

CHAPTER 1080
TIMES FOR CERTAIN PROBATE ACTIONS
S.F. 2138

AN ACT relating to the time within which to contest wills, file claims, make spousal elections and take certain other actions with respect to decedents' estates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 633.230, unnumbered paragraph 3, Code 1983, is amended to read as follows:

To All Persons Interested in the Estate of
.....
..... deceased, who died on or about
....., 19

Sec. 2. Section 633.230, unnumbered paragraph 5, Code 1983, is amended to read as follows:

Notice is hereby given that all persons indebted to ~~said~~ the estate are requested to make immediate payment to the undersigned, and creditors having claims against ~~said~~ the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed within ~~six~~ four months from the second publication of this notice (unless otherwise allowed or paid) ~~such a claim shall~~ is thereafter be forever barred.

Sec. 3. Section 633.237, Code 1983, is amended to read as follows:

633.237 PRESUMPTION THAT SURVIVING SPOUSE ELECTS TO TAKE UNDER WILL. ~~Where~~ If a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse within two months of the date of the second publication of notice of admission of the will to probate, and the surviving spouse is not the executor of ~~such~~ the will, ~~it shall be the duty of the executor to~~ shall cause to be served a written notice upon the surviving spouse in the manner directed by the court, advising the surviving spouse that the will of ~~such~~ the decedent has been admitted to probate, stating the name of the court where the will was admitted and the date when the will was admitted to probate, and notifying ~~such~~ the spouse that unless within four months after service of ~~such~~ the notice, ~~he~~ the spouse files an election in writing with the clerk of ~~such~~ that court refusing to take under the ~~provisions of such~~ will, ~~such surviving~~ the spouse shall take under the ~~provisions of the will; provided that if.~~ provisions of the will; provided, further, that if. If the surviving spouse files ~~his~~ an election to take under the will at any time the requirements of this section for serving notice are ~~thereby~~ waived; ~~provided, further, that if.~~ provided, further, that if. If within the ~~before described~~ period of four months an affidavit is filed setting forth that ~~such~~ the surviving spouse is incapable to make ~~such~~ the election, the court shall determine whether there shall be an election to take against the will in accordance with section 633.238; ~~provided further, that the.~~ The court on application may, prior to the expiration of ~~such~~ the period of four months, for cause shown, enter an order extending the time for making ~~such~~ the election.

PARAGRAPH DIVIDED. If ~~such the~~ surviving spouse shall be is an executor of the will and fails, within ~~six~~ four months after the date of the second publication of notice of admission of the will to probate, to file with the clerk of the court an election to refuse to take under the provisions of the will of the deceased, it shall be conclusively presumed that ~~such the~~ survivor consents to the provisions of the will and elects to take ~~thereunder; provided, further, that under it.~~ However, the court on application may, prior to the expiration of ~~such the~~ period of ~~six~~ four months, on cause shown, enter an order extending the time for making ~~such the~~ election.

Sec. 4. Section 633.241, Code 1983, is amended to read as follows:

633.241 TIME FOR ELECTION TO OCCUPY HOMESTEAD. ~~In case~~ If the surviving spouse does not make an election to occupy the homestead and file it with the clerk within ~~six~~ four months from the date of the second publication of the notice to creditors, it shall be conclusively presumed that ~~such the~~ surviving spouse waives the right to make ~~such the~~ election. The court on application may, prior to the expiration of ~~such the~~ period of ~~six~~ four months, for cause shown, enter an order extending the time for making ~~such the~~ election.

Sec. 5. Section 633.247, Code 1983, is amended to read as follows:

633.247 SETTING OFF SHARE OF SURVIVING SPOUSE WHEN ELECTING TO TAKE AGAINST THE WILL—TIME LIMIT. The share of the surviving spouse under section 633.236 may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have it set off by referees shall be made in writing within ~~six~~ four months after the second publication of notice of the probate of the will, or within one month after the election to take against the will is filed with the clerk, whichever is the longer. The application must describe the land in which the share is claimed, and pray for the appointment of referees to set it off.

