

CHAPTER 867

SUMMARY PROCEDURES

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867.01 Summary settlement of small estates. (1) **WHEN AVAILABLE.** The probate court shall summarily settle the estate of a deceased person without the appointment of a personal representative:

(a) Whenever the estate, less the amount of the debts for which any property in the estate is security, does not exceed in value the costs, expenses, allowances and claims under s. 859.25 (1) (a) to (g).

(b) Whenever the estate less the amount of the debts for which any property in the estate is security, does not exceed \$10,000 in value and the decedent is survived by a spouse or one or more minor children or both.

(2) **WHEN COMMENCED UNDER OTHER PROCEDURE.** An estate, administration of which has been commenced under ch. 856, may be terminated under this section at any time that it is found to meet the requirements of this section.

(3) **PROCEDURE.** A person who has standing to petition for administration of the estate under s. 856.07 has standing to petition for summary settlement.

(a) **Petition.** The petition shall contain the following information:

1. The facts required by sub. (1).

2. A detailed statement of property in which the decedent had an interest, property over which the decedent had a power of appointment, benefits payable on decedent's death under annuities or under a retirement plan, life insurance, joint and life tenancies, gifts made in contemplation of death or taking effect upon death or made within 2 years prior to death and any other property which may be subject to inheritance tax as a result of decedent's death.

3. The names and post-office addresses of all persons interested, so far as known to the petitioner or ascertainable by him with reasonable diligence. The petition shall indicate those

who are minors or otherwise under disability and the names and post-office addresses of their guardians.

(b) **Special administrator may be appointed.** If the court deems it necessary, it may at any time during the proceeding appoint a special administrator to aid in the settlement.

(c) **Bond.** Before making any order, the court may require a bond of the petitioner in an amount the court deems sufficient, conditioned to indemnify any person who may be aggrieved thereby.

(d) **Notice.** The court may hear the matter without notice or order notice to be given under s. 879.03.

(e) **Determination of tax.** The department of revenue may examine the property referred to in any petition under this section. Before making an order which distributes the estate, the court shall have received a copy of a certificate issued under s. 72.30 (3) determining inheritance tax or such certificate finding no inheritance tax due. No notice need be given to the department of revenue unless the court so orders.

(f) **Order.** If the court is satisfied that the estate is one proper to be settled by this section, it shall assign the property to the persons entitled to the same. If the estate is eligible to be settled under sub. (1) (b), any property not otherwise assigned shall be assigned to the surviving spouse or minor children or both as an allowance under s. 861.31. The court shall order any person indebted to or holding money or other property of the decedent to pay the indebtedness or deliver the property to the persons found to be entitled to receive the same. It shall order the transfer of interests in real estate, stocks or bonds registered in the name of the decedent, the title of a licensed motor vehicle, or any other form of property whatsoever. If the decedent immediately prior to death had an estate for life or an interest as a

joint tenant in any property in regard to which a certificate of termination in accordance with s. 867.04 has not been issued, the order shall set forth the termination of such life estate or the right of survivorship of any joint tenant. Every tract of real property in which an interest is assigned or terminated or which is security for a debt in which an interest is assigned or terminated shall be specifically described. The order shall state that the department of revenue has determined the inheritance tax, and that it has been paid, or that the department has determined that no inheritance tax is due.

(g) *Information to unsatisfied creditors.* The court may order the petitioner to inform known unsatisfied creditors as to the final disposition of the estate.

(h) *Recording required.* Whenever the order relates to an interest in real property or to a debt which is secured by an interest in real property, a certified copy or duplicate original of such order shall be recorded by the petitioner in the office of the register of deeds in each county in this state in which such real property is located.

(4) **RELEASE OF LIABILITY OF TRANSFEROR.** Upon the payment, delivery, transfer or issuance in accordance with the order of the court, the persons making such delivery, transfer or issuance are released to the same extent as if the same had been made to a personal representative of the estate of the decedent.

(5) **PROCEEDING WITH OR WITHOUT ATTORNEY.** Any party to a proceeding under this section may commence or appear at such proceeding in the party's behalf or by an attorney, but not otherwise.

History: 1971 c. 40 s. 93; 1973 c. 42, 90; 1975 c. 331, 421.

Cross References: See 103.39 for payment of decedent's wages by employer directly to decedent's dependents

See 186.34 for share in credit union issued to a member payable on death to another person.

