

CHAPTER 318.

ALLOWANCES, DISTRIBUTION, PARTITION.

318.01	Distribution of personalty.	318.10	Partition of residue, when necessary, judgment.
318.02	Rights of state, notice to attorney-general.	318.12	Notice of appointment of commissioners.
318.03	Escheats and unclaimed legacies and shares.	318.24	Advancements part of estate.
318.04	Lands distributed as personalty.	318.25	Advancement, how applied.
318.06	Estates, assigning residue.	318.26	Equalization of shares; not to be refunded.
318.061	Legacy or distributive share of minor, when guardian not needed; other small legacies and shares.	318.27	Gifts, when advancements; how valued.
318.065	Abridged judgment; recording.	318.28	Advancement to ancestor to affect child.
318.07	Receipts from guardians.	318.29	Advancements, questions for court.
318.08	Remedy of creditors of nonresident heirs and legatees; service of citation.	318.30	Partition.

318.01 Distribution of personalty. (1) **RESIDUE.** The residue, if any, of the personal estate of any intestate and the residue of the personal estate of a testator, not disposed of by his will and not required for the purposes mentioned in section 313.15, shall be distributed in the same proportions, and to the same persons, and for the same purposes, as prescribed for the descent and disposition of real estate in chapter 237, except that when the deceased shall leave a widow or widower and lawful issue the widow or widower shall be entitled to receive the same share of such residue as a child of such deceased, when there is only one child, and in all other cases one-third of such residue.

(3) **ALLOWANCE FOR CARE OF GRAVE.** In case there shall be no known heir or legatee or devisee residing in this state or in case there is no husband, widow or descendant, or no parent, brother or sister dependent upon the estate of the deceased, the court may order the executor or administrator to pay not to exceed one hundred dollars for perpetual care of the grave of the deceased as provided by subsection (9) of section 157.11.

(4) **ALLOWANCE FOR TOMBSTONE.** In case no provision is made in the will for a tombstone or monument or marker at the grave of the decedent, and none has been erected, the executor or administrator may expend a reasonable sum for a tombstone or monument or marker at the grave of his decedent. The expenditure shall be subject to the approval of the court and shall be classed as funeral expenses.

Cross Reference: For county court orders concerning perpetual care of graves, see 157.11 and 157.125.

318.02 Rights of state, notice to attorney-general. In all cases mentioned in subsections (1) and (2) of section 318.03 it shall be the duty of the county court having jurisdiction thereof to notify the attorney-general of the interest or probable interest of the state in such estate immediately after the same shall come to the knowledge of such court; and the attorney-general shall appear for and protect the interests of the state therein.

318.03 Escheats and unclaimed legacies and shares. (1) **HEIRS UNKNOWN.** In case there shall be no known heir of the decedent, the residue of the estate, not disposed of by will, shall escheat and shall be ordered paid into the state school fund.

(2) **RENOUNCED OR REFUSED LEGACIES.** (a) If any legacy other than a bequest of the residue or any interest therein, be renounced or refused, such legacy shall not escheat but in the absence of other directions in the will, shall become part of the residue of the estate.

(b) If any legacy consisting of the residue of an estate or any interest therein including legacies which have become a part of the residue under paragraph (a) shall be renounced or refused, such residue or legacy of an interest therein shall not escheat but in the absence of other directions in the will, shall descend or be distributed as intestate property.

(3) **UNCLAIMED LEGACIES AND SHARES; ESCHAT.** Except as provided in section 331.42, if any share of intestate property including property distributable as intestate property under subsection (2) shall not be claimed by the heir within 120 days after the entry of final judgment by the county court, or within such time as shall be designated in said final judgment, the executor or administrator shall convert the same into money and pay it to the state treasurer for the state school fund, and it shall be a part of said fund until and unless refunded as prescribed by subsection (4).

