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ENGROSSED SENATE BILL 5297

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State of Washington

61st Legislature

2010 Regular Session

By Senators Kline and Delvin; by request of Washington State Bar Association

Read first time 01/20/09. Referred to Committee on Judiciary.

1 AN ACT Relating to the procedure for filing a declaration of  
2 completion of probate; and amending RCW 11.68.110 and 11.68.114.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 11.68.110 and 1998 c 292 s 202 are each amended to  
5 read as follows:

6 (1) If a personal representative who has acquired nonintervention  
7 powers does not apply to the court for either of the final decrees  
8 provided for in RCW 11.68.100 as now or hereafter amended, the personal  
9 representative shall, when the administration of the estate has been  
10 completed, file a declaration of completion of probate that must state  
11 as follows:

12 (a) The date of the decedent's death and the decedent's residence  
13 at the time of death;

14 (b) Whether or not the decedent died testate or intestate;

15 (c) If the decedent died testate, the date of the decedent's last  
16 will and testament and the date of the order probating the will;

17 (d) That each creditor's claim which was justly due and properly  
18 presented as required by law has been paid or otherwise disposed of by

1 agreement with the creditor, and that the amount of estate taxes due as  
2 the result of the decedent's death has been determined, settled, and  
3 paid;

4 (e) That the personal representative has completed the  
5 administration of the decedent's estate without court intervention, and  
6 the estate is ready to be closed;

7 (f) ~~((If the decedent died intestate,))~~ The names~~((,))~~ and  
8 addresses (if known)~~((, and relationship))~~ of each heir, legatee, and  
9 devisee of the decedent to whom the personal representative is required  
10 to give notice as provided in this section and, if the decedent died  
11 intestate, the relationship of each heir to the decedent, together with  
12 the distributive share of each heir; and

13 (g) The amount of fees paid or to be paid to each of the following:  
14 (i) Personal representative or representatives; (ii) lawyer or lawyers;  
15 (iii) appraiser or appraisers; and (iv) accountant or accountants; and  
16 that the personal representative believes the fees to be reasonable and  
17 does not intend to obtain court approval of the amount of the fees or  
18 to submit an estate accounting to the court for approval.

19 (2) ~~((Subject to the requirement of notice as provided in this~~  
20 ~~section, unless an heir, devisee, or legatee of a decedent petitions~~  
21 ~~the court either for an order requiring the personal representative to~~  
22 ~~obtain court approval of the amount of fees paid or to be paid to the~~  
23 ~~personal representative, lawyers, appraisers, or accountants, or for an~~  
24 ~~order requiring an accounting, or both, within thirty days from the~~  
25 ~~date of filing a declaration of completion of probate, the personal~~  
26 ~~representative will be automatically discharged without further order~~  
27 ~~of the court and the representative's powers will cease thirty days~~  
28 ~~after the filing of the declaration of completion of probate, and the~~  
29 ~~declaration of completion of probate shall, at that time, be the~~  
30 ~~equivalent of the entry of a decree of distribution in accordance with~~  
31 ~~chapter 11.76 RCW for all legal intents and purposes.~~

32 ~~(3))~~ Within five days of the date of the filing of the declaration  
33 of completion, the personal representative or the personal  
34 representative's lawyer shall mail a copy of the declaration of  
35 completion to each heir, legatee, or devisee of the decedent, who: (a)  
36 Has not waived notice of the filing, in writing, filed in the cause;  
37 and (b) either has not received the full amount of the distribution to  
38 which the heir, legatee, or devisee is entitled or has a property right

1 that might be affected adversely by the discharge of the personal  
2 representative under this section, together with a notice which shall  
3 be substantially as follows:

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CAPTION NOTICE OF FILING OF  
OF DECLARATION OF COMPLETION  
CASE OF PROBATE

