

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2141

By: Braddock of the House

and

Dickerson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to probate procedure; permitting certain petition for summary administration; providing value limitation; requiring petition to set forth certain information; requiring verification of petition; authorizing special administrator to have certain powers; permitting court to require certain bond; setting forth procedure for summary administration; requiring certain notice and setting forth procedure for notice; establishing procedure for certain court hearing; requiring notice to set forth certain information; requiring certain hearing to be set within certain time; permitting postponement of certain hearing; authorizing court to hear certain objections; authorizing issuance of certain order based on certain hearing and the procedure related thereto; requiring the recording of court order; amending 58 O.S. 1991, Section 52, which relates to summary administration; modifying probates subject to summary administration; providing for collection of personal property by affidavit; setting forth contents of affidavit; providing for change in registered ownership; discharging and releasing certain persons delivering personal property to successors; providing for accountability of certain persons; amending 58 O.S. 1991, Section 711, which relates to recording of decrees affecting land; modifying filing requirements of certain judgment or decree; requiring certain notice to be recorded; stating that notice be in lieu of filing certain judgment or decree; requiring certain information be contained in notice; amending Section 1, Chapter 304, O.S.L. 1994, as amended by Section 6, Chapter 334, O.S.L. 1996 (60 O.S. Supp. 1997, Section 674.2), which relates to property delivered to the Oklahoma Tax Commission; increasing amount of certain property which may be claimed by affidavit; authorizing transfer of property based on affidavit; setting forth certain conditions to be included in affidavit; providing for effective date for application of certain affidavits; exempting certain persons; abolishing doctrine of constructive possession; extinguishing certain existing claims; providing exception; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 245 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A petition for summary administration may be filed by any person interested in an estate that meets one of the following conditions:

1. The value of the estate is less than or equal to One Hundred Seventy-five Thousand Dollars (\$175,000.00);

2. The decedent has been deceased for more than five (5) years; or

3. The decedent resided in another jurisdiction at the time of death.

B. The petition shall set forth the following:

1. A statement of the interest of the petitioner;

2. The name, age and date of death of the decedent, and the county and state of the decedent's domicile at the time of death;

3. If the decedent died testate, the original or certified copy of the will of the decedent shall be attached to the petition, together with a statement that:

a. the petitioner, to the best of the knowledge of the petitioner, believes the will to have been validly executed, and

b. after the exercise of due diligence, the petitioner is unaware of any instrument revoking the will, and that the petitioner believes that the instrument attached to the application is the decedent's last will;

4. Whether the will attached to the petition has been admitted to probate in any other jurisdiction;

5. If the decedent died intestate, the petitioner shall state that the petitioner has diligently searched for and failed to find a will;

6. The names, ages and last-known addresses of the administrators, executors, nonpetitioning conominees, heirs,

legatees and devisees of the decedent, so far as known to the petitioner;

7. The names and last-known addresses of all known creditors of the decedent. The petitioner shall state that the petitioner has exercised due diligence in determining the identities, last-known addresses and claims of the decedent's creditors;

8. The probable value and character of the property of the estate and the legal description of all real property owned by the decedent in Oklahoma;

9. Whether an application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

10. A statement of the relief requested, which may include a prayer for the court to admit the will, if any, to probate, to appoint the person requested in the petition as personal representative, to determine the heirs, devisees and legatees of the decedent, to approve the final account, to distribute the property of the estate and to discharge the personal representative.

C. The petition shall be verified by the petitioner or signed by the attorney for the petitioner.

D. The court, without a hearing, shall issue letters of special administration to the person requested in the petition if the petition is in proper form and:

1. The proposed personal representative is named as personal representative in the will;

2. The proposed personal representative has prior right to appointment; or

3. The petition is accompanied by a waiver of all persons entitled to letters testamentary and all persons with a prior right of appointment.

The special administrator shall have the powers set forth in subsection A of Section 215 of Title 58 of the Oklahoma Statutes. The court, in its discretion, may require a bond.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 246 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Upon the filing of the petition, the court shall dispense with the regular estate proceedings prescribed by law and the court shall order notice to creditors and issue an order for hearing upon the petition for admission of the will, if any, to probate, the petition for summary administration, the final accounting, and the petition for determination of heirship, distribution and discharge. However, nothing in this section shall affect the lien upon any property for any estate or transfer tax which may be due upon the estate of the decedent.

