

ENGROSSED SENATE
BILL NO. 1022

BY: HENDRICK of the SENATE

and

DAVIS of the HOUSE

AN ACT RELATING TO GUARDIAN AND WARD, PROBATE
PROCEDURE AND WILLS AND SUCCESSION; AMENDING 30
O.S. 1991, SECTIONS 1-122 AND 3-220, WHICH RELATE
TO THE OKLAHOMA GUARDIANSHIP AND CONSERVATORSHIP
ACT, 58 O.S. 1991, SECTIONS 44, 211, 217, 234, 387,
423, 527, 596 AND 632.3, WHICH RELATE TO PROBATE OF
WILLS, EXECUTORS AND ADMINISTRATORS, CLAIMS AGAINST
ESTATES, SALES AND CONVEYANCES, ACCOUNTS AND
PAYMENTS AND DISTRIBUTION AND SETTLEMENT OF
ESTATES, AND 84 O.S. 1991, SECTION 41, WHICH
RELATES TO EXECUTION AND REVOCATION OF WILLS;
PROVIDING THAT CERTAIN FACT NOT BE CONSIDERED
CONFIDENTIAL INFORMATION; SPECIFYING CERTAIN
REBUTTABLE PRESUMPTION; CLARIFYING JUDGE BEFORE
WHOM CERTAIN SUBSCRIPTION MAY BE MADE; AUTHORIZING
DISTRICT COURT TO APPOINT SPECIAL ADMINISTRATOR AND
MODIFYING CIRCUMSTANCES UNDER WHICH SUCH
APPOINTMENT MAY BE MADE; PROVIDING FOR FEE FOR
SPECIAL ADMINISTRATOR; MODIFYING PROCEDURE AND
CIRCUMSTANCES FOR SUSPENSION OF POWERS OF EXECUTOR
OR ADMINISTRATOR; REQUIRING SUCH SUSPENSION IN
CERTAIN MATTERS UNDER CERTAIN CONDITIONS; MODIFYING
PROCEDURE FOR SALE OF CERTAIN PROPERTY; REQUIRING
REPORT OF SUCH SALE; PROVIDING THAT EXECUTOR,

ADMINISTRATOR OR SPECIAL ADMINISTRATOR NOT BE SURCHARGED OR OTHERWISE LIABLE UNDER CERTAIN CIRCUMSTANCES; MODIFYING CERTAIN PROCEDURE FOR MAKING BIDS OR OFFERS ON SALE OF REAL PROPERTY AT PRIVATE SALE; MODIFYING COMPENSATION OF EXECUTORS OR ADMINISTRATORS UNDER CERTAIN CONDITIONS; MODIFYING PROCEDURE FOR PAYMENT OF CERTAIN CLAIMS; MODIFYING CIRCUMSTANCES UNDER WHICH CERTAIN FAILURE BY PERSONAL REPRESENTATIVE WILL NOT AFFECT TITLE TO CERTAIN PROPERTY; REQUIRING CERTAIN JUDGE TO MAKE CERTAIN ATTESTATION; SPECIFYING DUTIES AND AUTHORITY OF SUCH JUDGE; PROVIDING THAT CERTAIN DOCUMENTS CONSTITUTE PRIMA FACIE EVIDENCE OF DEATH OF LIFE TENANT LEAVING ESTATE SUBJECT TO PROBATE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 30 O.S. 1991, Section 1-122, is amended to read as follows:

Section 1-122. A. Confidential information filed with or submitted to the court in conjunction with any proceeding pursuant to the Oklahoma Guardianship and Conservatorship Act, Section 1-101 et seq. of this title, shall not constitute a public record and shall be sealed by the court. Access to confidential information shall be strictly controlled. Except upon court order, no confidential information shall be disclosed to persons other than:

1. ~~the~~ The subject of the proceeding and his attorney;
2. ~~the~~ The guardian ad litem;

3. ~~if~~ If the subject of the confidential information is a ward, the guardian or conservator of such ward;

