

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2141

By: Bonny

COMMITTEE SUBSTITUTE

An Act relating to probate procedure; creating the Simplification of Succession Act; providing short title; permitting certain petition for summary administration; providing value limitation; requiring petition to set forth certain information; requiring verification of petition; providing procedure for summary administration; providing for certain notice and setting forth requirements for notice; providing procedure for court hearing; providing for findings of fact and conclusions of law; requiring court to issue order; providing for collection of personal property by affidavit; providing for contents of certain affidavit; requiring certain transfer agent or official to change registered ownership; setting forth effect of certain affidavit; amending 58 O.S. 1991, Section 711, which relates to recording of decrees affecting land; modifying filing requirements of certain judgment or decree; providing for notice to be recorded; providing that notice be in lieu of filing certain judgment or decree; providing for certain information to 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. 1996, Section 674.2), which relates to property delivered to the Oklahoma Tax Commission; increasing amount of certain property which may be claimed by affidavit; repealing 58 O.S. 1991, Section 241, as amended by Section 9, Chapter 345, O.S.L. 1993 (58 O.S. Supp. 1996, Section 241), which relates to summary probate proceedings; 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:

Sections 1 through 5 of this act shall be known and may be cited as the "Simplification of Succession Act".

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. A petition for summary administration may be filed by any person interested in an estate in which the total gross value of the Oklahoma property does not exceed Sixty Thousand Dollars (\$60,000.00) or in which the decedent has been deceased for more than five (5) years. 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. A certified copy of the death certificate of the decedent shall be attached to the petition;

3. Whether the decedent died testate or intestate:

a. if the decedent died testate, the original or certified copy of all testamentary instruments shall be attached to the petition, together with a statement that (1) the petitioner, to the best of his knowledge, believes the will to have been validly executed and (2) 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. If the original cannot be found, the petitioner shall fully explain the failure to find the will,

b. if the decedent died intestate, the petitioner shall state that the petitioner has diligently searched for and failed to find an unrevoked testamentary instrument;

4. The names, ages, and last-known addresses of the administrators, executors, heirs, legatees, and devisees of the decedent, so far as known to the petitioner;

5. The probable value and character of the property of the estate and the legal description of all real property owned by the decedent in this state;

6. The names and last-known addresses of all known creditors of the decedent, with the amounts owing to each creditor. The petitioner shall state that the petitioner has exercised due

diligence in determining the identities, last-known addresses, and claims of the creditors of the decedent; and

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

B. The petition shall be verified in writing by the petitioner or signed by the attorney of the petitioner.

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. Upon the filing of the petition, the court shall dispense with any regular probate proceedings prescribed by law and set a hearing on the petition at least thirty (30) days from the date of the filing of the petition. Notice of the petition, notice to creditors, and notice of final accounting, determination of heirship, and distribution shall be combined into one notice and published once a week for two (2) consecutive weeks in some newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If there is no newspaper authorized by law to publish legal notices published in the county, the notice shall be published in an authorized newspaper in an adjoining county. Copies of the notice shall be sent by certified mail, return receipt requested, addressee's address, to all administrators, executors, heirs, legatees, devisees, and creditors of the decedent at their last-known address not less than twenty (20) days prior to the date of the hearing. The mailing shall be made by the court clerk, deputy court clerk, or the attorney for the petitioner. Proof of such mailing shall be by affidavit of the court clerk, deputy court clerk, or attorney, and such affidavit shall be filed in the case.

B. The notice referred to in subsection A of this section 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 party receiving the notice must file objections to the petition at least three (3) days before the hearing and send a copy to the petitioner or that the party shall be deemed to have waived any objections to the petition;

6. That if an objection is filed at least three (3) days before the hearing, the court shall determine at the hearing whether the estate will be distributed and to whom the estate will be distributed; and

7. The claims of any creditor not shown in the petition will be barred unless claims are timely filed and presented at the hearing.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 248 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. The court shall enter findings of fact and conclusions of law as set forth in Section 5 of this act without the necessity of a hearing if no objections are timely filed, the required notice has been given and the petition is in proper form.

B. If there is a defect in notice or in the form of the petition, the hearing may be postponed to a date certain after the defect is cured.

C. If an objection is timely filed, the court will conduct the hearing provided for in Section 3 of this act. Upon proof that the required notice has been given, the court shall inquire into the matters alleged by the petition and shall hear objections from all persons who timely filed objections. If a will is presented, the court shall require that the will be proved as provided by law.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 249 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Upon the conclusion of the hearing, the court shall enter findings of fact and conclusions of law which shall determine:

1. Whether the decedent died testate and whether the testamentary documents attached to the petition or introduced at the hearing shall be admitted to probate;

2. The names and addresses of the heirs at law of the decedent;

3. The reasonable legal fees and expenses of the petitioner in the proceeding;

4. The expenses and proof of payment of funeral expenses, expenses of last illness, and allowed creditor claims;

5. All real and personal property in this state owned by the decedent at the date of death and the value thereof; and

6. The heirs, legatees, and devisees entitled to share in the estate, and the respective shares or amounts which they are entitled to receive.

B. The court shall incorporate the findings of fact and conclusions of law in an order allowing such final account, determining heirship, and distributing the property of the estate to the decedent's heirs, legatees, and devisees.

C. No further action shall be required to distribute the estate. 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 court order may be filed and recorded in the records of the county clerk of any county where any real property owned by the decedent is located or in any county where real property in which the decedent had any right, title, or interest is located.

SECTION 6. 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 owned by the decedent and subject to disposition by will or intestate succession at the time of the death of the decedent, wherever that property is located, less liens and encumbrances, does not exceed Five Thousand Dollars (\$5,000.00);

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 debts of the estate have been paid 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 7. 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 of personal property to the successors named in the affidavit shall be discharged and released to the same extent as if the person dealt with a personal representative of the decedent. Such person shall not be 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, the personal property 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 shall be answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

SECTION 8. 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 judgment or decree shall~~ 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 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 where the probate proceeding was filed and the judgment or decree issued. In lieu of filing the judgment or decree in any other county where real property described in the judgment or decree is located, a notice of the judgment or decree shall be filed in the office of the county clerk of any county where real property described in the judgment or decree is located. The notice shall provide the names of the parties in the probate proceeding, the case number, the book, page number, and county where the judgment or decree is filed and the date, 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 9. AMENDATORY Section 1, Chapter 304, O.S.L. 1994, as amended by Section 6, Chapter 334, O.S.L. 1996 (60 O.S. Supp. 1996, 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)~~ Five Thousand Dollars (\$5,000.00) 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 10. REPEALER 58 O.S. 1991, Section 241, as amended by Section 9, Chapter 345, O.S.L. 1993 (58 O.S. Supp. 1996, Section 241), is hereby repealed.

SECTION 11. This act shall become effective November 1, 1997.

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