

CHAPTER 525

PROBATE PROCEEDINGS

<p>525.033 Fees for filing petitions.</p> <p>525.151 Allowance selection and maintenance payment.</p> <p>525.152 Award of property with sentimental value to children.</p> <p>525.56 Guardian's or conservator's powers and duties.</p>	<p>525.831 Notice to attorney general of devises for charitable purposes.</p> <p>525.94 Establishment of protocol to obtain organs for transplantation.</p> <p>525.95 Fiduciary powers, suspension during war service.</p>
---	--

525.033 FEES FOR FILING PETITIONS.

The probate court shall collect a fee as established by section 357.021, subdivision 2, clause (1), for filing a petition to commence a proceeding under this chapter and chapter 524. The fee for copies of all documents in probate proceedings must be the same as the fee established for certified copies in civil proceedings under section 357.021, subdivision 2. Fees collected under this section and section 525.031 must be forwarded to the state treasurer for deposit in the state treasury and credited to the general fund.

History: 1989 c 335 art 3 s 35

NOTE: This section, as amended by Laws 1989, chapter 335, article 3, section 35, is effective July 1, 1990, in all judicial districts except the eighth. See Laws 1989, chapter 335, article 3, section 58, subdivision 2.

525.151 ALLOWANCE SELECTION AND MAINTENANCE PAYMENT.

The surviving spouse, and conservators or guardians of the minor children, may select the property of the estate allowed to them under section 525.15, clauses (1), (2) and (3), subject to an award of property with sentimental value to the decedent's children under section 525.152. The personal representative may make these selections if the surviving spouse or the conservators or guardians of the minor children are unable or fail to do so within a reasonable time or if there are no conservators or guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of the property, provided that any notice required under section 525.152, subdivision 3, has been given and eligible children have failed to request an award of property with sentimental value or the court has denied the request. The personal representative may determine maintenance in periodic installments not exceeding \$500 per month for one year, if the estate is insolvent or 18 months if the estate is solvent, and may disburse funds of the estate in payment of such maintenance. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief. Relief may include provision for a family allowance larger or smaller than that which the personal representative determined or could have determined.

History: 1989 c 219 s 1

525.152 AWARD OF PROPERTY WITH SENTIMENTAL VALUE TO CHILDREN.

Subdivision 1. **Definitions.** (a) "Eligible child" means a child of the decedent who:

(1) is not the child of the surviving spouse, if any;

(2) if there is no surviving spouse, is not a minor, and has a different parent than minor children of the decedent who are entitled to an allowance selection under section 525.15, clause (3); and

(3) if the decedent dies testate, is a devisee under the decedent's will.

(b) "Sentimental value" means significant emotional or nostalgic value arising out of the relationship of an individual with the decedent or arising out of the relationship of the eligible child with the individual who is the nondecedent parent of the eligible child.

Subd. 2. **Ineligible property.** The following property is not eligible for an award under this section:

- (1) real property;
- (2) personal property that is the subject of a specific devise under the decedent's will where the will was executed before August 1, 1989, and where the devise specifically identifies the particular item of property, unless the property is selected under section 525.151;
- (3) personal property that is the subject of a specific devise under a separate writing under section 524.2-513, unless the property is selected under section 525.151; and
- (4) personal property disposed of by a premarital agreement.

Subd. 3. **Notice to eligible children; petition.** At the time of an allowance selection under section 525.151, the person making the selection shall serve personally or by mail a written itemized notice of the property selected to every eligible child of the decedent. This requirement does not apply if an award of property with sentimental value already has been made under this section. Within 30 days of receipt of the notice of selection, an eligible child may petition the court to award property with sentimental value contained in the notice, or other property with sentimental value that belonged to the decedent, to the eligible child.

Subd. 4. **Court decision.** The court shall award property with sentimental value to an eligible child if it finds that the property's sentimental value to the child outweighs its sentimental value to the person entitled to the allowance selection. If more than one eligible child petitions the court for an award of the same property, the court shall award the property to the child for whom the property has the greatest sentimental value. In awarding property with sentimental value to an eligible child, the court shall give weight to the following factors:

- (1) the relationship of the eligible child to the acquisition and use of the property;
- (2) whether the property was acquired prior to the decedent's marriage to the surviving spouse or prior to the birth of minor children who are entitled to an allowance selection; and
- (3) whether the property belonged to the individual who is the nondecedent parent of the eligible child.

Subd. 5. **Payment to estate.** (a) As a condition of an award of sentimental property under this section, the court shall order that the eligible child pay the value of the property to the estate or that the value of the property be deducted from the eligible child's share of the estate. The surviving spouse or minor children may make an additional allowance selection in place of property with sentimental value awarded to an eligible child.

(b) If the court awards property under subdivision 4, the court shall appoint an appraiser who shall determine the value of the property. The value of the property is its appraised value as of the date of the decedent's death without reference to its sentimental value to the eligible child or any other person.