NOTICE IS GIVEN that the attached Declaration of  
Completion of Probate was filed by the undersigned in the  
above-entitled court on the . . . . day of . . . . ., ~~((19:))~~  
20 . . . ; ((unless you shall file a petition in the above-entitled  
court requesting the court to approve the reasonableness of  
the fees, or for an accounting, or both, and serve a copy  
thereof upon the personal representative or the personal  
representative's lawyer, within thirty days after the date of  
the filing.)) the amount of fees paid or to be paid will be  
deemed reasonable, the acts of the personal representative  
will be deemed approved, the personal representative's  
powers will cease, the personal representative will be  
automatically discharged without further order of the court,  
and the Declaration of Completion of Probate will be final  
and deemed the equivalent of a Decree of Distribution  
entered under chapter 11.76 RCW unless you file a petition  
in the above-entitled court requesting the court to approve  
the reasonableness of the fees, or for an accounting, or both,  
and to set a time and date for a hearing on the petition, and  
serve a copy thereof on the personal representative or the  
personal representative's lawyer, and on each heir, legatee,  
and devisee to whom the personal representative sent a  
copy of this Declaration of Completion of Probate, within  
thirty days after the date of the filing.

1                   If you file and serve a petition within the period  
2 specified, ~~((the undersigned will))~~ then within such period  
3 you must also request the court to fix a time and place for  
4 the hearing of your petition, and ~~((you will be notified))~~  
5 must provide notice of the time and place thereof to the  
6 personal representative or the personal representative's  
7 lawyer and to each heir, legatee, and devisee to whom the  
8 personal representative sent a copy of this Declaration of  
9 Completion of Probate, by mail~~((:))~~ or personal service, not  
10 less than ten days before the hearing on the petition.

11                   If you file a petition, but do not serve a copy of such  
12 petition, and provide notice of the hearing and time and  
13 place within the prescribed time period, the amount of fees  
14 paid or to be paid will be deemed reasonable, the acts of the  
15 personal representative will be deemed approved, the  
16 personal representative's powers will cease, the personal  
17 representative will be automatically discharged as provided  
18 in RCW 11.68.110 and the Declaration of Completion of  
19 Probate will be final and deemed the equivalent of a Decree  
20 of Distribution entered under chapter 11.76 RCW.

21                   Dated this ... day of ....., ~~((49-))~~ 20..

22                   .....

23                   Personal Representative

24                   ~~((4))~~ (3) If all heirs, devisees, and legatees of the decedent  
25 entitled to notice under this section waive, in writing, the notice  
26 required by this section and such waivers are filed with the court,  
27 whether before or after the filing of the declaration of completion of  
28 probate, then upon the date of the filing of the declaration of  
29 completion of probate, the amount of fees paid or to be paid will be  
30 deemed reasonable, the acts of the personal representative will be  
31 deemed approved, the personal representative's powers will cease, the  
32 personal representative will be automatically discharged without  
33 further order of the court, and the declaration of completion of  
34 probate will become effective as a decree of distribution ~~((upon the~~  
35 date of filing thereof)) in accordance with chapter 11.76 RCW for all  
36 legal intents and purposes.

1       (4) Provided that the personal representative has complied with the  
2 requirements of this section, then unless a petition is filed as  
3 provided in subsection (5) of this section, thirty days after the  
4 filing of the declaration of completion of probate the amount of fees  
5 paid or to be paid will be deemed reasonable, the acts of the personal  
6 representative will be deemed approved, the personal representative's  
7 powers will cease, the personal representative will be automatically  
8 discharged without further order of the court, and the declaration of  
9 completion of probate will be, at that time, the equivalent of the  
10 entry of a decree of distribution in accordance with chapter 11.76 RCW  
11 for all legal intents and purposes.

12       (5) A declaration of completion of probate will not have the effect  
13 provided in subsection (4) of this section if within thirty days from  
14 the date of its filing an heir, devisee, or legatee of a decedent:

15       (a) Petitions the court either for an order requiring the personal  
16 representative to obtain court approval of the amount of fees paid or  
17 to be paid to the personal representative, lawyers, appraisers, or  
18 accountants, or for an order requiring an accounting, or both;

19       (b) Petitions the court to fix a time and place for the hearing of  
20 the petition. Such request may be included in the petition referenced  
21 in (a) of this subsection;

22       (c) Serves a copy of the petition(s) on the personal representative  
23 or the personal representative's lawyer and on each heir, legatee, and  
24 devisee to whom the personal representative sent a copy of the  
25 declaration of completion of probate at least ten days before the  
26 hearing on the petition; and

27       (d) Files proof of service of the petition(s) with the court within  
28 thirty-five days after the filing of the declaration of completion of  
29 probate.

