniture and other personal property allowed to the widow, pursuant to subsection (1) of section 313.15, but the same shall not be assets in the hands of the executor or administrator. Where the estate is situated in two or more counties appraisers may be appointed for each county. [*Supreme Court Order, effective Jan. 1, 1934*]

**Note:** As to a note payable to the husband only but purchased with joint funds, the remedy of the wife was to file a claim against his estate, not to petition to strike the note from the inventory. As to notes and mortgages running to husband and wife jointly, the wife properly petitioned to strike such items from the inventory instead of filing a claim against the estate. Estate of Abddulah, 214 W 336, 252 NW 158.

As to deposit payable to survivor see note to 221.45, citing Estate of Staver, 218 W 114, 260 NW 655, and Estate of Skilling, 218 W 574, 260 NW 660.

Debts owing from an executor to a testator automatically become assets in the executor's hands on his acceptance of his appointment, to be treated as cash in the executor's hands, regardless of the executor's insolvency at the time of his acceptance or thereafter. [Decisions in previous cases reviewed, and rule adhered to as established policy in this state.] Estate of Tuttle, 242 W 144, 7 NW (2d) 575.

**312.02 Inventory of partnership property and liabilities by survivor.** The surviving partner of any deceased person whose estate is being administered shall, whenever required by order of the county court, render to said court a true and complete inventory of the partnership property and liabilities verified by his oath. If he refuse or neglect to comply with such order for twenty days after the service of said order upon him, he shall be in contempt of court. [*Supreme Court Order, effective Jan. 1, 1934*]

**312.03 Inventories, accounts.** (1) VERIFICATION, EXAMINATION IN COURT. Every executor, administrator, trustee and guardian, shall verify by his oath every inventory required of him and such verification shall be to the effect that the inventory is true of all property which belongs to his decedent's or to the trust estate or his ward, which has come to his possession or knowledge, and that upon diligent inquiry he has not been able to discover any property belonging to such estates or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine him on oath in relation thereto, or in relation to any supposed omission therefrom.

(2) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any executor, administrator, trustee or guardian, shall neglect to file his inventory or account when required by law, the county judge shall call his attention to his neglect. If he shall still neglect his duty in the premises, the court shall order him to file his inventory, and the costs of such citation may be adjudged against him. [*Court Rules IX, X; Supreme Court Order, effective Jan. 1, 1934*]

**312.04 Possession and care of lands.** The executor or administrator shall have a right to the possession of the real estate of his decedent, except the exempt homestead, and may receive the rents and profits thereof until the estate shall be settled, or until delivered by order of the court, to the heirs or devisees, and he shall keep in good tenable repair all buildings and fences thereon which are under his control. [*1933 c. 190 s. 10*]

**Note:** An administrator is not entitled to the possession and rents of a decedent's homestead during the administration of an estate when the homestead is not subject to the "debts and liabilities" of the deceased owner. *Curtis v. Gillie*, 239 W 207, 300 NW 911.

The rights of an executor or an adminis-

trator in relation to the real estate of his decedent, under this section, and otherwise, does not prevent the heirs of a deceased grantor from prosecuting an action to have the deed declared void because of the mental incompetency of the grantor. *Riedi v. Heinzl*, 240 W 297, 3 NW (2d) 366.

**312.05 Liability for conversion.** Any person who shall embezzle or convert to his own use property of any decedent's estate shall be liable to an action by the executor or administrator for double the value of the property embezzled or converted. [1933 c. 190 s. 11]

**312.06 Discovery proceedings.** (1) If any executor or administrator, or person interested in the estate of any decedent shall complain to the county court on oath that any person is suspected to have concealed, embezzled, conveyed or disposed of property of the decedent, or to be indebted to the decedent, or has in his possession or under his control, or has knowledge of any concealed property of the decedent, or to have in his possession or under his control, or to have knowledge of any writings which contain evidence of or tend to disclose the right, title, interest or claim of the decedent to any property, or any will of the decedent, the court may cite such suspected person to appear before it and may examine him on oath upon the matter of such complaint.

(2) When any person shall be cited to appear pursuant to this section or section 319.33, the court may subpoena witnesses and compel the production of evidence in relation to said complaint against such person and may make such order in relation to said matter as shall be just and proper. Such proceeding shall be in addition to all other remedies. [Supreme Court Order, effective Jan. 1, 1934]

**Note:** The court has no power under this section to make an order concerning the disposition of the property, and the fact that the proceeding was between two adminis-

trators of two separate estates then in process of settlement in that court does not extend its jurisdiction in the premises. *Estate of Krauss*, 212 W 561, 250 NW 388.

**312.07 Refusal to answer, penalty; testimony to be written.** The examination of such suspected person and all witnesses may be by written or oral interrogatories and the testimony so given shall be signed by the party examined. All testimony so given may be taken by a stenographer and transcribed by him into longhand. If such testimony is taken by a stenographer the person giving such testimony may be required by the court to attend before the court to read and sign the same after it is transcribed into longhand, and his attendance for such purpose may be compelled by subpoena and tender or payment of witness fees and mileage in the same manner that witnesses are now compelled to attend county court. If the person so cited or subpoenaed shall refuse to appear and submit to such examination or to answer such interrogatories as may be put to him touching the matter of such complaint or refuse to obey any other order of the court made in such proceedings, the court may, by warrant for that purpose, commit him to the common jail of the county, until he shall submit to the order of the county court.

