

## CHAPTER 311.

## ADMINISTRATION AND ADMINISTRATORS.

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**311.01 Administration of intestate estates.** When any resident of this state shall die intestate letters of administration of his estate shall be granted by the county court of the county of which he was a resident. If any person not a resident of this state shall die, leaving estate to be administered in this state, administration thereof shall be granted by the county court of any county in which there is estate to be administered, and the administration first legally granted shall extend to all the estate in this state. Administration may also be granted upon the estate of any person who, at the time of his death, was a party to any action pending in any court of record, upon the application of any other party to such action, when it shall appear necessary to protect the rights of the party so applying.

**311.02 Who entitled to administration.** Administration of the estate of an intestate shall be granted to one or more of the persons hereinafter mentioned, and they shall be respectively entitled to the same in the following order:

(1) The widow, widower or heirs, or both, as the county court may think proper, or such person as they may request, if suitable and competent to discharge the trust;

(2) If the widow, widower or heirs, or the person selected by them shall be unsuitable or incompetent, or if they shall not within thirty days after the death of the intestate apply for administration or request that administration be granted to some other person, the same may be granted to one or more of the principal creditors, if competent;

(3) If there be no widow, widower or heirs, or creditors competent and willing to take administration, the same may be committed to such other person as the county court may think proper;

(4) If there be no application for administration by the widow, widower or heirs, or any creditor for 60 days after the death of the intestate, anyone who has a cause of action or who has a right of appeal, which cannot be maintained without the appointment of an administrator, may apply for the appointment of an administrator.

Where a petition for administration asserted the fundamental jurisdictional facts of death and residence, then, even if such petition was made by one who was not entitled to administration, the appointment of an administrator would be revocable, but the proceeding would not be void; the petition may be made by the general guardians of a minor who was the sole heir of the decedent. Estate of Bobo, 275 W 452, 32 NW (2d) 328.

**311.03 Notice of application for administration.** When application is made for the appointment of an administrator the court shall appoint a time and place for hearing the application, and notice thereof shall be given as provided in section 324.18.

**311.04 To give bond.** Every administrator shall give bond as provided in s. 310.15.

**History:** 1953 c. 300.

**311.05 Summary settlement of small estates.** (1) (a) The county court may authorize final disposition of the estate of a deceased resident of the county without the appointment of an executor or a general or special administrator whenever the estate does not exceed in value the necessary administration cost, the reasonable funeral expenses, expenses of last illness, and the selections and allowances of any surviving widow or minor child. In each such case the court shall order the estate distributed to persons entitled to receive such costs, expenses, selections and allowances.

(b) General administration or probate may be terminated at any time by summary proceedings.

(2) (a) The petition shall establish facts invoking this section, and shall set forth a detailed statement of the property in which the deceased had an interest including life insurance, joint and life tenancies and gifts made in contemplation of death, or taking effect upon death or made within 2 years prior to death, the estimated value thereof and the names and post-office addresses of all persons entitled to receive any portion of said estate.

(b) The court may hear the matter without notice or order notice to be given pursuant to s. 324.18.

(c) When title to real estate is involved, heirship may be determined on notice.

(d) The department of taxation or public administrator, personally or by representative, may examine the property referred to in any petition under this section at any time.

(3) If the court is satisfied, by sufficient proof, that the estate is one proper to be settled under this section (taking into consideration the rights of creditors in relationship to decedent's estate, gifts made in contemplation of death, ownership of joint interests and life insurance benefits payable upon his death), it may order any person indebted to or holding moneys or personal property of the decedent to pay the indebtedness or deliver the personal property to the persons found by the court entitled to receive the same. The court may also order the transfer of the homestead, interests in real estate, stocks or bonds registered in the name of the deceased, the title of a licensed motor vehicle, or any other form of property whatsoever.

(4) The court may deny the petition if it appears that rights of creditors, taxing bodies, or other interested persons may be jeopardized.

(5) Upon the payment, delivery, transfer or issuance in accordance with the order of the court and the filing with the court of proof thereof, the persons making such delivery, transfer or issuance shall be released to the same extent as if the same had been made to a legally qualified executor or administrator of the deceased.

(6) Before ordering such transfer, issuance or payment, the court may, in its discretion, require a bond of the petitioner in such an amount as the court shall deem sufficient and conditioned to indemnify any person, firm or corporation which may be aggrieved thereby.

**History:** 1953 c. 551, 661; 1957 c. 197.

**Cross Reference:** See 319.23 for summary closing by guardian of small estate of ward. See note to 253.29, citing 43 Atty. Gen. 177.

**311.06 Special administrator.** Whenever it shall appear by petition to the county court of any county that a resident of the county has died or that a person not a resident of this state has died leaving estate to be administered in such county a special administrator may be appointed where one or more of the following circumstances are shown to exist:

(1) That the decedent has left no debts, or that his debts have been fully paid, or that there are no assets available for the payment of his debts and an act remains unperformed on the part of the deceased person, the performance of which affects or is of importance to the petitioner or any other person.

