

1975 Senate Bill 388

Date published: June 10, 1976

CHAPTER 331, Laws of 1975

AN ACT to repeal 72.15 (1) (b), 72.76 (1) (i) to (n) and (2) and 865.135; to renumber 72.15 (1) (c); to amend 72.14 (1) (a) and (2), 72.30 (2) (intro.), 72.33 (2) (intro.) and (a), 856.15 (1), 856.31, 857.03, 858.01, 858.07, 858.09, 858.13, 859.01 (3), 859.47, 861.05 (1), 863.21, 863.23, 863.25, 865.01, 865.02 (1) (a) 2 and 3 and (b) 1, 865.05 (1), 865.065 (1), 865.08 (6), 865.10 (1),

865.11, 865.13, 865.16 (1) (intro.) and (2), 867.01 (3) (f), 867.02 (2) (g), 878.01 (1) and 878.03; to repeal and recreate 72.15 (1) (a) and 72.76 (1) (h); and to create 72.12 (7) (c), 72.33 (4), 865.02 (1) (a) 4, 865.20, 865.21, 867.01 (5) and 867.02 (5) of the statutes, relating to the probate of estates, inheritance and gift taxes and powers of attorney.

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

SECTION 1. 72.12 (7) (c) of the statutes is created to read:

72.12 (7) (c) *Definition.* In this subsection, “distributee” shall include “trustee”.

SECTION 2. 72.14 (1) (a) and (2) of the statutes are amended to read:

72.14 (1) (a) Debts of the decedent ~~allowed by the court~~, including medical expenses and expenses of last illness to the extent not claimed for income tax purposes.

(2) EXPENDITURES BY CERTAIN DISTRIBUTEES OUT OF CERTAIN TAXABLE ASSETS IN THEIR POSSESSION. Deductions for the expenses in sub. (1) ~~(b) to (e) and of last illness~~, to the extent not claimed for income tax purposes ~~made, paid~~ by a distributee, trustee or other person out of taxable assets not in the possession of a personal representative or special administrator, are allowed to the extent that ~~property assets~~ in the possession of a personal representative or special administrator ~~is are~~ not sufficient to pay them or to the extent that the distributee, trustee or other person is obligated to pay, or other assets are subject to the payment of, such expenses.

SECTION 3. 72.15 (1) (a) of the statutes is repealed and recreated to read:

72.15 (1) (a) All transfers to the following are exempt from the tax imposed by this subchapter:

1. The United States or any state or political subdivision thereof strictly for a public purpose;
2. Corporations, trusts, voluntary associations or foundations organized and operated exclusively for religious, humane, charitable, scientific or educational purposes;
3. Any corporation, organization, association or foundation in trust for the direct financial benefit of any municipality;
4. Any national organization of veterans of the U.S. armed forces or a subordinate unit thereof;
5. Banks or trust companies of this state, or to individuals residing in this state, or to fraternal societies organized under ch. 188, as trustees, in trust exclusively for the purposes specified in subs. 1 and 2.

SECTION 4. 72.15 (1) (b) of the statutes is repealed.

SECTION 5. 72.15 (1) (c) of the statutes is renumbered 72.15 (1) (b).

SECTION 7. 72.30 (2) (intro.) of the statutes, as affected by chapter 41, laws of 1975, is amended to read:

72.30 (2) (title) NOTICE TO DISTRIBUTEES AND TRUSTEES. (intro.) Not more than 10 days after filing the tax return under sub. (1), the personal representative, special administrator or trustee shall mail or deliver to each distributee and trustee of a transfer taxable under this subchapter a copy of the return or a statement containing the following:

SECTION 8. 72.33 (2) (intro.) and (a) of the statutes are amended to read:

72.33 (2) (intro.) If the amount of the federal estate tax initially paid is subsequently increased or decreased and if this affects the amount of the allowable

federal estate tax under subch. II or III deduction under s. 72.14 (1) (e), or if the federal determination requires adjustments in Wisconsin distribution or the deductions allowable under s. 72.14 (1) (a) only for medical expenses and last illness under s. 72.14 (1) (c), the person entitled to the refund or liable for the additional tax under subch. II or III shall, within 30 days:

(a) Submit to the department ~~and county court~~ copies of any additional papers or supporting documents required to be filed with the federal government.