(4) The moneys received by the state treasurer pursuant to subsections (1) and (3) shall be paid to the owner on proof of his right thereto. The claimant may, within 7 years after the date of publication by the treasurer of notice of receipt thereof as provided by section 14.42 (15), file in the county court in which the estate was settled, a petition alleging the basis of his claim to the residue or to the legacy or share. The court shall order a hearing upon the petition; and 20 days' notice thereof shall be given by the claimant to the attorney-general, who shall appear for the state at the hearing. If the claim is established it shall be allowed without interest; and the court shall so certify to the director of budget and accounts, who shall audit and the state treasurer shall pay the same. If real property has been adjudged to escheat to the state pursuant to section 237.01 (7) the county court which made the adjudication may adjudge at any time before title has been transferred from the state that the title shall be transferred to the proper owners pursuant to proceedings brought in the manner provided in this subsection.

318.04 Lands distributed as personalty. If any land held by an executor or administrator as mentioned in sections 312.10 and 312.13 shall not be sold by him as therein provided it shall be assigned and distributed to the same persons and in the same proportions as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons partition thereof may be made between them in like manner as if it were real estate which the deceased held in his lifetime.

[318.05 Stats. 1931 repealed by 1933 c. 190 s. 38]

318.06 Estates, assigning residue. (1) **DEDUCTIONS BEFORE JUDGMENT.** After the payment of the debts, funeral charges and expenses of administration and after deducting all the allowances provided for in this chapter or when sufficient effects shall be reserved in the hands of the executor or administrator for the above purposes, the county court shall, by a judgment assign the residue of the estate, if any, to such persons as by law are entitled to the same.

(2) **RIGHTS OF PARTIES.** Such judgment may be made on the application of the executor or administrator or of any person interested in the estate. The court shall name therein the persons and assign to each the portion to which he is entitled. The right to recover any such portion from the executor or administrator or from any other person is hereby given to the person entitled thereto.

(3) **JUDGMENT AS EVIDENCE.** Any finding or determination as to heirship or assignment of real estate in any such judgment shall be presumptive evidence of any fact so found and of the right to the portion of any estate so assigned and shall be conclusive evidence thereof as to all persons to whom notice shall have been given as provided in section 324.18, or who have appeared in any such proceeding and as to all persons claiming under them.

(4) **TO APPLY TO REALTY.** This section shall apply to all real estate described in any such judgment whether or not in the possession of the executor or administrator, and such judgment shall describe the real estate to be assigned and a certified copy of said judgment describing such real estate, or an abridgment or abstract of such judgment as provided in section 318.065, shall be recorded by the executor or administrator in the office of the register of deeds in each county wherein such real estate is located.

(5) **ORDER OF DISCHARGE.** Upon filing vouchers showing compliance with the foregoing judgment, the court shall enter an order finding such fact, discharging the executor or administrator and making the judgment absolute. Such order, or a certified copy thereof, shall be presumptive evidence of the facts therein adjudicated.

(7) **PROOF OF HEIRSHIP.** (a) No order shall be made assigning the residue of any estate until proof is filed that notice of such proceeding has been given or waived as provided by section 324.18, nor until the testimony or deposition of one or more witnesses is reduced to writing and filed, and the court is, from such evidence, fully satisfied as to who are the persons entitled to such residue.

(b) No order shall be made determining who are the heirs of any deceased person until proof is filed that notice of the taking of proof of heirs has been given by publication as provided by section 324.18, nor until the testimony or deposition of one or more witnesses is reduced to writing and filed, and the court is, from such evidence, fully satisfied as to who are the heirs of such person. Application to take proof of heirs may be included in the petition for administration, petition for probate, petition for final settlement, or in a separate petition, and the notice may be included in the notice published of the hearing on either of said petitions or in the notice to creditors, as the court shall order.

(8) **DISPOSITION OF MONEY OR OTHER PROPERTY WHERE PAYMENT OR TRANSFER IS PROHIBITED.** Where the laws of the United States or executive orders or regulations pursuant

thereto prohibit payment, conveyance, transfer, assignment or delivery of property or interest therein to a legatee, devisee, distributee, ward or beneficiary of an estate or trust or to any person on his behalf, the county court or other court having jurisdiction thereof, after due notice to such person as prescribed by section 324.18, may, by judgment or decree, authorize such disposition of such property or interest therein as is or may be permissible under or in conformity with the laws, executive orders or regulations of the United States of America.

