CHAPTER 318.

ALLOWANCES, DISTRIBUTION, PARTITION.

318.01 Distribution of personalty.
318.02 Rights of state, notice to attorney general.
318.03 Escheats.
318.04 Lands distributed as personalty.
318.06 Estates, assigning residue.
318.065 Abridged judgment; recording.
318.07 Notice of share or legacy.
318.075 Receipts from guardians.
318.08 Remedy of creditors of nonresident heirs and legatees; service of citation.
318.10 Partition of residue, when necessary, judgment.
318.12 Notice of appointment of commissioners.
318.15 Valuation used in distribution of estate assets.
318.24 Advancements part of estate.
318.25 Advancement, how applied.
318.26 Equalization of shares; not to be refunded.
318.27 Gifts, when advancements; how valued.
318.28 Advancement to ancestor to affect child.
318.29 Advancements, questions for court.
318.30 Partition.
318.31 Compromises.

318.01 Distribution of personalty. (1) RESIDUE. The residue, if any, of the personal estate of any intestate and the residue of the personal estate of a testator, not disposed of by his will and not required for the purposes mentioned in s. 313.15, shall be distributed in the same proportions, and to the same persons, and for the same purposes, as prescribed for the descent and disposition of real estate in ch. 237, except that when the deceased leaves a widow or widower and lawful issue, the widow or widower shall be entitled to receive the greater of: (a) the same share of such residue as a child of such deceased, when there is only one child, and in other cases one-third of such residue; or (b) when the deceased leaves no lawful issue by a previous marriage, all of such residue up to a value of $10,000, any remainder over said $10,000 value to be distributed to the lawful issue of the deceased.

(3) ALLOWANCE FOR CARE OF GRAVE. In case there shall be no known heir or legatee or devisee residing in this state or in case there is no husband, widow or descendant, or no parent, brother or sister dependent upon the estate of the deceased, the court may order the executor or administrator to pay not to exceed one hundred dollars for perpetual care of the grave of the deceased as provided by subsection (9) of section 157.11.

(4) ALLOWANCE FOR TOMBSTONE. In case no provision is made in the will for a tombstone or monument or marker at the grave of the decedent, and none has been erected, the executor or administrator may expend a reasonable sum for a tombstone or monument or marker at the grave of his decedent. The expenditure shall be subject to the approval of the court and shall be classed as funeral expenses.

History: 1961 c. 264; 1963 c. 384.

Cross References: For county court orders concerning perpetual care of graves, see 157.11 and 157.125.

See 237.01 (8) for renunciation of inheritance provision.

318.02 Rights of state, notice to attorney general. In all cases mentioned in ss. 237.01 (7), 238.136, 318.03 (1) and (2) and 318.06 (8) (b) the county court having jurisdiction of the matter shall notify the attorney general of the interest or probable interest of the state immediately after the court learns of such interest; and the attorney general shall appear for and protect the interests of the state therein.

318.03 Escheats. (1) If any legacy or intestate property is not claimed by the legatee or heir within 120 days after entry of final judgment (or within the time designated in such judgment) it shall be converted into money and paid to the state school fund.

(2) If notice is given to a legatee or heir resident of a foreign country in the manner provided in ss. 310.05 and 324.18 and such person is not heard from within 120 days after entry of final judgment (or within a longer time designated in such judgment) the property which such foreign legatee or heir would take shall not escheat, but shall descend as intestate property.

(4) The moneys received by the state treasurer pursuant to ss. 237.01, 238.136 and 318.03 (1) shall be paid to the owner on proof of his right thereto. The claimant may, within 7 years after the date of publication by the treasurer of notice of receipt thereof as provided by s. 14.42 (15), file in the county court in which the estate was settled, a petition alleging the basis of his claim to the residue or to the legacy or share. The court shall order a hearing upon the petition; and 20 days' notice thereof shall be given by the claim-

ant to the attorney general, who shall appear for the state at the hearing. If the claim is established it shall be allowed without interest; and the court shall so certify to the department of administration, who shall audit and the state treasurer shall pay the same. If real property has been adjudged to escheat to the state pursuant to s. 237.01 (7) the county court which made the adjudication may adjudge at any time before title has been transferred from the state that the title shall be transferred to the proper owners pursuant to proceedings brought in the manner provided in this subsection.

Cross Reference: See ch. 24 for procedure for handling escheated lands. See 895.42 as to deposit of undistributed money and property by administrator or otherwise.

