

CHAPTER 859

PROBATE — CLAIMS

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859.01 Time for filing claims. When an application for administration is filed, the court, or the probate registrar under informal administration proceedings, shall by order set a date as the deadline for filing a claim against the decedent's estate. The date shall be not less than 3 nor more than 4 months from the date of the order.

History: 1989 a. 96

The statute of limitations concerning claims filed against an estate in probate may not be waived. Estate of Palmer, 68 W (2d) 101, 227 NW (2d) 680.

859.02 Limitation on claims. (1) Except as provided in sub. (2) and s. 859.03, all claims against a decedent's estate including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, are barred against the estate, the personal representative and the heirs and beneficiaries of the decedent unless filed on or before the date set under s. 859.01.

(2) A claim against a decedent's estate that is not filed on or before the date set under s. 859.01 is not barred if:

(a) It is a claim based on tort, on a marital property agreement that is subject to the time limitations under s. 766.58 (13) (b) or (c), on Wisconsin income, franchise, sales, withholding, gift or death taxes, or on unemployment compensation contributions due or benefits overpaid, a claim for funeral or administrative expenses or a claim of the United States; or

(b) All of the following circumstances exist:

1. On or before the date set under s. 859.01, the personal representative knew, or in the exercise of reasonable diligence should have known, of the existence of the potential claim and of the identity and mailing address of the potential claimant.

2. At least 30 days prior to the date set under s. 859.01, the personal representative had not given notice to the potential claimant of the final day for filing his or her claim and the court in which the estate proceeding was pending.

3. At least 30 days prior to the date set under s. 859.01, the claimant did not have actual knowledge that the estate proceeding was pending and of the court in which that proceeding was pending.

(3) Failure of a claimant timely to file a claim against a decedent's estate does not bar the claimant from satisfying the claim from property other than the decedent's estate.

History: 1989 a. 96; 1991 a. 39, 89, 301.

Cross References: See 893.93 (1) (c) which bars all claims against a decedent or the estate if administration not commenced within 6 years after death.

See 859.45 as to tort claims.

An otherwise valid lease and sale of personalty executed by decedent are not claims against the estate subject to the limitations of this section. In re Estate of Taylor, 81 W (2d) 687, 260 NW (2d) 803.

Claim against estate for personal services rendered during adulterous relationship with deceased was allowed under quasi-contract. In Matter of Estate of Steffes, 95 W (2d) 490, 290 NW (2d) 697 (1980).

Mere fact that personal representative corresponded with creditors about accounts payable did not give rise to fiduciary duty on part of personal representative to disclose information about filing claims. In Matter of Estate of Letic, 104 W (2d) 592, 312 NW (2d) 773 (1981).

Testator's breach of contract in failing to make certain provisions by will is not actionable in tort. *Ländwehr v. Citizens Trust Co.* 110 W (2d) 716, 329 NW (2d) 411 (1983).

Probate filing deadlines for surviving spouses under a marital property regime. *Rasmussen and Brown*. WBB June 1988.

859.03 Continuance of separate action. If an action is pending against a decedent at the time of his or her death and the action survives, the plaintiff in that action may serve a notice of substitution of party defendant on the personal representative and file proof of service of notice in the court. Filing of proof of service on or before the deadline for filing a claim under s. 859.01 gives the plaintiff the same rights against the estate as the filing of a claim. A judgment in any such action constitutes an adjudication for or against the estate.

History: 1977 c. 449; 1989 a. 96.

See note to 767.01, citing *Morrisette v. Morrisette*, 99 W (2d) 467, 299 NW (2d) 590 (Ct. App. 1980).

859.07 Notice; publication. (1) Notice of the deadline for filing a claim under s. 859.01 shall be given by publication, under s. 879.05 (4), and may be given with the notice for granting letters. The first insertion shall be made within 15 days of the date of the order under s. 859.01.

