

1973 Assembly Bill 225

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CHAPTER 39 , Laws of 1973

AN ACT to amend 851.21 (2) (a), 851.23, 856.13, 856.29, 858.01, 862.01 (intro.), 863.23, 863.25 and 863.35; and to create chapter 865 of the statutes, relating to establishing a procedure for informal administration of estates.

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

SECTION 1. 851.21 (2) (a) of the statutes is amended to read:

851.21 (2) (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.

SECTION 2. 851.23 of the statutes is amended to read:

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.

SECTION 3. 856.13 of the statutes is amended to read:

856.13 Will must be proved. No will shall pass any property unless it has been proved and admitted to probate or informally admitted to probate under ch. 865.

SECTION 4. 856.29 of the statutes is amended to read:

856.29 Letters issued to trustee of testamentary trust. If the will of the decedent provides for a testamentary trust, letters of trust shall be issued to the trustee upon admission of the will to probate at the same time that letters are granted to the personal representative, unless the court otherwise directs. Upon issuance of letters of trust, the trustee shall continue to be interested in the estate, and beneficiaries in the

testamentary trust shall cease to be interested in the estate except under s. 851.21 (3). This section shall apply to wills admitted to informal probate and letters issued in informal administrations.

SECTION 5. 858.01 of the statutes is amended to read:

858.01 Inventory must be filed by personal representative. ~~Every~~ Except as provided by s. 865.11, every 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 6. 862.01 (intro.) of the statutes is amended to read:

862.01 When personal representative shall account. (intro.) ~~Every~~ Except where final settlement is by sworn statement under s. 865.16, every personal representative shall file in the court a verified account of his administration:

SECTION 7. 863.23 of the statutes is amended to read:

863.23 Determination of heirship 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 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 8. 863.25 of the statutes is amended to read:

863.25 Petition for final judgment. ~~After~~ 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.

SECTION 8m. 863.35 of the statutes is amended to read:

863.35 Dormant estates. (1) If under formal administration final judgment is not entered in an estate within ~~3 years~~ 18 months after filing of the petition for administration and the estate is not open pursuant to an order extending time, the judge shall order the attorney and the personal representative for the estate to show cause why final judgment has not been entered and shall proceed under s. 857.09.

(2) If under informal administration under ch. 865 the estate has not been closed by sworn affidavit within 18 months after filing of the petition for administration and the estate is not open pursuant to an order extending time, the probate registrar shall order the personal representative for the estate to show cause why the estate has not been closed. If cause is not shown the probate registrar shall appoint a new personal representative acceptable to all interested parties other than creditors of the deceased who shall proceed under ch. 865.

SECTION 9. Chapter 865 of the statutes is created to read:

CHAPTER 865
INFORMAL ADMINISTRATION

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. All provisions of chs. 851 to 879 not inconsistent with this chapter shall apply to the informal administration of estates.

865.02 Use of informal administration. (1) Informal administration may be used:

(a) Where the decedent died testate and:

1. The will does not prohibit the use of informal administration;
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.

(b) Where the decedent died intestate or the requirements of par. (a) 2 and 3 are not satisfied and:

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 guardian or guardian ad litem. The 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.

2. Bond is furnished if required under s. 865.07 as provided under s. 856.25.

(2) Where the will of the decedent expressly prohibits informal administration it shall not be used.

865.03 Formal proceedings: nature; effect. (1) A formal proceeding in this chapter is a judicial proceeding before the court involving the administration of the estate of a decedent, including a court proceeding concerning the use or availability of this chapter. It is distinguished from an administrative proceeding before the probate registrar. Formal proceedings, either as to a particular issue or as to the entire subsequent administration of the estate, may be initiated by the personal representative or by any interested person at any time by a written demand therefor. Formal proceedings may be demanded by a guardian or guardian ad litem on behalf of an interested person who is a minor or otherwise incompetent.

(2) A demand for formal proceedings shall be served on the personal representative, if any, and filed with the court. Service of a demand on the personal representative or, if none is appointed, filing of a demand with the court shall suspend informal administration as to the issues or matters referred to therein and shall

suspend the powers of the personal representative in respect thereto until the same are reinstated by the court.

865.031 Effect of fraud and evasion. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter, or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud, including restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

865.04 Proceedings independent; exceptions. (1) Except where a demand for formal administration of the estate has been duly made:

(a) Any interested person may apply for informal administration if administration of the estate has not been commenced under s. 856.07 or 879.57 or ch. 867; and

(b) The personal representative may apply for informal administration at any time during administration.

(2) The determination of each issue and the completion of each proceeding required for the administration of a decedent's estate is independent of any other issue or proceeding involving the same estate.

(3) Petitions in formal proceedings during informal administration may combine various requests for relief if all the requests may be finally granted without delay.

(4) Upon entry of an order of judgment in a formal proceeding informal administration shall resume except as otherwise ordered by the court.

