HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1547 By: McCullough

AS INTRODUCED

An Act relating to probate procedure; amending 58 O.S. 2011, Sections 245 and 246, which relate to summary administration; increasing estate value for summary administration; directing court to issue letters of special administration at the time of filing; modifying time for filing of combined notice; adding certain information to be included in the combined notice; modifying timing for published notice and mailed notice; modifying time for final hearing; and providing an effective date.

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

SECTION 1. AMENDATORY 58 O.S. 2011, Section 245, is amended to read as follows:

Section 245. 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)~~ Two Hundred Thousand Dollars ($200,000.00);

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~~Strike thru~~ language denotes deletion from present Statutes.

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;

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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.

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D. The court, ~~without a hearing~~ at the time of filing of the petition and combined notice, 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~~ this title. The court, in its discretion, may require a bond.

SECTION 2. AMENDATORY 58 O.S. 2011, Section 246, is amended to read as follows:

Section 246. A. Upon the filing of the petition and combined notice, 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~~ granting final 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,

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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 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". Combined notice shall be filed at the same time the petition for summary administration is filed. 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. Whether a will exists;

4. The name and address of the personal representative, if specified;

5. The name and address of the heirs or devisees;

6. The total value of the estate of the decedent as set forth in the petition;

7. The date, time and place of the final hearing;

8. That the person receiving the notice or any interested party may file objections to the petition at any time before the final hearing and send a copy to the petitioner or that person will be deemed to have waived any objections to the petition;

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9. That if an objection is filed 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

10. The claim of any creditor not shown in the petition will be barred unless the claim is presented to the personal representative no more than thirty (30) days following the filing of the petition and combined notice.

C. Within ten (10) days of filing of the petition and combined notice, 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~~ twice 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~~ Within ten (10) days of filing of the petition and combined notice,

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the combined notice shall be mailed to creditors of the decedent as provided in ~~Section~~ Sections 331 and 331.1 of ~~Title 58 of the Oklahoma Statutes~~ this title. ~~The~~ Within ten (10) days of filing of the petition and combined notice, 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;~~

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~~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 final hearing ~~not less than~~ forty-five (45) days following the ~~first publication of notice to creditors or~~ filing of the petition and 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. This act shall become effective November 1, 2013.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/06/2013 - DO PASS.

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