

Section 2. This act shall be in force and effect from and after its passage.

Approved April 26, 1937.

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CHAPTER 435—S. F. No. 806

*An act to amend Laws 1935, Chapter 72, Section 3, Subsections 1 and 4, and Sections 5, 14, 15, 16, 27, 29, 62, 67, 81, 93, 115, 121, 124, 125, 147, 148, 149, 158, 166, 167, 176, and 185 relating to probate courts, the practice and procedure therein, descent and distribution, wills and the probate thereof, administration, guardianships, and commitments.*

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Books of record.**—Laws 1935 Chapter 72 section 3 subsection 1, is hereby amended so as to read as follows:

“1. An index in which files pertaining to estates of deceased persons shall be indexed under the name of the decedent, those pertaining to guardianships under the name of the ward, those pertaining to an insane, inebriate, feebleminded, or epileptic person under the name of such person, those pertaining to wills deposited pursuant to Section 48, under the name of the testator. After the name of each file shall be shown the file number, and if ordered by the court, the book and page of the register in which the documents pertaining to such file are listed, and the date of the filing of the first document.”

Section 2. **Bond record.**—Laws 1935 Chapter 72 section 3, subsection 4, is hereby amended so as to read as follows:

“4. A record of bonds, properly indexed, in which shall be recorded all bonds filed; *provided that bonds not in excess of \$250.00 may be entered instead of recorded. Whenever a bond is entered and not recorded, the entry shall show the name of the estate, guardianship, or other proceedings, the name of the principal, the name and address of each surety, the amount, and the date of approval.*”

Section 3. **Bond.**—Laws 1935 Chapter 72 section 5 is hereby amended so as to read as follows:

“There shall be elected in each county a probate judge who before he enters upon the duties of his office shall execute a bond to the state in the amount of one thousand dollars, approved by the county

board and conditioned upon the faithful discharge of his duties. Such bond with his oath shall be recorded in the office of the register of deeds and filed in the office of the *secretary of state after approval as to form by the attorney general*. The premiums on such bond and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof."

Section 4. **Appointment—powers.**—Laws 1935 Chapter 72 section 14 is hereby amended so as to read as follows:

"The judge may appoint a clerk, deputy clerks, and employees as provided by law, to hold office during his pleasure, who shall perform the duties imposed by law and such judge. Such appointments shall be in writing and filed in such court. Before entering upon the duties of his office, each clerk and deputy clerk and, if ordered by the court, any employee shall execute a bond to the state, in the amount of one thousand dollars approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the register of deeds and filed in the office of the *secretary of state after approval as to form by the attorney general*. The premiums on such bonds and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof. A clerk or deputy clerk may take acknowledgments, administer oaths, authenticate, exemplify, or certify copies of instruments, documents, or records of the court, and when so ordered may hear and report to the court the testimony of any witness and the interrogatories and objections of counsel."

Section 5. **Orders by clerk.**—Laws 1935 Chapter 72 section 15 is hereby amended so as to read as follows:

"The judge may authorize the clerk or any deputy clerk to issue orders for hearing petitions for general administration, for the probate of any will, for determination of descent, for sale, lease, mortgage, or conveyance of real estate, for the settlement and allowance of any account, for partial or final distribution, *for commitment*, orders limiting the time to file claims and fixing the time and place for the hearing thereon, and to issue notice of the entry of any order. The issuance of any such order or notice by the clerk or deputy clerk shall be prima facie evidence of his authority to issue it."

Section 6. **Appointment—bond.**—Laws 1935 Chapter 72 section 16, is here amended so as to read as follows:

"The judge of the probate court of any county in this state now or hereafter having a population of not less than four hundred thousand inhabitants may appoint one referee in probate who shall

be a resident of such county and an attorney at law duly admitted in this state. He shall hold office during the pleasure of the judge appointing him. Such appointment shall be in writing and filed in such court. Before entering upon the duties of his office, he shall execute a bond to the state in the amount of one thousand dollars approved by the county board and conditioned upon the faithful discharge of his duties. Such bond with the oath of the appointee shall be recorded in the office of the register of deeds and filed in the office of the *secretary of state after approval as to form by the attorney general*. The premiums on such bond and the expenses of such recording and filing shall be paid by the county. An action may be maintained on such bond by any person aggrieved by the violation of the conditions thereof."

