

THIS CHAPTER REPEALED (EXCEPT AS NOTED) AS OF APRIL 1, 1971.

CHAPTER 316

SALE OF LAND BY EXECUTORS AND ADMINISTRATORS; SPECIFIC PERFORMANCE

316.01	Sale, mortgage or lease of lands of decedents; homestead.	316.25	Proceeds of sale; liability for
316.02	Petition for license	316.26	Sale to pay legacy
316.03	Sale of realty; order for hearing petition.	316.27	Sale of land contract.
316.07	Contesting claims, debts disputed, hearing adjourned	316.28	Sale of land contract, terms; bond.
316.09	Order to mortgage or lease.	316.29	Assignment of land contract; rights under.
316.10	Order for sale; lands platted.	316.30	License to foreign executors, etc
316.105	Sale of exempt homestead.	316.31	Foreign executor, when to give bond.
316.11	Mortgaged homestead sold; proceeds, applied	316.32	Foreign executor, same subject.
316.12	Dower, contract for sale.	316.33	Sales validated; purchaser's title
316.13	Bond to prevent sale	316.39	Sale of land contract without license.
316.14	Executor's bond if sale ordered.	316.40	Appraisal; how made.
316.15	What lands first sold.	316.41	Who not to purchase.
316.16	Time allowed for sale	316.43	Proceeds realty; how disposed of.
316.17	Summary proceedings for sale	316.45	Limitation of action to recover estate sold
316.18	Notices of sale	316.46	When sale not avoided.
316.19	Place of sale; notice when lands in several counties	316.47	Deed of mortgagor's title
316.20	Proof of notice	316.48	Liability for neglect.
316.21	Adjournment and notice of.	316.49	When sale valid.
316.22	Sale on credit; security.	316.50	Liability for fraud
316.23	Report; confirmation or vacation of sale.	316.51	Sales validated
316.235	Conveyances by executors and administrators.	316.52	Specific performance.
316.24	Purchaser to assume lien, exception.	316.53	Specific performance; order; appeal
		316.54	Specific performance; conveyance; warranties; judgment passing title.
		316.55	Specific performance; recording judgment; effect.

316.01 Sale, mortgage or lease of lands of decedents; homestead. (1) The executor or administrator of a deceased person's estate may mortgage, lease or sell real property in that estate pursuant to this chapter under the following conditions:

(a) If the available personal estate is insufficient to pay the expenses of administering his estate, and of his funeral and all his debts, the court may order the mortgage, lease or sale of any real estate, other than the homestead exempt under the provisions of ss. 237.02 (2) and 237.025.

(b) If the sale of the personal property would be inimical to the interests of the estate, or if the sale of the real estate would be for the best interests of the estate or the heirs, the court may order the mortgage, lease or sale of any real estate other than the exempt homestead. It may also order the mortgage, lease or sale of the exempt homestead if the widow or widower does not object in writing to the sale prior to the hearing date fixed by the court under s. 316.03.

(2) No debt of or claim against any deceased person, which was not a lien upon his real estate before his death, shall be a lien upon or valid claim against any such real estate for the payment of which it can be sold by an executor or administrator after three years from the death of such decedent, except in the following cases:

(a) When such claim is created or charged upon such real estate by a will.

(b) When letters testamentary upon the will or of administration of the estate of such decedent issued in this state within such three years and such claim is duly presented to the county court which issued such letters.

(c) When delay in issuing letters is caused by an appeal from the county court which suspends the proceedings therein, the time of such delay shall not be counted as any part of said 3 years.

Cross Reference: For execution sale to estate, see 272-56

316.02 Petition for license. The executor or administrator shall present a verified petition to the county court, setting forth the amount of personal estate that has come to his hands and how much thereof is available and remains undisposed of; the amount of the expenses of administration, and of the funeral, and of the debts outstanding against the decedent, so far as such expenses and debts can be ascertained; or if it is so alleged then a statement showing how the sale of the personal property would be inimical to the interests of the estate or how the sale of the real estate or homestead or both would be for the best interests of the estate or the heirs; a description of all the real estate of which the decedent died seized and the condition and value of the respective parcels thereof; and the names and post-office addresses of the heirs or legatees and devisees, designating those that are minors or incompetents, and if there be unknown parties interested stating the fact.