(2) If the decedent was at the time of death or at any time prior thereto a patient or inmate of any state or county hospital or institution or any person responsible for any obligation owing to the state or county under s. 46.03 (18), 46.10 or 48.36 or if the decedent or the spouse of the decedent ever received medical assistance under ss. 49.45 to 49.47, the personal representative shall send notice in writing of the date set under s. 859.01 by registered or certified mail to the department of health and social services or the department of corrections, as applicable, and the county clerk of the applicable county not less than 30 days before the date set under s. 859.01, upon such blanks and containing such information as the applicable department or county clerk may provide. The applicable county is the county of residence, as defined in s. 49.01 (8g).

(3) The personal representative may at any time give notice to any potential claimant of the deadline for filing a claim

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against the estate under s. 859.01 or 859.48 and of the court in which the estate proceeding is pending.

History: 1977 c 73; 1985 a 29; 1989 a 31, 96, 359; 1991 a 39

Notice to creditors by publication does not violate due process clause. In Matter of Estate of Fessler, 100 W (2d) 437, 302 NW (2d) 414 (1981).

859.09 Transfer of claims when administration fails.

Claims filed against the estate of a decedent following an order and notice to creditors shall, if the administration proceeding fails, be deemed filed upon notice to creditors in a subsequent administration proceeding. If the subsequent proceeding is in a different county, such claims shall be transmitted to and filed in the proper court.

859.13 Form and verification of claims. (1) GENERAL REQUIREMENTS. No claim shall be allowed unless it is in writing, describes the nature and amount thereof, if ascertainable, and is sworn to by the claimant or someone for the claimant that the amount is justly due, or if not yet due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the knowledge of the affiant, except as therein stated. If the claim is one for which property is available under s. 859.18, the claim shall describe which classification under s. 766.55 (2) is applicable to the claim. The claim shall also show the post-office address of the claimant. The presumption under s. 766.55 (1) applies to the classification of claims for which property is available under s. 859.18.

(2) REQUIREMENTS WHEN CLAIM FOUNDED ON WRITTEN INSTRUMENT. If a claim is founded on a written instrument which is available, the original or a copy thereof with all indorsements must be attached to the claim.

History: 1985 a 37.

Cross Reference: See 859.19 as to secured claims

NOTE: As to sub. (1) see notes in 1985 Wis. Act 37, marital property trailer bill.

Provisions of (2) are properly construed as directory and not mandatory. In matter of Estate of Alexander, 75 W (2d) 168, 248 NW (2d) 475

Claimant has burden of proving existence of express agreement by deceased former employer to pay compensation in addition to wages paid during employment. In re Estate of Huber, 81 W (2d) 55, 259 NW (2d) 714.

859.15 Effect of statute of limitations. Except as provided in ss. 46.10 (11), 49.08 and 49.195 (1), a claim shall not be allowed which was barred by any statute of limitations at the time of the decedent's death. A claim shall not be barred by statutes of limitation which was not barred at the time of the decedent's death if the claim is filed against the decedent's estate in the court on or before the deadline for filing a claim under s. 859.01.

History: 1977 c 449; 1985 a 29; 1989 a 96.

Cross References: See 893.03 which provides that the presentation of a claim in circuit court is deemed the commencement of an action

See 856.07 which authorizes any creditor of a decedent to petition for the administration of the estate 30 days after the date of death

859.17 Claims not due. Upon proof of a claim which will become due at some future time, the court may:

(1) Allow it at the present value and payment may be made as in the case of an absolute claim which has been allowed;

(2) Order the personal representative to retain personally sufficient funds to satisfy the claim upon maturity; or

(3) Order a bond to be given by the distributees for payment in satisfaction of the claim and the estate may be closed.

History: 1985 a 332.

859.18 Satisfaction of obligations at death of a spouse. (1) In this section:

(a) "Credit" means the right granted by a creditor to defer payment of a debt, incur debt and defer its payment, or

purchase property or services and defer payment for the property or services.

(b) "Creditor" means a person who regularly extends credit.

(2) At the death of a spouse, property, including the proceeds of or property exchanged for that property, that but for the death of the spouse would have been available under s. 766.55 (2) for satisfaction of an obligation continues to be available for satisfaction, except as provided in subs. (3) to (5).