Section 7. **Decent of homestead.**—Laws 1935 Chapter 72 section 27 is hereby amended so as to read as follows:

"(a) Where there is a surviving spouse, the homestead shall descend free from any testamentary or other disposition thereof to which such spouse has not consented in writing or by election to take under the will as provided by law, as follows: (1) If there be no surviving child or issue of any deceased child, to the spouse; (2) If there be children or issue of deceased children surviving, then to the spouse for the term of his natural life, and the remainder in equal shares to such children and the issue of deceased children by right of representation.

(b) Where there is no surviving spouse and the homestead has not been disposed of by will, it shall descend as other real estate.

(c) Where the homestead is disposed of by a will which does not otherwise provide and in all cases where the homestead descends to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death; in all other cases, it shall be subject to the payment of the items mentioned in section 29. No lien or other charge against any homestead which is so exempted shall be enforced in the probate court, but the claimant may enforce such lien or charge by an appropriate action in the district court."

Section 8. **Decent of property.**—Laws 1935 Chapter 72 section 29 is hereby amended so as to read as follows:

"Except as provided in sections 26 and 27, and subject to the allowances provided in section 28, and the payment of the expenses of administration, funeral expenses, expenses of last illness, taxes, and debts, the estate, real and personal, shall descend and be distributed as follows:

1. **Personal property:** To the surviving spouse one-third thereof free from any testamentary disposition thereof to which such sur-

vivor shall not have consented in writing or by election to take under the will as provided by law.

2. Real property: To the surviving spouse an undivided one-third of all real property of which the decedent at any time *while married to such spouse* was seized or possessed, to the disposition whereof by will or otherwise such survivor shall not have consented in writing or by election to take under the will as provided by law, except such as has been transferred or sold by judicial partition proceedings or appropriated to the payment of the decedent's debts by execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens.

3. If a spouse and only one child or the issue of a deceased child survive, the share of the spouse under the provisions of subsections 1 and 2 hereof shall be one-half instead of one-third.

4. Subject to the *preceding* provisions of *this section*, the whole estate, real and personal, except as otherwise disposed of by will shall descend and be distributed as follows:

(a) In equal shares to the surviving children and to the issue of deceased children by right of representation;

(b) If there be no surviving child *nor* issue of any deceased child, and *if* the intestate leave a surviving spouse, then to such spouse;

(c) If there be no *surviving* issue *nor* spouse, *then* to the father and mother in equal shares, or if but one survive, then to such survivor;

(d) If there be no surviving issue, spouse, father *nor* mother, *then* in equal shares to the surviving brothers and sisters, and to the issue of any deceased brother or sister by right of representation;

(e) If there be no *surviving* issue, spouse, father, mother, brother, *nor* sister, *then* in equal shares to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.

5. If a minor die leaving no spouse *nor* issue surviving, all of his estate that came to him by inheritance or will from his parent shall descend *and be distributed* in equal shares to the other children of the same parent and to the issue of any deceased child of such parent by right of representation; failing all such, it shall descend *and be distributed* by intestate succession as in other cases.

6. If the intestate leave no spouse nor kindred, the estate shall escheat to the state."

Section 9. **Petition and hearing.**—Laws 1935 Chapter 72 section 62 is hereby amended so as to read as follows:

"No such will shall be established unless *it is proved to have remained unrevoked* nor unless its provisions are clearly and distinctly proved."

Section 10. **Administration.**—Laws 1935 Chapter 72 section 67 is hereby amended so as to read as follows:

"Upon the filing for record in the office of the register of deeds of the proper county of an authenticated copy of his letters or other record of his authority and a certificate that the same are still in force, a representative appointed by a court of competent jurisdiction in another state or *country* may assign, extend, release, satisfy, or foreclose any mortgage, judgment, or lien, or collect any debt secured thereby belonging to the estate represented by him. Real estate acquired by a foreign representative on foreclosure or execution sale shall be held, sold, mortgaged, or leased pursuant to Section 93."

Section 11. **Decree of decent.**—Laws 1935 Chapter 72 section 81 is hereby amended so as to read as follows:

"Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188. Upon proof of the petition and of the will if there be one, the court shall allow the same and enter its decree assigning the real estate to the persons entitled thereto pursuant to the will if there be one, otherwise pursuant to *the law of intestate succession in force at the time of the decedent's death*. No decree shall be entered until after the determination and payment of inheritance taxes."

