

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1506

By: Representative Beatty

"AN ACT TO AMEND VARIOUS SECTIONS OF THE PROBATE CODE OF 1949, AS AMENDED, TO EXTEND THE PERIOD FOR PROBATING CERTAIN ESTATES FROM THREE (3) MONTHS TO SIX (6) MONTHS; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Section 50 of Act 140 of 1949, as amended, the same being Arkansas Statutes 62-2111, is hereby amended to read as follows:

"Section 50. Promptly after the letters have been granted on the estate of a deceased person, the personal representative shall cause to be published a notice of his appointment, stating the date thereof, and requiring all persons having claims against the estate to exhibit them, properly verified to him, within six (6) months from the date of the first publication of the notice, or they shall be forever barred and precluded from any benefit in such estate. The notice shall state the mail address of the personal representative. If a will of the decedent has been probated, the notice shall also state the date of admission of the will to probate and that a contest of such order of probate can be effected only by filing a petition within the time provided by law. Within two (2) months after the first publication of notice, a copy thereof shall also be served upon each heir and devisee whose name and address are known, in accordance with Section 12b(1), (2) or (3) [subsections b(1), (2) or (3) of subsection 62-2012]. When a will is to be probated without an administration of the estate, the notice shall be published by the proponents of the will and shall state the mail address of each of the one or more proponents and the name and address of the attorney for the proponents.

The notice shall be in substantially the following form:

In the Probate Court of

In the probate Court of _____ County, Arkansas.

Estate of _____, deceased.

Last known address _____.

Date of death _____.

a. (To be used where no will.)

The undersigned was appointed administrator of the estate of the above named decedent on the _____ day of _____, 19____.

b. (To be used when a will is probated and a personal representative appointed.)

An instrument dated _____ was on the _____ day of _____, 19____, admitted to probate as the last will of the above named decedent and the undersigned has been appointed executor (or administrator) thereunder. A contest of the probate of the will can be effected only by filing a petition within the time provided by law.

c. (To be used in either case.)

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

d. (To be used when a will is probated but no personal representative appointed.)

An instrument dated _____ was on the _____ day of _____, 19____, admitted to probate as the last will of the above named decedent. A contest of the probate of the will can be effected only by filing within the time provided by law a petition for an order revoking or modifying the order admitting the will to probate, and delivering a copy of such petition to the undersigned proponent(s) or to the undersigned attorney for the proponent(s) at his (their) address hereunder shown.

This notice first published _____, 19____.

(Administrator or Executor)

(Mail Address)

Publication of the notice shall be as provided in Section 12 b (4) [subsection b(4) of subsection 62-2012] unless the value of the estate to be administered upon does not exceed One Thousand Dollars (\$1,000) exclusive of homestead, in which event publication may be given by posting notice in the courthouse at a conspicuous place near a principal entrance for a period of three (3) weeks, and, in addition, the Court may, by general rule or by special order in a particular case, require that notice shall be given by ordinary mail to all persons whose names and addresses appear in the petition."

SECTION 2. Section 53 of Act 140 of 1949, as amended, the same being Arkansas Statute 62-2114, is hereby amended to read as follows:

"Section 53. No will can be contested unless the grounds of objection are filed within the periods hereinafter provided..

(a) If the ground of objection is that another will of the decedent has been discovered, the ground of objection must be filed before final distribution of the estate is ordered and within the period stated in Section 64 [subsection 62-2125].

(b) If the contest is on any other ground, and

(1) If the contestant (or the person through whom he derives his interest in the estate) has been given notice, other than by publication, of the hearing of a petition for probate as provided in Section 49 [subsection 62-2110], his grounds of objection must be filed at or prior to the time of the hearing on the petition for probate.

(2) If the contestant (or the person through whom he derives his interest in the estate) has been notified of the admission of the will to probate in the manner provided by Section 50 [subsection 62-2111] and is not barred by Section 53 b(1), his grounds of objection must be filed within six (6) months after the date of the first publication of the notice of the admission of the will to probate.

(3) If the contestant (or the person through whom he derives his interest in the estate) is not barred by the above provisions of this subsec-

tion b, but notice of the admission of the will to probate has been published as provided in Section 50 [subsection 62-2111], whether or not published promptly, and a copy thereof has been served upon the contestant or the person through whom he derives his interest in the estate in accordance with Section 12 b(1), (2) or (3) [subsection 62-2012], the contestant must file his grounds of objection to the probate of the will within six (6) months after the first publication of notice of the probate, or within ninety (90) days after a copy of such notice was served upon him or his predecessor in interest in the estate, whichever period shall last expire.

(4) If the contestant (or the person through whom he derives his interest in the estate) is not barred by any of the above provisions of this subsection (b), his grounds of objection must be filed within three years after the admission of the will to probate. If, prior to the filing of such objection, real or personal property or any security interest therein is acquired for value by a purchaser from or a lender to the personal representative of the estate or a distributee or devisee of such property by the terms or a will, the purchaser or lender shall take title free of rights of any interested person in the estate and incurs no personal liability to the estate or to any interested person whether or not the distribution was proper or supported by court order. This section protects a purchaser from or lender to a distributee, devisee, or personal representative, who has executed a deed or security instrument to such purchaser or lender, prior to the filing of objection to the will. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee or devisee are the same person. Any properly recorded instruments conveying such property on which a State documentary fee is noted pursuant to Act 275 of 1971, as amended, shall be prima facie evidence that such transfer was made for value and shall not be adversely affected, should a will be later set aside in the manner provided by law.

(c) The grounds of objection to a foreign will which has been admitted to probate in this state must be filed within the same time as though it were a will of a resident of this state, or thereafter within ninety (90) days after the rendition of an order of a court of competent jurisdiction in the state of the domicile of the decedent, setting aside the probate of the will therein."

SECTION 3. Subsections a., b., and c. of Section 110 of Act 140 of 1949, the same being Arkansas Statutes 62-2601 a., b., and c., are hereby amended to read as follows:

"a. STATUTE OF NONCLAIM. Except as provided in Section 111 and 119, all claims against a decedent's estate, other than expenses of administration and claims of the United States which, under valid laws of the United States, are not barrable by a statute of nonclaim, but including claims of a state or territory of the United States, and any subdivision thereof, whether due or to become due, absolute or contingent, liquidate or unliquidated, founded on contract or otherwise, shall be forever barred as against the estate, the personal representative, the heirs and devisees of the decedent, unless verified to the personal representative or filed with the court within six (6) months after the date of the first publication of notice to creditors.

b. STATUTES OF LIMITATION. No claim shall be allowed which was barred by any statute of limitation at the time of the decedent's death.

c. WHEN STATUTE OF NONCLAIM NOT AFFECTED BY STATUTES OF LIMITATION. No claim shall be barred by the statutes of limitation which was not barred thereby at the time of the decedent's death, if the claim shall be presented to the personal representative or filed with the court within six (6) months after the date of the first publication of notice to creditors."

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

