

No. 566, S.]

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#### CHAPTER 440

AN ACT to repeal 316.235 (2), 316.34, 316.35, 316.37 and 316.38; to amend 296.02, 296.03, 296.05, 296.10, chapter 316 (chapter title) and 323.06; to repeal and recreate 296.04; and to create 316.52 to 316.55 of the statutes, relating to the specific performance of contracts of decedents; the deeds of personal representatives.

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

SECTION 1. 296.02 and 296.03 of the statutes are amended to read:

296.02 SPECIFIC PERFORMANCE OF INCOMPETENT'S CONTRACT. The circuit and county court shall have power to authorize or compel the specific performance of any contract made by any person who \* \* \* *becomes* incompetent before the performance thereof \* \* \*, on the *complaint or* petition of the \* \* \* guardian of such incompetent person or of any other person interested in such contract.

296.03 SPECIFIC PERFORMANCE; ORDER; APPEAL. No order authorizing or directing any such conveyance or the performance of any such contract shall be made until after hearing the parties and being satisfied that such conveyance ought to be made or such contract ought to be performed. The court may, by such order, direct the guardian of such \* \* \* incompetent person, or a special guardian appointed in such proceeding, to \* \* \* do any \* \* \* act which is necessary to carry such order into effect. *The court may further direct that the reasonable expenses of the proceedings be paid out of the proceeds of the sale. No appeal shall lie from such order unless notice of intention to appeal shall be filed with the court within 10 days after date of the order. The court may enforce such order by any proper proceedings.*

SECTION 2. 296.04 of the statutes is repealed and recreated to read:

296.04 SPECIFIC PERFORMANCE; CONVEYANCE; WARRANTIES. The court may require the guardian to convey the real estate which such incompetent person might or ought to have conveyed if still competent. Where such incompetent person contracted before incompetency to convey real estate by warranty deed, the guardian shall

convey by warranty deed subject to any exceptions set forth in the incompetent's contract to convey. The guardian shall not be personally liable because of any breach of such warranty, but such warranty deed shall have the same effect for all purposes as if the incompetent had executed it at such time while competent. This section is applicable where an incompetent before incompetency made an assignment of a contract to convey real estate but did not deed to his assignee the title to the premises covered by the contract.

SECTION 3. 296.05 of the statutes is amended to read:

296.05 SPECIFIC PERFORMANCE; RECORDING ORDER; EFFECT. A certified copy of such judgment \* \* \* directing such conveyance \* \* \* which is recorded in the office of the register of deeds in the county where the lands lie, shall \* \* \* be prima facie evidence of the correctness of the proceedings and of the authority of the guardian to convey. \* \* \* Every such conveyance shall be as effectual in passing the estate as if the incompetent were then competent and executed the conveyance.

SECTION 4. 296.10 of the statutes is amended to read:

296.10 If, after an examination of the matter by the court or judge to which application is made, without a reference, or on the coming in of the report of the referee, and on examination of the matter, it shall satisfactorily appear that a disposition of any part of the real estate of such minor or incompetent person or any interest therein is necessary and proper, for any of the causes mentioned in 296.06 such court or judge shall make an order directing and authorizing the guardian to contract for the leasing, mortgaging or sale of such real estate or interest therein or of such part thereof as the court or judge shall deem proper in such manner and with such restrictions as shall be deemed expedient.  
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SECTION 5. Chapter 316 (chapter title) of the statutes is amended to read:

CHAPTER 316  
SALE OF LAND BY EXECUTORS AND ADMINISTRATORS;  
SPECIFIC PERFORMANCE

SECTION 6. 316.235 (2) of the statutes is repealed.

SECTION 7. 316.34, 316.35, 316.37 and 316.38 of the statutes are repealed.

SECTION 8. 316.52 to 316.55 of the statutes are created to read:

316.52 SPECIFIC PERFORMANCE. The county court shall have power to authorize or compel the specific performance of any contract made by any person who dies before the performance thereof, by the executor or administrator, general or special, of such deceased person, by his heirs or devisees, or by any other proper person, on the petition of the executor or administrator, or of any person interested in such contract or in the real estate which such contract may concern.

316.53 SPECIFIC PERFORMANCE; ORDER; APPEAL. No order authorizing or directing the performance of any such contract shall be made until after the court has heard the parties and is satisfied that such contract ought to be performed. The court may by such order direct the executor or administrator, or the heirs or devisees, or any other proper person, to do any act which is necessary to carry such order into effect. The court may further direct that the reasonable expenses of the proceedings be paid out of the estate of such deceased person. No appeal shall lie from such order unless notice of intention to appeal shall be filed with the court within 10 days after the date of the order. The court may enforce such order by any proper proceedings.

316.54 SPECIFIC PERFORMANCE; CONVEYANCE; WARRANTIES; JUDGMENT PASSING TITLE. The court may require the executor or administrator, heirs or devisees, or any other proper person, or the executor or administrator, heirs or devisees, and any other proper person to convey the real estate which such deceased person might or ought to have conveyed if still living. Where such deceased person contracted before death to convey real estate by warranty deed, the executor, administrator, or testamentary trustees shall convey by warranty deed subject to any exceptions set forth in the decedent's contract to convey. The executor, administrator, or testamentary trustee shall not be personally liable because of any breach of such warranty, but such warranty deed shall have the same effect as if the deceased were still living and then executed the warranty deed. The court may, by its judgment alone, pass the title to such real estate to the person entitled thereto without any conveyance. This section is applicable where a deceased vendor made an assignment of a contract to convey real estate but did not deed to his assignee the title to the premises covered by the contract.

316.55 SPECIFIC PERFORMANCE; RECORDING JUDGMENT; EFFECT. A certified copy of such order directing such conveyance, or of the judgment passing title without conveyance, which is recorded in the office of the register of deeds of the county where the real estate lies, shall be prima facie evidence of the correctness of the proceedings and of the authority of the executor, administrator, heir, devisee, or other proper

person to convey, or of the authority of the court to pass title by its judgment without conveyance. Every such conveyance or judgment passing title without conveyance shall be effectual to pass the estate contracted for as fully as if such deceased person were then living and executed the conveyance required by his contract.

SECTION 9. 323.06 of the statutes is amended to read:

323.06 The county court, on application of any such trustee or any person interested, may, after notice to all parties in interest, as provided by s. 324.18, authorize and require such trustee to sell any property so held in trust in such manner as the court may direct and to invest the proceeds of such sale in such manner as will be most for the interest of all concerned therein; and such court may from time to time make such orders and decrees as it may deem just and reasonable in relation to the sale, management, investment and disposition of such trust property and to the settlement of the account of such trustees, but no such order shall be made in violation of the terms of the trust. To keep the trust property from being removed out of the state or improperly or illegally used or invested the county court shall have the same power as circuit courts to issue the writ of ne exeat and injunctions. \* \* \*

Approved July 2, 1953.

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