Section 12. **Realty acquired.**—Laws 1935 Chapter 72 section 93 is hereby amended so as to read as follows:

"When a foreclosure sale, or a sale on execution for the recovery of a debt due the estate is had, or redemption is made, the representative shall receive the money paid and execute the necessary satisfaction or release. If bid in by the representative, or if bid in by the decedent or ward and the redemption period expired during the administration of the estate or guardianship without redemption the real estate shall be treated as personal property, but any sale, mortgage, or lease thereof shall be made pursuant to Article XVI, unless otherwise provided in the will. If not so sold, mortgaged, or leased, the real estate, or if so sold, mortgaged, or leased, the proceeds shall be assigned or distributed to the same persons and in the same pro-

portions as if it had been part of the personal estate of the decedent, unless otherwise provided in the will."

Section 13. **Hearing and decree.**—Laws 1935 Chapter 72 section 115 is hereby amended so as to read as follows:

"Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188, except as provided in Sections 78, 114, and 125. *Unless otherwise ordered*, the representative shall, and other persons may, be examined relative to the account and the distribution of the estate. If all taxes payable by the estate have been paid so far as there are funds to pay them and the account is correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed.

Upon such settlement and allowance the court shall determine the persons entitled to the estate and assign the same to them by its decree. The decree shall name the heirs and the distributees, describe the property and state the proportion *or* part thereof to which each is entitled. In the estate of a testate decedent, no heirs shall be named in the decree unless all of the heirs be ascertained. No final decree shall be entered until after the determination and payment of inheritance taxes except as provided in Section 189.

If all of the creditors have consented in writing, the court with or without notice may assign the estate, if insolvent, without conversion thereof into money, to such creditors in the proportions to which each is entitled.

Upon its own motion or upon the request of any party, without the determination or payment of inheritance taxes, the court may enter an interlocutory decree, determining the persons entitled to the estate, naming the heirs and distributees, describing the property and stating the proportion or part thereof to which each is entitled. Such interlocutory decree shall be final as to the persons entitled to distribution, and as to the part or portion of the estate each is entitled to receive, but it shall not have the effect of assigning the estate to such persons."

Section 14. **Removal of representative.**—Laws 1935, Chapter 72, Section 121, is hereby amended so as to read as follows:

"Whenever a representative becomes insane or otherwise mentally incompetent, or unsuitable, incompetent, or incapable of discharging his trust, or has mismanaged the estate, or has failed to perform any duty imposed by law or by any lawful order of the court, or has absconded, or has ceased to be a resident of this state, the court may remove him. *The court on its own motion may, and on the petition of any person interested in the estate shall, order the*

*representative to appear and show cause why he should not be removed. Service of such order may be made either upon the representative or his sureties, personally or by mailing a copy to him or any of them at the address given in the file, or in such other manner as the court may direct."*

Section 15. Discharge of representative.—Laws 1935, Chapter 72, Section 124, is hereby amended so as to read as follows:

"Section 124. Whenever any representative has paid or transferred to the persons entitled thereto all of the property in the estate, paid all taxes required to be paid by him and has filed proof thereof, and has complied with all the orders and decrees of the court and with the provisions of law, and has otherwise fully discharged his trust, the court shall finally discharge him and his sureties. Whenever any bequest or devise to a testamentary trustee amounts to more than five hundred dollars, and the will contains no express waiver, the representative shall not be discharged until a trustee has qualified in a court of competent jurisdiction and until proof of such qualification and a receipt by the trustee have been filed. No representative who has received any funds for death by wrongful act shall be discharged until he has filed a certified copy of the order, judgment, or decree of distribution of the court wherein such funds were recovered, and vouchers from the persons entitled to such funds, or copies thereof, certified by the clerk of such court.

