

TITLE XLIIB.

Probate Code.

CHAPTER 851

DEFINITIONS AND GENERAL PROVISIONS

| | | | |
|---------|-------------------------------|--------|---|
| 851.001 | Effective date, probate code. | 851.21 | Person interested. |
| 851.002 | Definitions. | 851.23 | Personal representative. |
| 851.01 | Administration. | 851.25 | Probate court. |
| 851.03 | Beneficiary. | 851.27 | Property. |
| 851.05 | Decedent. | 851.29 | Sale. |
| 851.07 | Distributee. | 851.40 | Basis for attorney's fees. |
| 851.09 | Heir. | 851.51 | Status of adopted persons for purposes of inheritance, wills and class gifts. |
| 851.11 | Intestate succession. | 851.55 | Uniform simultaneous death act. |
| 851.13 | Issue. | 851.61 | Decedent devolution of United States obligations in beneficiary form. |
| 851.15 | Mortgage. | | |
| 851.17 | Net estate. | | |
| 851.19 | Person. | | |

851.001 Effective date, probate code. Chapters 851 (except s. 851.51), 856, 857, 858, 859, 860, 862, 863 (except s. 863.13), 867 (except s. 867.02), 868, 878 and 879 are effective as of April 1, 1971. Chapters 852 and 861 and s. 863.13 are effective as to any person dying on or after April 1, 1971. Chapter 853 is effective as to the will of any testator dying on or after April 1, 1971, except that it is inapplicable to a will executed prior to the publication of the chapter if it is proved the testator lacked testamentary capacity at the time of the enactment, unless the testator subsequently regained capacity to make a valid will and had the capacity for a period of 6 months; a will so excepted is governed by the statutes applicable at the time the testator executed his will.

851.002 Definitions. The definitions in ss. 851.01 to 851.29 apply to title XLIIB.
Professional responsibility and probate practices. Martin, 1975 WLR 911.

851.01 Administration. "Administration" means any proceeding relating to a decedent's estate whether testate or intestate.

851.03 Beneficiary. "Beneficiary" means any person nominated in a will to receive an

interest in property other than in a fiduciary capacity.

851.05 Decedent. "Decedent" means the deceased person whose estate is subject to administration.

851.07 Distributee. "Distributee" means any person to whom property of a decedent is distributed other than in payment of a claim, or who is entitled to property of a decedent under his will or under the statutes of intestate succession.

851.09 Heir. "Heir" means any person, including the surviving spouse, who is entitled under the statutes of intestate succession to an interest in property of a decedent. The state is an heir of the decedent and a person interested under s. 45.37 (10) and (11) when the decedent was a member of the Wisconsin veterans home at the time of his death.

History: 1973 c. 333 s. 201m.

851.11 Intestate succession. "Intestate succession" means succession to title to property of a decedent by reason of ch. 852, without

regard to whether the property descends or is distributed.

851.13 Issue. "Issue" means children, grandchildren, great-grandchildren, and lineal descendants of more remote degrees, including those who occupy that relation by reason of adoption under s. 851.51 and illegitimate persons and their lineal descendants to the extent provided by s. 852.05.

851.15 Mortgage. "Mortgage" means any agreement or arrangement in which property is used as security.

851.17 Net estate. "Net estate" means all property subject to administration less the property selected by the surviving spouse under s. 861.33, the allowances made by the court under ss. 861.31, 861.35 and 861.41 except as those allowances are charged by the court against the intestate share of the recipient, administration, funeral and burial expenses, the amount of claims paid and federal and state estate taxes payable out of such property but not inheritance taxes.

851.19 Person. "Person" includes natural persons, corporations and other organizations.

851.21 Person interested. (1) WHO ARE "PERSONS INTERESTED". The following are "persons interested":

(a) An heir of the decedent.

(b) A beneficiary named in any document offered for probate as the will of the decedent and includes a person named or acting as a trustee of any trust, inter vivos or testamentary, named as a beneficiary.

(c) A beneficiary of a trust created under any document offered for probate as the will of the decedent.

(d) A person named as personal representative in any document offered for probate as the will of the decedent.

(e) Additional persons as the court by order includes as "interested persons".

(2) WHO CEASE TO BE "PERSONS INTERESTED". The following cease to be "persons interested":

(a) An heir of the decedent who is not a beneficiary under the will of the decedent, upon admission of the will to probate under ch. 856 or entry of a statement of informal administration under ch. 865.

(b) A beneficiary named in documents offered for probate as the will of the decedent who is not an heir of the decedent, upon denial of probate to such documents.

(c) A person named as personal representative or testamentary trustee in the will of the decedent, upon his failure to be appointed, the denial of letters by the court, or upon his discharge.

(d) A beneficiary under the will of a decedent, upon full distribution to the beneficiary.

(e) A beneficiary of a trust created under documents offered for probate as the will of the decedent upon the admission of the decedent's will to probate and the issuance of letters of trust to the trustee.

(3) ADDITIONAL PERSONS INTERESTED. In any proceedings in which the interest of a trustee of an inter vivos or testamentary trust, including a trust under documents offered for probate, conflicts with his duty as a personal representative, or in which the trustee or competent beneficiary of the trust cannot represent the interest of the beneficiary under the doctrine of virtual representation, the beneficiary is a person interested in the proceedings.