**312.08 Accounting by agent.** The county court, upon the application of any executor, administrator, trustee or guardian appointed by it may order any person who has been intrusted by him with any part of the estate of a decedent or the trust estate to appear before such court, and may require such person to render a full account, on oath, of any property or papers belonging to such estate which shall have come to his possession and of his proceedings thereon. If he refuses to appear and render such account the court may proceed against him as for contempt. [Supreme Court Order, effective Jan. 1, 1934]

**312.09 Compounding claim.** When any debtor of a deceased person shall be unable to pay all his debts the executor or administrator, with the approval of the county court, may compound with such debtor and give him a discharge upon receiving a fair and just dividend of his effects.

**312.10 Mortgage is personalty; foreclosure.** Real estate mortgages and the interest in the mortgaged premises conveyed thereby and the debt secured thereby belonging to a decedent's estate are personal assets, and the executor or administrator may foreclose or satisfy the same, and have any other remedy for the collection of such debt which the decedent would have if living. [1933 c. 190 s. 12]

**312.11 Fraud, waste, mismanagement.** Whenever the county court shall have reason to believe that any executor, administrator, trustee or guardian within its jurisdiction has filed a false inventory, or claims as his own property, or permits others to claim and retain property belonging to the estate which he represents, or is guilty of waste or mismanagement of the estate, or is unfit for the proper performance of his duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order such executor, administrator, trustee or guardian to file his account. If upon

the examination of such account the court shall deem it necessary to proceed farther, a time and place for the adjustment and settlement of said account shall be fixed by the court, and at least ten days' notice thereof shall be given to such guardian ad litem, if any is appointed, and to all persons interested. If, upon the adjustment of said account, the court shall be of the opinion that the interests of the estate, and of the persons interested, require it, such executor, administrator, trustee or guardian may be removed and another appointed. [Court Rule XI; Supreme Court Order, effective Jan. 1, 1934]

312.12 [Repealed by 1933 c. 190 s. 14]

312.13 Resale by executor, administrator, trustee or guardian without license.

Whenever any executor, administrator, testamentary trustee, or guardian has purchased real estate at judicial sale, under a judgment in an action in which he is plaintiff, or has redeemed real estate from a foreclosure or judicial sale, he may sell and convey the same without license, upon such terms as he shall deem best; and the proceeds arising from such sale shall be held by him the same as he would have held the money due upon the debt by virtue of which he purchased or held the money with which he redeemed such real estate. [Stats. 1931 s. 287.17; 1933 c. 190 s. 16; 1941 c. 245]

**Note:** To warrant a recovery under this section there must be a deficiency of assets and that deficiency must be established by an adjudication of the claims against the estate. The filing of claims does not establish a deficiency. Mann v. Grinwald, 203 W 27, 233 NW 582.

Proceedings brought by an administratrix appointed more than four years after the death of the decedent to recover land alleged to have been fraudulently conveyed and to subject the same to the payment of

debts was barred by 315.01. School v. Adams, 206 W 174, 239 NW 452.

The mere fact that realty was sold and mortgaged through dummies to make the title more marketable or otherwise serve the convenience of the parties, does not show fraud. In an administrator's or a creditor's action a conveyance may be set aside only if fraudulently made by a decedent with the intent to defeat or defraud his creditors. Massey v. Richmond, 208 W 239, 242 NW 507.

312.14 [Renumbered section 287.44 by 1933 c. 190 s. 17]

312.15 Estate recovered, how sold. All real estate recovered as provided in section 287.43 shall be sold for the payment of debts as if the deceased had died seized thereof, upon obtaining license therefor; and the proceeds of personal property so recovered shall be used to pay the debts of the decedent. [1933 c. 190 s. 18]

312.16 Creditor's action for property not inventoried. Whenever there shall be reason to apprehend that the estate of a decedent, as set forth in the inventory returned, may be insufficient to pay his debts any creditor whose claim has been allowed may, on behalf of all, bring an action to reach and subject to sale any property, not included in such inventory, which is liable for the payment of such debts. [1933 c. 190 s. 19]

**Note:** See note to 312.13, citing Massey v. Richmond, 208 W 239, 242 NW 507.

312.17 Creditor's action; procedure. Such creditor's action shall not be brought to trial until the insufficiency of the estate in the hands of the executor or administrator to pay the debts shall be ascertained; if found sufficient such action shall be dismissed at the cost of the plaintiff; if such action is tried any property which ought to be subjected to the payment of the debts of the decedent shall be sold in the action; and the net proceeds used to pay such debts. [1933 c. 190 s. 20]

312.18 [Renumbered section 313.09 by Supreme Court Order, effective Jan. 1, 1934]