

CHAPTER 317.

ACCOUNTS OF EXECUTORS AND ADMINISTRATORS.

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317.01 What charged to executor, administrator. (1) Every executor and administrator shall be charged in his accounts with all the personal property of the decedent which shall come to his possession; with all interest, profit and income, which shall come to his hands from the estate and with the proceeds of real estate sold by him.

(2) He shall verify his account of administration and it shall show by debit and credit in account form, each item with which he is chargeable or for which he claims credit; and said account must be filed not less than three weeks prior to the day fixed for examining the same. [*Court Rule XV s. 2; Supreme Court Order, effective Jan. 1, 1934*]

Note: An executor may deduct from legacies any amounts the legatees legally owe the estate; but since under 330.27, the running of the statutes of limitation operates as an extinguishment of the debt, a debt due the estate but barred by limitations prior to the death of the testator may not be deducted from a legacy, in the absence of a contrary intention expressed in the will. *Will of Weidig, 207 W 107, 240 NW 332.*

Debts owing from an executor to a testator automatically become assets in the executor's hands upon his acceptance of the executorship, regardless of the insolvency of the executor at the time of his accept-

ance or thereafter, for which the executor and his surety are liable. The fact that a bank, appointed as executor of an estate during the national bank holiday, tendered its resignation about four months later when the bank was closed permanently, did not estop the bank from later asserting that it never had acted as executor or accepted the appointment. *Estate of Howey, 216 W 94, 256 NW 620.*

An executor, liable to an estate for the face value of notes owing from the executor to the testator, is liable for interest at the rates fixed by the notes. *Estate of Tuttle, 242 W 144, 7 NW (2d) 575.*

317.02 What to account for as to sales; profit and liability. Every executor and administrator shall account for the personal estate of the deceased at the appraised value thereof, excepting when debts due the deceased remain uncollected without his fault he shall not be required to account for the same, and when personal property has been sold under an order of the county court he shall account for the same at the price for which it sold. He shall not make profit by the increase nor suffer loss by the decrease or destruction, without his fault, of any of the personal estate. If he shall sell any part of the personal estate without an order of court for less than the appraised value he shall not be liable for the loss if it shall appear that such sale was beneficial to the estate; if he sell for more than the appraised value he shall account for the excess.

Note: 287.14 and 317.02 do not relieve an executor, where debts owing from him to the testator have been appraised and inventoried at less than face value, from the rule of lia-

bility for the face value of such debts, since such debts are to be treated under the rule as paid and as cash in the executor's hands. *Estate of Tuttle, 242 W 144, 7 NW (2d) 575.*

317.03 Account for use of realty. When any executor or administrator shall use or occupy any part of the real estate of the decedent he shall account for such use or occupancy. [*1935 c. 176 s. 8*]

317.04 Liability for waste. When an executor or administrator shall neglect or unreasonably delay to raise money by collecting the debts or selling the real or personal estate of the deceased or shall neglect to pay over the money he shall have in his hands, and the value of the estate shall thereby be lessened or unnecessary cost or interest shall accrue, or the persons interested shall suffer loss, the same shall be deemed waste; and the damages sustained may be charged against the executor or administrator in his account or he shall be liable therefor on his administration bond; but no such liability shall arise or accrue if one or more of the causes for delay mentioned in section 313.13 exists, and the administrator or executor has, in good faith, accordingly delayed the final settlement of the estate, or has, in good faith, for the purpose of preserving the assets of the estate, with the knowledge or approval of the court, continued the business of the decedent during the existence of such cause or causes. [*1933 c. 335*]

Note: Purportedly retroactive amendatory statute excusing executrix from liability for waste if statutory cause for delay in filing accounting and settling estate exists and good faith is displayed, held not applicable to cause of action which accrued prior to date of its enactment. *Will of Robinson*, 218 W 596, 261 NW 725.

The amendment made by chapter 335, Laws 1935, was not retrospective. *Estate of Onstad*, 224 W 332, 271 NW 652.

The remedy provided by this section is for the benefit of the estate; and no creditor for his sole benefit can recover damages for waste caused by an administrator. *Rasmussen v. Jensen*, 240 W 242, 3 NW (2d) 335.

317.05 Accounts and examination under oath. Every executor or administrator shall render his account as required by section 313.13, and he shall render such further accounts of his administration from time to time as may be required by the county court, until the estate shall be wholly settled; and he may be examined on oath by the court upon any matter relating to his account and the settlement of the estate.

Note: The statute giving courts discretion to require further accounts of administrator applies only as to currently acting administrator or executor, not after final decree of discharge. *Estate of Penny*, 225 W 455, 274 NW 247.

317.06 Charitable trusts; trustee's annual account; removal. (1) Every trustee of a testamentary trust for charitable purposes shall, prior to March of each year, account to the court having jurisdiction thereof for the preceding calendar year and shall further account from time to time as required by the court; and he may be examined by the court upon any matter relating to his account and his conduct of such trust.