SECTION 8m. 72.33 (4) of the statutes is created to read:

72.33 (4) No valuation or other substantive issue upon which the department has issued its certificate may be reopened more than 6 months after the date of the certificate except with the mutual consent of the department and taxpayer.

SECTION 9. 72.76 (1) (h) of the statutes is repealed and recreated to read:

72.76 (1) (h) The transfer is exempt under s. 72.15 (1) (a).

SECTION 10. 72.76 (1) (i) to (n) and (2) of the statutes are repealed.

SECTION 12. 856.15 (1) of the statutes is amended to read:

856.15 (1) **GENERALLY.** The court may grant probate of an uncontested will on the execution in open court by one of the subscribing witnesses of a sworn statement that the will was executed as required by the statutes and that the testator was of sound mind, of full age and not acting under any restraint at the time of the execution thereof. If an uncontested will contains an attestation clause showing compliance with the requirements for execution under s. 853.03 or 853.05, the court may grant probate without any testimony or other evidence.

SECTION 13. 856.31 of the statutes is amended to read:

856.31 Selection of attorney to represent estate. Whenever a corporate fiduciary is appointed as the sole personal representative, the person or persons receiving the majority interest from the estate may within 30 days after the date of the appointment select the attorney who shall represent the personal representative in all proceedings of any kind or nature, unless good cause is shown before the court why selection should not be so made, or unless the testator's will names the attorney or firm who shall represent his personal representative. The corporate fiduciary shall notify the persons who are entitled to name the attorney of this right within 5 days after appointment. In case of ~~persons who are a person is~~ under disability, ~~their~~ his court appointed guardian, if any, ~~shall may~~ act for ~~them~~ him under this section. In the case of a minor who has no court appointed guardian, his natural guardian, if any, ~~shall may~~ act for him. "Interest", as used in this section, means beneficial interest whether legal or equitable.

SECTION 14. 857.03 of the statutes is amended to read:

857.03 Powers and duties of personal representative; in general. The personal representative shall collect, inventory and possess all the decedent's estate; ~~inventory all of the decedent's estate and all property subject to inheritance tax and have appraised such as is required by law;~~ collect all income and rent from decedent's estate; manage the estate and, when reasonable, maintain in force or purchase casualty and liability insurance; contest all claims except claims which he believes are valid; pay and discharge out of the estate all expenses of administration, taxes, charges, claims allowed by the court, or such payment on claims as directed by the court; render accurate accounts; make distribution and do any other things directed by the court or required by law.

SECTION 15. 858.01 of the statutes is amended to read:

858.01 Inventory must be filed by personal representative. Except as provided by s. 865.11, ~~every~~ the personal representative, within a reasonable time but no later than 6

months after his appointment unless the court has by order extended or shortened the time, shall file with the court an inventory of all property owned by the decedent. ~~The inventory shall also separately include all property which is required to be listed for inheritance tax purposes only.~~ The inventory when filed shall show the value of all property as of the date of the decedent's death. If a special administrator or personal representative has filed an inventory, no personal representative who is later appointed need file a further inventory unless additional property is found or the court orders otherwise.

