STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2467 By: Bass

COMMITTEE SUBSTITUTE

An Act relating to probate procedure; amending 58 O.S. 1991, Sections 1104, 1105 and 1106, which relate to probate of will by surviving spouse; providing for admission of will and distribution of estate; providing for exception from appointment of personal representative and giving notice to creditors; requiring certain order to contain legal description of real property distributed; requiring certain filing; providing exception to final accounting and hearing on final account and petition; providing for responsibility for decedent debts and prescribing limit of liability for debts; providing for order discharging surviving spouse and declaring distribution; and providing an effective date.

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

SECTION 1. AMENDATORY 58 O.S. 1991, Section 1104, is amended to read as follows:

Section 1104. A. At the time and place of such hearing or at the postponement thereof, after first receiving satisfactory proof of the giving of the notice of the hearing, and if there is no contest to the probate of the will or the appointment of the personal representative, the court shall receive proof of the will and, if satisfied thereby, may admit the will to probate and order the appointment and qualification of the surviving spouse as personal representative. Provided appointment of the surviving spouse as personal representative shall be waived if the provisions of subsection C of this section are applicable. Unless the will provides otherwise, the court, in its discretion, may waive or require the giving of bond by the spouse regardless of the known or estimated value of the estate. The court, at a later

time, for good cause shown, may waive or require a bond of the personal representative.

B. After being appointed personal representative, the surviving spouse shall:

1. Give notice to creditors in the manner provided in Section 331 of this title with respect to a decedent who has been dead for a period of more than five (5) years prior to the commencement of a probate proceeding for such decedent's estate, and file the appropriate affidavits as provided in Section 332 of this title;

2. Make and return to the court, as in other estate proceedings, a true inventory and appraisement of all the estate of the decedent, except that the surviving spouse alone may appraise the values thereof and shall appraise the items set out in the estate inventory at their fair market values and no appraisers need be appointed by the court. Both the estate inventory and the appraisement thereof shall be verified by the surviving spouse;

3. Prepare all returns and reports required by law with regard to estate, income and other taxes owed by the decedent or the estate and obtain receipts, releases and waivers as are required in regard thereto, or in regard to estate taxes, obtain an order releasing estate tax liability from the district court; and

4. Carry out all other duties of a personal representative as in other estate proceedings.

C. If the requirements of Sections 1102 and 1103 of this title and subsection A of this section have been met to the satisfaction of the court, and the verified petition states that the surviving spouse shall be responsible for any debts of the decedent, then no personal representative shall be appointed and the will shall be deemed admitted and the property distributed pursuant to the terms of the will. Unless otherwise responsible for the debt, the surviving spouse shall not be responsible for debts of the decedent for an amount in excess of the value of all property distributed to the surviving spouse pursuant to the provisions of this section. The remaining requirements of

subsection B of this section and the requirements of Sections 1105 and 1106 of this title shall not be applicable. An order shall be entered discharging the surviving spouse and stating that distribution and final settlement was made pursuant to the terms of the will. The order shall contain the legal description of the real property distributed and a copy of the order shall be filed in the office of the county clerk in any county in which such real property is located.

SECTION 2. AMENDATORY 58 O.S. 1991, Section 1105, is amended to read as follows:

Section 1105. ~~After~~ Except as provided in subsection C of Section 1104 of this title, after completing all applicable provisions of this act, the surviving spouse shall prepare and file a final account which need only include a description of income and expenditures, as in other estate proceedings and shall petition the court:

1. To approve the Final account;

2. To determine the names and identities of the heirs and that the surviving spouse is the sole legatee and devisee of the decedent;

3. To order distribution to the surviving spouse of all remaining assets of the estate; and

4. To discharge the surviving spouse and any sureties on the bond from further duties and liabilities.

SECTION 3. AMENDATORY 58 O.S. 1991, Section 1106, is amended to read as follows:

Section 1106. ~~The~~ Except as provided in subsection C of Section 1104 of this title, the court shall thereupon fix a date, time and place for the final account and petition, which date shall be not less than ten (10) nor more than thirty (30) days after the filing of the final account and petition. There shall be notice given by mailing to the heirs and contingent legatees and devisees of the decedent, whose names and addresses are known, not less than ten (10) days prior to the date of the hearing and by publication one time in a newspaper in the county not less than

ten (10) days prior to the hearing. Proof of such notice shall be made and filed as in other estate proceedings.

The hearing shall be held and findings and orders made, filed and recorded in the same manner as in other estate proceedings.

SECTION 4. This act shall become effective September 1, 1994.

44-2-9118 MAH