4. ~~if~~ If the subject of the confidential information is the guardian or conservator, the ward and his attorney, and the attorney of such guardian or conservator;

5. ~~abstractors~~ Abstractors licensed pursuant to the Oklahoma Abstractors Law, Section 227.10 et seq. of Title 74 of the Oklahoma Statutes, for the purpose of having access to records regarding minors and determinations of persons as incapacitated or partially incapacitated persons pursuant to the Oklahoma Guardianship Act. ~~Said abstractor~~ Abstractor shall maintain the confidentiality of this data, except for such parts as are relevant to the land title being researched; and

6. ~~an~~ An authorized representative of the United States Department of Veterans Affairs upon proper identification.

B. The fact of the existence of a guardianship or conservatorship of a person or that person's estate shall not be considered confidential information.

SECTION 2. AMENDATORY 30 O.S. 1991, Section 3-220, is amended to read as follows:

Section 3-220. All conservatorships created prior to the effective date of the Oklahoma Guardianship and Conservatorship Act, Section 1-101 et seq. of this title, with the consent of the person for whose property a conservator was appointed, are hereby validated. Each such conservatorship shall be presumed to have been created by consent unless otherwise established by documents filed in the conservatorship action or by other evidence.

SECTION 3. AMENDATORY 58 O.S. 1991, Section 44, is amended to read as follows:

Section 44. The testimony of any witness or witnesses admitted at a hearing on a petition to probate a will shall be recorded in one of the following methods:

(a) filing with the court clerk a written summary of the testimony, subscribed and sworn to by each witness in the presence of the ~~district or associate district~~ judge having jurisdiction of probate matters; or

(b) having the testimony taken down verbatim in shorthand, stenotype, or any other method approved by the court; or

(c) having the testimony recorded verbatim by a sound recorder approved by the court; or

(d) having the testimony recorded verbatim by an official court reporter.

If the testimony is recorded by one of the methods described in subdivisions (b) or (c), the same shall be transcribed, subscribed and sworn to by each witness, and filed with the court clerk. If the testimony is recorded by the method described in subdivision (d), the same shall be transcribed and certified by the official court reporter who took the testimony, and filed with the clerk of the court. Such evidence shall be admissible in any subsequent proceedings concerning the validity of the will, or the sufficiency of the proof if the subscribing witness is dead, or has permanently left this state.

SECTION 4. AMENDATORY 58 O.S. 1991, Section 211, is amended to read as follows:

Section 211. When there is delay in granting letters testamentary, or of administration, from any cause, or when such letters are granted irregularly, or no sufficient bond is filed as required, or when no application is made for such letters, or when an administrator or executor dies, or is suspended, suspended partially, or removed, the judge of the district court ~~must~~ may appoint a special administrator to collect and take charge of the estate of the decedent, in whatever county or counties the same may be found, and to exercise such other powers as may be necessary for the preservation of the estate.

SECTION 5. AMENDATORY 58 O.S. 1991, Section 217, is amended to read as follows:

Section 217. The special administrator must render an account, on oath of his proceedings, in like manner as other administrators are required to do. The special administrator shall be entitled to a fee to be determined by the court in its discretion, which fee shall in no event exceed the fee allowed to an executor or administrator pursuant to Section 527 of this title.

SECTION 6. AMENDATORY 58 O.S. 1991, Section 234, is amended to read as follows:

Section 234. A. ~~Whenever the judge of the district court~~ has reason to believe, from his own knowledge or from credible information, that any executor or administrator has wasted, embezzled or mismanaged, or is about to waste, or embezzle the property of the estate committed to his charge, or has committed or is about to commit a fraud upon the estate, or is incompetent to act ~~or has permanently removed from the state~~ or has wrongfully neglected the estate, or has long neglected to perform any act as such executor or administrator, he must, by an order entered upon the minutes of the court, suspend the powers of such executor or administrator until the matter is investigated.