SECTION 16. 858.07 of the statutes is amended to read:

858.07 Contents of inventory. The personal representative shall include in the inventory all property subject to administration. ~~For information purposes the personal representative also shall include all property over which the decedent had a power of appointment, life insurance payable to beneficiaries other than the estate, benefits payable on decedent's death under annuities or under a retirement plan, and shall list joint and life tenancies, gifts which may have been made in contemplation of death or taking effect upon death or made within 2 years prior to death and any other property which may be subject to inheritance tax as a result of the decedent's death. He shall include a statement of all encumbrances, liens and any encumbrance, lien or other charges charge upon any each item.~~

SECTION 17. 858.09 of the statutes is amended to read:

858.09 (title) Inventory, certification, examination in court. ~~Every~~ The personal representative shall ~~verify every inventory required of him. The verification is to the effect that to the best of his knowledge the inventory includes all property of his decedent which is subject to administration and all property which may be subject to inheritance tax as a result of his decedent's death~~ certify under oath that the inventory, to the best of his knowledge, includes all property, encumbrances, liens or charges required to be shown therein. The court, at the request of any person interested in the estate or the property listed or on its own motion, may examine the personal representative on oath in relation thereto or in relation to any proposed addition thereto or deletion therefrom.

SECTION 18. 858.13 of the statutes is amended to read:

858.13 When appraisal necessary. Except as provided in s. 858.15 all inventoried property shall be appraised by one or more disinterested persons appointed by the court. The appraiser or appraisers shall appraise each item in the inventory which is required to be appraised and certify to its value. ~~Where~~ If the estate property is situated in 2 or more counties, one or more appraisers may be appointed for each county.

SECTION 19. 859.01 (3) of the statutes is amended to read:

859.01 (3) This section does not ~~apply to~~ bar claims based on tort, claims based on Wisconsin income, sales, withholding, gift, inheritance or estate taxes, claims for funeral expenses, claims for administration expenses or claims of the United States.

SECTION 20. 859.47 of the statutes is amended to read:

859.47 Payment of unfiled claims. ~~Where~~ If a personal representative has in good faith paid unfiled claims against the estate, the payments may be allowed upon proof that they were just demands against the estate and that they were paid within the time limited for the presentation of claims, or at any time with the consent of the heirs or beneficiaries affected by the payment. Notice that application will be made for such allowance shall be given under s. 879.03. Payment shall be allowed on a pro rata basis with other claims of the same class if the estate is insolvent.

SECTION 21. 861.05 (1) of the statutes is amended to read:

861.05 (1) If decedent dies testate, the surviving spouse has a right to elect to take the share provided by this section. The elective share consists of one-third of the value of the net probate estate, reduced by the value of any property given outright to the spouse under the decedent's will. As used in this subsection, net probate estate means the net estate as defined in s. 851.17, including any property passing by intestate succession as well as under the will, but without deduction of the estate taxes.

SECTION 23. 863.21 of the statutes is amended to read:

863.21 Construction of will, notice. Notice of hearing upon a petition for the construction of a will shall be given under s. 879.05. If a petition for final judgment contains a request for construction of a will, the notice of hearing on such petition shall include, or be accompanied by, specific notice of the request for construction, the reasons therefor and a copy of the petition or the part thereof requesting construction.

SECTION 24. 863.23 of the statutes is amended to read:

863.23 (title) Determination and proof of heirship. In every administration of an estate in which notice to creditors is required, except in proceedings under ch. 865, the persons who are the heirs of the decedent shall be determined by the court after hearing. Proof and determination of heirship may be had under this section in an estate administered informally under ch. 865 if desired by the personal representative or interested persons or ordered by the court. Notice of the hearing is required except in summary assignment under s. 867.02. Notice shall be given under s. 879.03 but shall include notice by publication under s. 879.05 (4). Determination of heirship shall not be made until after the testimony or deposition of one or more witnesses is reduced to writing and filed. A petition for determination of heirship may be included in the petition for administration, petition for approval of final account and final judgment or in a separate petition; and the notice may be included in the notice of hearing on any of the petitions, or in the notice to creditors.