(9) **PARTITION.** Property passing by descent or by will to persons as joint tenants or tenants in common may be partitioned among such persons by the judgment of the county court assigning such property, provided a petition therefor is filed with the court prior to such judgment signed by all parties interested in the property involved. Such petition shall be supported by a stipulation signed by all persons interested in the property in the manner provided by section 235.19 which stipulation shall set out the manner in which the property is to be divided and the agreement of all persons interested therein in such division. This subsection shall be applicable to the property of estates which has not been assigned by judgment of the court filed prior to June 9, 1945 and shall validate all partitions of property accomplished prior to said date in the manner herein provided.

(10) **ASSIGNING PURSUANT TO CONTRACT.** If any person having an interest in an estate shall assign all or part of his interest therein (other than an interest not assignable by the specific language of a will) as collateral or otherwise and the assignee shall serve a copy thereof on the executor or administrator of the estate and shall file the assignment with the county court having jurisdiction of the estate before the entry of the final decree or judgment therein, the county court shall assign to such assignee in the final decree or judgment in the estate the legacy, share or portion included within such assignment to the extent that such assignment is valid as determined by said court, after giving effect to any credits to which the assignor may be entitled.

318.061 Legacy or distributive share of minor, when guardian not needed; other small legacies and shares. (1) If the legacy or distributive share of the estate to which a minor is entitled does not exceed \$500, the court may, without the appointment of a guardian, authorize the deposit thereof in a savings account in some bank to be paid to the guardian when appointed or to the minor upon his attaining the age of 21 years; or the court may authorize the payment or delivery thereof to the natural guardian of the minor or to the person who maintains the minor or to the minor himself.

(2) The court may apply the provisions of this section to any legatee or distributee whose legacy or share does not exceed \$500.

318.065 Abridged judgment, recording. (1) There may be recorded in the office of the register of deeds in lieu of a certified copy of the final judgment assigning an estate an abridgment or abstract of such final judgment relating to and confined to such portions of such final judgment as may relate to or affect real estate. The judge of the court assigning such estate shall certify as to the truth and accuracy of such abridgment or abstract which shall include the following matters set out in such final judgment:

(a) A general recital of those facts pertaining to the hearing, allowance of final account, and the filing of a final judgment therein.

(b) The findings of fact relating to

1. The death of the deceased.
2. His testacy or intestacy.
3. The payment of inheritance tax, claims and charges against such estate.
4. The survivors or beneficiaries.

(c) The description of that portion of his property which may relate to or affect real estate.

(d) The assignment of such property.

(e) Such other matters set out in the final judgment as may be deemed necessary.

(2) The certification and recording of such abridgment or abstract shall have the same force and effect as to the property described therein as the certification and recording of the entire final judgment.

318.07 Receipts from guardians. If a legatee or distributee of an estate be a minor or an incompetent person and has a general guardian the executor or administrator shall take from such guardian on delivery of the legacy or share, a receipt and file the same with the court of probate and such court shall transmit a certified copy of such receipt to the court which appointed such guardian.

318.08 Remedy of creditors of nonresident heirs and legatees; service of citation.

(1) Whenever any legacy or distributive share of any estate belongs to any debtor who has absconded from or is a nonresident of this state, any of his creditors may petition to

intervene in the probate proceedings to compel the application of said legacy or distributive share to the payment of his debt, and whenever it shall be necessary a citation to such debtor to appear at a time certain may be served by publication.

(2) Such citation shall be served in the manner provided by section 324.18.

(3) Upon due proof of service of, and at the time fixed in said citation, said court shall proceed to consider such petition, and take proof, and grant such relief thereunder as shall be just, and any order, judgment or determination made in said proceedings shall be binding upon said debtor. If the claim is not a judgment and any issue shall arise in said proceedings relating to said debt, the court may stay such proceedings pending the final determination of said issue. The court may at any time require the petitioner to give a bond in such sum and with such sureties for costs and damages as it may deem proper.

[318.09 Stats. 1931 repealed by 1933 c. 190 s. 40]

318.10 Partition of residue, when necessary, judgment. (1) When the court shall assign the residue of any personal estate to two or more persons, it shall not be necessary to make partition or distribution of such estate; but when partition is requested by any party in interest prior to final judgment, and it appearing to the satisfaction of the court that partition can be made without damage or prejudice to the owners, partition may be made by three disinterested persons to be appointed by the court. Said court shall issue its warrant to them and they shall be sworn to a faithful discharge of their duties.

