

No. 403, S.]

[Published August 10, 1951.]

**CHAPTER 705.**

AN ACT to amend 296.10 and 323.06 and to create 316.235 of the statutes, relating to the effect of conveyances by certain personal representatives.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 296.10 of the statutes is amended to read:

296.10 If, after an examination of the matter by the court or judge to which application is made, without a reference, or on the coming in of the report of the referee, and on examination of the matter, it shall satisfactorily appear that a disposition of any part of the real estate of such minor or incompetent person or any interest therein is necessary and proper, for any of the causes mentioned in section 296.06 such court or judge shall make an order directing and authorizing the guardian to contract for the leasing, mortgaging or sale of such real estate or interest therein or of such part thereof as the court or judge shall deem proper in such manner and with such restrictions as shall be deemed expedient. *Every deed made by a guardian under this or any other section of the statutes shall be construed to have the effect of a conveyance by warranty deed, as provided in section 235.06 with a warranty that the title so conveyed is free and clear from all liens and encumbrances except as to any liens or encumbrances or other matters expressly excepted by such conveyance or to which such conveyance is expressly made subject. The guardian shall not be personally liable for any such breach of warranty but a recovery may be had from any assets or property held by him as such guardian; if the guardianship has been terminated, recovery may be had proportionately from the persons who have received the assets or property but recovery shall not exceed the value of the property received.*

SECTION 2. 316.235 of the statutes is created to read:

**316.235 CONVEYANCES BY EXECUTORS AND ADMINISTRATORS.** (1) **FREE OF CERTAIN LIENS.** Every conveyance of land of a decedent, pursuant to power of sale in a will, or under a contract executed by the decedent during his lifetime or under this chapter shall transfer such lands free and clear from liens and claims of all creditors of the decedent and of the estate of the decedent (except as provided in 316.24); and any such liens or claims shall be transferred to the proceeds of said sale received by the executor or administrator making the same, provided that nothing herein shall affect inheritance and gift tax liens.

(2) **WARRANTIES.** If any decedent has contracted to convey land by warranty deed, and a conveyance is made by an executor or administrator under 316.34, the assets of said estate available to creditors of the decedent shall be subject prior to the final distribution of said estate to any claim made under such warranty by virtue of defective title or encumbrance not excluded by said warranty or otherwise; if such claim is made after the distribution of such estate, the devisees, beneficiaries or heirs of the decedent shall be liable for payment thereof in proportion to the share of such estate received by each. No

separate warranty by the executor or administrator shall be required to subject such estate to the warranty made or agreed to be made by the decedent. This subsection shall apply to any sale referred to in subsection (1), and to any sale by any executor or administrator pursuant to a power of sale in a will or court order in all cases where the purchaser has contracted for the benefit of these provisions with such administrator or executor and in such case the administrator or executor shall not be personally liable on the warranty except as he may be a devisee, heir or beneficiary. Sections 313.08 and 313.21 shall not affect claims arising under this subsection. Every conveyance by any executor or administrator shall be construed to include a warranty of good title free and clear from all liens and encumbrances, together with a provision for the remedies for breach of warranty herein provided, except as to such liens or encumbrances or other matters affecting the title, which are expressly excepted by such conveyance or to which such conveyance is expressly made subject.

SECTION 3. 323.06 of the statutes is amended to read:

323.06 The county court, on application of any such trustee or any person interested, may, after notice to all parties in interest, as provided by section 324.18, authorize and require such trustee to sell any property so held in trust in such manner as the court may direct and to invest the proceeds of such sale in such manner as will be most for the interest of all concerned therein; and such court may from time to time make such orders and decrees as it may deem just and reasonable in relation to the sale, management, investment and disposition of such trust property and to the settlement of the account of such trustee, but no such order shall be made in violation of the terms of the trust. To keep the trust property from being removed out of the state or improperly or illegally used or invested the county court shall have the same power as circuit courts to issue the writ of ne exeat and injunctions. *Every deed made by a trustee under this or any other section of the statutes or pursuant to power of sale under any will shall be construed to have the effect of a conveyance by warranty deed, as provided in section 235.06, with a warranty that the title so conveyed is free and clear from all liens and encumbrances except as to any liens or encumbrances or other matters expressly excepted by such conveyance or to which such conveyance is expressly made subject. The trustee shall not be personally liable for any such breach of warranty but a recovery may be had from any assets or property held by him as such trustee; if the trust estate has been terminated, recovery may be had proportionately from the persons who have received the assets or property but recovery shall not exceed the value of the property received.*

Approved July 20, 1951.

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