

## 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 shall show by debit and credit each item with which he is chargeable or for which he claims credit. Notice of hearing on the examination of the account may be waived, but if not waived, the account must be filed not less than 3 weeks before the date of the hearing. An account so filed may be brought to date on the day of the hearing.

**History:** Sup. Ct. Order, 258 W vii.

The evidence warranted a finding that requested reports filed by the executor of a widow's estate as to the widow's handling of her husband's estate under a will appointing her as executrix and giving her an absolute life estate in his property with the right to invade the principal, and under which she was not required to file and did not file any annual reports, were as accurate and detailed as the data available to her executor permitted; and, such executor admitting that he knew nothing of his own knowledge about her handling of her husband's estate, and his only sources of infor-

mation having been equally available to the residuary legatees under the husband's will, no purpose would be served in allowing their further examination of such executor with regard to an accounting. Estate of Larson, 261 W 206, 52 NW (2d) 141.

Under some circumstances an administrator or ancillary administrator may take possession of real estate, but he has no duty to do so unless necessary to pay debts on expenses; if he does not he is not accountable for the real estate or any income from it. Estate of Rieman, 272 W 378, 75 NW (2d) 564.

**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.

**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.

Where a son-coexecutor, desirous of purchasing the decedent's homestead, took possession of the property under an agreement with his sister-coexecutor to pay her \$55 per month as her share of the fair rental value of the property, he did not take possession as an executor nor, so far as the sister's interest in the property was con-

cerned, as an heir or devisee, but he became the sister's tenant, and his liability on account of the \$55 per month was to the sister and not to the estate, so that the trial court erred in charging him in the executors' account for the use of the premises. Will of Fehlhaber, 272 W 327, 75 NW (2d) 444.

**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.

**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.

**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 mailed to the attorney general and published under s. 324.20.

**History:** Sup. Ct. Order, 271 W xi.

**Cross Reference:** Enforcement of public charitable trust by attorney general, see 231.34. Time limit on mailing notice to attorney general, see 324.18 (1).

**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.

**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.

**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.

**317.105 Taxes; payment by personal representative.** If it appears to the county court that it is in the interest of an estate pending in the court that taxes on real estate constituting a part of the estate be paid, the court may authorize the personal representative to pay the taxes from any moneys on hand upon conditions fixed by the court.

**History:** 1955 c. 422.

**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.

**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.

**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.