(2) That the final judgment in the estate has been rendered and an act remains unperformed in said estate, or that unadministered assets have come to said estate or have been found or may be found belonging to it.

(3) That it appears that the estate can be settled in accordance with the provisions of section 311.05.

(4) That it appears to be necessary to conserve or administer the estate of a decedent before letters testamentary or of administration can be issued.

(5) That the circumstances provided for in section 72.17 exist.

(6) That there is reason to believe that a cause of action exists for the wrongful death of or for personal injury to the deceased person, or for injury or damage to his property.

**History:** 1951 c. 86.

See note to 253.29, citing 43 Atty. Gen. 177.

**311.07 Notice of hearing on petition for appointment of special administrator.** The court shall determine whether notice of the hearing for the appointment of a special administrator shall be given. If the court shall deem notice of such hearing unnecessary, inexpedient, or if the appointment should be made without delay the court shall proceed to hear the matter without notice. If notice of hearing is required it shall be given pursuant to the provisions of section 324.18.

**311.075 When special administrator not liable to suit; appeal, when allowed.** A special administrator appointed pursuant to the provisions of section 311.06 (4) shall not be liable to an action by any creditor or to be called upon in any way to pay the debts of the deceased and no appeal shall be allowed from the order appointing him.

**311.08 Bond of special administrator.** If it appears that anything of value will come into the hands of the special administrator the judge shall require him to give bond

as required in s. 310.15. If it appears that nothing of value will come into his hands the court may appoint such special administrator without bond subject to the provisions of s. 310.15 (5). If the person appointed special administrator is subsequently appointed executor or administrator, his bond given as special administrator, if given after June 24, 1953, shall continue in effect as the bond of executor or administrator, unless otherwise ordered by the judge.

**History:** 1953 c. 300.

**311.09 Powers, duties and liabilities of special administrator.** (1) Such special administrator, if his appointment has been made pursuant to the provisions of either section 311.06 (1) or (2) shall have the following powers:

(a) To release or discharge a mortgage or judgment which remains undischarged of record;

(b) To convey lands pursuant to a contract for the conveyance of lands, the performance of which remains unfulfilled on the part of the decedent;

(c) To receive and distribute pursuant to the order of the court any unadministered assets of the estate;

(d) To perform such other acts as may be deemed necessary in the premises.

(2) Such special administrator, if his appointment has been made pursuant to section 311.06 (3) shall have the authority to carry out the duties imposed upon him by section 311.05.

(3) Such special administrator, if his appointment has been made pursuant to the provisions of section 311.06 (4) shall have the following powers:

(a) To collect all goods, chattels and credits of the deceased;

(b) To care for, gather and secure crops;

(c) With leave of the court to commence and maintain actions as such special administrator;

(d) With leave of the court to lease for a term not exceeding one year the real property of the deceased;

(e) With leave of the court to sell such personal property of the deceased as the court may direct;

(f) With leave of the court to carry on an existing business of the decedent until an executor or administrator is appointed;

(g) To do such other things as the court may direct for the best interests of the estate.

(4) Such special administrator, if his appointment has been made pursuant to the provisions of section 311.06 (5) shall have authority to discharge the duties imposed by section 72.17.

(4a) Such special administrator, if his appointment has been made pursuant to section 311.06 (6), shall with leave of court have authority as a personal representative to compromise and settle claims and to commence and maintain actions for the wrongful death of or for personal injuries to the decedent, or for injury or damage to his property.

(5) It shall be the duty of the special administrator to preserve the property of the deceased for such purpose and in such manner as the court may direct or as required by law. Such special administrator shall execute his duties with diligence and he shall make to said court without delay a full report of his acts under such appointment and such further reports as the court shall require. Upon filing of such report such further proceedings shall be had and such further order may be made by said court as it shall deem necessary or proper in the premises according to law.

(6) Such special administrator shall exercise no powers except those expressly granted to him by law or by the order of the court, which order may expressly limit his authority and powers.

(7) Such special administrator shall be allowed all necessary expenses incurred in the care and management of the estate and for his services \$2.50 per day and such further compensation as the court shall judge to be reasonable. If a special administrator is subsequently appointed executor or administrator, his compensation as special administrator may be considered and fixed at the time his compensation as executor or administrator is determined.

**History:** 1953 c. 300.

**311.10 Termination of authority and discharge of special administrator.** (1) The court may at any time require such special administrator to make a report. It may instruct him, at any time, concerning his duties and obligations. It may revoke his appointment whenever it shall be deemed best.

(2) Such special administrator shall be entitled to be discharged whenever the court shall be satisfied that he has properly performed his duties. Such discharge may be granted with or without notice as the court may determine. If notice of hearing upon the application for discharge is required such notice shall be given pursuant to the provisions of section 324.18.