See 253.10 and 856.01 for jurisdiction for administration of estates.

See 851.61 for transfer of U.S. obligations in beneficiary form.

See 880.28 which provides for summary closing by guardian of small estate of ward.

See 895.41 (3) for payment of decedent's employee's cash bond by employer directly to decedent's dependents.

867.02 Summary assignment of small estates subject to claims of creditors. (1) **WHEN AVAILABLE.** The probate court shall summarily assign the estate of a deceased person without the appointment of a personal representative whenever the estate less the amount of the debts for which any property in the estate is security, does not exceed \$10,000 in value and the estate cannot be summarily settled under s. 867.01. An estate, administration of which has been commenced under ch. 856, or a summary settlement commenced under s. 867.01 may be

terminated under this section at any time that it is found to meet the requirements of this section.

(2) **PROCEDURE.** Any person who has standing to petition for administration of the estate under s. 856.07 has standing to petition for summary assignment.

(a) *Petition.* The petition shall contain the following information, except that the petitioner may omit from the petition the information in subs. 3 and 4 and include it in an affidavit filed with the court prior to the signing of the order assigning the estate:

1. A statement that the estate does not exceed \$10,000 in value and cannot be summarily settled under s. 867.01.

2. A statement as to whether, after the exercise of reasonable diligence, the petitioner has been able to locate the will of the decedent.

3. A detailed statement of property in which the decedent had an interest, property over which the decedent had a power of appointment, benefits payable on decedent's death under annuities or under a retirement plan, life insurance, joint and life tenancies, gifts made in contemplation of death or taking effect upon death or made within 2 years prior to death and any other property which may be subject to inheritance tax as a result of decedent's death.

4. The names and post-office addresses of all creditors of the decedent or his estate of whom the petitioner has knowledge and the amount claimed by each.

5. The names and post-office addresses of all persons interested, so far as known to petitioner or ascertainable by him with reasonable diligence. The petition shall indicate those who are minors or otherwise under disability and the names and post-office addresses of their guardians.

(b) *Will.* The will of the decedent shall be filed with the petition.

(c) *Bond.* Before making any order, the court may require a bond of the petitioner in an amount the court deems sufficient, conditioned to indemnify any person who may be aggrieved by the order. Before assigning property, the court may require assignees to give bond for the satisfaction of their liability to creditors or persons interested in the estate.

(d) *Notice.* The court may hear the matter, including the proof of the will, without notice to interested persons or order notice to be given under s. 879.03. After the filing of the petition with the court, the petitioner shall publish notice to creditors as a class 1 notice, under ch. 985, in a newspaper published in the county.

(e) *Determination of tax.* The department of revenue may examine the property referred to in a petition under this section. Before making an order assigning the estate, the court shall have

received a copy of a certificate issued under s. 72.30 (3) determining inheritance tax or such certificate finding no inheritance tax due. No notice need be given to the department of revenue if it appears clearly evident to the court that no inheritance tax is due and payable.

(f) *Special administrator may be appointed.* If the court deems it necessary, it may at any time during the proceeding appoint a special administrator to aid in the proceeding.

(g) *Order.* If the court is satisfied that the estate is one proper to be settled by this section, after filing of the petition and proof of the will, and after 30 days have elapsed since publication under par. (d), it shall forthwith assign the property to the creditors and persons interested who are entitled to the same. The assignment shall be subject to the unknown rights of creditors or persons interested in the estate as limited in sub. (4). The court shall order any person indebted to or holding money or other property of the decedent to pay the indebtedness or deliver the property to the persons found to be entitled to receive the same. It shall order the transfer of interests in real estate, stocks or bonds registered in the name of the decedent, the title of a licensed motor vehicle or any other form of property. If the decedent immediately prior to death had an estate for life or an interest as a joint tenant in any property in regard to which a certificate of termination under s. 867.04 has not been issued, the order shall set forth the termination of such life estate or the right of survivorship of any joint tenant. Every tract of real property in which an interest is assigned or terminated or which is security for a debt in which an interest is assigned or terminated shall be specifically described. The order shall state that the department of revenue has determined the inheritance tax, and that it has been paid, or that the department has determined that no inheritance tax is due.

(h) *Recording required.* Whenever the order relates to an interest in real property or to a debt which is secured by an interest in real property, a certified copy or duplicate original of the order shall be recorded by the petitioner in the office of the register of deeds in each county in this state in which the real property is located.