SECTION 25. 863.25 of the statutes is amended to read:

863.25 Petition for final judgment. Except where final settlement is by sworn statement under s. 865.16, after the payment of the allowances, debts, taxes, funeral expenses and expenses of administration and when, if necessary, a fund has been withheld from distribution for the payment of contingent claims, for meeting possible tax liability or for any other reasonable purpose, the personal representative shall, if the estate is in a condition to be closed, file his final account and at the same time petition the court for hearing on the final account and for final judgment assigning the estate to the persons entitled to the same. Notice of hearing shall be given under s. 879.03. If the petition requests the construction of a will, the notice shall comply with the requirements under s. 863.21.

SECTION 26. 865.01 of the statutes is amended to read:

865.01 Applicability of informal administration. "Informal administration of estates" means the administration of decedents' estates, testate and intestate, without exercise of continuous supervision by the court. Administrative action by the probate registrar is not action by the court. Informal administration proceedings are, nevertheless, proceedings in the county court, records of which shall be kept in the same manner as they are kept for formal proceedings; all of the duties and powers of registers in probate, including the certification of papers filed in the probate court, as set forth in ch. 253 shall apply to informal proceedings in the same manner as they apply to formal proceedings. All provisions of chs. 851 to 879 not inconsistent with this chapter shall apply to the informal administration of estates.

SECTION 27. 865.02 (1) (a) 2 and 3 of the statutes are amended to read:

865.02 (1) (a) 2. The will names a personal representative who accepts such

appointment; ~~and~~

3. Bond is furnished if required under s. 865.07 as provided under s. 856.25; and
SECTION 28. 865.02 (1) (a) 4 of the statutes is created to read:

865.02 (1) (a) 4. The probate registrar may appoint a guardian ad litem, and shall have the authority, for such purpose, granted to the court by, and shall proceed pursuant to s. 879.23.

SECTION 29. 865.02 (1) (b) 1 of the statutes is amended to read:

865.02 (1) (b) 1. All interested persons request or consent in writing to informal administration and to the appointment of the same person as personal representative. ~~An interested person who is a minor or otherwise incompetent may give consent by a~~ A guardian or guardian ad litem may consent on behalf of an interested person who is a minor or incompetent. The probate registrar may appoint a ~~parent as~~ guardian ad litem. ~~Consent may also be given by an interested person who has an identical interest as the person who is a minor or otherwise incompetent, and shall have the authority, for such purpose, granted to the court by, and shall proceed pursuant to s. 879.23.~~

SECTION 30. 865.05 (1) of the statutes is amended to read:

865.05 (1) Notice of application to initiate administration of an estate under this chapter shall be given to the persons entitled thereto under s. 879.03 (2) and (3) in accordance with s. 879.05, unless waived under s. 879.09. Notice to creditors shall be given in accordance with s. 859.07. ~~Such notice shall state that claims shall be presented pursuant to s. 865.135 and shall further state that all such claims shall be presented within 3 months of the date of first insertion or be forever barred.~~

SECTION 31. 865.065 (1) of the statutes is amended to read:

865.065 (1) The term "probate registrar" refers to the official of the court designated to perform the functions of probate registrar. The acts and orders which this chapter specifies as performable by the probate registrar may be performed either by the county judge or by a person, including the clerk, deputy clerk, register in probate, deputy register in probate, and court legal assistant, designated by the court by a written order filed and recorded in the office of the court. The probate registrar shall be an officer of the court and, unless prohibited by the court, shall be entitled to use the court seal.

SECTION 32. 865.08 (6) of the statutes is amended to read:

865.08 (6) If the will of the decedent provides for a testamentary trust, letters of trust shall be issued by the probate registrar to the trustee upon admission of the will to informal probate at the same time that letters are granted to the personal representative. The probate registrar shall determine if bond shall be required and, if so, the amount thereof, and for such purpose the probate registrar shall have the authority granted to the court by, and shall proceed pursuant to s. 701.16 (2). Thereafter, the trustee shall continue to be interested in the estate, and beneficiaries ~~in~~ of the testamentary trust shall cease to be interested in the estate except under s. 851.21 (3). The trust shall be administered under supervision of the court under ch. 701.

