

CHAPTER 573

ACTIONS BY OR AGAINST PERSONAL REPRESENTATIVES AND HEIRS

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**573.01 SURVIVAL OF CAUSES.** A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in section 573.02. It also dies with the person against whom it exists, except a cause of action arising out of bodily injuries or death caused by the negligence of a decedent survives against his personal representatives. All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter.

[R. L. s. 4502; 1941 c. 440] (9656)

**573.02 ACTION FOR DEATH BY WRONGFUL ACT.** When death is caused by the wrongful act or omission of any person or corporation, the personal representative of the decedent may maintain an action therefor if he might have maintained an action, had he lived, for an injury caused by the same act or omission. The action may be commenced within two years after the act or omission. The damages therein cannot exceed \$10,000, and shall be for the exclusive benefit of the surviving spouse and next of kin, to be distributed to them in the same proportion as personal property of persons dying intestate; but funeral expenses and any demand for the support of the decedent, duly allowed by the probate court, shall first be deducted and paid. If an action for such injury shall have been commenced by such decedent and not finally determined during his life, it may be continued by his personal representative for the benefit of the same persons and for recovery of the same damages as herein provided, and the court, on motion, may make an order allowing such continuance and directing pleadings to be made and issues framed conformably to the practice in actions begun under this section.

[R. L. s. 4503; 1911 c. 281 s. 1; 1935 c. 325 s. 1] (9657)

**573.03 DEFAULT JUDGMENT; JUDGMENT NOT LIEN UPON REAL ESTATE.** When a judgment is taken against an executor or administrator upon failure to answer it shall not be deemed evidence of assets in his hands unless the complaint alleged assets and was personally served on him. No judgment against any executor or administrator shall bind, or in any way affect, the real property which belonged to the decedent, nor shall the same be liable upon execution issued upon such judgment.

[R. L. s. 4504] (9658)

**573.04 EXECUTOR DE SON TORT, TO WHOM LIABLE.** No person shall be liable to an action, as executor of his own wrong, for having taken, received, or interfered with the property of a deceased person, but shall be responsible to the executor, or general or special administrator, of such decedent for the value of all property so taken or received and for all damages caused by his acts to the estate.

[R. L. s. 4505] (9659)

**573.05 ACTION BY FOREIGN EXECUTOR.** Any foreign executor or administrator may commence and prosecute an action in this state, in his representative capacity, in the same manner and under the same restrictions as in case of a resident. Before commencing such action he shall file an authenticated copy of his appointment as executor or administrator with the probate court of the county in which such action is to be commenced.

[R. L. s. 4506] (9660)

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**573.06 NEXT OF KIN; LIABILITY FOR DEBTS; CONTRIBUTION.** The next of kin of a deceased person are liable to an action by a creditor of the estate, to recover the distributive shares received by them out of such estate, or so much thereof as shall be necessary to satisfy his debt, which action may be against all or against any one or more of them. The plaintiff may recover the value of all assets received by all the defendants, if necessary to satisfy his demand, and his recovery shall be apportioned among the defendants in proportion to the value of the assets received by each without deduction on account of there being other relatives who have received assets. Any one against whom such recovery has been had may maintain an action for contribution against all or any other relatives of the decedent to whom assets have been paid, and may recover of each defendant such proportionate share of the amount paid by plaintiff as the value of assets received by each bears to the value of all the assets distributed to all the relatives.

[R. L. s. 4507] (9661)

**573.07 LEGATEES; WHEN LIABLE.** Legatees are liable to an action by a creditor of the testator to recover the value of legacies received by them. Such action may be brought against all or any one or more of the legatees. The plaintiff cannot recover unless he shows:

(1) That no assets were delivered by the executor or administrator to the heirs or next of kin; or

(2) That the value of the assets so delivered has been recovered by another creditor; or

(3) That such assets are not sufficient to satisfy the demands of the plaintiff, in which case he can recover only the deficiency.

The whole amount which the plaintiff can recover shall be apportioned among all the legatees, in proportion to the amount of their legacies, respectively, and his proportion only can be recovered of each legatee.

[R. L. s. 4508] (9662)

**573.08 COSTS; JUDGMENT, WHEN DISCHARGED.** If an action be brought against several next of kin jointly, or several legatees jointly, for assets delivered to them, and a recovery be had against them, the costs shall be apportioned among the several defendants in proportion to the amount of the damages recovered against each. In either case, the payment or satisfaction of the judgment recovered against any one of the defendants shall discharge him and his property from such judgment.

[R. L. s. 4509] (9663)

**573.09 HEIRS AND DEVISEES; WHEN LIABLE.** Heirs and devisees are liable to an action by a creditor of a deceased person to recover a debt, to the extent of the value of any real property inherited by or devised to them. If such action be against the heirs, all heirs who are liable shall be made parties thereto. The heirs shall not be liable for the debt unless it shall appear that the personal assets were not sufficient to discharge it, or that, after due proceedings before the probate court, the creditor is unable to collect the debt from the personal representatives of the decedent, or from his next of kin or legatee; and if the personal assets were sufficient to pay a part of the debt, or in case a part thereof has been collected, as hereinbefore mentioned, the heirs of such deceased person are liable for the residue. Nothing in this section shall affect the liability of heirs for a debt of their ancestors, where, by his will, such debt was expressly charged exclusively on the real property descended to such heirs, or directed to be paid out of the real property so descended, before resorting to the personal property.

