

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1893

By: Steidley of the House

and

Dickerson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to probate procedure; amending 58 O.S. 1991, Section 52, which relates to certain petitions; modifying procedures for admitting copy of will to probate; providing for certification; amending 58 O.S. 1991, Section 239, as amended by Section 8, Chapter 345, O.S.L. 1993 (58 O.S. Supp. 1993, Section 239), which relates to court orders relating to petitions for admission of a will to probate; modifying requirements for certain form and declaration of written consent of certain persons; amending 58 O.S. 1991, Sections 311 and 313, which relate to homesteads; authorizing sale of certain real property; providing exceptions; modifying certain procedures; modifying certain homestead rights exempt from debt or liability; and providing an effective date.

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

SECTION 1. AMENDATORY 58 O.S. 1991, Section 52, is amended to read as follows:

Section 52. A. When a copy of the will, and the order or decree admitting same to probate, ~~duly authenticated~~ certified by the court clerk or otherwise certified pursuant to Section 1739 of Title 28 of the United States Code, shall be produced by the executor, or by any other person interested in the will, with a petition for letters, the same must be filed, and the court or judge must appoint a time for the hearing, notice whereof must be given as provided for an original petition for the probate of a will.

B. Regardless of the value of the estate, any will admitted to probate under this section may be probated under the procedures prescribed under ~~Title 58 O.S.~~, Section 241 of this title.

SECTION 2. AMENDATORY 58 O.S. 1991, Section 239, as amended by Section 8, Chapter 345, O.S.L. 1993 (58 O.S. Supp. 1993, Section 239), is amended to read as follows:

Section 239. A. After the appointment of the personal representative, and, provided that a determination of the identities of the heirs, devisees and legatees of the decedent has been made pursuant to the provisions of Section 240 of this title, and upon the filing of a petition or application, the petition to be accompanied by ~~acknowledged,~~ verified written consents by all heirs, devisees and legatees, other than contingent devisees and legatees, and persons authorized to act on behalf of any heir, devisee or legatee under any legal disability, the court may enter an order:

1. Authorizing the personal representative to sell, grant, lease, mortgage or encumber any real or personal property including mineral interests, and to execute and issue deeds, leases, bills of sale, notes, mortgages, easements and other documents of conveyance, without further judicial authorization or a return of sale or confirmation of such sale or transaction. Any sale or transaction so authorized shall pass title to the purchaser without being confirmed by the court, notwithstanding any statutory provision to the contrary; or

2. Waiving the filing of any accounting specified in the consents of the persons herein named, or waiving the necessity for presentation to the court for approval of any such accounting.

B. Waivers or consents may be withdrawn at any time and thereafter all acts shall be in accordance with regular statutory procedures. A withdrawal of a waiver or consent shall be effected by filing a written statement of withdrawal with the court clerk and by serving a certified copy on the personal representative or the attorney for the personal representative by certified mail.

C. Notwithstanding the foregoing, if the petition or application is filed after three (3) months from the date of admission of the will to probate, and no appeal of the admission of the will is pending nor has any contest to admission of the will to probate been filed after admission of the will to probate,

and if the will contains a residuary disposition clause, then the consents of heirs who are neither devisees or legatees shall not be required.

SECTION 3. AMENDATORY 58 O.S. 1991, Section 311, is amended to read as follows:

Section 311. A. Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead, which shall not in any event be subject to administration proceedings, except as in this title provided, until it is otherwise disposed of according to law; and upon the death of both husband and wife the children may continue to possess and occupy the whole homestead until the youngest child becomes of age. ~~The title~~

B. The land set apart for the homestead, except the fee interest therein passing to surviving spouse and/or minor children, shall be subject to probate sale to pay the debts of the decedent, widow's allowance, and expenses of administration or probate expenses or both administrative and probate expenses. Such sale shall be subject to the possessory probate homestead rights of the surviving spouse and minor children, if any.

Title to the land set apart for the homestead property, and not sold during the probate, shall pass, subject to the right of homestead, the same as other property of the decedent and shall be included in the decree of distribution. ~~And in addition thereto,~~

~~the~~ C. The following property ~~must~~ shall be immediately delivered by the executor or administrator to such surviving wife or husband, and child or children, and is not to be deemed assets, namely:

1. All family pictures ~~;~~i
2. A pew or other sitting in any house of worship ~~;~~i
3. A lot or lots in any burial ground ~~;~~i
4. The family Bible and all school books used by the family, and all other books used as part of the family library, not exceeding in value of One Hundred Dollars (\$100.00) ~~;~~i
5. All wearing apparel and clothing of the decedent and his family ~~;~~i

6. The provisions for the family necessary for one (1) year's supply, either provided or growing, or both; and fuel necessary for one (1) year-; and

7. All household and kitchen furniture, including stoves, beds, bedsteads and bedding.

No such property shall be liable for any prior debts or claims whatever.

SECTION 4. AMENDATORY 58 O.S. 1991, Section 313, is amended to read as follows:

Section 313. The possessory homestead rights of the surviving spouse and/or minor children of the decedent, and the fee interest in the homestead passing to the surviving spouse and/or minor children ~~is~~ are not subject to the payment of any debt or liability contracted by or existing against the husband and wife, or either of them, previous to or at the time of the death of such husband or wife, except such as are secured by lien thereon, as provided in the laws relating to homesteads.

SECTION 5. This act shall become effective September 1, 1994.

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