(2) Such partition, when completed and approved, shall be incorporated in and made a part of the final judgment.

[318.11 Stats. 1931 repealed by 1933 c. 190 s. 42]

318.12 Notice of appointment of commissioners. Notice of the time and place of hearing the application for the appointment of commissioners shall be given as provided by section 324.18.

[318.13 to 318.23 Stats. 1931 repealed by 1933 c. 190]

318.24 Advancements part of estate. Any estate, real or personal, that may have been given by an intestate as an advancement to any lineal descendant shall be considered as a part of the estate of the intestate, upon the division and distribution thereof among his heirs, and shall be taken by such descendant toward his share of the estate.

318.25 Advancement, how applied. If the advancement shall exceed the share of the heir he shall be excluded from any further portion of the estate, but he shall not be required to refund any part of such advancement.

318.26 Equalization of shares; not to be refunded. If such advancement be made in real estate the value thereof shall, for the purposes mentioned in section 318.25, be considered a part of the real estate to be divided; and if it be in personal estate it shall be considered as a part of the personal estate; if in either case it shall exceed the share of real or personal estate respectively that would have come to the heir so advanced he shall not be required to refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

318.27 Gifts, when advancements; how valued. All gifts and grants shall be deemed to have been made in advancement if they are expressed in the gift or grant to be so made or if charged in writing by the intestate as an advancement or acknowledged in writing as such by the child or other descendant. If the value of the estate so advanced shall be expressed in the conveyance or in the charge thereof made by the intestate or in the acknowledgment of the party receiving it such value shall govern in the division and distribution of the estate; otherwise it shall be estimated according to its value when given, as nearly as the same can be ascertained.

318.28 Advancement to ancestor to affect child. If any child or other lineal descendant, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced in like manner as if the advancement had been made directly to them.

318.29 Advancements, questions for court. All questions as to advancements shall be determined by the county court, and shall be specified in the judgment assigning the estate.

318.30 Partition. (1) Whenever any heir or devisee is entitled to maintain an action under chapter 276 to partition any real estate received by descent or devise, he

may, at any time prior to the entry of the order of final settlement and distribution in the estate of the person from whom he derives such real estate, petition the court in which such estate is pending for a partition or sale of such real estate and a division of the proceeds among the persons entitled to receive the same. Such petition shall be verified and shall contain a description of the real estate to be partitioned or sold and the names of all persons interested therein (including any person who may have an inchoate dower right therein).

(2) The court shall by order fix the time and place for hearing such petition and notice thereof shall be given as provided by section 324.18, except that all interested persons residing within the state shall be served with notice in the manner a summons is served in circuit court other than by publication.

(3) Upon the hearing, if the court shall find that actual partition of said premises can be made without great prejudice to the owners it shall by order appoint 3 disinterested persons commissioners to make the partition according to the interests of the parties. In making partition the commissioners shall proceed according to chapter 276 so far as applicable and not inconsistent with this section. Upon confirmation of their report, judgment of partition according thereto shall be made a part of the final order of distribution in said estate.

(4) If the court shall find that actual partition of said premises cannot be made or cannot be made without great prejudice to the owners, it shall order a sale thereof to be made, either at public or private sale, by the administrator or executor of the estate who shall give such additional bond as the court shall order. Notice of public sale shall be given as provided for the sale of real estate under chapter 316.

(5) Report of sale shall be filed and an order entered fixing the time and place for hearing on the same and notice thereof shall be given by mail to all persons interested at least 5 days before the hearing.

(6) Upon confirmation of such sale the administrator or executor by order shall be authorized and directed to make a conveyance of said property to the purchaser.

(7) All costs of the proceeding and sale including attorney fees, administrator or executor fees, cost of serving and publishing notices, cost of abstract and in case the court authorizes the employment of a real estate broker a reasonable fee for him, shall be allowed by the court and paid out of the proceeds of the sale and the balance thereof shall be distributed in the order of final settlement in said estate to the persons entitled thereto.