Once it is established in the county court that there are heirs to escheated property paid into the state treasury, the state no longer has any right or interest in the property, and the attorney general has no duty or authority to contest the distribution of the estate to such heirs on the ground that other heirs may exist who have a better claim, since, if there are any heirs at all, the state has no right to the property and it is then for the court to determine which of the heirs is entitled to it. Estate of Kavanaugh, 11 W (2d) 619, 106 NW (2d) 405.

Escheat in case of disappearance of a known heir discussed. Estate of Smith, 16 W (2d) 118, 113 NW (2d) 841.

A claimant who had a hearing in county court on a claim of heirship cannot make a further claim under (4); the matter was res adjudicata. Estate of Radocay, 30 W (2d) 671, 142 NW (2d) 224.

318.04 Lands distributed as personalty. If any land held by an executor or administrator as mentioned in sections 312.10 and 312.13 shall not be sold by him as therein provided it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons partition thereof may be made between them in like manner as if it were real estate which the deceased held in his lifetime.

318.06 Estates, assigning residue. (1) DEDUCTIONS BEFORE JUDGMENT. After the payment of the debts, funeral charges and expenses of administration and after deducting all the allowances provided for in this chapter or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the county court shall, by a judgment assign the residue of the estate, if any, to such persons as by law are entitled to the same.

(2) RIGHTS OF PARTIES. Such judgment may be made on the application of the executor or administrator or of any person interested in the estate. The court shall name therein the persons and assign to each the portion to which he is entitled. The right to recover any such portion from the executor or administrator or from any other person is hereby given to the person entitled thereto.

(3) JUDGMENT AS EVIDENCE. Any finding or determination as to heirship or assignment of real estate in any such judgment shall be presumptive evidence of any fact so found and of the right to the portion of any estate so assigned and shall be conclusive evidence thereof as to all persons to whom notice shall have been given as provided in section 324.18, or who have appeared in any such proceeding and as to all persons claiming under them.

(4) TO APPLY TO REALTY. This section shall apply to all real estate described in any such judgment whether or not in the possession of the executor or administrator, and such judgment shall describe the real estate to be assigned and a certified copy of said judgment describing such real estate, or an abridgment or abstract of such judgment as provided in section 318.065, shall be recorded by the executor or administrator in the office of the register of deeds in each county wherein such real estate is located.

(5) ORDER OF DISCHARGE. Upon the filing of receipts for all personal property assigned in the judgment, or other evidence of transfer satisfactory to the court, the court shall enter an order finding such fact, discharging the executor or administrator and making the judgment absolute. Such order, or a certified copy thereof, shall be presumptive evidence of the facts therein adjudicated.

(7) PROOF OF HEIRSHIP. (a) Proof of who are the heirs of a deceased and a determination thereof shall be made in every estate of a decedent where notice to creditors is required, and no order or final decree may be made assigning the property of such estate until such determination has been made.

(b) No determination of heirship shall be made until proof is filed that notice of the hearing for determination of heirship has been given as hereinafter provided, nor until the testimony or deposition of one or more witnesses is reduced to writing and filed, and the court is, from such evidence, fully satisfied who the heirs of the deceased are. Application for determination of heirship may be included in the petition for administration, petition for probate, petition for final settlement or in a separate petition; and the notice may be included in the notice of the hearing on any of said petitions, or in the notice to creditors, as the court shall order.

(c) Notice of the hearing for determination of heirship shall be given to all persons interested in the manner provided in s. 324.18 unless such notice is dispensed with by

waiver or general appearance. Service of such notice by mail or personal service can be waived, but publication of such notice cannot be waived.

(8) DISPOSITION OF MONEY OR OTHER PROPERTY WHERE PAYMENT OR TRANSFER IS PROHIBITED. (a) Where the laws of the United States or executive orders or regulations pursuant thereto prohibit payment, conveyance, transfer, assignment or delivery of property or interest therein to a legatee, devisee, distributee, ward or beneficiary of an estate or trust or to any person on his behalf, the county court or other court having jurisdiction thereof, after due notice to such person as prescribed by s. 324.18, may, by judgment or decree, authorize such disposition of such property or interest therein as is or may be permissible under or in conformity with the laws, executive orders or regulations of the United States of America.

