

## CHAPTER 777

## ACTIONS BY AND AGAINST EXECUTORS, ADMINISTRATORS, HEIRS AND LEGATEES

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**777.01 Tort actions on surviving causes.** If the cause of action survives under ch. 895, the executors or administrators may maintain an action thereon against the wrongdoer, in every case where their decedent could if living, and, after the wrongdoer's death, against the wrongdoer's executors or administrators. But this section shall not extend to actions for slander or libel.

**History:** 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.01.

**777.03 Executors, etc., to be considered one.** In actions or proceedings against executors or administrators they shall all be considered as representing their testator or intestate, and service of summons on one shall constitute service on all. Judgment shall be rendered as if all had been served and execution may be issued against the property of the testator or intestate as if all had appeared. But the plaintiff may actually serve each of them.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.03.

**777.05 Judgment not to bind realty.** The real estate which belonged to any deceased person shall not be bound or in any way affected by any judgment against the deceased person's executors or administrators, nor shall it be liable to be sold by virtue of any execution issued upon such judgment except as provided in s. 811.25.

**History:** Sup. Ct. Order, 67 W (2d) 775; 1975 c. 218; 1979 c. 32 s. 55; Stats. 1979 s. 777.05.

**777.06 Executor may prosecute; set-off; judgment, how paid. (1)** An executor or administrator may commence and prosecute an action and may prosecute any action commenced by his or her predecessor or decedent for the recovery of any claim or cause of action which survived and may have execution on any judgment. In the action the defendant may set off any claim pleadable as a counterclaim which he or she may have against the decedent, instead of presenting it to the court. If judgment is rendered in favor of the defendant the claim shall be certified to the circuit court, and paid as other claims allowed against the estate.

**(2)** An administrator of effects which were left unadministered by a previous administration of the same estate may bring a writ of error or appeal upon any judgment against the predecessor or decedent and shall defend any writ of error or appeal brought upon any such judgment, and have the same remedies in the prosecution or defense of any action by or against the predecessor or decedent and to collect and enforce any judgment as the predecessor or decedent had.

**History:** 1977 c. 449; 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.06.

**777.07 Executor's executor not to sue.** An executor of the will of a deceased executor shall not meddle with the estate

which the latter was entrusted with or take any charge or control thereof.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.07.

**777.08 Liability as executor of his or her own wrong.** No person shall be liable to an action as executor of his or her own wrong but the wrongdoer shall be responsible to the executors or administrators for the value of any property or effects wrongfully received or taken and for all damages caused by his or her acts to the estate of the decedent.

**History:** 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.08.

**777.14 Rebuttal of inventory. (1)** In any action or proceeding against executors or administrators, the inventory of property of the decedent filed by them shall be prima facie evidence of the property which has come to their possession or knowledge and of the value thereof.

**(2)** In such action the defendants shall not be charged with choses in action specified in their inventory unless it appear that the same have been collected or might have been collected with due diligence.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.14.

**777.16 Foreign executors, empowered to act.** When no executor or administrator has been appointed in this state, on the estate of any decedent not a resident of this state at the time of his or her death, a foreign executor or administrator thereof, upon filing the original appointment or a certified copy thereof in any circuit court in this state, may exercise any power over the estate, including sales and assignments, and prosecute and defend any action and proceeding relating thereto and have all the remedies and defenses in regard to the property and to collect any demands of the estate which an executor or administrator appointed in this state can have or exercise in relation thereto.

**History:** 1977 c. 449; 1979 c. 32 s. 55; Stats. 1979 s. 777.16.

**777.17 Actions against executors; when allowed; when not.** No attachment or execution may be issued against the estate of the decedent or the executor or administrator, until the expiration of the time limited for the payment of debts, except as provided in ss. 811.25 and 815.14.

**History:** Sup. Ct. Order, 67 W (2d) 775; 1977 c. 449; 1979 c. 32 s. 55; Stats. 1979 s. 777.17.

The personal representative's failure to inform the trial court that the high bidders in a sale of testator's property had been occasional clients did not constitute a breach of fiduciary duty where the sale was publicly advertised—netting 20 to 30 interested viewers of the house—conducted under sealed bid, and authorized as to procedure by both court and estate beneficiaries. Estate of Philbrick, 68 W (2d) 776, 229 NW (2d) 573.

**777.18 Action to recover from heirs, legatees; parties defendant.** Actions against the heirs or legatees and devisees

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of any deceased person to recover the value of any assets that may have been paid or delivered to them by any executor or administrator may be brought against all of the heirs or all of the legatees and devisees jointly or against one or more of them. If the action is not against all who are liable the rest shall be made parties on request of the defendant.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.18.

**777.19 Action against heirs and legatees; what may be recovered; costs.** If an action mentioned in s. 777.18 is brought the plaintiff must show that he or she has been or will be unable, with due diligence, to collect his or her debt or some part thereof by proceedings in the circuit court or from the personal representatives of the decedent. In that event, except as limited by s. 859.23, the plaintiff may recover the value of all the assets received by all the defendants if necessary to satisfy his or her demand, and the amount of the recovery shall be apportioned among the defendants in proportion to the value of the property received by each of them; and the costs of the action shall be apportioned in like manner. No allowance or deduction may be made from the amount on account of other heirs or legatees or devisees to whom assets have also been delivered or paid. The judgment shall express the amount recovered against each defendant for damages and costs.