B. If the judge determines on his own motion, or upon application by an interested party and upon proper showing, that an executor or administrator is subject to a conflict of interest which substantially impairs the executor's or administrator's ability to perform his duties as required by law, the judge shall suspend the powers of the executor or administrator with respect to the subject matter of the conflict of interest and appoint a special administrator to act with respect to such subject matter. The executor or administrator shall remain empowered to act with respect to all other matters.

C. The judge of the district court shall require each and every administrator, executor or guardian to make a report at least once in each year, showing the condition of the estate, and of all property, notes, monies, and other assets in his hands and the use that has been made thereof during the past year.

SECTION 7. AMENDATORY 58 O.S. 1991, Section 387, is amended to read as follows:

Section 387. A. At any time after receiving letters, the executor, administrator, or special administrator may ~~make application to the court for an order to sell at public auction or private sale,~~ perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent without obtaining prior court authorization for sale, without filing a return of sale, and without obtaining court confirmation of sale. The ~~order and the sale may be made without notice; but the executor, administrator or special administrator must file a sworn return of said sale, and on proper showing, the court shall approve the sale.~~ Title to such property shall pass to the purchaser thereof without approval or confirmation by the court of such sale.

B. Any sale of property made by an executor, administrator or special administrator of the property of a decedent pursuant to this section shall be reported in the accounting next filed by such executor, administrator or special administrator after the making of the sale. If the court determines the property sold was not perishable or was not otherwise likely to depreciate in value or would not have caused the estate of the decedent loss or expense if kept, or was not necessary to pay the allowance made to the family of the decedent, the executor, administrator or special administrator who made such sale shall not be surcharged or otherwise held liable with respect to such sale if he made a

reasonable determination in good faith that the property sold was perishable, was otherwise likely to depreciate in value, would have caused the estate of the decedent to incur loss or expense if kept or the sale was necessary to pay the allowance made to the family of the decedent.

SECTION 8. AMENDATORY 58 O.S. 1991, Section 423, is amended to read as follows:

Section 423. When a sale of real property is ordered to be made at private sale, notice of such sale must be published once each week for two (2) consecutive weeks in a newspaper in each county in which any part of the land to be sold is situated, and in the county where the order is made and by mailing a copy of ~~said~~ the notice to all heirs, legatees and devisees of the decedent whose addresses are known. The notice of sale shall describe the real property to be sold with common certainty, and must set a day on or after which the sale will be made, and the place where offers or bids will be received. The date last referred to must be at least ten (10) days from the first publication of notice, and the sale must not be made before that day, but must be made within one (1) year thereafter. The bids or offers must be in writing, and may be left at the place designated in the notice, ~~or delivered to the executor or administrator personally, or may be filed in the court to which the return of the sale must be made,~~ at any time after the first publication of notice, and before the making of the sale.

SECTION 9. AMENDATORY 58 O.S. 1991, Section 527, is amended to read as follows:

Section 527. A. When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of the whole estate accounted for by him, excluding all property not ranked as assets, as follows:

1. For the first thousand dollars, at the rate of five percent (5%); ~~for all above that sum, and not exceeding~~

2. For the next Five Thousand Dollars (\$5,000.00), at the rate of four percent (4%); ~~for~~ and

3. For all amounts above ~~that sum~~ Six Thousand Dollars (\$6,000.00), at the rate of two and one-half percent (2 1/2%); and the same commission must be allowed administrators.

In all cases such further allowance may be made, as the judge of the district court may deem just and reasonable, for any extraordinary service. The total amount of such allowance must not exceed the amount of commissions allowed by this section.

B. Co-executors and co-administrators shall be entitled, as a unit, to the same fee allowable to a single executor or administrator, and shall divide such fee among themselves equally unless they agree to a different division and the division is approved by the court.

C. An executor or administrator who does not serve during the entire administration of an estate shall be entitled to only a portion of the fee provided in subsection A of this section, and such portion shall be determined by the court in its discretion.

