

**CHAPTER 1021**

**PROBATE — WITNESSES TO WILLS, DISTRIBUTION BY AFFIDAVIT, AND CLAIMS OF PERSONAL REPRESENTATIVES**

*S.F. 2169*

**AN ACT** relating to wills including witness testimony, distribution of property, and claims of personal representatives, and including retroactive and other applicability provisions.

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

Section 1. Section 633.295, Code 2014, is amended to read as follows:

**633.295 Testimony of witnesses.**

The proof may be made by the oral or written testimony of one or more of the subscribing witnesses to the will. If such testimony is in writing, it shall be substantially in the following form executed and sworn to before or after the death of the decedent:

In the District Court of Iowa  
In and for ..... County  
In the Matter of the Estate of .....  
....., Deceased  
Probate No. ....  
Testimony of Subscribing  
Witness on Probate of Will.  
State of ..... )  
..... County ) ss

I, ....., being first duly sworn, state:  
I reside in the County of ....., State of .....; I knew the identity of the testator on the ..... day of ..... (month), ..... (year), the date of the instrument, the original or exact reproduction of which is attached hereto, now shown to me, and purporting to be the last will and testament of the said .....,—deceased; I am one of the subscribing witnesses to said instrument; at the said date of said instrument, I knew the identity of ....., the other subscribing witness; that said instrument was exhibited to me and to the other subscribing witness by the testator, who declared the same to be the testator’s last will and testament, and was signed by the testator at ....., in the County of ....., State of ....., on the date shown in said instrument, in the presence of myself and the other subscribing witness; and the other subscribing witness and I then and there, at the request of the testator, in the presence of said testator and in the presence of each other, subscribed our names thereto as witnesses.

.....  
Name of witness

.....  
Address

Subscribed and sworn to before me this ..... day of ..... (month), ..... (year)

.....  
Notary Public in and for  
(Stamp) the State of .....

Sec. 2. Section 633.356, Code 2014, is amended to read as follows:

**633.356 Distribution of property by affidavit.**

1. When the gross value of the decedent’s personal property that would otherwise be distributed by will or intestate succession ~~does not exceed~~ is or has been, at any time since

~~the decedent's death, twenty-five thousand dollars or less and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right full rights of survivorship, and if forty days have elapsed since the death of the decedent, the a successor of the decedent as defined in subsection 2 may, by filing furnishing an affidavit prepared pursuant to subsection 3 or 8, and without procuring letters of appointment, do any of the following with respect to one or more particular items of such personal property:~~

~~a. Receive any particular item of tangible personal property of the decedent.~~

~~b. Have any evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.~~

~~c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.~~

~~2. "Successor of the decedent" means:~~

~~a. If the decedent died testate, the reasonably ascertainable beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will. For the purposes of this subsection the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.~~

~~b. If the decedent died intestate, the reasonably ascertainable person or persons who succeeded to the particular item of property of the decedent under the laws of intestate succession of this state.~~

~~c. If the decedent received medical assistance benefits from the state, the Iowa Medicaid agency that provided the benefits is a successor pursuant to subsection 8.~~

~~3. a. To collect money, receive tangible personal property, or have evidences of intangible personal property transferred under this chapter section, the a successor of the decedent shall furnish to the holder of the decedent's property an affidavit under penalty of perjury stating all of the following:~~

~~(1) The decedent's name, social security number, and the date and place of the decedent's death.~~

~~(2) That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.~~

~~(3) That the gross value of the decedent's personal property that would otherwise be distributed by will or intestate succession does not exceed is, or has been at any time since the decedent's death, twenty-five thousand dollars or less and there is no real property or the real property passes to persons exempt from inheritance tax pursuant to section 450.9 as joint tenants with right full rights of survivorship.~~

~~(4) A general description of the property of the decedent that is to be paid, transferred, or delivered to or for the benefit of each successor.~~

~~(5) The name, address, and social security tax identification number of the successor of the decedent to the described property and relationship to the decedent of each successor, and whether the any successor is under a legal disability.~~

~~(6) If applicable pursuant to subsection 2, paragraph "a", that the attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in delivered to the office of a clerk of the district court in accordance with Iowa law.~~

~~(7) That no persons other than those the successors listed in the affidavit have a right to the interest of the decedent in the described property.~~

~~(8) That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property or for the benefit of each successor.~~

~~(9) That the affiant affirms under penalty of perjury that the affidavit is true and correct.~~

~~b. More than one person If there are two or more successors, any of the successors may execute an affidavit under this subsection.~~

~~4. a. If the decedent had evidence of ownership of the property described in the affidavit and the holder of the property would have the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of the ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.~~

b. If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor affiant provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property. This subsection does not preclude the holder and the successor affiant from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor affiant to indemnify the holder.

c. Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 or 8 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

5. Reasonable proof of the identity of each successor ~~of the decedent~~ seeking distribution by virtue of the affidavit shall be provided to the satisfaction of the holder of the decedent's property.