(3) Unless the obligation resulted from an extension of credit or from a tax obligation to this state, upon the death of a spouse who was the only obligated spouse under s. 766.55 (2) (a) or the only incurring spouse under s. 766.55 (2) (b) to (d):

(a) No income of the surviving spouse is available for satisfaction of an obligation described under s. 766.55 (2).

(b) Marital property of the surviving spouse, if otherwise available for satisfaction of an obligation described under s. 766.55 (2), is available to the extent of the value of the marital property at the death of the decedent spouse.

(4) (a) If the decedent spouse was the only obligated spouse under s. 766.55 (2) (a) or the only incurring spouse under s. 766.55 (2) (b) to (d), the following property is not available for satisfaction of the obligation:

1. Survivorship marital property, except as provided in s. 766.60 (5) (b) and (c).

2. Joint tenancy property in which the decedent spouse was a tenant, subject to any judgment lien on which execution was issued before the spouse's death.

3. Deferred employment benefits arising from the decedent spouse's employment.

4. Proceeds of a life insurance policy insuring the life of the decedent spouse, if the proceeds are not payable to the decedent's estate and not assigned to the creditor as security or payable to the creditor.

(b) If the surviving spouse is the only obligated spouse under s. 766.55 (2) (a) or the only incurring spouse under s. 766.55 (2) (b) to (d), the following property transferred to a person other than the surviving spouse is not available for satisfaction:

1. The decedent's interest in joint tenancy property, subject to any judgment lien on which execution was issued before the decedent's death.

2. Deferred employment benefits arising from the employment of the decedent spouse.

3. The proceeds of a life insurance policy insuring the life of the decedent spouse, if the proceeds are not payable to the decedent's estate and not assigned to the creditor as security or payable to the creditor.

(5) If otherwise available under this section to satisfy an obligation under s. 766.55 (2):

(a) The availability of a trust described under s. 701.07 (3) is subject to s. 701.07 (3).

(b) The availability of a spendthrift trust described under s. 701.06 is subject to s. 701.06.

(c) The availability of an account governed under subch. I of ch. 705 is subject to s. 705.07.

(6) A provision in a marital property agreement, as defined under s. 766.01 (12), which provides for the disposition of either or both spouses' property upon the death of a spouse does not affect property available under this section for satisfaction unless that property was not available for satisfaction under the marital property agreement while both

spouses were alive and the agreement is binding on the creditor under s. 766.55 (4m) or 766.56 (2) (c).

History: 1985 a. 37; 1989 a. 331; 1991 a. 301.

NOTE: See 1985 Wis. Act 37 which contains an extensive note and an explanatory chart following this section.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

859.19 Secured claims. (1) When a creditor holds any security for a claim the security shall be described in the claim, and the judgment allowing the claim shall describe the security. The security is sufficiently described if the security document is described by date and by the recording or filing data.

(2) Payment of the claim shall be upon the basis of:

(a) The full amount thereof if the creditor surrenders the security; or

(b) If the creditor realizes on the security before receiving payment, then upon the full amount of the claim allowed less the fair value of the security.

History: 1985 a. 332

Cross References: See 859.13 which deals with the form and verification of claims generally.

See 859.43 which deals with the payment of secured claims.

See 863.13 which deals with the exoneration of encumbered property.

859.21 Contingent claims. If the amount or validity of a claim cannot be determined until some time in the future, the claim is a contingent claim regardless of whether the claim is based on an event which occurred in the past or on an event which may occur in the future. Except for claims of the type not required to be filed under s. 859.02, contingent claims which cannot be allowed as absolute must, nevertheless, be filed in the court and proved in the same manner as absolute claims. If allowed subject to the contingency, the order of allowance shall state the nature of the contingency. If the claim is allowed as absolute before distribution of the estate, it shall be paid in the same manner as absolute claims of the same class. In all other cases the court may provide for the payment of contingent claims in any one of the following methods:

(1) The creditor and personal representative may determine, by agreement, arbitration or compromise, the value thereof, according to its probable present worth, and it may be allowed and paid in the same manner as an absolute claim.

