

House File 609

S-5052

1 Amend House File 609, as passed by the House, as
2 follows:

3 1. Page 1, line 1, after <Code> by inserting
4 <Supplement>

5 2. Page 2, after line 22 by inserting:
6 <Sec. _____. Section 633.350, Code 2011, is amended
7 to read as follows:

8 **633.350 Title to decedent's estate — when property**
9 **passes — possession and control thereof — liability**
10 **for administration expenses, debts, and family**
11 **allowance.**

12 Except as otherwise provided in this probate code,
13 when a person dies, the title to the person's property,
14 real and personal, passes to the person to whom it is
15 devised by the person's last will, or, in the absence
16 of such disposition, to the persons who succeed to the
17 estate as provided in this probate code, but all of
18 the property shall be subject to the possession of the
19 personal representative as provided in section 633.351
20 and to the control of the court for the purposes of
21 administration, sale, or other disposition under the
22 provisions of law, and such property, except homestead
23 and other exempt property, shall be chargeable with the
24 payment of debts and charges ~~against~~ of the estate.
25 There shall be no priority as between real and personal
26 property, except as provided in this probate code or by
27 the will of the decedent. If real property is titled
28 at any time in a decedent's estate, such property
29 shall be treated as titled in the name of the personal
30 representative of the estate.

31 Sec. _____. Section 633.351, Code 2011, is amended to
32 read as follows:

33 **633.351 Possession of real and personal property.**

34 ~~If there is no distributee of the real estate~~
35 ~~present and competent to take possession, or if there~~
36 ~~is a lease of such real estate outstanding, or if the~~
37 ~~distributees present and competent consent thereto~~
38 During the period of administration, the personal
39 representative shall take possession of such the
40 decedent's real estate, except the homestead and
41 other property exempt to the surviving spouse. Every
42 personal representative shall take possession of
43 all the personal property of the decedent, except
44 the property exempt to the surviving spouse. The
45 personal representative may maintain an action for
46 the possession of such real and personal property
47 or to determine the title to any property of the
48 decedent. Until property is distributed, the
49 personal representative shall take reasonable steps
50 to safeguard such property, pay any expenses related

1 to such property, and collect any income generated
2 by such property. Unless otherwise provided by the
3 decedent's will, all such expenses shall be paid from
4 the residuary estate and all such income shall be
5 considered a part of the residuary estate.

6 Sec. _____. Section 633.352, Code 2011, is amended to
7 read as follows:

8 **633.352 Collection of rents and payment of taxes and**
9 **charges.**

10 Unless otherwise provided by the will, the ~~personal~~
11 ~~representative shall allocate and distribute provisions~~
12 ~~of chapter 637 that conflict with this part 3 shall~~
13 ~~not apply to the allocation and distribution of estate~~
14 ~~income of an estate in accordance with chapter 637.~~

15 Sec. _____. Section 633.355, Code 2011, is amended to
16 read as follows:

17 **633.355 Delivery of specific devise after nine**
18 **twelve months.**

19 Unless the court, for cause shown, determines
20 that the possession of the personal representative
21 shall continue for a longer period, the personal
22 representative shall deliver all specifically devised
23 property to the devisees entitled thereto after the
24 expiration of ~~nine~~ twelve months from the date of
25 appointment of the personal representative. This
26 section shall not preclude the court from directing
27 that such delivery be made before such period has
28 expired, nor shall the personal representative
29 be prevented from ~~sooner settling the estate and~~
30 ~~delivering such property at an earlier time.>~~

31 3. Page 7, after line 1 by inserting:

32 <Sec. _____. Section 633A.3102, subsection 5, Code
33 2011, is amended to read as follows:

34 5. The settlor's powers with respect to revocation
35 or modification may be exercised by an agent under a
36 power of attorney only ~~and to the extent the power~~
37 ~~of attorney expressly so authorizes. if all of the~~
38 following apply:

39 a. The trust instrument expressly authorizes an
40 agent under a power of attorney to exercise such
41 powers.

42 b. The power of attorney expressly authorizes an
43 agent acting under the power of attorney to exercise
44 such powers.>

45 4. Page 12, line 24, after <Code> by inserting
46 <Supplement>

47 5. Page 18, after line 18 by inserting:

48 <Sec. _____. Section 635.7, Code 2011, is amended to
49 read as follows:

50 **635.7 Report and inventory — value and conversion.**

1 1. The personal representative is required to file
2 the report and inventory for which provision is made in
3 section 633.361, including all probate and nonprobate
4 assets. This chapter does not exempt the personal
5 representative from complying with the requirements of
6 section 422.27, 450.22, 450.58, 633.480, or 633.481,
7 and the administration of an estate whether converted
8 to or from a small estate shall be considered one
9 proceeding pursuant to section 633.330.

10 2. ~~If the~~ The report and inventory and report shows
11 shall show the gross value of probate assets subject to
12 the jurisdiction of this state which exceed.

13 3. If the gross value of probate assets subject
14 to the jurisdiction of this state exceeds the amount
15 permitted for a small estate under section 635.1, the
16 estate shall be administered as provided in chapter
17 633.