6. a. If the requirements of this section are satisfied:

(1) The property described in the affidavit shall be paid, delivered, or transferred to the or for the benefit of each successor of the decedent's interest in the property.

(2) A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to the person listed on the affidavit as the or for the benefit of each successor of the decedent's interest.

(3) The holder of the property may return the attached certified copy of the decedent's death certificate to the affiant.

b. If the holder of the decedent's property refuses to pay, deliver, or transfer any property or evidence thereof to or for the benefit of the successor of the decedent within a reasonable time, the a successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this subsection, the court shall award attorney's attorney fees to the person bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to or for the person benefit of the successor as required by this subsection.

7. a. If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit under subsection 3 or 8 constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter section and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

b. If the requirements of this section are satisfied, the holder is not liable for any debt owed by the decedent by reason of paying money, delivering property, or transferring registered ownership of property pursuant to this chapter section. If an action is brought against the holder under this section, the court shall award attorney fees to the holder if the court finds that the holder acted reasonably in paying, delivering, or transferring the property as required by this section.

8. a. When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession. If an affidavit, executed under this section for a deceased distributee of an estate being administered in this state, is filed with the clerk of the district court in which the estate is being administered, the court shall

direct the personal representative to pay the money or deliver the property to or for the benefit of each successor to the extent the court determines that the deceased distributee would have been entitled to money or property of the estate.

b. When the department of human services is entitled to money or property of a decedent pursuant to section 249A.53, subsection 2, and no affidavit has been presented by a successor ~~of the decedent~~ as defined in subsection 2, paragraph “a” or “b”, within ninety days of the date of the decedent’s death, the funds in the account or other property, up to the amount of the claim of the department, shall be paid to the department upon presentation by the department or an entity designated by the department of an affidavit to the holder of the decedent’s property. Such affidavit shall include the information specified in subsection 3, except that the department may submit proof of payment of funeral expenses as verification of the decedent’s death instead of a certified copy of the decedent’s death certificate. The amount of the department’s claim shall also be included in the affidavit, which shall entitle the department to receive the funds as a successor ~~of the decedent~~. The department shall issue a refund within sixty days to any claimant with a superior priority pursuant to section 633.425, if notice of such claim is given to the department, or to the entity designated by the department to receive notice, within one year of the department’s receipt of funds. This paragraph shall apply to funds or property of the decedent transferred to the custody of the treasurer of state as unclaimed property pursuant to chapter 556.

9. The procedure provided by this section may be used only if no administration of the decedent’s estate is pending.

10. Upon receipt of an affidavit under subsection 3 and reasonable proof under subsection 5 of the identity of each successor seeking distribution by virtue of the affidavit, the holder of the property shall disclose to the affiant whether the value of the property held by the holder is, or has been at any time since the decedent’s death, twenty-five thousand dollars or less. An affidavit furnished for the purpose of determining whether the value of the property is, or has been at any time since the decedent’s death, twenty-five thousand dollars or less need not contain the language required under subsection 3, paragraph “a”, subparagraph (3), but shall state that the affiant reasonably believes that the gross value of the decedent’s personal property that would otherwise be distributed by will or intestate succession is, or has been at any time since the decedent’s death, twenty-five thousand dollars or less and there is no real property or the real property passes to persons exempt from inheritance tax as joint tenants with full rights of survivorship.

Sec. 3. Section 633.432, Code 2014, is amended to read as follows:

**633.432 Allowance or disallowance of claim of personal representative.**

1. The A temporary administrator appointed pursuant to section 633.431 shall, after upon investigation, file a report with the court recommending the allowance or disallowance of such a claim filed pursuant to section 633.431. The recommendation may, but need not, include information on the substantive merits of allowing or disallowing the claim. The recommendation shall include a statement that, upon investigation, a legitimate dispute either does or does not exist as to such a claim.

2. Unless the court allows the claim, ~~it the claim shall then~~ be disposed of as a contested claim in accordance with the provisions of sections 633.439 to 633.448.

Sec. 4. 2013 Iowa Acts, chapter 33, section 9, is amended to read as follows:

**SEC. 9. APPLICABILITY.**

1. The sections of this Act amending sections 633.273A, and 633.279, ~~and 633.295~~ apply to estates of decedents dying on or after July 1, 2013.

1A. The section of this Act amending section 633.295 applies to wills executed on or after July 1, 2013.

2. The sections of this Act amending sections 633.290 and 635.1 apply to petitions filed on or after July 1, 2013.

3. The section of this Act amending section 633.575 applies to all judicial proceedings held on or after July 1, 2013, in which an order for the appointment of a conservatorship is sought or has been issued.

4. The section of this Act amending section 633A.4504 applies retroactively to all reports and accountings provided by a trustee, unless an exception applies, to one year from July 1, 2000.

Sec. 5. APPLICABILITY. The section of this Act amending section 633.295 applies to wills executed on or after July 1, 2014.

Sec. 6. RETROACTIVE APPLICABILITY. The section of this Act amending 2013 Iowa Acts, chapter 33, section 9, is applicable retroactively to July 1, 2013.

Approved March 26, 2014