SECTION 10. AMENDATORY 58 O.S. 1991, Section 596, is amended to read as follows:

Section 596. ~~If~~ Subject to the provisions of Section 5 of Title 46 of the Oklahoma Statutes, if there is any claim not due, or any contingent or disputed claim against the estate, the court may direct that the amount thereof, or such part of the same as the holder would be entitled to if the claim were due, established or absolute, ~~must~~ be paid into the court, and there remain, to be paid over to the party when he becomes entitled thereto, or the court may direct that such claim be satisfied in some other manner as determined by the court in its discretion; or, if ~~he~~ the party fails to establish his claim, to be paid over or distributed as the circumstances of the estate require. If any creditor whose claim has been allowed, but is not yet due, appears and assents to a

deduction therefrom of the legal interest for the time the claim has yet to run, he is entitled to be paid accordingly. The payments provided for in this section are not to be made when the estate is insolvent, unless a pro rata distribution is ordered.

SECTION 11. AMENDATORY 58 O.S. 1991, Section 632.3, is amended to read as follows:

Section 632.3 1. At the hearing on the final account of any personal representative who has given notice to creditors as provided in this title, the judge shall conduct an inquiry to judicially determine whether the personal representative has complied with the provisions of Sections ~~3~~ 243 and ~~4~~ 331 of this ~~act~~ title.

2. The final decree shall contain a finding in substantially the following form:

~~that~~ a. That notice to creditors as required by Sections ~~3~~ 243 and ~~4~~ 331 of this ~~act~~ title was given by the personal representative, including notice by mail to all creditors, if any, known to the personal representative as of the date said notice was filed with the district court clerk for the county in which the probate is pending, at their respective last-known addresses; and

~~that~~ b. That all claims not filed within the time permitted for the presentation of claims are nonsuited, void and forever barred, except as otherwise provided in this title or any claim for which payment is approved in this decree pursuant to Section 335 of ~~Title 58 of the Oklahoma Statutes~~ this title.

3. A final decree which fails to contain the finding required by this section shall be voidable.

4. If the affidavits required by Section 332 of ~~Title 58 of the Oklahoma Statutes~~ this title are filed in the probate proceeding for the decedent's estate prior to the entry of the final decree ~~or~~ ~~prior to the entry of the order confirming a sale of any property, real or personal, sold during the administration of such estate and~~

the final decree ~~or such order confirming such sale~~ contains the findings required by this section, the failure of a personal representative to give actual notice to a creditor shall not impair the marketability of the title to any property, real or personal, distributed from the estate ~~or sold during the administration of such estate~~.

5. Marketability of the title to any property, real or personal, sold during the administration of an estate shall not be impaired or affected by the requirements of this title for giving notice to creditors of a decedent.

SECTION 12. AMENDATORY 84 O.S. 1991, Section 41, is amended to read as follows:

Section 41. A. Every person over the age of eighteen (18) years of sound mind may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in this title, being chargeable in both cases with the payment of all the decedent's debts, as provided in Title 12 of the Oklahoma Statutes.

B. The appointment of a guardian or a conservator does not prohibit a person from disposing of his estate, real and personal, by will; provided, that when any person subject to a guardianship or conservatorship shall dispose of such estate by will, such will must be subscribed and acknowledged in the presence of a judge of the district court. The judge before whom the will is subscribed and acknowledged shall attest to the execution of the will but shall have neither the duty nor the authority to approve or disapprove the contents of the will. Subscribing and acknowledging such will before a judge shall not render such will valid if it would otherwise be invalid.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 36.1 of Title 60, unless there is created a duplication in numbering, reads as follows:

In the event of the death of a life tenant leaving an estate subject to probate, a certified copy of Letters Testamentary or of Administration shall constitute prima facie evidence of the life tenant's death.

SECTION 14. This act shall become effective September 1, 1992.

Passed the Senate the 10th day of March, 1992.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1992.

Speaker of the House of Representatives