History: 1973 c. 39.

A trust for the benefit of grandchildren includes an illegitimate child whose parents entered into a void marriage after his birth. In re Trust of Parsons, 56 W (2d) 613, 203 NW (2d) 40.

Testamentary dispositions to "children" as including illegitimates—a change in Wisconsin law? 57 MLR 174.

851.23 Personal representative. "Personal representative" means any person to whom letters to administer a decedent's estate have been granted by the court or by the probate registrar under ch. 865, but does not include a special administrator.

History: 1973 c. 39.

851.25 Probate court. "Probate court" means the probate branch of the county court or the county court exercising its probate jurisdiction under s. 253.10.

851.27 Property. "Property" means any interest, legal or equitable, in real or personal property, without distinction as to kind.

851.29 Sale. "Sale" includes an option or agreement to transfer whether the consideration is cash or credit. It includes exchange, partition and settlement of title disputes. The intent of this section is to extend and not to limit the meaning of "sale".

851.40 Basis for attorney's fees. (1) Any attorney performing services for the estate of a deceased person in any proceeding under chs. 851 to 879, including a proceeding for informal administration under ch. 865, shall be entitled to just and reasonable compensation for such services.

(2) Any personal representative, heir, beneficiary under a will or other interested party may petition the court to review any attorney's fee which is subject to sub. (1). If the decedent died intestate or the testator's will contains no provision concerning attorney fees, the court shall consider the following factors in determining what is a just and reasonable attorney's fee:

(a) The time and labor required.

(b) The experience and knowledge of the attorney.

(c) The complexity and novelty of the problems involved.

(d) The extent of the responsibilities assumed and the results obtained.

(e) The sufficiency of assets properly available to pay for the services, except that the value of the estate may not be the controlling factor.

History: 1975 c. 329.

Cross Reference: See 865.16 (1m) review of attorney's fees by the probate registrar.

851.51 Status of adopted persons for purposes of inheritance, wills and class gifts. (1) INHERITANCE RIGHTS BETWEEN ADOPTED PERSON AND ADOPTIVE RELATIVES. A legally adopted person is treated as a natural child of his adoptive parents for purposes of intestate succession by, through and from the adopted person and for purposes of any statute conferring rights upon children, issue or relatives in connection with the law of intestate succession or wills.

(2) INHERITANCE RIGHTS BETWEEN ADOPTED PERSON AND NATURAL RELATIVES. A legally adopted person ceases to be treated as a child of his natural parents for the same purposes, except:

(a) If a natural parent marries or remarries and the child is adopted by the stepparent, the child is treated as the child of his natural parent for all purposes;

(b) If a natural parent of a legitimate child dies and the other natural parent remarries and the child is adopted by the stepparent, the child is treated as the child of the deceased natural parent for purposes of inheritance through that parent and for purposes of any statute conferring rights upon children, issue or relatives of that parent under the law of intestate succession or wills.

(3) CONSTRUCTION OF CLASS GIFT AS INCLUDING ADOPTED PERSONS. A gift of property by will, deed or other instrument to a class of persons described as issue, lawful issue, children, grandchildren, descendants, heirs, heirs of the body, next of kin, distributees or the like includes a person adopted by a person whose natural child would be a member of the class or issue of the

adopted person, if (a) the instrument does not expressly exclude adopted persons, (b) the conditions for membership in the class are otherwise satisfied, and (c) the adopted person was a minor at the time of adoption, or was adopted after having been raised as a member of the household by the adoptive parent from the child's 15th birthday or before. Unless the instrument expressly provides otherwise such a gift excludes a natural child and his issue otherwise within the class if the child has been adopted and would cease to be a child of his natural parents under sub. (2) for purposes of inheritance from the testator. This subsection applies to all wills, deeds, trusts or other instruments executed on or after April 1, 1971.

A bequest to "children" executed in 1919 excludes adopted children. Will of Mitchell, 50 W (2d) 499, 184 NW (2d) 853.

A valid adoption of petitioner by his aunt would preclude his right to inherit as the son of his natural mother, although he would be entitled to inherit as a nephew. Estate of Komarr, 68 W (2d) 473, 228 NW (2d) 681.

Inheritance "by, through and from" an adopted person under the new statute. Taibl, 56 MLR 119.

851.55 Uniform simultaneous death act.

(1) Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this section.

(2) If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the 2 have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that 2 or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

(3) Where there is no sufficient evidence that 2 joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than 2 joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

(4) Where the insured and the beneficiary in a policy of life or accident insurance have died

851.55 DEFINITIONS AND GENERAL PROVISIONS

4268

and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(5) This section shall not apply to the distribution of the property of a person who has died before June 26, 1941.

(6) This section shall not apply in the case of wills, living trusts, deeds or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this section, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that herein provided.

(7) This section shall be so construed as to make uniform the law in those states which enact it.

(8) This section may be cited as the "Uniform Simultaneous Death Act".

851.61 Decedent devolution of United States obligations in beneficiary form.

Where a resident of this state dies possessed of bonds or certificates of indebtedness of the United States of America which are registered in his name, payable on death to another, the unqualified ownership and the proceeds shall, on the death of the original owner, belong to the named alternate payee, any law of this state to the contrary notwithstanding.