THIS CHAPTER REPEALED (EXCEPT AS NOTED) AS OF APRIL 1, 1971.

316.03 Sale of realty; order for hearing petition. If the petition shows that it is necessary to sell, mortgage or lease real estate or that the sale of the real estate or homestead or both would be for the best interests of the estate or the heirs, the court shall fix the time for hearing the petition, and notice thereof shall be given as provided by s. 324.18. The creditors need not be notified of the hearing unless the court so orders.

316.07 Contesting claims, debts disputed, hearing adjourned. If on such hearing it shall appear that the heirs or devisees of the real estate in question or persons claiming under them contest the validity of any debt or claim which may be represented as existing against the estate, the hearing shall be postponed until the liability of the estate for such claim is finally determined.

316.09 Order to mortgage or lease. If it appears that money needed can be raised advantageously to such estate by lease or mortgage the court shall direct a mortgage or lease to be made.

316.10 Order for sale; lands platted. If it appears that the money required cannot be raised by mortgage or lease, advantageously to the estate, or that the sale of the real estate or homestead or both is for the best interests of the estate or the heirs, the court shall order a sale of so much of the real estate or homestead or both as shall be sufficient with the available personal estate to pay such expenses and debts and legacies; or of the whole of the real estate or homestead or both, if it appears that partition thereof is impractical or that sale of the whole thereof is for the best interest of the estate or the heirs. The court may direct the executor or administrator, either alone or together with other owners of such real estate or homestead or both, to make, acknowledge and record a plat of such real estate or homestead or both as prescribed in ch. 236.

316.105 Sale of exempt homestead. If the available personal property or other real property of the decedent is insufficient to pay the debts and expenses specified in s. 316.01 and if the homestead exempt under ss. 237.02 (2) and 237.025 is part of a larger tract and that part of the tract not included in the exempt homestead cannot be sold separately without injury to the interests of the parties, the court may order sale of the whole tract under the terms specified in s. 316.11 for sale of a mortgaged homestead.

316.11 Mortgaged homestead sold; proceeds, applied. (1) Whenever the exempt homestead of the decedent is part only of a tract of land which was subject to a mortgage at the time of his death, and all other real estate and personal property of the decedent has been applied to the payment of his debts and the expenses specified in section 316.01, or is insufficient therefor and the part of the mortgaged premises not included in the exempt homestead can not be sold separately therefrom without injury to the interests of the parties, the court may order the sale of the whole tract; or if a part of the tract can be sold separately, and only a part is necessary to be sold in connection with the exempt homestead to prevent such injury, then an order to first sell the part which can be so separately sold, and the remainder afterwards, may be made. The order, in either case, shall direct that the entire estate, including the interest of the mortgagee, be sold; but no such order to sell shall be made when the mortgage debt is not wholly due unless the mortgagee shall consent in writing thereto; if such consent is given and the sale is made for less than the amount of such debt with interest and costs of sale, the mortgagee shall have the same right to proceed, in an independent action, against every party who may be personally liable for the debt secured by the mortgage and to a personal judgment for any deficiency against such party as if such sale had not been made. In the event of sale of the homestead with other lands of the deceased to pay a mortgage, the widow shall be paid one-third of the net proceeds of the sale after the mortgage debt, as to lands other than the homestead, and she shall be paid the value of her dower and homestead interests in the proceeds of sale of the homestead, based upon her life expectancy, and to be computed by the annuity tables on a life estate as in partition.

(2) The proceeds of the sale shall, under the direction of the court, be applied in the following order: The expenses of the sale shall first be paid; the mortgage debt shall next be paid; the court shall next ascertain and set apart the value of the homestead sold, irrespective of the mortgage thereon; if there be any residue, the same shall be applied to the payment of the expenses and debts specified in section 313.16 and in the order there enumerated.