(2) The court may order the personal representative to make distribution of the estate but to retain in his hands sufficient funds to pay the claim if and when the same becomes absolute; but for this purpose the estate shall not be kept open longer than 2 years after distribution of the remainder of the estate has been made; and if the claim has not become absolute within that time, distribution shall be made to the distributees of the retained funds, after paying any costs and expenses accruing during such period but the distributees shall be liable to the creditor to the extent provided in s. 859.23, if the contingent claim thereafter becomes absolute. When distribution is so made to distributees, the court may require the distributees to give bond for the satisfaction of their liability to the contingent creditor.

(3) The court may order distribution of the estate as though the contingent claim did not exist, but the distributees shall be liable to the creditor as limited by s. 859.23, if the contingent claim thereafter becomes absolute; and the court may require the distributees to give bond for the satisfaction of their liability to the contingent creditor.

(4) Such other method as the court orders.

History: 1989 a. 96.

859.23 Payment of contingent claims by distributees. If a contingent claim is filed and allowed against an estate subject

to the contingency and all the assets of the estate including the fund set apart for the payment thereof has been distributed, and the claim thereafter is allowed as absolute, the creditor may recover thereon against those distributees, or the persons who furnish bond for the distributees, whose distributive shares have been increased by reason of the fact that the amount of the claim as finally determined was not paid prior to final distribution, if a proceeding therefor is commenced in court within 6 months after the claim is allowed as absolute. A distributee or the person who furnishes bond for the distributee shall not be liable for an amount exceeding his or her proportionate share of the estate subject to the claim, nor for an amount greater than the value of the property which he or she received from the estate, the value to be determined as of the time of distribution to the distributee.

History: 1977 c. 449.

859.25 Priority of payment of claims and allowances. (1) CLASSES AND PRIORITY. At the time of their allowance, all claims and allowances shall be classified in one of the following classes. If the applicable assets of the estate are insufficient to pay all claims and allowances in full, the personal representative shall make payment in the following order:

(a) Costs and expenses of administration.

(b) Reasonable funeral and burial expenses.

(c) Provisions for the family of the decedent under ss. 861.31, 861.33 and 861.35.

(d) Reasonable and necessary expenses of the last sickness of the decedent, including compensation of persons attending him.

(e) All debts, charges or taxes owing to the United States, this state or a governmental subdivision or municipality of this state.

(f) Wages, including pension, welfare and vacation benefits, due to employes which have been earned within 3 months before the date of the death of the decedent, not to exceed \$300 in value to each employe.

(g) Property assigned to the surviving spouse under s. 861.41.

(h) All other claims allowed.

(2) NO PREFERENCE WITHIN CLASSES. Preference shall not be given in the payment of any claim over any other claim of the same class, nor shall a claim due and payable be entitled to a preference over claims not due.

History: 1971 c. 63; 1983 a. 186; 1985 a. 37

NOTE: See notes in 1985 Wis. Act 37, marital property trailer bill.

859.27 Execution and levies prohibited. Garnishment, attachment or execution shall not issue against nor shall any levy be made against any property of the estate under any judgment or cause of action against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges, liens or other security agreements upon real or personal property in an appropriate proceeding.

859.29 Persons interested may be informed of claims. After the deadline for filing a claim against the estate under s. 859.01, any person interested in the estate may make a written request to the personal representative or special administrator for a statement listing all claims that have been filed against the estate. The statement shall show each claim, the name of the claimant, a brief description of the basis of the claim and the amount claimed. Within 5 days after receipt of the request, the personal representative shall mail or deliver a copy of the statement to the requester, including any guardian of the estate, guardian ad litem or attorney, or attorney-in-fact, for a person in the military service. Failure of the

personal representative or special administrator to comply with this section does not affect the jurisdiction of the court as to persons interested.

History: 1989 a. 96; 1991 a. 220.

859.31 Compromise of claims. When a claim against the estate has been filed or suit thereon is pending, the creditor and personal representative may, if it appears for the best interests of the estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated; but if an objection to the claim has been filed by a person interested no compromise of the claim may be made without the consent of the objector.

