

CHAPTER 857

POWERS AND DUTIES OF PERSONAL REPRESENTATIVES

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857.01 Title in personal representative. Upon his letters being issued by the court, the personal representative has title to all property of the decedent.

857.03 Powers and duties of personal representative; in general. The personal representative shall collect, inventory and possess all the decedent's estate; 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 the personal representative 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.

History: 1975 c. 331, 421.

Cross References: Chapter 287 deals generally with actions by and against personal representatives.

See 70.22 which deals with assessment of personal property taxes on property in decedent's estates.

See 71.08(6) which requires the personal representative to file with the assessor of incomes such withholding tax returns (reports) for wages paid, sales tax returns and income tax returns as are due from the decedent and his estate.

As the holder of legal title to the assets of the estate, the personal representative has the standing to bring a constitutional challenge against the statute upon which the claim of the appellant is based. Estate of Peterson, 66 W (2d) 535, 225 NW (2d) 644.

The personal representative's failure to inform the trial court that the high bidders in a sale of testator's property had been occasional clients did not constitute a breach of fiduciary duty where the sale was publicly advertised—netting 20 to 30 interested viewers of the house—conducted under sealed bid, and authorized as to procedure by both court and estate beneficiaries. Estate of Philbrick, 68 W (2d) 776, 229 NW (2d) 573.

857.05 Allowances to personal representative for expenses and services. (1) **EXPENSES.** The personal representative shall be allowed all necessary expenses in the care, management and settlement of the estate.

(2) **SERVICES.** Subject to the approval of the court the personal representative shall be allowed for his services commissions computed on the inventory value of the property for which the personal representative is accountable less any mortgages or liens plus net corpus gains in the estate proceedings at the rate of 2%; and such further sums in cases of unusual difficulty or extraordinary services as the probate court judges reasonable. If a personal representative is derelict in his duty, his compensation for services may be reduced or denied.

(3) **ATTORNEY'S FEES AND COMMISSIONS.** If the personal representative or any law firm with which the personal representative is associated also serves as attorney for the decedent's estate, the probate court may allow him either executor's commissions, (including sums for any extraordinary services as set forth above) or attorney's fees. The court may allow both executor's commissions and attorney's fees, and shall allow both if the will of the decedent authorizes the payments to be made.

857.07 Allowances to personal representative for costs. When costs are allowed against a personal representative in any action or proceeding the same shall be allowed him in his administration account unless it appears that the action or proceeding in which the costs were taxed was prosecuted or resisted without just cause on his part; and the court may determine, in rendering the judgment, whether the costs shall be paid out of the estate or by the personal representative. The court may allow as costs the sum paid by a personal representative on any bond or undertaking given by him in the case.

857.09 Procedure which may be followed when personal representative fails to perform. When a personal representative fails

to perform an act or file a document within the time required by statute or order of the probate court the judge may upon his own motion or upon the petition of any person interested order the personal representative for the estate and his attorney to show cause why the act has not been performed or the document has not been filed and shall mail a copy of the order to the sureties on the bond of the personal representative. If cause is not shown the judge shall determine who is at fault. If both are at fault, the judge may dismiss both and forthwith appoint a personal representative and appoint an attorney acceptable to the personal representative to complete the administration of the estate. If only the personal representative is at fault, he may be summarily dismissed and in that event the judge shall forthwith appoint another personal representative to complete the administration and close the estate. If only the attorney is at fault, the judge may dismiss him and instruct the personal representative to employ another attorney; if the personal representative fails to employ another attorney within 30 days, the judge shall appoint an attorney. No other procedure for substitution of attorney is required in such cases. The procedure set forth in this section is not exclusive.

Cross Reference: This procedure is mandatory when the personal representative fails to comply with the requirements of ss. 862.17 and 863.35.

857.10 Failure to comply with certain statutes. Failure of the personal representative to comply with ss. 858.03, 859.29 or 862.11 is prima facie evidence of neglect of duty.