[R. L. s. 4510] (9664)

**573.10 APPORTIONMENT OF LIABILITY; CONTRIBUTION.** When the heirs, devisees, or legatees have received real or personal estate, and are liable by law for any debts, such liability shall be in proportion to the estate they have, respectively, received, and a creditor may recover his claim against a part or all of them to the amount of such liability. If, by the testator's will, any part of his estate, or any devisees or legatees, are made exclusively liable for the debt, the devisees or legatees shall contribute among themselves accordingly.

[R. L. s. 4511] (9665)

**573.11 NEW PARTIES; ISSUES; APPORTIONMENT.** If all the persons liable for the payment of any such debt shall not be included as defendants, the action shall not thereby be dismissed or barred; but the court may order any other parties brought in, and allow such amendments as may be necessary, on such terms

as it may prescribe. If more than one person is liable, and the creditor shall bring action against all or any of them, and those liable shall dispute the debt, or the amount claimed, the court may order an issue to be framed, and direct the amount to be ascertained by a jury, and shall determine how much each is liable to pay.

[R. L. s. 4512] (9666)

**573.12 ESTATE OF DECEASED HEIRS, WHEN LIABLE.** If any of the heirs, devisees, or legatees die without having paid his just share of the debts, his estate shall be liable therefor as for his own debt, to the extent to which he would have been liable if living.

[R. L. s. 4513] (9667)

**573.13 CONTRIBUTION AMONG HEIRS.** When any heir, devisee, or legatee pays more than his share of such debt, the other persons liable shall be holden and compelled to contribute their just proportion of the same.

[R. L. s. 4514] (9668)

**573.14 PRIORITY AMONG DEBTS.** When the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestor, or testator, they shall give preference in the payment of the same, and be liable therefor, in the following order:

(1) Debts entitled to a preference under the laws of the United States;

(2) Judgments against the ancestor or testator, according to the priority thereof, respectively;

(3) Debts due to other creditors.

[R. L. s. 4515] (9669)

**573.15 NO PREFERENCE BETWEEN DEBTS OF SAME CLASS.** No preference shall be given by any next of kin, legatee, heir, or devisee to one debt over another of the same class, except one specified in section 573.14, clause (2); nor shall a debt due and payable be entitled to a preference over one not due; nor shall the commencement of an action against any next of kin, legatee, heir, or devisee, for the recovery of a debt, entitle it to preference over others of the same class.

[R. L. s. 4516] (9670)

**573.16 DEFENSES; OTHER DEBTS OUTSTANDING OR PAID.** The next of kin, legatees, heirs, and devisees may show, in their defense, that there are unsatisfied debts of a prior class, or others of the same class as the debt in action; and if it shall appear that the value of the personal property delivered, or of the real estate descended or devised, to them does not exceed the debts of a prior class, judgment shall be rendered in their favor. If the value of such property exceeds the amount of debts which are entitled to preference over the debt in action, judgment shall be rendered against them only for such a sum as bears a just proportion to the other debts of the same class. If a debt of a class prior to the one in action, or of the same class, is paid by any next of kin, legatees, heirs, or devisees, they may prove such payment, and the amount thereof shall be treated, in ascertaining the amount to be recovered, as if it were unpaid.

[R. L. s. 4517] (9671)

**573.17 REAL PROPERTY DESCENDED; LIEN OF JUDGMENT.** If it appears that the real property so descended was not alienated by the heir at the time of the commencement of the action, the court shall order that plaintiff's debt, or the proportion thereof which he is entitled to recover, be levied upon such real estate, and not otherwise; and every judgment rendered in such action has preference as a lien on such real estate, to any judgment obtained against such heir for a debt of his own.

[R. L. s. 4518] (9672)

**573.18 PERSONAL LIABILITY; ALIENATION BEFORE SUIT.** If it appears in the action that before the commencement thereof the heir has alienated the real property descended to him, or any part thereof, he shall be personally liable for the value of that aliened; and judgment may be rendered therefor, and execution awarded, as in actions for his own debts. No real property aliened in good faith by an heir, before action commenced against him, shall be liable to execution or in any manner affected by a judgment against him.

[R. L. s. 4519] (9673)

**573.19 HEIRS AND DEVISEES; LIMIT OF RECOVERY.** In actions brought against several heirs or several devisees jointly, the amount of plaintiff's recovery

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shall be apportioned among all the heirs of the ancestor, or all the devisees of the testator, in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each.

[R. L. s. 4520] (9674)

**573.20 DEVISEES, WHEN LIABLE; LIMITATIONS.** Devisees made liable to creditors of their testator by the provisions of this chapter shall not be held liable unless it shall appear that his personal assets and the real property descended to his heirs were insufficient to discharge the debt, or that after due proceedings before the probate court the creditor has been unable to recover the debt, or any part thereof, from the personal representative of the testator, or his next of kin, legatees, or heirs. In either of these cases, the amount of the deficiency of the personal assets, and of the real property descended to satisfy the debt of the plaintiff, and the amount which he may have failed to recover from the personal representative, next of kin, legatees, and heirs of the testator, may be recovered of the devisees, to the extent of the real property devised to them, respectively. Nothing in this section shall affect the liability of the devisees for a debt of their testator which was charged by will exclusively upon the real property devised, or made payable exclusively by such devisees, or out of the real property devised before resorting to the personal property or to any other real property descended or devised.

[R. L. s. 4521] (9675)

**573.21 DEVISEES; APPLICATION.** The provisions of this chapter with regard to heirs, and to proceedings by and against them, and to judgments and executions against them, are applicable to actions and proceedings against devisees, and they must in like manner be jointly sued.

[R. L. s. 4522] (9676)