(i) *Mailing or delivery required.* The petitioner shall mail or deliver a copy of the order to all persons interested in the estate whose post-office address is known to the petitioner or can with reasonable diligence be ascertained.

(3) RELEASE OF LIABILITY OF TRANSFEROR. Upon the payment, delivery, transfer or issuance in accordance with the order of the court, the persons making the payment, delivery, transfer or issuance are released to the same extent as if

the same had been made to a personal representative of the estate of the decedent.

(4) RIGHTS OF CREDITORS AND PERSONS INTERESTED; STATUTES OF LIMITATION. Creditors and persons interested in the estate who were not assigned the property to which they were entitled from the estate may recover against those assignees, or their respective bondsmen whose assigned shares have been increased by reason of the fact that the creditor or person interested was not assigned the share of the estate to which he was entitled. No assignee or his bondsman shall be liable for an amount greater than the value of the property which was assigned to him from the estate, the value to be determined as of the time of the assignment. No action for the recovery of any property assigned in the proceeding or for the value of such property shall be brought by any creditor more than 3 months after the publication. No action for the recovery of any property assigned in the proceeding or for the value of such property may be brought by any person interested more than 3 months after a copy of the order assigning the estate was mailed or delivered to him, or if his name or post-office address could not have been ascertained by the exercise of reasonable diligence on the part of the petitioner, then more than 3 months after a copy of the order assigning the estate was mailed or delivered to any person interested.

(5) PROCEEDING WITH OR WITHOUT ATTORNEY. Any party to a proceeding under this section may commence or appear at such proceeding in the party's behalf or by an attorney, but not otherwise.

History: 1971 c. 40 s. 93; 1973 c. 90, 243; 1975 c. 331, 421.

867.03 Transfer by affidavit. (1) **GENERALLY.** When a decedent leaves solely-owned property in this state which does not exceed \$3,000 in value, any heir of the decedent, may collect any money due the decedent, receive the property of the decedent if it is not an interest in or lien on real property and have any evidence of interest, obligation to or right of the decedent transferred to the affiant upon furnishing the person owing the money, having custody of the property or acting as registrar or transfer agent of the evidences of interest, obligation to or right, with an affidavit in duplicate showing:

(a) A description of and the value of the property to be transferred, and

(b) The total value of the decedent's property in this state at the date of decedent's death.

(2) RELEASE OF LIABILITY OF TRANSFEROR. Upon the transfer to the heir furnishing the affidavit, and mailing a copy of the affidavit to the department of revenue, the transferor is released to the same extent as if the transfer had

been made to the personal representative of the estate of the decedent.

(3) APPLICABILITY. This section is additional to s. 109.03 (3) for payment of decedent's wages by an employer directly to the decedent's dependents.

History: 1973 c. 43; 1975 c. 380 s. 5.

867.04 Termination of joint tenancy and life estate. When a domiciliary of this state dies who immediately prior to his death had an estate for life or an interest as a joint tenant in any property, or when a person not domiciled in this state dies having such an interest in property in this state, upon petition of any person interested in the property to the probate court of the county of domicile of the decedent (or if the decedent was not domiciled in this state, of any county where the property is situated) the court shall issue a certificate, under the seal of the court. The certificate shall set forth the fact of the death of the life or joint tenant, the termination of the life estate or joint tenancy interest, the right of survivorship of any joint tenant and any other facts essential to a determination of the rights of persons interested. The certificate is prima facie evidence of the facts recited, and if the certificate relates to an interest in real property or to a debt which is secured by an interest in real property, a certified copy or duplicate original of the certificate shall be recorded by the petitioner in the office of the register of deeds in each county in this state in which the real property is located.

Cross References: See 863.27 which deals with the termination of life estate and joint tenancy in the final judgment of an estate.

See 865.20 which provides an alternative method of termination of joint tenancy.