(2) The court shall promptly examine such account, and if it be not satisfactory it shall be examined on notice and the court shall make such order as may be necessary to carry out the provisions of the trust.

(3) The court may remove the trustee for failure to comply with this section, or with the order of the court, and appoint another trustee as provided by law or the terms of the will creating such trust.

(4) No action of the court upon such account shall be final except it be upon notice. [*Supreme Court Order, effective Jan. 1, 1934*]

Note: In the absence of a reverter clause, a charitable trust created by will cannot be defeated by failure of executors or trustees to carry it out; and courts will appoint successor trustees to carry out the trust when deceased trustees have failed to do so. *Estate of Mead*, 227 W 311, 277 NW 694, 279 NW 18.

317.07 Compensation of executors. When a will provides compensation to the executor it shall be deemed full compensation for his services unless he shall file in the court his renunciation of all claim to the compensation so provided. [*1935 c. 176 s. 9*]

317.08 Allowances to executors and administrators for expenses and services. When no such compensation shall be provided by the will or the executor shall renounce all claims thereto he shall be allowed unless derelict in his duty all necessary expenses in the care, management and settlement of the estate and for his services two dollars and fifty cents per day, and commissions upon the amount of personal estate collected and accounted for by him and the proceeds of real estate sold under an order of the county court for the payment of debts or legacies as follows: For the first thousand dollars at the rate of five per cent; for the next nineteen thousand dollars at the rate of one per cent; for all above the sum of twenty thousand dollars at the rate of two per cent; and such further sums in cases of unusual difficulty or extraordinary services as the county court shall judge reasonable. The same provision for compensation shall apply to administrators. [*1937 c. 224*]

Note: Where the executor failed to keep a clear and distinct account and to close the estate promptly and efficiently, a disallowance of a claim of the executor for attorneys' fees and auditing costs was proper. In re *Roebken's Will*, 230 W 215, 283 NW 815. Chapter 224, Laws 1937, increasing fees for executors and administrators, applies to accounts allowed and settled subsequently to effective date of that act, even though services may have been rendered prior thereto. 26 Atty. Gen. 367.

317.09 Allowance for costs paid. When costs in any case are allowed against an executor or administrator in any proceeding in the county court and paid by him the same shall be allowed him in his administration account unless it shall appear that the action or proceeding in which the costs were taxed shall have been 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 executor or administrator. The court may allow as costs the sum paid by an executor or administrator for surety on any bond or undertaking given by him in the case, but not exceeding two per centum of the amount thereof.

317.10 Payment of unfiled claims. Where an executor or administrator has, in good faith, paid claims against the estate without the claims having been filed, such payments may be allowed upon proof that they were just demands against the estate and were paid within the time limited for the presentation of claims. Notice that application will be made for such allowance shall be served as provided in section 324.18. Payment shall be

allowed on a pro rata basis with other claims when the estate is insolvent. [*Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective Jan. 1, 1940*]

317.11 Accounts examined; notice; allowance. Notice of the time and place of the examination and allowance of the accounts of executors and administrators shall be given as provided in section 324.18. Such notice shall not issue until the account is filed. The court must be satisfied of the correctness and legality of the account before allowing it. [*Court Rule XV s. 1; Supreme Court Order, effective Jan. 1, 1934; Supreme Court Order, effective Jan. 1, 1940*]

Note: See note to 253.24, citing *In re Trustees of Milwaukee County Orphans' Board*, 218 W 518, 261 NW 676.

317.12 [*Renumbered section 327.24 sub. (6) by 1933 c. 190 s. 36*]

317.13 Suit on bond. In case any sole or surviving executor or administrator has heretofore died or shall hereafter die, leaving his administration accounts unsettled, no action shall be commenced upon the administration bond of such deceased executor or administrator against the sureties in such bond or either of them until such sureties or one of them shall have had an opportunity to apply for and have a settlement of the administration accounts of such deceased executor or administrator.

317.14 Account of deceased executor, administrator. The accounts of any deceased executor or administrator may be settled on the application of any surety on his bond or of any other person interested in such settlement, upon notice being given as required by section 317.11. [*Supreme Court Order, effective Jan. 1, 1934*]

317.15 Settlement of accounts. Any person interested may file objections to any item of the account of the executor or administrator or that property has been omitted which the executor or administrator ought to account for. If it shall appear that any such property is held by any other person claiming title thereto, or any interest therein, which is disputed; and if all the persons interested in said estate consent, or any person shall indemnify the executor or administrator against the costs and expenses of litigation to recover such property, the court shall order action be brought and suspend the settlement of such account until the title is determined, or may settle the account, leaving such matter to be the subject of a supplemental account after the action shall be determined and the court may direct the executor or administrator to prosecute any such action when the persons interested shall not consent thereto, and no person indemnifies the executor or administrator against costs and expenses of such litigation. [*Court Rule XV s. 4; Supreme Court Order, effective Jan. 1, 1934*]