Sec. 6. Section 633.304, Code 1983, is amended to read as follows:

633.304 NOTICE OF PROBATE OF WILL WITH ADMINISTRATION. On admission of a will to probate, the executor shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate of ~~said the~~ will must be brought within ~~six~~ four months from the date of the second publication of ~~said the~~ notice or thereafter be forever barred, and ~~there in which~~ shall ~~also~~ be included ~~therein~~ a notice to debtors to make payment, and to creditors having claims against ~~said the~~ estate to file them with the clerk within ~~six~~ four months from the second publication of ~~said the~~ notice, or thereafter be forever barred.

~~Such~~ The notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor, and Notice to Creditors
 In the District Court of Iowa
 in and for County. Probate No.
 In the Estate of, Deceased
 To All Persons Interested in the Estate of,
 Deceased, who died on or about, 19

You are hereby notified that on the day
 of, 19, the last will and testament of,
 deceased, bearing date of the day of, 19, was admitted to
 probate in the above named court and that was appointed executor of
~~said the~~ estate. Any action to set aside ~~said the~~ will must be brought in the district court of

said county within ~~six~~ four months from the date of the second publication of this notice, or thereafter be forever barred.

Notice is further given that all persons indebted to ~~said~~ the estate are requested to make immediate payment to the undersigned, and creditors having claims against ~~said~~ the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed within ~~six~~ four months from the second publication of this notice (unless otherwise allowed or paid) ~~such~~ a claim ~~shall~~ is thereafter be forever barred.

Dated this day of, 19.....

.....
Executor of ~~said~~ estate
.....

.....
Address
.....

.....
Attorney for ~~said~~ executor
.....

.....
Address
.....

Date of second publication
..... day of, 19.....
(Date to be inserted by publisher)

This section is applicable to wills admitted to probate on or after July 1, 1975.

Sec. 7. Section 633.305, Code 1983, is amended to read as follows:

633.305 NOTICE ~~WHERE~~ IF NO ADMINISTRATION. On admission of a will to probate without administration of the estate, and upon advanced payment of the costs thereof by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate in which shall be included a notice that any action to set aside ~~said~~ the will must be brought within ~~six~~ four months from the date of the second publication of ~~said~~ the notice or thereafter be barred.

~~Such~~ The notice shall be substantially in the following form:

Notice of Proof of Will
Without Administration

In the District Court of Iowa
in and for County. Probate No.

In the Estate of, Deceased To All Persons Interested
in the Estate of, Deceased, who died on or
about, 19.....:

You are hereby notified that on the day of, 19.....,
the last will and testament of, deceased, bearing date of the day
of, 19....., was admitted to probate in the above named court and there will be
no present administration of the estate. Any action to set aside ~~said~~ the will must be brought
in the district court of said county within ~~six~~ four months from the date of the second publica-
tion of this notice or thereafter be forever barred.

Dated this day of, 19.....

.....
Clerk of the district court
.....

.....
Attorney for ~~said~~ estate
.....

Address

Date of second publication

..... day of, 19.

(Date to be inserted by publisher)

This section is applicable to wills admitted to probate on or after July 1, 1975.

Sec. 8. Section 633.309, Code 1983, is amended to read as follows:

633.309 TIME WITHIN WHICH ACTION MUST BE COMMENCED. An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within ~~six~~ four months from the date of second publication of notice of admission of ~~such~~ the will to probate and not thereafter. ~~This section is applicable to wills admitted to probate on or after July 1, 1975.~~

Sec. 9. Section 633.410, Code 1983, is amended to read as follows:

633.410 LIMITATION ON FILING CLAIMS AGAINST DECEDENT'S ESTATE. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, ~~shall be~~ are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within ~~six~~ four months after the date of the second publication of the notice to creditors; ~~provided, however, that.~~ However, the personal representative may waive ~~such~~ this limitation on filing; ~~and this provision shall.~~ This section does not bar claimants entitled to equitable relief due to peculiar circumstances.

Sec. 10. Section 633.412, Code 1983, is amended to read as follows:

633.412 WHEN CLAIM NOT AFFECTED BY STATUTE OF LIMITATION LIMITATIONS. ~~No~~ A claim shall ~~not~~ be barred by the ~~statutes of limitation which~~ statute of limitations if the claim was not barred at the time of the decedent's death; ~~if the claim shall have been and is filed against the decedent's estate within~~ six four months from the date of the decedent's death.