867.045 Administrative joint tenancy termination for real property, savings accounts, checking accounts, and stocks and bonds. (1) As an alternative to s. 867.04, applicable to real property, savings and checking accounts and stocks and bonds, upon the death of any person having an interest as a joint tenant in any real property or in any savings or checking account or any stock certificates or bonds, the surviving joint tenant may obtain evidence of the termination of such joint tenancy interest of the decedent by providing to the register of deeds of the county in which such property is located a certified copy of the death certificate for the decedent and by providing, in triplicate, on applications supplied by the register of deeds for that purpose, the following information:

- (a) Name, residence and post-office address of the decedent and surviving joint tenant;
- (b) The date of decedent's death;

(c) The serial number of any stock certificates or bonds, and the value thereof on the date of decedent's death;

(d) The name and post-office address of the banks, savings and loan associations and credit unions in which the joint tenants had savings accounts, the numbers thereof, and the respective balances therein on the date of decedent's death;

(e) The name and post-office address of the banks in which the joint tenants had checking accounts, the numbers thereof, and the respective balances therein on the date of decedent's death;

(f) The total value of pars. (c), (d) and (e);

(g) The assessed value of the real property for the immediately preceding year as determined from the tax bill, receipt or other records; and

(h) 1. Recording data from the deed creating the joint tenancy; or

2. The deed creating the joint tenancy from which the register of deeds shall copy the recording data onto the application.

(2) The register of deeds shall complete the application by entering the full value of the real property as determined from sub. (1) (g) or other records. The register of deeds or a notary public shall then complete a statement at the foot of the application, declaring that the surviving joint tenant appeared before him or her and verified, under oath, the correctness of the information required by sub. (1).

(3) The register of deeds shall then mail, or deliver, copies of such application to the department of revenue and county court for the county of residence of the decedent, and shall thereupon record the original application certifying thereon that the above mailing or delivery has been accomplished.

(4) Upon such recording, the application shall constitute prima facie evidence of the facts recited and shall constitute the termination of such joint tenancy, all with the same force and effect as if issued by the probate branch of the county court of the county of domicile of the decedent under s. 867.04. This application shall not constitute evidence of payment of any inheritance tax which may be due, the payment for which shall remain an obligation of the surviving joint tenant.

(5) The department of revenue shall prepare and furnish the register of deeds and the public with adequate supplies of the form of application described in sub. (1).

History: 1973 c. 41, 84, 90; 1975 c. 127, 200, 262, 421.

Cross Reference: See 865.20 which provides an alternative method of termination of joint tenancy.

Register of deeds is not authorized to collect and forward to the county court fees set forth in 253.34 (1) (a) where 867.045 is used for administrative joint tenancy termination for homes. 62 Atty Gen. 192.

867.05 Determination of descent of property.

(1) **PETITION.** Six years or more after any person dies intestate, leaving an estate which a probate court in this state has jurisdiction to administer, any person interested in the estate or in any property in the estate may petition the probate court which has jurisdiction to administer the estate, to determine the descent of the property in the estate. The petition shall be verified and shall show, as particularly as known or can with due diligence be ascertained, the time and place of death and domicile of the decedent, that the estate has not been administered and the other facts which authorize the proceeding, the names, post-office addresses and relationship to the decedent of all heirs and their grantees entitled to any interest in the property, stating who are minors or under legal disability, and the names and addresses of their guardians, and a description of all property for which a determination of descent is sought.

(2) **CERTIFICATE AFTER HEARING WITHOUT NOTICE.** The court may hear the petition without notice, and after hearing the evidence, if the court is satisfied who the heirs of the decedent are and what their respective rights and interests in the property are, the court shall certify the same and in its certificate shall name the persons entitled to interests therein and the property to which each is entitled. The certificate is prima facie evidence of the facts recited.

(3) **JUDGMENT AFTER HEARING ON NOTICE.** The court may hear the petition after notice of hearing given under s. 879.03, and after hearing the evidence, if the court is satisfied who the heirs of the decedent are and what their respective rights and interests in the property are, the court shall determine the same and in its judgment shall name the persons entitled to interests therein and the property to which each is entitled.

(4) **RECORDING REQUIRED.** Whenever the certificate or judgment relates to an interest in real property or to a debt which is secured by an interest in real property, a certified copy or duplicate original of the certificate or judgment shall be recorded by the petitioner in the office of the register of deeds in each county in this state in which such real property is located.

867.07 Grounds for appointment of special administrator. Whenever it appears by petition to probate court that a person has died and the court would have jurisdiction for the administration of his estate, the court may appoint a special administrator if it appears that:

(1) There is no estate to be administered and an act should be performed on the part of the decedent, the performance of which affects or is

of importance to the petitioner or any other person.

(2) The final judgment of distribution in the estate has been entered and an act remains unperformed in the estate, or that unadministered assets have been found or may be found belonging to the estate.