18 ~~3.~~ 4. If the inventory report and inventory in
19 an estate probated pursuant to chapter 633 indicates
20 shows the gross value of the probate assets subject
21 to the jurisdiction of this state does not exceed the
22 amount permitted under section 635.1, the estate shall
23 be administered as a small estate upon the filing of
24 a statement by the personal representative that the
25 estate is a small estate.

26 ~~4.~~ 5. Other interested parties may convert
27 proceedings from a small estate to a regular estate or
28 from a regular estate to a small estate only upon good
29 cause shown with approval from the court.

30 Sec. _____. Section 635.8, Code 2011, is amended to
31 read as follows:

32 **635.8 Closing by sworn statement.**

33 1. The personal representative shall file with the
34 court a closing statement and proof of service thereof
35 within a reasonable time from the date of issuance
36 of the letters of appointment, ~~and the.~~ The closing
37 statement shall be verified or affirmed under penalty
38 of perjury, stating all of the following:

39 a. To the best knowledge of the personal
40 representative, the gross value of the probate assets
41 subject to the jurisdiction of this state does not
42 exceed the amount permitted under section 635.1.

43 b. The estate has been fully administered and will
44 ~~be disbursed and distributed to persons entitled to the~~
45 estate thereto if no objection is filed to the closing
46 statement after the requisite time period has expired
47 as provided in subsection 2 and the accounting and
48 proposed distribution within thirty days after service
49 thereof.

50 ~~c. A description of the disbursement and An~~

1 accounting and proposed distribution of the estate
2 including an accurate description of all the real
3 estate of which the decedent died seized, stating the
4 nature and extent of the interest in the real estate
5 and its disposition.

6 d. A copy of the closing statement and a notice
7 of an opportunity to object to and request a hearing
8 has been sent by proper notice, as provided in section
9 633.40, to all interested parties.

10 e. ~~The personal representative has complied~~
11 with A statement as to whether or not all statutory
12 requirements pertaining to taxes have been complied
13 with, including whether federal estate tax was paid
14 or a return was filed, whether Iowa inheritance tax
15 was paid or a return was filed, whether the decedent's
16 final personal income taxes were filed, whether
17 fiduciary income tax returns for the estate were filed,
18 and due has been paid, whether a lien continues to
19 exist for any federal or state estate tax, and whether
20 inheritance tax was paid or a tax return was filed in
21 this state.

22 f. The amount of fees to be paid to the personal
23 representative and the personal representative's
24 attorney with the appropriate documentation showing
25 compliance with subsection 4.

26 2. If no actions or proceedings involving the
27 estate are pending in the court thirty days after
28 notice service of the closing statement is filed,
29 the the estate shall be distributed according to the
30 closing statement.

31 3. The estate shall close and the personal
32 representative shall be discharged after distribution
33 upon the earlier of either of the following:

34 a. The filing of a statement of disbursement of
35 assets with the clerk by the personal representative an
36 affidavit of mailing or other proof of service of the
37 closing statement and a statement of asset distribution
38 by the personal representative.

39 b. An additional thirty days have passed after
40 notice of the Sixty days after the filing of the
41 closing statement is filed and an affidavit of mailing
42 or other proof of service thereof.

43 3. 4. The closing statement shall include a
44 statement as to the amount of fees to be paid for
45 services rendered by the personal representative
46 and the personal representative's attorney in
47 administration of the estate. The fees for the
48 personal representative shall not exceed three percent
49 of the gross value of the probate assets of the
50 estate, unless the personal representative itemizes

1 the personal representative's services to the estate.
2 The personal representative's attorney shall be paid
3 reasonable fees as approved by the court or as agreed
4 to in writing by the personal representative at or
5 before and such writing shall be executed by the
6 time of filing the probate inventory or as approved
7 by the court. All interested parties shall have the
8 opportunity to object and request a hearing as to all
9 fees reported in the closing statement.

10 ~~4.~~ 5. If a closing statement is not filed within
11 twelve months of the date of issuance of a letter of
12 appointment, an interlocutory report shall be filed
13 within such time period. Such report shall be provided
14 to all interested parties at least once every six
15 months until the closing statement has been filed
16 unless excused by the court for good cause shown.
17 The provisions of section 633.473 requiring final
18 settlement within three years shall apply to an estate
19 probated pursuant to this chapter. A closing statement
20 filed under this section has the same effect as final
21 settlement of the estate under chapter 633.>

22 6. Page 18, line 23, by striking <2011> and
23 inserting <2012>

24 7. Page 18, line 25, by striking <2011> and
25 inserting <2012>

26 8. Page 18, line 31, by striking <2011> and
27 inserting <2012>

28 9. Page 18, line 34, by striking <2011> and
29 inserting <2012>

30 10. Page 18, after line 34 by inserting:

31 <5. The section of this Act amending section
32 633A.3102 applies to revocable trusts and powers of
33 attorney in existence on or after July 1, 2012.>

34 11. Title page, by striking lines 1 and 2 and
35 inserting <An Act relating to trusts and estates
36 including the administration of small estates, and
37 certain state inheritance tax provisions, and including
38 applicability provisions.>

39 12. By renumbering as necessary.

COMMITTEE ON JUDICIARY
EUGENE S. FRAISE, CHAIRPERSON