(b) Whenever payment of a legacy or a distributive share cannot be made to the person entitled thereto, or it shall appear that such person may not receive or have the opportunity to obtain said legacy or distributive share, the court may, on petition of an interested party or in its discretion, order that the money be deposited in the state school fund until such time as the court may determine, upon the claim of a person asserting a right to such funds, that he is entitled thereto. Such claim shall be made in the manner provided in s. 318.03 (4), except that there shall be no limit upon the time within which such a claim may be filed. When a claimant to such funds resides outside of the United States or its territories, the court in its discretion, in order to assist in establishing such claimant's identity, his right and opportunity to receive such fund, may require the personal appearance of such claimant before the court.

(9) PARTITION. Property passing by descent or by will to persons as joint tenants or tenants in common may be partitioned among such persons by the judgment of the county court assigning such property, provided a petition therefor is filed with the court prior to such judgment signed by all parties interested in the property involved. Such petition shall be supported by a stipulation signed by all persons interested in the property in the manner provided by section 235.01 which stipulation shall set out the manner in which the property is to be divided and the agreement of all persons interested therein in such division. This subsection shall be applicable to the property of estates which has not been assigned by judgment of the court filed prior to June 9, 1945 and shall validate all partitions of property accomplished prior to said date in the manner herein provided.

(10) ASSIGNING PURSUANT TO CONTRACT. If any person having an interest in an estate shall assign all or part of his interest therein (other than an interest not assignable by the specific language of a will) as collateral or otherwise and the assignee shall serve a copy thereof on the executor or administrator of the estate and shall file the assignment with the county court having jurisdiction of the estate before the entry of the final decree or judgment therein, the county court shall assign to such assignee in the final decree or judgment in the estate the legacy, share or portion included within such assignment to the extent that such assignment is valid as determined by said court, after giving effect to any credits to which the assignor may be entitled.

Where an unappealed final decree assigning an estate to a trust for life of widow and on her death "to the surviving children of deceased," a widow of a son who died after testator but before the life tenant receives nothing and the court will not consider whether the decree correctly construed the will. Will of Falk, 12 W (2d) 247, 107 NW (2d) 134.

A final judgment of a county court administering the estate of decedent whose property had its situs within the county and in which county the intestate was domiciled, which judgment assigned a portion of the estate as an intestate share to a deceased person (albeit erroneously), was not void, since death of the intestate and her domicile were the jurisdictional facts which empowered the court to act and gave the judgment efficacy. Estate of Hatzl, 24 W (2d) 64, 127 NW (2d) 782, 129 NW (2d) 249.

Where distribution of an estate was made prior to judgment but in accordance with an agreement of the heirs and the determination of the court on inheritance taxes, the trial court could properly enter the judgment in accordance with the agreement, although a 3rd party who had no notice has a prior claim to the estate. Estate of Wettig, 29 W (2d) 239, 138 NW (2d) 206, 139 NW (2d) 622.

318.065 Abridged judgment; recording. (1) There may be recorded in the office of the register of deeds in lieu of a certified copy of the final judgment assigning an estate an abridgment or abstract of such final judgment relating to and confined to such portions of such final judgment as may relate to or affect real estate. The judge of the court assigning such estate shall certify as to the truth and accuracy of such abridgment or abstract which shall include the following matters set out in such final judgment:

(a) A general recital of those facts pertaining to the hearing, allowance of final account, and the filing of a final judgment therein.

(b) The findings of fact relating to

1. The death of the deceased.
2. His testacy or intestacy.
3. The payment of inheritance tax, claims and charges against such estate.

4. The survivors or beneficiaries.

(c) The description of that portion of his property which may relate to or affect real estate.

(d) The assignment of such property.

(e) Such other matters set out in the final judgment as may be deemed necessary.

(2) The certification and recording of such abridgment or abstract shall have the same force and effect as to the property described therein as the certification and recording of the entire final judgment.

318.07 Notice of share or legacy. At least 10 days prior to distribution of a share or legacy for the benefit of a minor or incompetent for whom a general guardian has been appointed, the personal representative shall notify the court appointing such general guardian, in writing, the total amount to be distributed to the general guardian for the benefit of his ward. An affidavit of mailing said notice shall be filed before making such distribution.

History: 1964 Sup. Ct. Order, 25 W (2d) ix.

318.075 Receipts from guardians. If a legatee or distributee of an estate be a minor or an incompetent person and has a general guardian the executor or administrator shall take from such guardian on delivery of the legacy or share, a receipt and file the same with the court of probate and such court shall transmit a certified copy of such receipt to the court which appointed such guardian.