B. Notice of the petition, notice to creditors, and notice of final accounting, determination of heirship, distribution and discharge shall be published once each week for two (2) consecutive weeks in a newspaper that is authorized by law to publish legal notices and that is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in the county, the notice shall be posted in three public places in the county, one of which shall be the county courthouse. Notice to creditors and notice of hearing upon the petition for summary administration and the final accounting, determination of heirship, and distribution and discharge shall be combined into one notice, referred to as a "combined notice". The combined notice shall be mailed to creditors of the decedent as provided in Section 331 and 331.1 of Title 58 of the Oklahoma Statutes. The combined notice shall be mailed to all persons interested in the estate of the decedent at their respective last-known addresses not less than thirty (30) days prior to the date of the hearing. The notice shall set forth a date by which the final account and petition for distribution will be filed. The date of the filing shall follow the presentment date by at least five (5) days and shall precede by at least twenty (20) days the hearing on the order allowing final accounting, determination of heirs, legatees and devisees, if any, distribution and discharge.

C. The combined notice shall set forth the following:

1. The name, address, and date of death of the decedent;
2. The name and address of the petitioner;
3. The total value of the estate of the decedent as set forth in the petition;
4. The time and place of the hearing;
5. That the person receiving the notice must file objections to the petition at least ten (10) days before the hearing and send a copy to the petitioner or that person will be deemed to have waived any objections to the petition;
6. That if an objection is filed at least ten (10) days before the hearing, the court will determine at the hearing whether the will attached to the petition shall be admitted to probate, whether summary proceedings are appropriate and, if so, whether the estate will be distributed and to whom the estate will be distributed; and
7. The claim of any creditor not shown in the petition will be barred unless the claim is presented to the personal representative on or before a date certain at least thirty (30) days following the filing of the combined notice.

D. The matter shall be set for hearing not less than forty-five (45) days following the first publication of notice to creditors or combined notice.

E. If there is a defect in notice or in the form of the petition or if objections are filed, or for other good cause shown, the hearing may be postponed to a date certain.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 247 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. At the hearing, the court shall hear objections from all persons who timely filed objections. If the court determines that summary proceedings are appropriate, the court may, after proof of payment of funeral expenses, expenses of last sickness and of administration and allowed claims, issue an order approving the petition for summary administration, finding that the will has been proved as required by law, admitting the will attached to the

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petition to probate, allowing the final accounting, determining heirship and the legatees and devisees, if any, of the decedent, distributing the property of the estate and discharging the personal representative and surety or sureties on the personal representative's bond, or defer such discharge if in the discretion of the court such deferral is necessary or desirable.

B. The order of the court shall have the same force and effect as a final decree or order rendered in any other proceeding provided in this title for distribution of the estate of a decedent. A certified copy of the order or a notice of the order as set forth in Section 711 of Title 58 of the Oklahoma Statutes shall be filed and recorded in the records of the county clerk in any county where real property in which the decedent had any right, title, or interest is located.

SECTION 4. 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, 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~~ in another jurisdiction may be probated under the procedures prescribed ~~under Title 58 O.S., Section 241~~ pursuant to Section 1 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 393 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. At any time ten (10) or more days after the date of death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or stock brand belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an

instrument evidencing a debt, obligation, stock, chose in action, or stock bond to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

1. The fair market value of property located in this state owned by the decedent and subject to disposition by will or intestate succession at the time of the decedent's death, less liens and encumbrances, does not exceed Ten Thousand Dollars (\$10,000.00);

2. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

3. Each claiming successor is entitled to payment or delivery of the property in the respective proportions set forth in the affidavit; and

4. All taxes and debts of the estate have been paid or otherwise provided for or are barred by limitations.

B. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection A of this section.