(3) The estate can be settled under s. 867.01 or 867.02.

(4) It is necessary to conserve or administer the estate of a decedent before letters can be issued to a personal representative.

(5) Circumstances provided for in s. 72.31 exist.

(6) A cause of action exists for or against the decedent or his estate and that it is necessary that some act be performed before letters can be issued to a personal representative.

(7) Other circumstances exist which in the discretion of the court require the appointment of a special administrator.

History: 1971 c. 307 s. 118.

Cross Reference: See 253.10 and 856.01 for jurisdiction for administration of estates.

867.09 Who may petition for appointment of special administrator. Petition for the appointment of a special administrator may be made by any person who has standing to petition for administration of the estate under s. 856.07, and waiting periods stated in that section do not apply.

867.11 Notice of hearing on petition for appointment of special administrator. The court shall determine whether notice of the hearing for the appointment of a special administrator need be given. If the court deems notice unnecessary or inexpedient or if the appointment should be made without delay, the court shall proceed to hear the matter without notice. If notice of hearing is required, it shall be given under s. 879.03.

867.13 Bond of special administrator. If it appears that anything of value will come into the hands of the special administrator, the court may require him to give bond in the amount the court deems reasonable, except that no bond shall be required of any trust company bank, state bank or national banking association which is authorized to exercise trust powers and which has complied with s. 220.09 or 223.02. If the person appointed special administrator is subsequently appointed personal representative, his bond given as special administrator continues in effect as his bond as personal representative unless otherwise ordered by the court. Section 895.345 does not apply to bonds of special administrators.

867.15 Letters of special administration; no appeal. Upon the appointment of a special administrator, letters of special administration shall be issued to the special administrator by the court. An order appointing a special administrator is a nonappealable order.

867.17 Powers, duties and liabilities of special administrator. A special administrator who is appointed without notice of hearing shall have only those powers and duties that are specifically granted to him by order of the court. The court may, following a hearing on notice to or waiver of notice by all interested parties, grant the special administrator by general order the same powers, duties and liabilities as a personal representative, except as expressly limited by the order of the court. By order the court may expressly grant him powers and impose duties in addition to those granted by statute to personal representatives as may be necessary to accomplish the purpose for which he is appointed.

History: 1971 c. 40.

Cross Reference: As defined in 851.23 "personal representative" as used in Title XLII-B does not include "special administrator".

Revisor's Note, 1971: Clarifies the section. The 2nd sentence spells out what powers can be granted after hearing. The first sentence was intended to authorize more limited powers where the special administrator is appointed without notice of hearing. Requested by probate code drafting committee. [Bill 165-S]

867.19 Compensation of special administrator. The special administrator shall be allowed all necessary expenses incurred in the care and management of the estate and the performance of his duties; for his services he shall be allowed the compensation the court deems reasonable. If a special administrator is subsequently appointed personal representative, his compensation as special administrator may be considered and fixed at the time his compensation as personal representative is determined.

867.21 Termination of authority and discharge of special administrator. (1) WHEN NO PERSONAL REPRESENTATIVE IS TO BE APPOINTED. The special administrator shall be discharged whenever the court is satisfied that he has properly performed his duties. Before discharging the special administrator the court may require him to file any accounts or reports which the court deems necessary. Discharge may be granted with or without notice as the court determines. If notice of hearing upon the application for discharge is required, it shall be given under s. 879.03.

(2) UPON GRANTING LETTERS TO A PERSONAL REPRESENTATIVE. Upon the granting of letters to a personal representative of the estate of the decedent, the power of the special administrator ceases and he shall forthwith file his account and deliver to the personal representative all property of the estate which he has in his possession. The court may accept the written receipt of the personal representative as evidence of delivery and upon approving his account shall discharge the special administrator. If the special administrator is appointed personal representative, he need not file an account as special administrator unless his bond is not continued as his bond as personal representative. If no accounting as special administrator is made he shall account for the special administration in his account as personal representative.

Sub. (1), providing for the discharge of a special administrator who has "properly performed his duties" with or without notice as the court determines, is limited to the situation where the special administration has been completed and no further administration is contemplated, as is made clear from (2). Fundamental notions of fair play require that if a special administrator is to be removed while special administration continues, he must be provided an opportunity to respond to any charges which in the court's mind justify his removal. Estate of White, 69 W (2d) 649, 231 NW (2d) 194.