865.05 Notice: method and time of giving. (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.

(2) When an estate is under formal administration and is to be made subject to this chapter the personal representative shall give notice to every interested person at least 20 days prior to filing with the probate registrar the application to initiate informal administration. Notice shall be given under s. 879.05, unless waived under s. 879.09.

(3) When an estate is under informal administration and a demand for a formal proceeding has been made, the personal representative shall, within 10 days of receipt of the demand, mail to each person interested in the estate a statement disclosing the demand and its nature.

865.06 Application; contents. (1) The application to initiate informal administration shall be verified and shall be directed to the probate registrar of the court designated by s. 856.01 and shall state the information required by ss. 879.01 and 856.09, and whether any probate or administration proceeding concerning the

estate of the decedent is pending in this state or elsewhere, and the nature of such proceeding, if any.

(2) In addition to the statements required by sub. (1), where the decedent apparently died testate, the application shall state:

(a) That the original will is in the possession of the court or accompanies the application, or that it was probated elsewhere and an authenticated copy accompanies the application;

(b) That the applicant believes the will to have been executed properly and to be valid and that he has made diligent inquiry and is unaware of any subsequent revocation of the will.

(3) In addition to the statements required by sub. (1), where the decedent apparently died intestate, the application shall state that the applicant has made diligent inquiry and is unaware of any unrevoked testamentary instrument of the decedent.

(4) An application for appointment of a successor personal representative shall adopt the statements of any previous application unless they no longer are accurate in which event corrected statements shall be made. Consents required by s. 865.02 shall be reaffirmed by all interested persons.

(5) An application for informal administration in a pending estate shall incorporate all information otherwise required by this section and in addition shall set forth the name and post office address of the personal representative of the estate.

865.065 Probate registrar: definition and powers. (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.

(2) The probate registrar, the deputy, or members of the staff of the probate registrar, or other persons designated, to perform the duties of the probate registrar, under this chapter, shall not be obligated to prepare, assist or advise in the preparation of any of the documents required to be prepared and filed by the personal representative under this chapter.

865.07 Determinations required of probate registrar. (1) Where no administration proceedings are pending, upon receipt of an application for informal administration the probate registrar shall determine whether:

(a) The application is complete including verification and the applicant is an interested person;

(b) The court of the county in which the application is made has jurisdiction of the estate of the decedent;

(c) The requests and consents required by s. 865.02 (1) (b) are complete and notice has been given as required under s. 865.05;

(d) The decedent died intestate or testate, and if testate, whether the original will is in the possession of the court or accompanies the application and contains an attestation clause showing compliance with the requirements of execution under s. 853.03 or 853.05, and does not expressly prohibit informal administration;

(e) The person nominated for personal representative is not disqualified under s. 856.23 or otherwise deemed unsuitable;

(f) Bond may be required. The probate registrar shall have the authority granted to the court by, and shall proceed pursuant to, s. 856.25.

(2) Where administration proceedings are pending either before the court or in another jurisdiction, upon receipt of an application for informal administration the probate registrar shall determine, in addition to the requirements of sub. (1), that no demand for formal administration has been made and, where the decedent died testate and the will was probated elsewhere, that an authenticated copy of the will and proof of probate accompany the application.

(3) The failure of the probate registrar to make a determination on any of the items set forth in subs. (1) and (2) shall not be a defense in any suit at law against the personal representative.

865.08 Informal appointment; letters. (1) Upon receipt of an application and making the determinations required by s. 865.07, the probate registrar may enter a statement of informal administration, admit a will to informal probate and may appoint the personal representative nominated by the will or requested by the interested parties, subject to qualification and acceptance.

(a) Where no personal representative is named or where the named personal representative fails to qualify, the personal representative shall be either a bank or trust company entitled to exercise fiduciary powers in this state which has the consent of all interested persons, other than creditors of the deceased, or a natural person who has the consent of all interested parties, other than creditors of the deceased, and is:

1. In an intestate estate, an heir; or
2. In a testate estate, a beneficiary; or
3. In any estate, an attorney admitted to practice law in this state.

(b) If the decedent was a nonresident, the appointment shall be delayed until 30 days have elapsed since death unless the applicant is the domiciliary representative.

(2) Prior to receiving letters, a personal representative shall qualify by filing with the probate registrar a statement of acceptance of the duties of the office and any required bond. By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person.

(3) If the probate registrar is not satisfied that a will is entitled to be probated or that a requested appointment of a personal representative should not be made because of failure to meet the requirements of s. 856.23, 865.02 or 865.07, or for any other reason, he shall deny the application. Denial of an application is not an adjudication and does not preclude proceeding formally.

(4) Upon appointment and qualification, letters shall be issued and the estate shall be administered under this chapter unless or until superseded or suspended by formal proceedings.