History: 1964 Sup. Ct. Order, 25 W (2d) ix.

Cross Reference: For procedure in case of payment to and receipt by a foreign guardian, see 319.29.

318.08 Remedy of creditors of nonresident heirs and legatees; service of citation. (1) Whenever any legacy or distributive share of any estate belongs to any debtor who has absconded from or is a nonresident of this state, any of his creditors may petition to intervene in the probate proceedings to compel the application of said legacy or distributive share to the payment of his debt, and whenever it shall be necessary a citation to such debtor to appear at a time certain may be served by publication.

(2) Such citation shall be served in the manner provided by section 324.18.

(3) Upon due proof of service of, and at the time fixed in said citation, said court shall proceed to consider such petition, and take proof, and grant such relief thereunder as shall be just, and any order, judgment or determination made in said proceedings shall be binding upon said debtor. If the claim is not a judgment and any issue shall arise in said proceedings relating to said debt, the court may stay such proceedings pending the final determination of said issue. The court may at any time require the petitioner to give a bond in such sum and with such sureties for costs and damages as it may deem proper.

318.10 Partition of residue, when necessary, judgment. (1) When the court shall assign the residue of any personal estate to two or more persons, it shall not be necessary to make partition or distribution of such estate; but when partition is requested by any party in interest prior to final judgment, and it appearing to the satisfaction of the court that partition can be made without damage or prejudice to the owners, partition may be made by three disinterested persons to be appointed by the court. Said court shall issue its warrant to them and they shall be sworn to a faithful discharge of their duties.

(2) Such partition, when completed and approved, shall be incorporated in and made a part of the final judgment.

318.12 Notice of appointment of commissioners. Notice of the time and place of hearing the application for the appointment of commissioners shall be given as provided by section 324.18.

318.15 Valuation used in distribution of estate assets. If a general bequest of estate assets, including a pecuniary bequest, in a dollar amount fixed by formula or otherwise is satisfied by a distribution in kind, the distribution shall be made at current fair market values unless the will expressly provides that another value may be used. If the will requires or permits a different value to be used all assets available for distribution, including cash, shall unless otherwise expressly provided be so distributed that the assets, including cash, distributed in satisfaction of the bequest will be fairly representative of the net appreciation or depreciation in the value of the available property on the date or dates of distribution. A provision in a will that the executor may fix values for the purpose of distribution does not of itself constitute authorization to fix a value other than current fair market value.

History: 1965 c. 65.

318.24 Advancements part of estate. Any estate, real or personal, that may have been given by an intestate as an advancement to any lineal descendent shall be considered as a part of the estate of the intestate, upon the division and distribution thereof among his heirs, and shall be taken by such descendant toward his share of the estate.

318.25 Advancement, how applied. If the advancement shall exceed the share of the heir he shall be excluded from any further portion of the estate, but he shall not be required to refund any part of such advancement.

318.26 Equalization of shares; not to be refunded. If such advancement be made in real estate the value thereof shall, for the purposes mentioned in section 318.25, be considered a part of the real estate to be divided; and if it be in personal estate it shall be considered as a part of the personal estate; if in either case it shall exceed the share of real or personal estate respectively that would have come to the heir so advanced he shall not be required to refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

318.27 Gifts, when advancements; how valued. All gifts and grants shall be deemed to have been made in advancement if they are expressed in the gift or grant to be so made or if charged in writing by the intestate as an advancement or acknowledged in writing as such by the child or other descendant. If the value of the estate so advanced shall be expressed in the conveyance or in the charge thereof made by the intestate or in the acknowledgment of the party receiving it such value shall govern in the division and distribution of the estate; otherwise it shall be estimated according to its value when given, as nearly as the same can be ascertained.

318.28 Advancement to ancestor to affect child. If any child or other lineal descendant, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced in like manner as if the advancement had been made directly to them.

318.29 Advancements, questions for court. All questions as to advancements shall be determined by the county court, and shall be specified in the judgment assigning the estate.

318.30 Partition. (1) Whenever any heir or devisee is entitled to maintain an action under chapter 276 to partition any real estate received by descent or devise, he may, at any time prior to the entry of the order of final settlement and distribution in the estate of the person from whom he derives such real estate, petition the court in which such estate is pending for a partition or sale of such real estate and a division of the proceeds among the persons entitled to receive the same. Such petition shall be verified and shall contain a description of the real estate to be partitioned or sold and the names and post-office addresses of all persons interested therein (including any person who may have an inchoate dower right therein).