30       (6) In those instances where the personal representative has been  
31 required to furnish bond, and a declaration of completion is filed  
32 pursuant to this section, any bond furnished by the personal  
33 representative (~~shall be~~) is automatically discharged upon the  
34 discharge of the personal representative.

35       **Sec. 2.** RCW 11.68.114 and 1998 c 292 s 203 are each amended to  
36 read as follows:

37       (1) The personal representative retains the powers to: Deal with

1 the taxing authority of any federal, state, or local government; hold  
2 a reserve in an amount not to exceed three thousand dollars, for the  
3 determination and payment of any additional taxes, interest, and  
4 penalties, and of all reasonable expenses related directly or  
5 indirectly to such determination or payment; pay from the reserve the  
6 reasonable expenses, including compensation for services rendered or  
7 goods provided by the personal representative or by the personal  
8 representative's employees, independent contractors, and other agents,  
9 in addition to any taxes, interest, or penalties assessed by a taxing  
10 authority; receive and hold any credit, including interest, from any  
11 taxing authority; and distribute the residue of the reserve to the  
12 intended beneficiaries of the reserve; if:

13 (a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the  
14 declaration of completion of probate states that:

15 The personal representative has completed the  
16 administration of the decedent's estate without court  
17 intervention, and the estate is ready to be closed, except for  
18 the determination of taxes and of interest and penalties  
19 thereon as permitted under this section;

20 and

21 (b) The notice of the filing of declaration of completion of  
22 probate must be in substantially the following form:

23 CAPTION NOTICE OF FILING OF  
24 OF DECLARATION OF COMPLETION  
25 CASE OF PROBATE

26 NOTICE IS GIVEN that the attached Declaration of  
27 Completion of Probate was filed by the undersigned in the  
28 above-entitled court on the . . . day of . . . . , . . . . ;  
29 unless you file a petition in the above-entitled court  
30 requesting the court to approve the reasonableness of the fees,  
31 or for an accounting, or both, and to set a time and date for  
32 a hearing on the petition, and serve a copy thereof upon the  
33 personal representative or the personal representative's  
34 lawyer, and on each heir, legatee, and devisee to whom the  
35 personal representative sent a copy of this Declaration of  
36 Completion of Probate, within thirty days after the date of the  
37 filing:

1 (i) The (~~schedule~~) amount of fees paid or to be paid  
2 set forth in the Declaration of Completion of Probate will be  
3 deemed reasonable;

4 (ii) The Declaration of Completion of Probate will be  
5 final and deemed the equivalent of a Decree of Distribution  
6 entered under chapter 11.76 RCW;

7 (iii) The acts that the personal representative  
8 performed before the Declaration of Completion of Probate was  
9 filed will be deemed approved, and the personal representative  
10 will be automatically discharged without further order of the  
11 court with respect to all such acts; and

12 (iv) The personal representative will retain the power  
13 to deal with the taxing authorities, together with \$. . . . for  
14 the determination and payment of all remaining tax obligations.  
15 Only that portion of the reserve that remains after the  
16 settlement of any tax liability, and the payment of any  
17 expenses associated with such settlement, will be distributed  
18 to the persons legally entitled to the reserve.

19 (2) If the requirements in subsection (1) of this section are met,  
20 the personal representative is discharged from all claims other than  
21 those relating to the settlement of any tax obligations and the actual  
22 distribution of the reserve, at the effective date of the declaration  
23 of completion. The personal representative is discharged from  
24 liability from the settlement of any tax obligations and the  
25 distribution of the reserve, and the personal representative's powers  
26 cease, thirty days after the personal representative has mailed to  
27 those persons who would have shared in the distribution of the reserve  
28 had the reserve remained intact and has filed with the court copies of  
29 checks or receipts showing how the reserve was in fact distributed,  
30 unless a person with an interest in the reserve petitions the court  
31 earlier within the thirty-day period for an order requiring an  
32 accounting of the reserve or an order determining the reasonableness,  
33 or lack of reasonableness, of distributions made from the reserve. If  
34 the personal representative has been required to furnish a bond, any  
35 bond furnished by the personal representative is automatically

1 discharged upon the final discharge of the personal representative.

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