CHAPTER 865

PROBATE — INFORMAL ADMINISTRATION

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Cross−reference: See definitions in ch. 851.

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. Informal administration proceedings are, nevertheless, circuit court proceedings, records of which shall be kept in the same manner as they are kept for formal proceedings; all of the duties and powers of registers in probate, including the certification of papers filed in the probate court, apply to informal proceedings in the same manner as they apply to formal proceedings. All provisions of chs. 851 to 879 not inconsistent with this chapter shall apply to the informal administration of estates.

History: 1973 c. 39; 1975 c. 331; 1977 c. 449.

Informal administration of decedents' estates in Wisconsin. 1974 WLR 581.

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;

3. Bond is furnished if required under s. 865.07 as provided under s. 856.25; and

4. The probate registrar may appoint a guardian ad litem, and shall have the authority, for such purpose, granted to the court by, and shall proceed pursuant to s. 879.23.

(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. A guardian or guardian ad litem may consent on behalf of an interested person who is a minor or is an individual adjudicated incompetent. The probate registrar may appoint a guardian ad litem, and shall have the authority, for such purpose, granted to the court by, and shall proceed pursuant to s. 879.23.

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.

History: 1973 c. 39; 1975 c. 331; 2005 a. 387.

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 is an individual adjudicated 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.

History: 1973 c. 39; 2005 a. 387.

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, benefiting 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 the decedent's lifetime which affects the succession of the decedent's estate.

History: 1973 c. 39; 1993 a. 486.

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 or judgment in a formal proceeding informal administration shall resume except as otherwise ordered by the court.

History: 1973 c. 39, 243.

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.

(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.

History: 1973 c. 39; 1975 c. 331; 1977 c. 73; 1989 a. 96.

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 the applicant 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.

History: 1973 c. 39; 1993 a. 486.

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 court 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. The probate registrar shall be an officer of the court and, unless prohibited by the court, shall be entitled to use the court seal.

(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 advise, within their competence, in the preparation of any of the documents required to be prepared and filed by the personal representative under this chapter.

History: 1973 c. 39; 1975 c. 331; 1977 c. 343, 449.

A probate registrar is an official of the county court, and ss. 256.22 and 59.40 [now ss. 757.22 and 59.41] would prohibit an attorney who serves as probate registrar from practicing law in county [now circuit] court. 63 Atty. Gen. 55.

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, contains an attestation clause showing compliance with the requirements of execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form under s. 853.04 (1) or (2), 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.

History: 1973 c. 39; 2005 a. 216.

865.08 Informal appointment; letters. (1) (ac) 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 appoint the personal representative nominated by the will or requested by the interested parties, subject to qualification and acceptance.

(am) If no personal representative is named or if the named personal representative fails to qualify, the personal representative shall be any of the following:

1. A bank or trust company that is entitled to exercise fiduciary powers in this state and that has the consent of all interested persons, other than creditors of the deceased.

2. A natural person who has the consent of all interested parties, other than creditors of the deceased, and who is not disqualified under s. 856.23.

(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, the probate registrar 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 the personal representative's 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 by the probate registrar to the trustee upon admission of the will to informal probate at the same time that letters are granted to the personal representative. The probate registrar shall determine if bond shall be required and, if so, the amount thereof, and for such purpose the probate registrar shall have the authority granted to the court by, and shall proceed pursuant to s. 701.0702. Thereafter, the trustee shall continue to be interested in the estate, and beneficiaries of the testamentary trust shall cease to be interested in the estate except under s. 851.21 (3). The trust shall be administered under supervision of the court under ch. 701.

History: 1973 c. 39; 1975 c. 331; 1993 a. 486; 2001 a. 94; 2013 a. 92.

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 the personal representative's appointment. The personal representative's powers relate back in time to acts by the personal representative prior to appointment which are beneficial to the estate.

History: 1973 c. 39; 1993 a. 486.

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

(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 3rd parties dealing in good faith with an informally appointed personal representative.

History: 1973 c. 39; 1975 c. 331.

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. 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. The probate registrar shall accept the inventory form filed with the department of revenue for death tax purposes for the purposes of this subsection.

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

History: 1973 c. 39; 1975 c. 331; 1987 a. 27 s. 3200 (47).

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 the appraiser, 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.

History: 1973 c. 39; 1993 a. 486.