SECTION 33. 865.10 (1) of the statutes is amended to read:

865.10 (1) ~~A~~ The personal representative shall proceed with the settlement and distribution of the decedent's estate and, except as provided by this chapter or required by interested persons, shall do so without adjudication, order or direction of the court. At any time, however, the personal representative may invoke the authority of the court to resolve questions concerning the estate or its administration. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate of the decedent according to its terms. ~~The personal~~

~~representative may pay an allowance as necessary or appropriate for the support of the surviving spouse and any minor children during informal administration of the estate. Such allowance shall be determined and paid under s. 861.31, except that a court order shall not be required unless formal proceedings as to this issue are initiated under s. 865.03 (1).~~

SECTION 34. 865.11 of the statutes is amended to read:

865.11 Inventory and tax returns. (1) A personal representative who is not successor to another representative who previously has discharged this duty shall prepare an inventory of property owned by the decedent at the time of death, ~~listing all items with reasonable detail.~~ The inventory may indicate as to each listed item its fair market value and the amount of any encumbrance as of the death of the decedent and shall list the fair market value of and the amount of any encumbrance on bank and savings accounts, securities and real property. The probate registrar shall accept the inventory form filed with the department of revenue for inheritance tax purposes for the purposes of this subsection.

(2) The personal representative shall furnish a copy of the inventory to interested persons, and shall exhibit to but need not file a copy of the inventory with the probate registrar. He or she need not file the inventory, the inheritance tax return, nor the federal estate tax return with the court but he or she may do so if he deems it is in the best interest of the estate and the beneficiaries.

SECTION 35. 865.13 of the statutes is amended to read:

865.13 Personal representative may pay claims. ~~A~~ The personal representative may pay valid in good faith just demands against the estate, whether filed as a claim or not, within the time allowed for filing claims, or at any time with the consent of the heirs or beneficiaries affected by the payment. In allowing paying a claim the personal representative may deduct any counterclaim which the estate has against the claimant. Any claim filed ~~with the court~~ shall be allowed or disallowed according to ch. 859.

SECTION 36. 865.135 of the statutes is repealed.

SECTION 37. 865.16 (1) (intro.) and (2) of the statutes are amended to read:

865.16 (1) (intro.) As an alternative to closing an estate ~~pursuant to chs. 862 and under ch. 863,~~ a personal representative may close an estate by filing with the court a verified statement that he, or a prior personal representative whom he has succeeded, has:

(2) If no proceedings challenging the statement or otherwise involving the personal representative are pending in the court 6 months after the statement is filed, appointment of the personal representative terminates. A personal representative who closes an estate under this subsection may comply with the accounting requirements of ch. 862.

SECTION 38. 865.20 and 865.21 of the statutes are created to read:

865.20 Termination of joint tenancy. (1) As an alternative to ss. 867.04 and 867.045, the personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest as joint tenant, including the recording data, if any, of the document creating the joint tenancy. Valuations need not be set forth in the statement.

(2) Upon being filed with the probate registrar, the statement shall constitute prima facie evidence of the facts recited and shall evidence the termination of the decedent's interest in the property listed thereon, with the same effect as if a certificate terminating joint tenancy had been issued by the court under s. 867.04. If the statement describes an interest in real property or a debt which is secured by an interest in real property a certified copy or duplicate original of the statement may be

recorded in the office of the register of deeds in each county in this state in which real property is located. This statement shall not constitute a release of any inheritance tax lien.

865.21 Receipts to be filed. The personal representative shall file with the probate registrar receipts from the distributees in the manner prescribed under s. 863.41.