C. The public official having cognizance over the registered title of any personal property of the decedent shall change the registered ownership from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection A of this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 394 of Title 58, unless there is created a duplication in numbering, reads as follows:

The person paying, delivering, transferring, or issuing personal property or the evidence thereof to the successor or successors named in the affidavit is discharged and released to the same extent as if the person dealt with a personal representative of the decedent. Such person is not required to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver,

transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer, or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

SECTION 7. AMENDATORY 58 O.S. 1991, Section 711, is amended to read as follows:

Section 711. When a judgment or decree is made, setting apart and defining the homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, a certified copy of the same must be recorded in the office of the ~~register of deeds~~ county clerk of the county in which the real property is situated: ~~Provided, that~~ a. A certified copy of any such judgment or decree may be made by the court clerk as to real property in any one county without including therein the description of lands located in any other county, such certificate reciting that the same is a true copy of such instrument insofar as the same relates to real property in such county. Instead of filing the judgment or decree in the office of the county clerk where the real property described in the judgment or decree is located, a notice of the judgment or decree may be filed in the office of the county clerk of any county where the real property described in the judgment or decree is located. The notice shall provide the name of the decedent in the probate proceeding, the court, case number, the date that the judgment or decree was entered, a legal description of the real property located in the county where the notice is to be filed without including the description of real property located in any other county, and the name and address of the party or parties holding title to such real property as set forth in the judgment or decree.

SECTION 8. AMENDATORY Section 1, Chapter 304, O.S.L. 1994, as amended by Section 6, Chapter 334, O.S.L. 1996 (60 O.S. Supp. 1997, Section 674.2), is amended to read as follows:

Section 674.2 If any person claims an interest in any property delivered to the Oklahoma Tax Commission in which the owner of the property is determined to be deceased, the Commission shall pay over or deliver to the claimant the property as provided in Section 651 et seq. of Title 60 of the Oklahoma Statutes upon receipt of the following:

1. A certified copy of letters of administration or letters testamentary from the probate of the estate of the decedent naming the claimant as the personal representative of the estate of the decedent; or

2. A certified copy of the decree of distribution from the probate of the estate of the decedent determining the claimant to be entitled to receive such property through the estate of the decedent; or

3. If the value of the property is ~~One Thousand Dollars (\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00) or less, a signed affidavit executed by the claimant stating that the claimant is entitled to receive such property, the reason the claimant is entitled to receive such property, that there has been no probate of the estate of the deceased owner, that no such probate is contemplated and that claimant will indemnify the state for any loss, including attorney fees, should another claimant assert a prior right to the property.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 67 of Title 16, unless there is created a duplication in numbering, reads as follows:

Any purchaser for value acquiring an interest in real estate from a person who claims such interest, immediately or remotely, through a recorded affidavit of death and heirship or a recital of death and heirship in a recorded title transaction, as that term is defined in Section 78 of Title 16 of the Oklahoma Statutes, shall acquire a valid and marketable title to such interest as against any person claiming adversely to such recorded affidavit or recital on the following conditions:

1. The affidavit or recital states that the decedent died without a will;

2. The affidavit or recital lists the names of the decedent's heirs and their relationship to the decedent;

3. The affidavit or recital states that the maker is related to the decedent or otherwise has personal knowledge of the facts stated therein;

4. The affidavit or the title transaction that contains the recital has been recorded for at least ten (10) years in the office of the county clerk in the county in which the real property is located; and

5. No instrument inconsistent with the heirship alleged in the affidavit or recital has been filed in the office of the county clerk in the county in which the real property is located.

This section shall apply to affidavits recorded before the effective date of this act as well as to those recorded thereafter, except that, with respect to those recorded before such date, the ten-year period specified above shall not expire until one (1) year after the effective date of this act. This section shall not apply as against any person in possession of the land, by occupancy or by occupancy of a tenant, at the time such purchaser acquires an interest in such land.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 68 of Title 16, unless there is created a duplication in numbering, reads as follows:

The doctrine of constructive possession is abolished only insofar as it applies to the Simplification of Land Titles Act, Section 61 et seq. of Title 16 of the Oklahoma Statutes. Any claims based upon constructive possession before the effective date of this act shall be extinguished unless a notice of the claim is filed with the county clerk of the county where the land or interest is located within one (1) year from the effective date of this act. The notice of the claim shall set forth basis thereof and specifically refer to this section.

SECTION 11. This act shall become effective November 1, 1998.