History: 1971 c. 211 s. 126.

857.11 Ordering personal representative to appear; costs. Whenever the court issues an order directed to the sheriff requiring the personal representative to appear before it, all costs incurred by the court in the proceeding may be charged to the personal representative personally and may be deducted from the fees which he may receive for his services as personal representative.

857.13 Powers of surviving personal representative. Every power exercisable by copersonal representatives may be exercised by the survivors of them when one or more is dead or by the others when less than the number designated in the will are appointed by the court or when an appointment is terminated by order of the court or by resignation accepted by the court unless the power is given in the will and its terms provide otherwise as to the exercise of the power.

857.15 When personal representative removed, resigns. The judge may accept the

written resignation of any personal representative. When a personal representative becomes incompetent, disqualified, unsuitable, incapable of discharging his duties or is a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court, the court shall remove him. When any personal representative has failed to perform any duty imposed by law or by any lawful order of the court or has ceased to be a resident of the state, the court may remove him. When grounds for removal appear to exist, the court on its own motion or on the petition of any person interested, shall order the personal representative to appear and show cause why he should not be removed.

857.17 Validity of acts of personal representative prior to removal. The resignation, removal or death of a personal representative after letters have been issued to him do not invalidate his official acts performed prior to his resignation, death or removal.

857.19 When will proved after letters issued. When after letters are issued to a personal representative by a probate court in the estate of a decedent, whether testate or intestate, a will of the decedent is proved and allowed by the court, the powers of the personal representative cease, and the court shall remove him. All acts of the personal representative before his removal are as valid as if the will had not been allowed.

857.21 Appointment of successor personal representative. When a personal representative dies, is removed by the court, or resigns and the resignation is accepted by the court, the court may, and if he was the sole or last surviving personal representative and administration is not completed, the court shall appoint another personal representative in his place.

857.23 Rights and powers of successor personal representative. A successor personal representative has all the rights and powers of his predecessor except that he may not exercise powers given in a will which by its terms are personal to the personal representative therein designated.

857.25 Continuation of business. (1) **GENERALLY.** Upon a proper showing, the court may by order authorize the personal representative to continue any business of the decedent, but the order may not be contrary to the provisions of the decedent's will. The order may be with or

without notice. If notice is not given to all interested persons before the order is made, notice of the order shall be given within 5 days after the order. The order may provide:

(a) For the conduct of the business solely by the personal representative or jointly with one or more of the decedent's surviving partners or as a corporation to be formed by the personal representative;

(b) As between the estate and the personal representative, the extent of the liability of the estate and the extent of the liability of the personal representative for obligations incurred in the continuation of the business;

(c) As between distributees, the extent to which liabilities incurred in conduct of the business are to be chargeable solely to a part of the estate set aside for use in the business or to the estate as a whole; and

(d) As to the period of time for which the business may be conducted and such other conditions, restrictions, regulations, requirements and authorizations as the court orders.

(2) RIGHTS OF CREDITORS. Nothing contained in this section affects the rights of creditors against the estate or the personal representative. Expenses incurred in the operation of a business, other than those incurred to

wind up and dispose of a business, are not considered costs and expenses of administration for the purpose of determining priority of payment under s. 859.25 and are subordinate to all claims and allowances listed in s. 859.25.

857.27 Personal representatives or trustees may form corporation. The court may by order authorize the personal representatives or trustees of the estate of a decedent or one or more of the personal representatives or trustees to organize a corporation for any of the purposes authorized by ch. 180 or 181 and to subscribe for shares of the corporation and convey estate property to the corporation in payment for the shares subscribed.

857.29 Personal representative may plat land. The court may by order authorize the personal representative to plat land which is a part of the estate, either alone or together with other owners of the real estate. The personal representative must comply with the same statutes, ordinances and rules which apply to a person who is platting his own land.