**History:** 1977 c. 449; 1979 c. 32 ss. 55, 92 (7); Stats. 1979 s. 777.19.

**777.20 Contribution among heirs.** Any of the heirs against whom recovery shall be had pursuant to ss. 777.18 and 777.19 may maintain an action against the other heirs to whom any such assets may have been paid or delivered, jointly or against any of them separately, for a just and equal contribution; and shall be entitled to recover of each defendant an amount which shall be in the same proportion to the sum collected of the plaintiff as the value of the assets delivered to such defendant bore to the value of all the assets delivered to all the heirs.

**History:** 1979 c. 32 ss. 55, 92 (7); Stats. 1979 s. 777.20.

**777.21 Recovery against legatee; contribution. (1)** If the action is brought against all the legatees and devisees the plaintiff shall not recover unless the plaintiff shows, in addition to the facts required to be shown in an action against the heirs: that no assets were delivered by the executor or administrator to the heirs; or that the value of such assets has been recovered by some other creditor; or that such assets are not sufficient to satisfy the demands of the plaintiff; and in the last case the plaintiff is entitled to recover the deficiency.

**(2)** If the action be brought against a preferred legatee or devisee or a preferred class the plaintiff must also show the same matters as to the legatee or devisee or class to whom the defendants are preferred as is above required to be shown as to the heirs. And any legatee or devisee against whom recovery shall be had may maintain an action for contribution against others of the same class as heirs may among themselves.

**(3)** Specific legacies and devises are preferred to residuary ones.

**History:** 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.21.

**777.22 Payment a discharge.** In case of any judgment against several heirs or legatees or devisees the payment or satisfaction of the amount recovered against any one of the defendants shall discharge such defendant from the judgment and from execution thereon.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.22.

**777.26 Accounts as evidence.** The account of the executor or administrator, settled by the proper circuit court, may be

used in any action brought under the provisions of this chapter as presumptive evidence of any matter of fact stated therein.

**History:** 1977 c. 449 s. 497; 1979 c. 32 s. 55; Stats. 1979 s. 777.26.

**777.28 Limit of liability.** When part of the plaintiff's debt has been collected the plaintiff can recover only the residue remaining unpaid; and when the action is against the devisees and legatees the plaintiff shall recover only such part thereof as shall not be recoverable from the heirs.

**History:** 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.28.

**777.29 Debts charged upon realty not affected.** Nothing in this chapter shall affect the liability of heirs or beneficiaries for any debt of their decedent, which was by the decedent's will expressly charged upon property or made payable exclusively out of particular property or of any beneficiary made exclusively liable for any such debt.

**History:** 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.29.

**777.32 Judgment, how collected.** If any real estate which descended or was devised to any defendant is not aliened by the defendant before the filing of a notice of the pendency of the action the court shall adjudge that the debt of the plaintiff, or the portion thereof which the plaintiff is entitled to recover against such defendant, shall be levied out of such real estate so descended or devised, and not otherwise.

**History:** 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.32.

**777.36 Debts, order of payment.** When the next of kin, legatees, heirs or devisees are liable for demands against the decedent as prescribed in this chapter they shall be given preference in the payment of the same and shall be liable therefor in the following order:

**(1)** Debts entitled to preference under the laws of the United States.

**(2)** Judgments docketed against the decedent, according to the priority thereof, respectively.

**(3)** All other debts arising or growing out of any contract.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.36.

**777.38 Defenses.** The next of kin, legatees, heirs and devisees may show that there are debts of a prior class unsatisfied or that there are unpaid debts of the same class with that on which the action is brought; and if it appear that the value of the personal property delivered to them or of the real estate descended or devised to them does not exceed the debts of a prior class judgment shall be rendered in their favor.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.38.

**777.39 Extent of liability.** If the personal property delivered to such next of kin or legatee, or if the real estate descended or devised to such heirs or devisees, exceed the amount of debts which are entitled to a preference over the debt for which the action is brought judgment shall be rendered against them only for such a sum as shall be a just proportion to the other debts of the same class with that on which the action is brought.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.39.

**777.40 Preferred debts deducted.** If any debt of a prior class to that on which the action is brought, or of the same class, shall have been paid by any next of kin, legatees, heirs or devisees they may give evidence of such payment, and the amount of debts so paid shall be estimated in ascertaining the amount to be recovered in the same manner as if such debts were outstanding and unpaid as prescribed in ss. 777.38 and 777.39.

**History:** 1979 c. 32 ss. 55, 92 (7); Stats. 1979 s. 777.40.

**777.41 Rights and liabilities of posthumous child and witness to will.** A child born after the making of a will who is entitled to succeed to a portion of the real or personal property or both of the testator, or a witness to a will who is entitled to recover any portion of such property from the legatees or devisees, shall have the same rights and remedies to compel a distribution of the personal property and partition of the real estate or to recover of the legatees or devisees such portion of the property as belongs to him, or to compel a contribution from other persons interested in the estate, or to gain possession of the property, as any other persons who are

entitled to any part of such estate and shall be equally liable to the creditors of the decedent under the provisions of this chapter.

**History:** 1979 c. 32 s. 55; Stats. 1979 s. 777.41

**777.42 Estate of deceased heir liable.** The estate of any heir, devisee, legatee or next of kin of decedent who dies before paying his or her just share of the decedent's debts is liable therefor, as for personal debt, to the extent to which he or she would have been liable if living.

**History:** 1979 c. 32 s. 55; 1979 c. 176; Stats. 1979 s. 777.42