(3) Upon the granting of letters testamentary, or of administration of the estate of the decedent, the power of the special administrator shall cease and such special administrator shall forthwith file an account and deliver to the executor or administrator all the goods, chattels, moneys and effects of the deceased in his hands. The court may accept the receipt in writing of the duly appointed executor or administrator of the estate as evidence of such delivery. If the special administrator is subsequently appointed executor or administrator he need not then file an account as special administrator unless his bond is not continued as his bond of executor or administrator. If no accounting as special administrator is made he shall account for the special administration in his account as executor or administrator. If the court is satisfied that he has properly performed his duties the court may discharge such special administrator, with or without notice. If notice of hearing upon the application for discharge is required it shall be given pursuant to the provisions of s. 324.18.

**History:** 1953 c. 300.

**311.11 Power of administrator acting in place of executor.** An administrator appointed in place of any former executor or administrator, for the purpose of administering the estate not already administered, shall have the same powers and shall proceed in settling the estate in the same manner as the former executor or administrator would or should have done; and may prosecute or defend any action commenced by or against the former executor or administrator, and may have execution on any judgment recovered in the name of such former executor or administrator.

**311.12 When administration revoked.** If, after granting letters of administration by any county court on the estate of any deceased person as an intestate, a will of such deceased person shall be duly proved in and allowed by said court such letters of administration shall be revoked by order of and surrendered to said court; and the powers of the administrator shall cease, and he shall thereupon render an account of his administration within such time as the court shall direct.

An order appointing an administrator, and necessarily finding intestacy, did not bar the probate of a will subsequently presented, although the time for appeal from such order had expired. Estate of Yahn, 258 W 280, 45 NW (2d) 702.

from revoking letters of administration in all other situations, the authority of the court to revoke letters of administration being inherent to the general powers of the court. Estate of Eannelli, 274 W 193, 80 NW (2d) 240.

This section does not preclude such court

**311.13 Power of executor on revocation.** The executor of the will shall in such case be entitled to demand, sue for and collect all the goods, chattels, rights and credits of the deceased remaining unadministered, and may be admitted to prosecute to final judgment any action commenced by the administrator before the revocation of his authority, and may have execution on any judgment recovered in the name of such administrator.

**311.14 Effect of revocation.** All acts of an executor or administrator as such, before the revocation of his letters testamentary or of administration, shall be as valid to all intents and purposes as if such executor or administrator had continued lawfully to execute the duties of his trust.

Where an administratrix whose letters were revoked because improperly issued was personally interested in a matter in dispute between 2 groups of heirs, she should not be allowed attorneys' fees and disbursements in liquidating such matter. The amount of compensation to her for services is within the discretion of the county court. Estate of Eannelli, 274 W 193, 80 NW (2d) 240.

**311.16 Public administrators; emergency administrator, guardian.** (1) When any person shall die intestate, leaving property in this state, but leaving no widow, widower or heir known to the county court, living therein, or when any administrator or executor or guardian shall be removed, resign or refuse to act, or when upon the final settlement of an estate and the assignment thereof there shall be minor or incompetent heirs, devisees or legatees entitled to any part thereof, and no person entitled to apply shall, within thirty days after such removal, resignation or refusal to act or within thirty days after such final settlement and assignment, apply for the appointment of an administrator or guardian, or when in any case there is no person entitled to apply for administration or guardianship within the county, known to the county court, and no valid application is made, and it appears to the court necessary that administration or guardianship should be granted without delay in order to protect and preserve such estate, the county court having jurisdiction of such estate or of such minor or incompetent person or his estate shall, upon its own motion or upon the application of the public administrator, grant administration of such estate or guardianship of the estate of such minor or incompetent person to the public administrator, and he shall thereupon take possession of the estate and protect and preserve the same, and proceed with the administration and with the care and management of the estate, as the case may require, until administration or guardianship shall be granted to some other person.

(2) If such decedent or minor or incompetent person be a nonresident, administration or guardianship of his estate shall be granted to the public administrator of the county where property may be found, and the administration or guardianship first granted shall extend to all the property in this state. Such administration or guardianship may be revoked at any time upon the appointment and qualification of an administrator or guardian, or when for any other cause the court shall deem it just or expedient; but such revocation shall not impair the public administrator's rights to receive from the estate his legal charges and disbursements, to be determined by the county court. This section does not apply to Milwaukee county.

(3) When notice has been given to the public administrator as specified by section 310.05 (2) that a resident of a foreign country, not represented by a consul, vice consul or consular agent, is interested in an estate, the public administrator shall appear for such foreign resident and be allowed his compensation and necessary expenditures in the same manner as a guardian ad litem.

**Cross Reference:** For duty of public administrator as to inheritance taxes, see 72.17.