(2) The court shall by order fix the time and place for hearing such petition and notice thereof shall be given as provided by section 324.18, except that all interested persons residing within the state shall be served with notice in the manner a summons is served in circuit court other than by publication.

(3) Upon the hearing, if the court shall find that actual partition of said premises can be made without great prejudice to the owners it shall by order appoint 3 disinterested persons commissioners to make the partition according to the interests of the parties. In making partition the commissioners shall proceed according to chapter 276 so far as applicable and not inconsistent with this section. Upon confirmation of their report, judgment of partition according thereto shall be made a part of the final order of distribution in said estate.

(4) If the court shall find that actual partition of said premises cannot be made or cannot be made without great prejudice to the owners, it shall order a sale thereof to be made, either at public or private sale, by the administrator or executor of the estate who shall give such additional bond as the court shall order. Notice of public sale shall be given as provided for the sale of real estate under chapter 316.

(5) Report of sale shall be filed and an order entered fixing the time and place for hearing on the same and notice thereof shall be given by mail to all persons interested at least 5 days before the hearing.

(6) Upon confirmation of such sale the administrator or executor by order shall be authorized and directed to make a conveyance of said property to the purchaser.

(7) All costs of the proceeding and sale including attorney fees, administrator or executor fees, cost of serving and publishing notices, cost of abstract and in case the court authorizes the employment of a real estate broker a reasonable fee for him, shall be allowed by the court and paid out of the proceeds of the sale and the balance thereof shall be distributed in the order of final settlement in said estate to the persons entitled thereto.

318.31 Compromises. (1) The court may authorize executors, administrators and trustees to adjust by compromise any controversy that may arise between different claimants to the estate or property in their hands to which agreement such executors, administrators or trustees and all other parties in being who claim an interest in such estate and whose interests are affected by the proposed compromise shall be parties in person or by guardian as hereinafter provided.

(2) The court may likewise authorize the person or persons named as executors in one or more instruments purporting to be the last will and testament of a person deceased, or the petitioners for administration with such will or wills annexed, to adjust by compromise any controversy that may arise between the persons claiming as devisees or legatees under such will or wills and the persons entitled to or claiming the estate of the deceased under the statutes regulating the descent and distribution of intestate estates, to which agreement or compromise the persons named as executors or the petitioners for administration with the will annexed, as the case may be, those claiming as devisees or legatees and those claiming the estate as intestate, shall be parties, provided that persons named as executors in any instrument who have renounced or shall renounce such executorship and any person whose interest in the estate is unaffected by the proposed compromise shall not be required to be parties to such compromise.

(3) Where a person subject to guardianship is a necessary party to a compromise under this section he shall be represented in the proceedings by his guardian or by a special guardian appointed by the court, who shall in the name and on behalf of the party he represents make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court.

(4) If it appears to the satisfaction of the court that the interests of persons unknown or the future contingent interests of persons not in being are or may be affected by the compromise, the court shall appoint some suitable person or persons to represent such interests in the compromise and to make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court. In the event that by the terms of any compromise made pursuant to this section money or property is directed to be set apart or held for the benefit of or to represent the interest of persons subject to guardianship or persons unknown or unborn, the same may in a proper case be deposited in any trust company, or any state or national bank within this state authorized to exercise trust powers, or with the public administrator, and shall remain subject to the order of the court.

(5) An agreement of compromise made in writing pursuant to this section, if found by the court to be just and reasonable in its effects upon the interests in said estate or property of persons subject to guardianship, unknown persons, or the future contingent interests of persons not in being, shall be valid and binding upon such interests as well as upon the interests of adult persons of sound mind.

(6) An application for the approval of a compromise pursuant to this section shall be made by petition duly verified, which shall set forth the provisions of any instruments or documents by virtue of which any claim is made to the property or estate in controversy and any and all facts relating to the claims of the various parties to the controversy and the possible contingent interests of persons not in being and all facts which make it proper or necessary that the proposed compromise be approved by the court. The court in its discretion may entertain such application prior to the execution of the proposed compromise by all the parties required to execute it and may permit the execution by the necessary parties to be completed after the inception of the proceedings for approval thereof if the proposed compromise has been approved by the estate representatives described in subsections (1) and (2). The court shall inquire into the circumstances and make such order or decree as justice requires.