*Provided, that whenever a minor child shall receive personal property not to exceed the sum of \$200, the Judge of Probate Court may order and direct representatives of estates to make payment thereof to the parent or parents, custodian, or the person, corporation or institution with whom such minor child may be, for the benefit, support, maintenance and education of such minor child, or may direct the deposit thereof in a savings bank in the name of such minor child, and when so deposited in a savings bank; the book showing such deposit to be retained by the Probate Court, and no funds shall be withdrawn from such savings bank until such minor child shall have reached majority, unless by order of the Probate Court."*

Section 16. Summary proceedings.—Laws 1935, Chapter 72, Section 125, is hereby amended so as to read as follows:

"In a special administration, general administration, or in the administration of the estate of a person dying testate, if the court has determined that the decedent had no estate, or that the property has been destroyed, abandoned, lost, or rendered valueless, and that no recovery has been had nor can be had therefor, or if there be no property except such as has been recovered for death by wrongful act, or such as is exempt from all debts and charges in the probate

court, or such as may be appropriated for the payment of the allowances to the spouse and children mentioned in Section 28, expenses of administration, funeral expenses, expenses of last illness, debts having preference under laws of the United States, and taxes, the representative by order of the court may pay the same in the order named, and file his final account with his petition for the settlement and allowance thereof. Thereupon the court with or without notice may adjust, correct, settle, allow, or disallow such account, and if the account be allowed, summarily determine the heirs, legatees, and devisees in its final decree assigning to them their share or part of the property with which the representative is charged upon the allowance of his final account, and close the administration.

If upon the hearing of a petition for *summary assignment or distribution*, for special administration, general administration, or for the probate of a will, the court determines that there is no need for the appointment of a representative and that the administration should be closed summarily for the reason that all of the property in the estate is exempt from all debts and charges in the probate court, a final decree may be entered, with or without notice, assigning such property to the persons entitled thereto pursuant to the terms of the will, or if there be none pursuant to *the law of intestate succession in force at the time of the decedent's death.*"

Section 17. **Petition—notice—hearing.**—Laws 1935, Chapter 72, Section 147, is hereby amended so as to read as follows:

"A representative may file a petition to sell, mortgage, or lease *alleging briefly the facts constituting the reasons for the application* and describing the real estate involved therein. The petition may include all the real estate of the decedent or ward or any part or parts thereof. It may apply for different authority as to separate parcels. It may apply in the alternative for authority to sell, mortgage, or lease.

Upon the filing of such petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall state briefly the nature of the application made by the petition and shall be given pursuant to Article XIX, Section 188. Upon the hearing, the court shall have full power to direct the sale, mortgage, or lease of all the real estate described in the petition, or to direct the sale, mortgage, or lease of any one or more parcels thereof, provided that any such direction shall be within the terms of the *application* made by the petition."

Section 18. **Order for sale, mortgage or lease.**—Laws 1935, Chapter 72, Section 148, is hereby amended so as to read as follows:

"The order shall describe the real estate to be sold, mortgaged, or leased, and may designate the sequence in which the several par-

cels shall be sold, mortgaged, or leased. If the order be for a sale, it shall direct whether the real estate shall be sold at private sale or public auction. When the purpose of a sale, mortgage, or lease is to pay debts, bequests, or other items, the real estate shall be sold, mortgaged, or leased in the following sequence: (1) real estate devised charged with the payment of such debts, bequests, or other items (2) real estate not specifically devised (3) real estate specifically devised but not so charged. An order to mortgage shall fix the maximum amount of the principal and the maximum rate of interests and shall direct the purpose for which the proceeds shall be used. An order for sale, mortgage, or lease shall remain in force until terminated by the court, but no private sale shall be made after one year from the date of the order unless the real estate shall have reappraised under order of the court within *three months* preceding the sale."

Section 19. **Terms of sale.**—Laws 1935, Chapter 72, Section 149, is hereby amended so as to read as follows:

"The court may order a sale of real estate for cash, part cash and a purchase-money mortgage of not more than fifty per cent of the purchase price, or on contract for deed. The initial payment under a sale on contract shall not be less than ten per cent of the total purchase price, and the unpaid purchase price shall bear interest at a rate of not less than four per cent per annum and shall be payable in reasonable monthly, quarterly, semi-annual, or annual payments, and the final installment shall become due and payable not later than ten years from the date of the contract. Such contract shall provide for conveyance by quitclaim deed, which deed shall be executed and delivered upon full performance of the contract without further order of the court. In the event of termination of the interest of the purchaser and his assigns in such contract, the real estate may be resold under the original order and a reappraisal within *three months* preceding the sale. A sale of the vendor's interest in real estate sold by the representative on contract may be made under order of the court with or without notice upon an appraisal of such interest within *three months* preceding the sale; no such sale shall be made for less than its value as fixed by such appraisal."