865.13 Personal representative may pay claims. The personal representative may pay in good faith just demands against the estate, whether filed as a claim or not, on or before the deadline for filing a claim under s. 859.01, or at any time with the consent of the heirs or beneficiaries affected by the payment. In paying a claim the personal representative may deduct any counterclaim which the estate has against the claimant. Any claim filed shall be allowed or disallowed according to ch. 859.

History: 1973 c. 39; 1975 c. 331; 1989 a. 96.

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, the distributee or claimant is liable to return the value thereof as of the date of distribution together with all income and gain received thereon.

History: 1973 c. 39; 1993 a. 486.

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.

History: 1973 c. 39.

865.16 Closing estates by sworn statement. (1) As an alternative to closing an estate under ch. 863, a personal representative may close an estate by filing with the probate registrar a verified statement that the personal representative, or a prior personal representative whom he or she has succeeded, has:

(a) Duly given notice to interested persons under s. 865.05 and to creditors under s. 859.07, and that the deadline for filing a claim under s. 859.01 has passed 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 death and other taxes, except as expressly specified otherwise, and that the assets of the estate have been inventoried and distributed to the persons entitled to them. 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 the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

(1m) The probate registrar may review the statement to determine whether the amount of attorney fees, if any, are just and rea-

sonable under s. 851.40. If, in the probate registrar's judgment, the amount of such attorney fees appear unjust and unreasonable, the probate registrar shall refer the matter to the court for such proceeding or action as the court deems appropriate.

(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. A personal representative who closes an estate under this subsection may comply with the accounting requirements of ch. 862.

History: 1973 c. 39; 1975 c. 329, 331, 421; 1977 c. 267; 1987 a. 27; 1989 a. 96; 1993 a. 486, 490.

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 the distributee's 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.

History: 1973 c. 39; 1993 a. 486.

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.

History: 1973 c. 39.

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.

History: 1973 c. 39.

865.20 Termination of joint tenancy or life estate. (1) As an alternative to ss. 867.04 and 867.045, the personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest as joint tenant or life tenant, including the recording data, if any, of the document creating the joint tenancy or life estate. Valuations need not be set forth in the statement.

(2) Upon being filed with the probate registrar, the statement shall be presumed to be evidence of the facts recited and of the termination of the decedent's interest in the property listed on it as if a certificate terminating joint tenancy or life estate had been issued by the court under s. 867.04. If the statement describes an interest in real property or a debt which is secured by an interest in real property a certified copy or duplicate original of the statement may be recorded in the office of the register of deeds in each county in this state in which real property is located. This statement does not release any death tax lien.

History: 1975 c. 331; 1981 c. 376; 1987 a. 27.

865.201 Confirmation of interest in property. (1) As an alternative to s. 867.046 the personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest in marital property or in which any designated person, trust, or other entity has an interest passing by nontestamentary disposition under s. 705.15 or 766.58 (3) (f), including the recording data, if any, of the document creating the interest and any right of survivorship. Valuations need not be set forth in the statement.

(2) Upon filing under sub. (1), the statement constitutes prima facie evidence of the facts recited and evidences the termination of the decedent's interest and the confirmation of the surviving spouse's or the designated person's trust's or other entity's interest in the property listed, with the same effect as if a certificate had been issued by the court under s. 867.046. If the statement describes an interest in real property or a debt secured by an interest in real property, the personal representative may record the statement in the office of the register of deeds in each county in this state in which real property is located.

History: 1983 a. 186; 1985 a. 37; 1993 a. 301; 2005 a. 206.

865.202 Transfer of interest in property. (1) If the estate is closed under s. 865.16, the personal representative may file with the probate registrar a verified statement describing property in which the decedent had an interest other than an interest specified in s. 865.20 or 865.201, including the recording data, if any, of the document creating the interest, and specifying the persons to whom the property is distributed. Valuations need not be set forth in the statement.

(2) Upon being filed with the probate registrar, the statement shall be presumed to be evidence of the facts recited, of the termination of the decedent's interest in the property listed and of the transfer of the interest in the property to the persons entitled to the interest, as if a final judgment regarding the distribution of the property had been issued by the court under s. 863.27. If the statement describes an interest in real property or a debt that is secured by an interest in real property a certified copy or duplicate original of the statement shall be recorded in the office of the register of deeds in each county in this state in which the real property is located.

History: 1999 a. 94.

865.21 Receipts to be filed. The personal representative shall file with the probate registrar receipts from the distributees in the manner prescribed under s. 863.41.

History: 1975 c. 331.