

Bill No.: SF0111

Effective: 7/1/2015

LSO No.: 15LSO-0344

Enrolled Act No.: SEA 34

Chapter No.: 74

Prime Sponsor: Perkins

Catch Title: Summary probate proceedings.

Subject: Procedures and requirements for summary probate proceedings

Summary/Major Elements:

- The bill generally modifies and establishes requirements and procedures for distribution of property by affidavit and summary procedure under the probate code.
- The bill clarifies that summary probate procedure is available if the entire estate does not exceed \$200,000 after subtracting liens and encumbrances from the value of the estate.
- The bill creates a new section requiring the proof of publication of the application for summary procedure to be by affidavit, signed under the penalty of perjury and filed with the clerk of court prior to taking action on the application.
- The bill creates a new section concerning missing distributees as follows:
 - The bill requires the person who filed the application to make reasonable efforts to identify and locate all living distributees having an interest in the estate.
 - The person filing the application has to inform the court of his/her efforts to locate missing distributees.
 - If a distributee cannot be located, the court is instructed to grant the application as follows:
 - If it is an interest in real property, the interest shall be set over to the missing distributee;
 - In the case of all other interests, the court may direct that the share of the missing distributee be paid to the State Treasurer under the Uniform Unclaimed Property Act.
 - The court may order the missing distributee's share to be liquidated for value. The person filing the application must report to the court upon payment of the share of the missing distributee.
- A venue section was added to clarify where an application for a summary probate procedure should be filed:
 - If the decedent was a resident of Wyoming at the time of death, the application must be filed in the county of which the decedent was a resident; or
 - If the decedent was not a resident of Wyoming at the time of death, the application can be filed in a county where any part of the estate is located.

- Under current law, any person indebted to the decedent or having personal property (tangible or intangible) belonging to the decedent must make payment or deliver the property to the person claiming to be the distributee of the property or his/her attorney upon being presented with a certified copy of the affidavit filed with the court. This bill amends the required information to be contained in the affidavit as follows:
 - A statement concerning the legal basis upon which the distributee claims entitlement to such property, including facts regarding any intervening estates or other parties who may have a claim of entitlement from the decedent and from whom the applicant distributee claims, and that there are no other distributees of the decedent having a right to succeed to the property under probate proceedings in any jurisdiction;
 - If an application for appointment of a personal representative has been made in a jurisdiction outside of Wyoming, the name and address of the proposed or appointed personal representative, the date of the application, the date of any appointment, the title of the proceedings and name of the court and jurisdiction in which the application was made must be provided.
- For a person with custody of property belonging to the decedent, the bill clarifies that a proof of delivery of the property to the distributee will constitute a valid and sufficient release and discharge. The old statute only provided a receipt for payment of debt and did not address delivery of property.
- If a person indebted to the decedent or having custody of property belonging to the decedent refuses to pay or deliver the property, the bill provides for the award of reasonable attorney's fees and costs to be awarded to the plaintiff if the property or debt was not paid, transferred or delivered within 45 days after being presented the affidavit and there was no just cause for the refusal to pay, transfer or deliver.
- The bill clarifies the sworn report of value that is required to be attached to the application can be based upon a broker's price opinion.
- The bill amends the notice requirements for an application for a decree of summary distribution as follows:
 - The notice of application must be published in a newspaper of general circulation once a week for two consecutive weeks in the county where the application was filed; and
 - The notice and application must be served by first class mail to the last known address of the surviving spouse of the decedent, all other distributees, so far as known, or to their guardians if any of them are minors, or to their personal representatives if any of them are deceased and to any reasonably ascertainable creditors no less than 10 days after the date of first publication.
- If no objection to the application has been filed within 30 days after the date of first publication, the court shall enter a decree establishing the right and title to property located in Wyoming. A certified copy of the decree must be filed in the office of the county clerk of each county in which real property, including mineral interests, is located. The bill clarifies that upon recording the decree, it shall be presumptive evidence of title to the property. If an objection is filed to the application, the court must set a hearing and after conducting a hearing, either enter or deny the application.
- The bill clarifies the rights of a distributee who is damaged by an application containing a materially false statement. The distributee may file an action to amend the decree and seek damages. The action must be filed in the court in which the application was filed and is barred unless commenced within two years from the entry of the decree.

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