(5) Within 10 days of his appointment the personal representative shall, where the estate is testate, provide a copy of the will and a list of all interested persons to each interested person; and, where the estate is intestate, the personal representative shall furnish a list of all interested persons to each interested person.

(6) If the will of the decedent provides for a testamentary trust, letters of trust shall be issued to the trustee upon admission of the will to informal probate at the same time that letters are granted to the personal representative. Thereafter, the trustee shall continue to be interested in the estate, and beneficiaries in the testamentary trust shall cease to be interested in the estate except under s. 851.21 (3).

865.09 Powers and duties; time of accrual. (1) A personal representative to whom letters have been issued by the probate registrar and whose letters have not been revoked has all the powers of a personal representative to whom letters have been issued by the court.

(2) The duties and powers of a personal representative appointed under this chapter commence upon his appointment. His powers relate back in time to acts by him prior to appointment which are beneficial to the estate.

865.10 Personal representative to proceed without court order; exception. (1) A 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).

(2) Any determination made in the course of informal administration or probate is subject to review and redetermination by the court in formal judicial proceedings at any time prior to termination of the appointment of the personal representative under s. 865.16 (2), or the entry of final judgment under ch. 863. Any such redetermination shall not affect the rights of bona fide purchasers and other third parties dealing in good faith with an informally appointed personal representative.

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.

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

865.12 Employment of appraisers. The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining values of any assets where valuation is subject to reasonable doubt. The name and address of any appraiser so employed shall be indicated on the inventory with the item or items appraised by him, notwithstanding the omission from the inventory of the value thereof. Any interested person may invoke the jurisdiction of the court to require an appraisal or to contest said appraisals.

865.13 Personal representative may pay claims. A personal representative may pay valid demands against the estate, whether filed as a claim or not, within the time allowed for filing claims. In allowing 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.

865.135 Manner of presentation, allowance and payment of claims. Claims against a decedent's estate shall be presented as follows:

(1) The claimant may deliver or mail to the probate registrar a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in the court designated by s. 856.01 to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim or within 60 days. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(3) In the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period, or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.

(4) All claims must be presented within 3 months of the first insertion of the notice required by s. 865.05 (1) or be forever barred.

(5) The personal representative shall mail the claimant a notice that his claim is either allowed or disallowed within 30 days after the date on which claims are barred.

865.14 Improper distribution; liability of distributee. A distributee of property which was distributed or paid improperly and a claimant who was paid improperly are liable to return the property or assets so distributed or paid together with all income received thereon, unless the distribution or payment cannot be questioned because of an adjudication, estoppel, limitation or other bar. If the distributee or claimant no longer has the property or assets, he is liable to return the value thereof as of the date of distribution together with all income and gain received thereon.

865.15 Purchasers from distributees protected. If property distributed in kind or a security interest therein is acquired from a distributee by a purchaser, or lender, in good faith, for value and without actual notice that the distribution was improper, the purchaser or lender takes title free of any claims of the estate and incurs no personal liability to the estate, whether or not the distribution was proper. Purchasers and lenders have no duty to inquire whether a distribution was proper.

865.16 Closing estates by sworn statement. (1) As an alternative to closing an estate pursuant to chs. 862 and 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:

(a) Duly given notice to interested persons under s. 865.05 and to creditors under s. 859.07, and that the time for filing claims has expired prior to the date of the statement;

(b) Fully administered the estate of the decedent by making payment, settlement or other disposition of all claims which were presented, expenses of administration, reasonable funeral and burial expenses and estate, inheritance and other taxes, except as expressly specified otherwise, and that the assets of the estate have been inventoried and distributed to the persons entitled thereto. If any claims, expenses or taxes remain undischarged, the statement shall disclose in detail all arrangements made to accommodate the outstanding liabilities; and

(c) Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby.

(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.

865.17 Liability of distributees to claimants. After assets of an estate have been distributed, and subject to s. 865.19, an undischarged claim not barred by notice under s. 859.07 or otherwise may be prosecuted in a proceeding against one or more distributees of property from an estate administered under this chapter. No distributee shall be liable to claimants for amounts in excess of the value of his distribution as of the time of distribution. As among distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration.

865.18 Limitations on proceedings against personal representative. Unless barred by adjudication and except as provided in the closing statement, the rights of interested persons and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within 6 months after the filing of the closing statement. Rights thus barred do not include recovery for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

865.19 Limitations on actions and proceedings against distributees. (1) Unless previously adjudicated in a formal testacy proceeding or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of:

- (a) Three years after the decedent's death; or
- (b) One year after the time of distribution thereof.

(2) This section does not bar an action to recover property or value received as the result of fraud or an action by a creditor where notice was not given under s. 859.07.

SECTION 10. Effective date. This act shall take effect on the first day of the month commencing at least 75 days after passage and publication. Informal

administration, as provided by this act, shall not be used to probate any estate where the decedent died prior to the effective date of this act.