(3) The sum set apart as the value of the homestead shall thereafter be applied to the payment of the expenses and debts specified in section 316.01 and in the order there enumerated, so far as such homestead shall be chargeable therewith. The remainder of the sum set apart as the value of the homestead shall be paid to the

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owners thereof. If some of them be minors, in which case the court may, if it can be justly done, separate the amount belonging to such minors and pay the same to their guardian, and pay the amount belonging to any person of full age to such person; or if such separation of the funds cannot be made with certainty and with justice to the interests of such minors, the court may order the whole invested until such minors reach majority or such separation of the fund can be made, and meantime apply the income from such investment to the use of the persons entitled thereto. The proceeds of such homestead shall possess all the privileges and exemptions which appertained by law to the homestead before such sale.

316.12 Dower, contract for sale. (1) Whenever an order shall be made for the sale of any real estate for the payment of the debts of the decedent and charges of administration and the widow has dower in such real estate, the executor or administrator may contract with the widow to accept in lieu of dower one-third of the amount realized on the sale, which contract shall be witnessed by two witnesses, be acknowledged and be filed with the county court.

(2) If the contract is approved by the court, her dower in the real estate shall be sold with the rest of the title and the deed given pursuant to such sale shall pass her estate to the purchaser. The executor or administrator shall pay the widow one-third of the net proceeds and shall file with the county court her receipt therefor.

316.13 Bond to prevent sale. No license to mortgage, lease or sell real estate shall be granted if any person interested in the estate shall give bonds to the judge of the county court in such sum and with such sureties as he shall direct and approve, with conditions to pay all the debts and the expenses of administration, so far as the goods and chattels, rights and credits of the decedent shall be insufficient therefor, within such time as the county court shall direct. Such bond shall be for the security, and may be prosecuted for the benefit, of the creditors as well as the executor or administrator.

316.14 Executor's bond if sale ordered. When the executor or administrator is authorized to mortgage, lease or sell any real estate for the payment of debts he shall, before the sale, give bond to the judge of the county court, with sufficient sureties, to account for all the proceeds of the sale and to dispose of the same according to law, unless it shall appear to the court that the bond previously filed is ample security, in which case no further or additional

bond shall be required.

Cross Reference: For bond exemption of executor, see 310.15

316.15 What lands first sold. The order shall specify the lands to be sold, and may direct the order in which parcels shall be sold. If any part of such real estate or any interest therein has been devised and not charged in such devise with the payment of debts the county court shall order that part not devised to be first sold; and if it appear that any lands devised or descended have been sold by the devisees or heirs then the lands remaining shall be sold first.

316.16 Time allowed for sale. The order for mortgaging, leasing or selling real estate shall authorize the executor or administrator, to mortgage, lease or sell the real estate as therein directed, within one year after the date of the order. But the court may, on application of the executor or administrator and for good cause shown, extend the time for making a sale of real estate but not longer than two years after the date of the original order.

316.17 Summary proceedings for sale. (1) A sale of real estate pursuant to this chapter may be private or public, as the court shall by order direct.

(2) If the court authorizes a private sale, the executor or administrator shall attempt such a sale and may enter into a contract of sale subject to the approval of the court; and the court may approve a contract made in advance of the order authorizing the sale, if he concludes that the contract is for the best interests of the estate. Upon approval of the contract the executor or administrator shall execute and deliver a deed of the real estate sold, as directed by the order.

(3) Where a public sale shall have been ordered as provided by law and it shall later appear to the court that no sufficient or satisfactory bid was received, although the property was offered at public sale as directed, the court may then authorize a private sale pursuant to this section precisely as it might have done originally and with the same effect as though no public sale had been ordered.

316.18 Notices of sale. When a public sale is ordered, notice of the time and place of holding the same shall be posted in 3 public places in the town, village or ward in which the land is situated and shall be published as provided in s. 324.20, before the day fixed for the sale, and the first insertion shall not be more than 40 days before such day, in which notice the lands to be sold shall be described with reasonable certainty.

THIS CHAPTER REPEALED (EXCEPT AS NOTED) AS OF APRIL 1, 1971.

316.19 Place of sale; notice when lands in several counties. A public sale shall be in the county where the lands are situated, at auction, between 9 a.m. and sundown of the same day. When the lands adjoin and lie in 2 or more counties the sale may be had in either, but the court shall by order designate in which. If there is a newspaper eligible under ch. 985, in more than one of said counties, the court shall direct in which of such newspapers the notice of sale required by s. 316.18 shall be published.