SECTION 39. 867.01 (3) (f) of the statutes is amended to read:

867.01 (3) (f) *Order.* If the court is satisfied that the estate is one proper to be settled by this section, it shall assign the property to the persons entitled to the same. If the estate is eligible to be settled under sub. (1) (b), any property not otherwise assigned shall be assigned to the surviving spouse or minor children or both as an allowance under s. 861.31. The court shall order any person indebted to or holding money or other property of the decedent to pay the indebtedness or deliver the property to the persons found to be entitled to receive the same. It shall order the transfer of interests in real estate, stocks or bonds registered in the name of the decedent, the title of a licensed motor vehicle, or any other form of property whatsoever. If the decedent immediately prior to his death had an estate for life or an interest as a joint tenant in any property in regard to which a certificate of termination in accordance with s. 867.04 has not been issued, the order shall set forth the termination of such life estate or the right of survivorship of any joint tenant. Every tract of real property in which an interest is assigned or terminated or which is security for a debt in which an interest is assigned or terminated shall be specifically described. The order shall state that the department of revenue has determined the inheritance tax, and that it has been paid, or that the department has determined that no inheritance tax is due.

SECTION 40. 867.01 (5) of the statutes is created to read:

867.01 (5) **PROCEEDING WITH OR WITHOUT ATTORNEY.** Any party to a proceeding under this section may commence or appear at such proceeding in his own behalf or by an attorney, but not otherwise.

SECTION 41. 867.02 (2) (g) of the statutes is amended to read:

867.02 (2) (g) *Order.* If the court is satisfied that the estate is one proper to be ~~properly~~ settled by this section, after filing of the petition and proof of the will, and after 30 days have elapsed since publication under par. (d), it shall forthwith assign the property to the creditors and persons interested who are entitled to the same. The assignment shall be subject to the unknown rights of creditors or persons interested in the estate as limited in sub. (4). The court shall order any person indebted to or holding money or other property of the decedent to pay the indebtedness or deliver the property to the persons found to be entitled to receive the same. It shall order the transfer of interests in real estate, stocks or bonds registered in the name of the decedent, the title of a licensed motor vehicle or any other form of property. If the decedent immediately prior to his death had an estate for life or an interest as a joint tenant in any property in regard to which a certificate of termination under s. 867.04 has not been issued, the order shall set forth the termination of such life estate or the right of survivorship of any joint tenant. Every tract of real property in which an interest is assigned or terminated or which is security for a debt in which an interest is assigned or terminated shall be specifically described. The order shall state that any the department of revenue has determined the inheritance tax has been determined and paid, and that it has been paid, or that the department has determined that no inheritance tax is due.

SECTION 42. 867.02 (5) of the statutes is created to read:

867.02 (5) **PROCEEDING WITH OR WITHOUT ATTORNEY.** Any party to a proceeding under this section may commence or appear at such proceeding in his own behalf or by an attorney, but not otherwise.

SECTION 43. 878.01 (1) of the statutes is amended to read:

878.01 (1) ~~GENERALLY. All bonds required by law to be taken in or by order of the probate court~~ or of the probate registrar shall be for such sum and with such sureties as the court or probate registrar directs, except when otherwise provided by law. The bonds shall be for the security and benefit of all persons interested and shall be taken to the judge of the probate court, and in any probate court having more than one judge, shall run to all of the judges of that court, except where they are required by law to be taken to the adverse party. A bond shall not be deemed sufficient unless it has been examined and approved by the judge ~~or~~, the register in probate or the probate registrar and his approval indorsed thereon in writing and signed by him; but his failure so to do shall not render the bond void.

SECTION 44. 878.03 of the statutes is amended to read:

878.03 Corporate fiduciaries. The probate court and the probate registrar shall not require bond from any corporate fiduciary which has complied with the requirements of s. 220.09 or 223.02.

SECTION 45. **Program responsibility.** In the list of program responsibilities for the department of revenue under section 15.431 of the statutes, reference to section "865.11 (1)" of the statutes is inserted.

SECTION 46. **Transitional provisions.** This act shall apply only to transfers of property by decedents who die on or after the effective date of this act and to gifts made on or after the effective date of this bill.