Section 20. **Conveyance of vendor's title.**—Laws 1935, Chapter 72, Section 158, is hereby amended so as to read as follows:

"When any person legally bound to make a conveyance or lease dies before making the same, or when any ward is legally bound to make a conveyance or lease, the court *with or without notice* may direct the representative to make the conveyance or lease to the person entitled thereto. *The petition may be made* by any person claiming to be entitled to such conveyance or lease, or by the representative, or by any person interested in the estate or claiming an

interest in such real estate or contract, *and shall show the description of the land and the facts upon which such claim for conveyance or lease is based. Upon proof of the petition, the court may order the representative to execute and deliver an instrument of conveyance or lease upon performance of the contract.*"

Section 21. **Affirmance—reversal.**—Laws 1935, Chapter 72, Section 166, is hereby amended so as to read as follows:

"Such appeal may be taken by any person aggrieved within thirty days after service of notice of the filing of the order, judgment, or decree appealed from, or if no such notice be served, within six months after the filing of such order, judgment, or decree. To render the appeal effective (1), the appellant shall serve upon the adverse party or his attorney or upon the probate judge for the adverse person who did not appear, a written notice of appeal specifying the order, judgment, or decree appealed from, *and file in the probate court such notice with proof of service thereof; (2) pay to the probate court an appeal fee of three dollars to apply on the fee for the return; and (3) the appellant, other than the state, the Veterans' Administration, or a representative appealing on behalf of the estate, shall file in the probate court a bond in such amount as that court may direct, conditioned to prosecute the appeal with due diligence to a final determination, to pay all costs and disbursements, and to abide the order of the court therein.*

The notice of the order, judgment, or decree appealed from, the notice of appeal, and the bond if required, shall be served as in civil actions in the district court.

*Whenever a party in good faith gives due notice of appeal and omits through mistake to do any other act necessary to perfect the appeal, the district court may permit an amendment on such terms as may be just."*

Section 22. **Judgment—execution.**—Laws 1935, Chapter 72, Section 167, is hereby amended so as to read as follows:

"When an appeal has been effected, the probate court *upon payment of the remainder of its fee, if any,* forthwith shall return to the district court a certified transcript of the order, judgment, or decree appealed from, the notice of appeal with proof of service thereof, and the bond if required. *If the required fee for the return be not paid within twenty days after the appeal has been effected, the district court may dismiss the appeal.* If the appeal be taken under section 164, subsection 10, such transcript shall also contain copies of such other documents, papers, and exhibits as the probate court may consider necessary. The district court may require a further or amended return."

Section 23. **No abatement.**—Laws 1935, Chapter 72, Section 176, is hereby amended so as to read as follows :

“Section 176. If the patient is found to be insane or inebriate, the court shall issue to the sheriff or any other person a warrant in duplicate, committing the patient to the custody of the superintendent of the proper state hospital, *or to the superintendent or keeper of any private licensed institution for the care of inebriates or insane persons; provided, however, that such patients are required to pay the necessary hospital charge.* If such patient be entitled to care in any institution of the United States in this state, such warrant shall be in triplicate, committing him to the joint custody of the superintendents of the proper state and federal institution. If such federal institutions be unable or unwilling to receive the patient at the time of commitment, he subsequently may be transferred to it upon its request. Such transfer shall discharge his commitment to the state institution and constitute a sole commitment to the federal institution.

If the patient is found to be feebleminded or epileptic, the court shall appoint the State Board of Control guardian of his person and commit him to its care and custody.

Whenever a defendant in a criminal proceedings has been examined in the probate court, pursuant to an order of the state or federal district court, the probate court shall transmit its findings and return the defendant to such district court, unless otherwise ordered. A duplicate of the findings shall be filed in the probate court, but there shall be no petition, property or report, nor commitment, unless otherwise ordered.”

Section 24. **Definitions.**—Laws 1935, Chapter 72, Section 185, is hereby amended so as to read as follows :

“As used in this act, the word ‘representative’ unless the context otherwise indicates, shall include executors, general administrators, special administrators, administrators with the will annexed, administrators de bonis non, general guardians, and special guardians. The word ‘minor’ means a person under the age of twenty-one years.”

Approved April 26, 1937.

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#### CHAPTER 436—H. F. No. 816

*An act to amend Mason's Minnesota Statutes of 1927, Section 2676 relating to registration of motor vehicles, imposing certain restrictions for fraudulent or fictitious applications and fraudulently*