859.33 Contest of claims; procedure. (1) HOW CONTEST INITIATED. The following persons may contest a claim or assert an offset or counterclaim in court: the personal representative, a guardian ad litem or a person interested who has the approval of the court. They may do so only by mailing a copy of the objection, offset or counterclaim to the claimant or personally serving the same upon the claimant and filing the same with the court. The objection, offset or counterclaim may be served at any time prior to entry of judgment on the claim, but if a copy of the claim has been mailed to or served upon the personal representative or the attorney for the estate, the objection, offset or counterclaim shall be served upon or mailed to the claimant and filed with the court within 60 days after the copy of the claim was mailed to or served upon the personal representative or the attorney for the estate. The personal representative shall not be obligated to assert any offset or counterclaim in court and may, if he or she deems it to be in the best interests of the estate, assert the offset or counterclaim in any separate action otherwise authorized by law outside the court proceedings. Any offset or counterclaim so asserted shall be deemed denied by the original claimant.

(2) PROCEDURE. If any claim, offset or counterclaim is contested, the court may require the issues to be made definite, fix a date for pretrial conference and direct the manner in which pleadings, if any, shall be exchanged. The court shall set a time for trial upon its own motion or upon motion of any party.

History: 1973 c. 233; 1977 c. 449; 1983 a. 186; 1985 a. 37; 1989 a. 96.

NOTE: See notes in 1985 Wis. Act 37, marital property trailer bill.

859.35 Prompt judgment; hearing if claim filed over one year. The hearing on any claim, offset or counterclaim may be adjourned from time to time, but the hearing shall be concluded as soon as practicable. The court may on its own motion after notice to the claimant, the objector and the personal representative, set for hearing any contested claim, offset or counterclaim, filed over one year. The court may disallow all or any part of the claim, offset or counterclaim for nonprosecution.

859.37 Judgment on claims. Before setting a time for hearing on the final account the court shall enter a judgment on the claims presented against the decedent and the offsets and counterclaims asserted and stating how much was allowed for or against the estate in each case. The judgment shall set a date by which payment shall be made. If the balance as to any claimant is in favor of the estate, the payment thereof may be enforced as with any other judgment.

859.39 Delay of payment of claims when funds are insufficient. If it appears at any time that an estate is or may be insolvent; that there are insufficient funds on hand for payment of claims in full or that there is other good cause for delaying payment, the personal representative may report

that fact to the court and apply for any order that he deems necessary.

Cross Reference: See 859.25 which establishes priority of payment of claims and allowances.

859.40 Creditor's action for property not inventoried. Whenever there is reason to believe that the estate of a decedent as set forth in the inventory may be insufficient to pay his debts, a creditor whose claim has been allowed may, on behalf of all, bring an action to reach and subject to sale any property or interest therein not included in the inventory, which is liable for the payment of debts. The creditor's action shall not be brought to trial until the insufficiency of the estate in the hands of the personal representative is ascertained; if found likely that the assets may be insufficient, the action shall be brought to trial. If the action is tried, any property or interest therein which ought to be subjected to the payment of the debts of the decedent shall be sold in the action and the net proceeds used to pay such debts and to reimburse the creditor for the reasonable expenses and attorney's fees incurred by him in the action as approved by the court.

859.41 Creditor's action for property fraudulently sold by decedent. Whenever there is reason to believe that the estate of a decedent as set forth in the inventory may be insufficient to pay his debts, and the decedent conveyed any property or any interest therein with intent to defraud his creditors or to avoid any duty, or executed conveyances void as against creditors, any creditor whose claim has been allowed may, on behalf of all, bring an action to reach and subject to sale any property or interest therein. The creditor's action shall not be brought to trial until the insufficiency of the estate in the hands of the personal representative is ascertained; if found likely that the assets may be insufficient, the action shall be brought to trial. If the action is tried any property or interest therein which ought to be subjected to the payment of the debts of the decedent shall be sold in the action and the net proceeds used to pay such debts and to reimburse the creditor for the reasonable expenses and attorney's fees incurred by him in such action as approved by the court.

859.43 Encumbered assets; payment of debt. (1) RIGHTS OF SECURED CREDITORS NOT AFFECTED. Nothing in this chapter shall affect or prevent any action or proceeding to enforce any mortgage, pledge, lien or other security agreement against property of the estate.