316.20 Proof of notice. An affidavit of any person having knowledge of the fact that notice of any such sale was posted together with proof of the publication of the notice as provided in this chapter, filed in the county court, shall be evidence of the time, place and manner of giving such notice.

316.21 Adjournment and notice of. If at the time appointed for any such sale the executor or administrator shall deem it for the interest of all persons concerned therein he may adjourn the same from time to time, not exceeding in all three months. In case of such adjournment notice thereof shall be given by a public declaration at the time and place first fixed for the sale. If the adjournment is for more than one day further notice shall be given by posting, or publishing the same as a class 1 notice, under ch. 985, or both, as the time and circumstances may admit.

316.22 Sale on credit; security. On such sale the executor or administrator may give such length of credit, not exceeding three years and for not more than three-fourths of the purchase money, as shall seem best calculated to produce the highest price and as shall have been directed or shall be approved by the county court, and shall take such security for the amount of the credit given upon the premises sold as the court shall direct and approve.

316.23 Report; confirmation or vacation of sale. (1) The executor or administrator shall make prompt return of his doings upon the order of sale to the court. The court shall examine the proceedings and may examine the executor, administrator or any other person on oath touching the same. If the court shall be of the opinion that the proceedings were unfair or that the sum obtained is disproportionate to the value of the land sold and that a greater sum, exclusive of the expense of a new sale, may be obtained, said court may vacate such sale and direct another to be had, as provided in s. 316.17. If it shall appear to the court that the sale was legally made and fairly conducted and that

the sum bid thereon was not disproportionate to the value of the property sold, or if disproportionate that a greater sum cannot be obtained, said court shall confirm such sale and direct conveyances to be executed. The executor or administrator may expend usual and customary broker's and attorney's fees, as well as necessary expenditures for abstracting, title insurance, survey, revenue stamps and other necessary costs and expenses in connection with the sale, all subject to review and approval by the court.

(2) No sale of real estate shall be confirmed without five days' notice of application therefor to all parties who appeared at the hearing upon the petition for sale or other disposition of the real estate.

316.235 Conveyances by executors and administrators. (1) **FREE OF CERTAIN LIENS.** Every conveyance of land of a decedent, pursuant to power of sale in a will, or under a contract executed by the decedent during his lifetime or under this chapter shall transfer such lands free and clear from liens and claims of all creditors of the decedent and of the estate of the decedent (except as provided in section 316.24); and any such liens or claims shall be transferred to the proceeds of said sale received by the executor or administrator making the same, provided that nothing herein shall affect inheritance and gift tax liens.

316.24 Purchaser to assume lien, exception. All sales of land made pursuant to this chapter, except as otherwise provided in sections 49.26 (5) and 316.11, shall be subject to all liens and mortgages thereon existing at the time of the death of the decedent, where such mortgage or lien is upon a single lot or tract of land. In case the estate shall be liable for the amount secured by any such mortgage or lien such sale shall not be confirmed until the purchaser shall execute a bond to the executor or administrator as required in section 316.28. But in case the mortgage or lien is upon 2 or more lots or parcels of land, greater in value than the amount of said mortgage or lien, the court, on being satisfied that it would be most beneficial to the parties interested in said land that the same be sold freed from such incumbrances, may so order; in which case sufficient of the moneys made by the sale shall be appropriated or invested by order of the court, on confirming the sale, to pay and satisfy said incumbrances.

316.25 Proceeds of sale; liability for. The proceeds arising from mortgage, lease or sale of real estate or interest therein of any deceased person as provided in this chapter shall be

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deemed assets in the hands of the executor or administrator, and he and the sureties on his administration bond shall be accountable and liable therefor.

316.26 Sale to pay legacy. When any legacy is a charge upon the real estate and the personal property shall be insufficient to pay such legacy, and the debts, and charges of administration, a sale, mortgage or lease of real estate for that purpose may be made in the same manner and upon the same terms and conditions as are prescribed for the payment of debts.