Sec. 11. Section 633.427, Code 1983, is amended to read as follows:

633.427 PAYMENT OF CONTINGENT CLAIMS BY DISTRIBUTEES - CONTRIBUTION. If a contingent claim ~~shall have~~ has been filed and allowed against an estate and all the assets of the estate ~~shall have~~ have been distributed, and the claim ~~shall thereafter become~~ becomes absolute, the creditor ~~shall have~~ has the right to recover ~~thereon on the claim~~ against those distributees whose distributive shares have been increased by ~~reason of the fact that~~ because the amount of ~~said the~~ the claim as finally determined was not paid prior to final distribution, ~~provided if an action therefor shall be for recovery is~~ provided if an action commenced within ~~six~~ four months after the claim becomes absolute. Such distributees ~~shall be~~ are jointly and severally liable, but ~~no~~ a distributee ~~shall be~~ is not liable for an amount exceeding the amount of the estate or fund so distributed to ~~him~~ that distributee. If more than one distributee is liable to the creditor, the creditor shall make parties to the action all such distributees who can be reached by process. By its judgment, the court shall determine the amount of the liability of each of the distributees as between themselves, but if any ~~be~~ distributee is insolvent or unable to pay ~~his~~ his that distributee's proportion, or is beyond the reach of process, the others, to the extent of their respective liabilities, ~~shall are~~ are nevertheless be liable to the creditor for the whole amount of ~~his~~ the creditor's debt. If any person liable for the debt fails to pay ~~his~~ his that person's just proportion to the creditors, ~~he shall be~~ the person is liable to indemnify all who, by reason of ~~such the~~ the failure ~~on his part,~~ on his part, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions.

Sec. 12. Section 633.433, Code 1983, is amended to read as follows:

633.433 PAYMENT OF DEBTS AND CHARGES BEFORE EXPIRATION OF SIX FOUR MONTHS' PERIOD. As soon as the personal representative is possessed of sufficient means over and above the other costs of administration, ~~he~~ the personal representative shall pay any allowance made by the court for the surviving spouse and children of the decedent, and may pay the expenses of funeral, ~~and~~ burial and last illness. Prior to the expiration of ~~six~~ four months after the date of the second publication of notice to creditors, the personal representative shall pay ~~such~~ other debts and charges against the estate as the court ~~shall order orders~~, and the court may require bond or other security to be given by the creditor to refund such part of ~~such~~ the payment as may be necessary to make payment in accordance with the provisions of this Code code. All payments made by the personal representative without order of court ~~shall be~~ are at his the personal representative's own peril.

Sec. 13. Section 633.434, Code 1983, is amended to read as follows:

633.434 PAYMENT OF DEBTS AND CHARGES AFTER EXPIRATION OF SIX FOUR MONTHS' PERIOD. Upon the expiration of ~~six~~ four months after the date of the second publication of notice to creditors, the personal representative shall ~~proceed to~~ pay the debts and charges against the estate in accordance with the provisions of this Code code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that ~~he~~ the personal representative deems necessary in connection therewith.

Sec. 14. Section 633.516, Code 1983, is amended to read as follows:

633.516 RIGHTS OF ABSENTEE BARRED—SALE BY SPOUSE. ~~Such an~~ An order establishing the death of an absentee ~~shall forever bar bars~~ the rights of homestead and distributive share of the absentee, and ~~his~~ the absentee's interest in and to any real estate owned or held by the spouse of ~~such~~ the absentee, and in which ~~said~~ the spouse may have a legal or equitable interest. Conveyance of any such real estate by ~~such~~ the spouse, after ~~six~~ four months or more from date of publication of second notice of the appointment of a personal representative, ~~shall be~~ is free and clear of any claim or right of homestead or distributive share on the part of ~~such~~ the absentee.

Sec. 15. Section 635.13, Code 1983, is amended to read as follows:

635.13 NOTICE—CLAIMS. The executor or administrator of a small estate may publish notice pursuant to section 633.230 or section 633.304. Creditors having claims against the estate must file them with the clerk within ~~six~~ four months from the second publication of the notice. The notice ~~shall have~~ has the same force and effect as in chapter 633.

Sec. 16. This Act applies to estates for which administration is granted on or after its effective date and to wills admitted to probate on or after that effective date.

Approved April 13, 1984