(2) PAYMENT. When any property in the estate is encumbered by mortgage, pledge, lien or other security agreement, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or may convey or transfer the encumbered assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has filed a claim.

Cross References: See 863.13 which deals with exoneration of encumbered property.

See 859.19 which deals with the payment of secured claims which have been filed.

859.45 Tort claims. (1) FILED WITHIN TIME LIMITED. If a claim based on a cause of action in tort or for contribution resulting from a cause of action in tort is filed on or before the deadline for filing a claim under s. 859.01 or 859.21 or a continuance is secured under s. 859.03, the claimant will receive the same protection in regard to payment as a claimant who has filed a claim which was required to be filed.

(2) NOT FILED WITHIN TIME LIMITED. A cause of action against a decedent in tort or for contribution resulting from a cause of action in tort is not defeated by failure to file the

claim or commence or continue an action against the personal representative on or before the deadline for filing a claim under s. 859.01 against an estate, but the failure relieves the court of all responsibility to protect the rights of the claimant and the claimant shall not be granted any of the protections under s. 859.21. If the claim is made absolute through court approved settlement or adjudication and a certified copy of the settlement or judgment is filed in the court in which the estate is being administered prior to the approval of the final account, it shall be paid prior to the distribution of the estate, otherwise the estate may be distributed as though the claim did not exist. After the final account has been approved, a claimant whose claim has been made absolute through court approved settlement or through adjudication may proceed against the distributees, but no distributee may be liable for an amount greater than that allowed under s. 859.23.

History: 1977 c. 449; 1989 a. 96

Cross Reference: Chapter 777 deals with actions against distributees.

See note to 859.02, citing *Landwehr v. Citizens Trust Co.* 110 W (2d) 716, 329 NW (2d) 411 (1983)

859.47 Payment of unfiled claims. If a personal representative has in good faith paid unfiled claims against the estate, the payments may be allowed upon proof that they were just demands against the estate and that they were paid on or before the deadline for filing claims under s. 859.01, or at any time with the consent of the heirs or beneficiaries affected by the payment. Notice that application will be made for such allowance shall be given under s. 879.03. Payment shall be allowed on a proportional basis with other claims of the same class if the estate is insolvent.

History: 1975 c. 331; 1979 c. 110 s. 60 (11); 1989 a. 96

859.48 Claims of creditors without notice. (1) A claim not barred by s. 859.02 (1) because of the operation of s. 859.02 (2) (b) may be enforced only as provided in this section.

(2) The claimant shall file the claim in the court in which the estate is administered within one year after the decedent's death and within 30 days after the earlier of the following:

(a) The date that the personal representative gives notice to the potential claimant of the deadline for filing a claim against the estate under s. 859.01 or this section and of the court in which the estate is administered.

(b) The date that the claimant first acquires actual knowledge that the estate is being or was administered and of the court in which the estate is administered.

(3) The claimant shall serve a copy of the claim upon or mail a copy of the claim to the personal representative or the attorney for the estate within 10 days after the claim is filed.

(4) In any proceeding under this section, the claimant shall have the burden of establishing by the greater weight of the credible evidence that all of the circumstances under s. 859.02 (2) (b) existed.

(5) If the claim is allowed, it shall be paid to the same extent as other claims of the same class. If allowed after the assets of the estate have been partially or fully distributed, any unpaid portion of the claim may be enforced by separate action against the distributees. No distributee is liable for any amount greater than that allowed under s. 859.23.

(6) This section does not extend the time for commencement of a claim beyond the time provided by any statute of limitations applicable to that claim.

History: 1989 a. 96

859.49 Last illness and funeral expense of deceased spouse. The reasonable expense of the last illness and funeral may, if properly presented, be paid by the personal representative of the estate of a deceased spouse and if so paid shall be allowed as a proper expenditure even though the surviving spouse could have been held liable for the expense.

History: 1975 c. 94 s. 91 (3), (13); 1975 c. 199

859.51 No impediment to summary settlement. Nothing in this chapter shall impede the summary procedure provided by ss. 867.01 and 867.02 for closing small estates.