History: 1989 c 219 s 2

525.56 GUARDIAN'S OR CONSERVATOR'S POWERS AND DUTIES.

[For text of subs 1 to 3, see M.S.1988]

Subd. 4. **Duties of guardian or conservator of the estate.** The court may appoint a guardian of the estate if it determines that all the powers and duties listed in this subdivision are needed to provide for the needs of the incapacitated person. The court may appoint a conservator of the estate if it determines that a conservator is necessary to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this subdivision. The duties and powers of a guardian or those which the court may grant to a conservator include, but are not limited to:

(1) The duty to pay the reasonable charges for the support, maintenance, and education of the ward or conservatee in a manner suitable to the ward's or conservatee's station in life and the value of estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The guardian or conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the guardian or conservator should meet these requirements through governmental benefits or services to which the ward or conservatee is entitled, rather than from the ward's or conservatee's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal, but the guardian or conservator shall have no personal or monetary liability;

(2) The duty to pay out of the ward's or conservatee's estate all just and lawful debts of the ward or conservatee and the reasonable charges incurred for the support, maintenance, and education of the ward's or conservatee's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the ward or conservatee;

(3) The duty to possess and manage the estate, collect all debts and claims in favor of the ward or conservatee, or, with the approval of the court, compromise them, institute suit on behalf of the ward or conservatee and represent the ward or conservatee in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48.84 and 501B.10, subdivision 1, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a guardian or conservator. A guardian or conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) Where a ward or conservatee has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the ward or conservatee, may authorize an exchange or sale of the ward's or conservatee's interest or a purchase by the ward or conservatee of any interest other heirs may have in the real estate.

History: 1989 c 340 art 2 s 4

525.831 NOTICE TO ATTORNEY GENERAL OF DEVICES FOR CHARITABLE PURPOSES.

Whenever a will provides for a devise for a charitable purpose, as defined in section 501B.35, subdivision 2, the personal representative shall provide the attorney general with the notices or documents, if any, required by section 501B.41, subdivision 5.

History: 1989 c 340 art 2 s 5

525.94 ESTABLISHMENT OF PROTOCOL TO OBTAIN ORGANS FOR TRANSPLANTATION.

[For text of subs 1 and 2, see M.S.1988]

Subd. 3. **Documentation.** Notification under subdivision 2, as well as any identified contradiction to organ donation, must be documented in the patient's medical record, which must include the name of the person notified and the person's relationship to the decedent.

[For text of subs 4 to 6, see M.S.1988]

History: 1989 c 209 art 1 s 42

525.95 FIDUCIARY POWERS, SUSPENSION DURING WAR SERVICE.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "War service" includes the following, during a period when the United States is engaged in war or other major military engagement with a foreign nation:

(1) active membership in the military forces of the United States or any of its allies;

(2) acceptance for membership in the military forces of the United States or any of its allies and awaiting induction into that service;

(3) participation in work abroad in connection with a governmental agency of the United States or any of its allies, with the Red Cross, or with a similar service;

(4) internment by an enemy or absence from the United States and inability to return; and

(5) service arising out of or in connection with the war or other major military engagement, which in the opinion of the court prevents the fiduciary from giving the proper attention to duties.

(b) "Fiduciary" refers to a trustee of a testamentary trust or of an express trust, a guardian or conservator of the person or estate of a person, an executor of a will, an administrator of the estate of the decedent, a custodian under the Minnesota uniform transfers to minors act, or an advisor or consultant in a testamentary or express trust.

Subd. 2. Powers of fiduciary may be suspended; petition. A fiduciary who contemplates entering war service, a fiduciary who is engaged in war service, a cofiduciary, or an interested person may petition the proper court having jurisdiction in matters of that nature for the suspension of the powers and duties of the fiduciary during the period of war service and until the further order of the court, and may petition for the reinstatement of the fiduciary upon the fiduciary's return.

Subd. 3. Notice of hearing. Notice of the hearing on a petition under subdivision 2 must be given to persons and in the manner the court directs.

Subd. 4. Hearing; order. After a hearing on a petition under subdivision 2 or in the case of an executor, administrator, or guardian on the court's own motion, the court may:

(1) order the suspension of the powers and duties of the fiduciary who is in war service for the period of the war service and until the further order of the court;

(2) appoint a successor fiduciary to serve for the period of suspension of the powers and duties of the fiduciary and until the further order of the court, if upon suspension of powers and duties, there is no fiduciary to exercise the powers and duties of the fiduciary who is in war service, or if in the opinion of the court the appointment of a cofiduciary is advisable;

(3) decree that the ownership and title to the trust property vests in the successor fiduciary or cofiduciary, as the case may be, and that the duties, powers, and discretions, or those of the powers and discretions that are not personal to the fiduciary, may be exercised by the cofiduciary or successor fiduciary;

(4) make other orders the court considers advisable with respect to the trust estate or its administration, and authorize a reasonable compensation to the successor fiduciary; or

(5) reserve jurisdiction for the entry of further orders and for the reinstatement of the fiduciary.

Upon petition, the court shall order the reinstatement of the fiduciary when the fiduciary's war service has terminated if it appears that the trust is not fully executed or administration of the estate is not completed.

Subd. 5. Responsibility of fiduciary. The fiduciary has no responsibility for the acts and doings of the cofiduciary or successor fiduciary during the period of the suspension of the fiduciary's powers and duties, but is not relieved of responsibility for the fiduciary's own acts or doings in the administration of the trust fund or estate. A successor fiduciary appointed under this section is not responsible for the acts of the predecessor fiduciary.

History: 1989 c 340 art 1 s 75