

THIS CHAPTER IS EFFECTIVE APRIL 1, 1971.

CHAPTER 878

PROBATE COURT BONDS

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878.01 Probate court bonds. (1) **GENERALLY.** All bonds required by law to be taken in or by order of the probate court shall be for such sum and with such sureties as the court directs, except when otherwise provided by law. The bonds shall be for the security and benefit of all persons interested and shall be taken to the judge of the probate court, and in any probate court having more than one judge, shall run to all of the judges of that court, except where they are required by law to be taken to the adverse party. A bond shall not be deemed sufficient unless it has been examined and approved by the judge or the register in probate and his approval indorsed thereon in writing and signed by him; but his failure so to do shall not render the bond void.

(2) **SURETIES.** When individuals act as sureties, each must be a resident of this state, and shall give satisfactory evidence as to his financial responsibility, and, when required, shall do so before the judge, or some other officer designated by him.

Cross Reference: See 204.07 which authorizes bonds by licensed surety corporations

878.03 Corporate fiduciaries. The probate court shall not require bond from any corporate fiduciary which has complied with the requirements of s. 220.09 or 223.02.

878.05 Additional bond; reducing bond; sureties discharged. The probate judge may, at any time, require additional bond from any personal representative, special administrator, guardian or trustee and may, upon application, enter an order, with or without notice, reducing the amount of any bond, when he is satisfied that no injury can result to those interested in the estate.

Cross Reference: See 895.38 which provides a procedure for the discharge of a surety from future liability.

878.07 Actions on bonds. (1) **WHO MAY BRING.** Actions may be brought on the bonds of personal representatives, special administrators, guardians and trustees in the probate court by:

(a) A creditor when the amount due him has been ascertained and ordered paid by the court, if the personal representative, special administrator, guardian or trustee neglects to pay the same when demanded;

(b) A distributee to recover his share of the estate, after the court has declared the amount due to him, and ordered it paid or delivered if the personal representative, special administrator or trustee fails to pay or deliver the same when demanded; and

(c) A creditor, distributee, or other person aggrieved by any maladministration, when it appears that the personal representative, special administrator, guardian or trustee has failed to perform his duty in any other particular.

(2) **WHEN ORDERED.** Whenever a personal representative, special administrator, guardian or trustee refuses or neglects to perform any order or judgment for rendering an account, or upon a final settlement, or for the payment of debts or distributive shares, the judge shall cause the bond of the personal representative, special administrator, guardian or trustee to be prosecuted for the benefit of all concerned, and the money collected shall be applied in satisfaction of the order or judgment in the same manner as the property ought to have been applied by the personal representative, guardian or trustee.

(3) **LIMITATION AS TO LIABILITY OF SURETY ON FIDUCIARY'S BOND.** An action may not be maintained against the sureties on any bond given by a personal representative, special administrator, guardian or trustee unless it is commenced within 6 years from the time when he was discharged.

(4) **SEPARATE AND JOINT ACTIONS; ACTION BY WARD; ACCOUNTING, WHEN UNNECESSARY.** An action upon a bond by or in behalf of one person interested does not bar or in any way affect the right of any other person interested to maintain an action thereon, but separate actions or a joint action may be maintained thereon by or in behalf of any or all persons interested, but the action does not impair any

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other remedy of the ward. An accounting is not necessary before bringing an action against sureties when the personal representative, special administrator, guardian or trustee dies or moves out of the state or becomes incompetent.

878.09 Actions on bonds in name of judge. All actions upon bonds issued to a probate judge shall be brought in the name of the probate judge in office at the time the action is commenced. If judgment is rendered for the plaintiff, it shall be for the amount found due and costs of suit, and shall specify the amount found due to each particular person for whose benefit it is brought; but no judgment or execution against the sureties on any bond shall exceed the amount of the penalty thereof, exclusive of costs.

878.11 Money, to whom paid. All moneys recovered on any judgment in favor of the judge of the probate court, shall be paid over to the person, other than the defendant therein, who is then the rightful personal representative, special administrator, guardian or trustee, and the

moneys shall be assets in his hands to be administered according to law. If there is no personal representative, special administrator, guardian or trustee, other than the defendant, the moneys shall be paid to the persons entitled thereto upon their giving receipts which shall be filed with the probate court.

878.13 Action not barred; partial defense; stay of execution. An action brought upon the bond of any personal representative, special administrator, guardian or trustee shall not be barred or dismissed by reason that a former action was prosecuted on the bond, but any payment of damages made or collected from the sureties or any of them on any judgment in an action previously begun by any party on the bond shall be applied as a total or partial discharge of the liability thereon; and such partial defense may be pleaded by answer or supplemental answer as may be proper. The court may stay execution on any judgment rendered in the action until the final determination of any other action commenced upon the bond.