316.27 Sale of land contract. If a person, at the time of his death, was possessed of a contract for the purchase or sale of land, his interest in such land may be sold in the same cases and in the same manner as if he had died seized of such land; and the same proceedings may be had for that purpose as are prescribed in this chapter in respect to lands of which he died seized, except as herein otherwise provided in case he was the purchaser.

316.28 Sale of land contract, terms; bond. Such sale shall be made subject to all payments that may thereafter become due on such contract; and shall not be confirmed until the purchaser shall execute a bond to the court for the benefit of the persons entitled to the interest of the decedent in the lands, in double the amount of payments thereafter to become due on such contract, with such sureties as the court shall approve, with condition that such purchaser will make all payments for such land that shall become due after the date of such sale and will indemnify the executor or administrator and the person so entitled against all demands, costs, charges and expenses by reason of any covenant or agreement contained in such contract.

316.29 Assignment of land contract; rights under. Upon the confirmation of such sale the executor or administrator shall execute to the purchaser an assignment of such contract, which assignment shall vest in the purchaser, his heirs and assigns all the right, interest and title of the person entitled to the interest of the decedent in the lands at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such land as the decedent would have were he living.

316.30 License to foreign executors, etc. A foreign executor or administrator of the estate of any person dying a nonresident of this state (where no executor or administrator thereon shall be appointed in this state) may

upon filing an authenticated copy of his appointment in the county court of any county in which there may be real estate of the decedent and making application therefor be licensed by such court to mortgage, lease or sell real estate or any interest therein, for the payment of debts or legacies and charges of administration in the same manner and upon the same terms and conditions as are prescribed in the case of an executor or administrator appointed in this state.

316.31 Foreign executor, when to give bond. When it shall appear to the court that such foreign executor or administrator is bound with sufficient surety in the state, territory or country in which he was appointed to account for the proceeds of such mortgage, lease or sale, and a copy of such bond, duly authenticated, shall be filed in such county court no further bond shall be required of him. If a copy of such bond shall not be filed as aforesaid, or if his bond shall be insufficient, such executor or administrator, before making such mortgage, lease or sale, shall give bond with sufficient sureties to the judge of the county court with condition to account for and dispose of the proceeds of such mortgage, lease or sale for the payment of the debts or legacies of the decedent and the charges of administration, according to the law of the state, territory or country in which he was appointed.

316.32 Foreign executor, same subject. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies and charges of administration, as before provided for in this chapter, he shall, before making the sale, give bond, with sufficient sureties, to the judge of the county court with condition to account to such court for all the proceeds of the sale that shall remain after payment of the said debts, legacies and charges and to dispose of the same according to law.

316.33 Sales validated; purchaser's title. When any sale shall have been made by virtue of any order of any county court by any person acting as an executor or administrator, the title of any purchaser in good faith at such sale shall not be invalidated by reason of any omission or error in the appointment of such executor or administrator or by reason of any defect or irregularity in the proceedings before such court, except in the manner and for the causes that the same could be invalidated in case such sale had been made pursuant to the order or judgment of a court of general jurisdiction.

THIS CHAPTER REPEALED (EXCEPT AS NOTED) AS OF APRIL 1, 1971.

316.39 Sale of land contract without license. Whenever any executor or administrator assigns any contract made by a decedent for the sale of real estate, he may convey, without license therefor, to the assignee all the right, title and interest which the decedent had in such real estate at the time of his decease, subject to the contract or, upon performance by the vendee, he may convey without license therefor, to the vendee all such right, title and interest.

316.40 Appraisal; how made. The county court may, in its discretion, authorize an executor or administrator to have the lands which he may be licensed to sell, appraised by three disinterested freeholders of the county in which the lands or some part thereof lie. The appraisal shall specify the whole value of such lands, and separately the value of each lien and incumbrance thereon, and the net value of such lands after deducting all liens and incumbrances as appraised by them. Such appraisal shall be under oath, which oath and appraisal shall be certified in the usual form and filed in the court from which said license was issued. The appraisal of such lands made pursuant to section 312.01 shall be taken as the appraised value thereof, if no additional appraisal be had under the provisions of this section.

