

is based upon present s. 313.05 (2) and (3) but contains new provisions limiting the time within which a claim may be contested if a claim has been served upon the personal representative or attorney for the estate. [Bill 5-S]

859.35 History: 1969 c. 339; Stats. 1969 s. 859.35.

Legislative Council Note, 1969: This section is based upon present ss. 313.03 (5) and 313.05 (4). [Bill 5-S]

859.37 History: 1969 c. 339; Stats. 1969 s. 859.37.

Legislative Council Note, 1969: This section is a restatement of ss. 313.06 and 313.17. [Bill 5-S]

859.39 History: 1969 c. 339; Stats. 1969 s. 859.39.

Legislative Council Note, 1969: This section is based upon and is a consolidation of provisions contained in present s. 313.14 and ss. 313.17 to 313.21. [Bill 5-S]

859.40 History: 1969 c. 339; Stats. 1969 s. 859.40.

Legislative Council Note, 1969: This section is a restatement of present ss. 312.16 and 312.17. [Bill 5-S]

859.41 History: 1969 c. 339; Stats. 1969 s. 859.41.

Legislative Council Note, 1969: This section is a restatement of present ss. 287.43 and 287.44. [Bill 5-S]

859.43 History: 1969 c. 339; Stats. 1969 s. 859.43.

Legislative Council Note, 1969: Sub. (2) is new and is consistent with the new power to sell, lease and mortgage property which is given to the personal representative in ch. 860. [Bill 5-S]

859.45 History: 1969 c. 339; Stats. 1969 s. 859.45.

Legislative Council Note, 1969: This section is new. The Wisconsin Court has consistently held that tort claims against a decedent do not have to be filed in probate court. See *Lounsbury v. Eberlein*, 2 Wis. 2d 112, 86 N.W. 2d 12 (1957). [Bill 5-S]

859.47 History: 1969 c. 339; Stats. 1969 s. 859.47.

Legislative Council Note, 1969: This section is a restatement of present s. 317.10. [Bill 5-S]

859.49 History: 1969 c. 339; Stats. 1969 s. 859.49.

Legislative Council Note, 1969: This section changes the common law rule which is to the effect that the estate of a deceased wife is not liable for the expense of her last illness when she is survived by a husband who is liable for all necessities provided for her during her lifetime. See *Grasser v. Anderson*, 224 Wis. 654, 273 N.W. 63 (1937). [Bill 5-S]

859.51 History: 1969 c. 339; Stats. 1969 s. 859.51.

CHAPTER 860.

Sale, Mortgage and Lease of Property.

Legislative Council Note, 1969: This chapter replaces chapter 316. [Bill 5-S]

860.01 History: 1969 c. 339; Stats. 1969 s. 860.01.

Legislative Council Note, 1969: This section gives to all personal representatives the power that is given to executors in most wills. It is the power which all personal representatives have always had over personal property in Wisconsin. Though a personal representative is given unrestricted power to sell, mortgage or lease property he will be held financially responsible to the persons interested if he acts carelessly or unreasonably. He "must act not only honestly or with good faith in the narrow sense but must also exercise the duty of loyalty toward the beneficiary for whose benefit the power of sale is to be exercised and with such care and skill as a man of ordinary prudence would exercise in dealing with his own property". *Estate of Scheibe*, 30 Wis. 2d 116, 140 N.W. 2d 196 (1966). [Bill 5-S]

860.05 History: 1969 c. 339; Stats. 1969 s. 860.05.

Legislative Council Note, 1969: This section is a restatement of present ss. 316.235 and 316.24. [Bill 5-S]

860.07 History: 1969 c. 339; Stats. 1969 s. 860.07.

Legislative Council Note, 1969: This section is new and its purpose is to prevent the encumbrance of other assets in an estate by warranting title to real estate sold. [Bill 5-S]

860.09 History: 1969 c. 339; Stats. 1969 s. 860.09.

Legislative Council Note, 1969: The purpose of this section is to provide a forum and procedure for the purchaser or lessee who seeks to specifically enforce a contract which he had with the decedent. If the decedent's contract required him to give a warranty deed, the purchaser's right to the warranties which the decedent agreed to give should not be cut off by the decedent's death. [Bill 5-S]

860.11 History: 1969 c. 339; Stats. 1969 s. 860.11.

Legislative Council Note, 1969: Sub. (4) establishes a simple procedure for securing court authority to sell, mortgage or lease contrary to the provisions of the will when the proceeds are required to pay allowances, expenses of administration and claims. Compliance with this subsection protects the personal representative from liability to the persons interested. It is irrelevant to the rights and title of the purchaser, mortgagee or lessee. [Bill 5-S]

860.13 History: 1969 c. 339; Stats. 1969 s. 860.13.

Legislative Council Note, 1969: This section is a restatement of present ss. 313.093 and 316.41. [Bill 5-S]