

No. 838, A.]

[Published September 22, 1959.

**CHAPTER 450**

AN ACT to amend 316.02, 316.03 and 316.10; to repeal and recreate 316.01 (1); and to create 316.105 of the statutes, relating to permitting executor to sell homestead for the best interests of estate or if homestead is part of a larger tract.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 316.01 (1) of the statutes is repealed and recreated to read:

316.01 (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.

SECTION 2. 316.02 of the statutes is amended to read:

316.02 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.

SECTION 3. 316.03 of the statutes is amended to read:

316.03 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.

SECTION 4. 316.10 of the statutes is amended to read:

316.10 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.

SECTION 5. 316.105 of the statutes is created to read:

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.

Approved September 11, 1959.