316.41 Who not to purchase. The executor or administrator making the sale or the guardian of any heir of the decedent shall not be interested in the purchase of any part of the real estate sold unless such sale is made with written consent of the parties concerned and of the guardian ad litem for minors and incompetents and approval of the court after notice and hearing, except where such purchase is authorized by the will of the decedent. This section shall not prohibit such purchase by a guardian for the benefit of his ward.

316.43 Proceeds realty; how disposed of. In all cases of a sale by an executor or administrator of real estate under a license granted by any county court, the surplus of the proceeds of the sale remaining on the final settlement of the accounts shall be considered as real estate and disposed of among the persons and in the same proportions as the real estate would have been if it had not been sold.

316.45 Limitation of action to recover estate sold. No action for the recovery of any estate sold by an executor or administrator under the provisions of this chapter shall be maintained by any heir or other person claiming under the deceased testator or intestate unless it be commenced within five years next after the

sale; and no action for the recovery of any estate sold by a guardian shall be maintained by the ward or by any person claiming under him unless it be commenced within five years next after the termination of the guardianship, excepting only that minors and others under legal disability to sue at the time when the cause of action shall accrue may commence their action at any time within 5 years next after the removal of the disability.

Note: Chap. 339, laws of 1969, amends this section and renumbers it to be 296 50, effective April 1, 1971. See text at 296 50.

316.46 When sale not avoided. A sale of real estate by an executor, administrator or guardian shall not be avoided on account of any irregularity in the proceedings; provided, it shall appear that he was licensed to make the sale by the county court having jurisdiction; that he gave a bond which was approved by the county court before the sale if a bond was required; that he gave the notice of the time and place of sale as prescribed by law; that the premises were sold accordingly and the sale confirmed by the court, and that they are held by one who purchased them in good faith.

Note: Chap. 339, laws of 1969, amends this section and renumbers it to be 296 52, effective April 1, 1971. See text at 296 52.

316.47 Deed of mortgagor's title. In any case where the court may find, upon application made for the purpose, that it is for the best interest of the estate of the deceased that the property incumbered with mortgage be conveyed to the holder of the mortgage, so as to avoid foreclosure and possible judgment for deficiency, the court may authorize the administrator or executor to make such a deed.

316.48 Liability for neglect. If there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian in relation to such sale, by which any person interested in the estate shall suffer damages, such aggrieved party may recover the same in an action on the bond of such executor, administrator or guardian or otherwise, as the case may require.

Note: Chap. 339, laws of 1969, amends this section and renumbers it to be 296 54, effective April 1, 1971. See text at 296 54.

316.49 When sale valid. The validity of a sale made by an executor, administrator or guardian shall not be questioned by any person claiming under any title that is not derived from or through the deceased persons or the ward, on account of any irregularity in the proceedings; provided, it shall appear that the executor, administrator or guardian was licensed to make the sale by a court having jurisdiction and that

THIS CHAPTER REPEALED (EXCEPT AS NOTED) AS OF APRIL 1, 1971.

he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Note: Chap. 339, laws of 1969, amends this section and renumbers it to be 296.56, effective April 1, 1971. See text at 296.56

316.50 Liability for fraud. Any executor, administrator or guardian who shall fraudulently sell any real estate of his testator, intestate or ward, contrary to the provisions of law, shall be liable in double the value of the land sold as damages, to be recovered in an action by any person having an inheritance therein.

Note: Chap. 339, laws of 1969, amends this section and renumbers it to be 296.58, effective April 1, 1971. See text at 296.58.

316.51 Sales validated. No sale of lands in proceedings pursuant to this chapter made since the repeal of sections 316.39 to 316.44 of the statutes of 1927 shall be held invalid if such sale would have been valid had said sections been in force at the time of the sale; and no such sale shall be held invalid because not made at public vendue. No sale of lands for the best interests of the estate or the heirs made prior to the date of amendment of section 316.02 in 1949 shall be held invalid. This is a curative act, the purpose of which is to validate titles acquired upon sales in county court under this chapter, whenever such titles may be questioned upon the ground that since said repeal there was no authority in the court to authorize private sales.

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.