

SENATE BILL REPORT

ESB 5297

As Passed Senate, February 10, 2010

Title: An act relating to the procedure for filing a declaration of completion of probate.

Brief Description: Concerning the procedure for filing a declaration of completion of probate.

Sponsors: Senators Kline and Delvin; by request of Washington State Bar Association.

Brief History:

Committee Activity: Judiciary: 1/30/09 [DP].

Passed Senate: 3/05/09, 48-0; 2/10/10, 48-0.

Passed House: 3/30/09, 97-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; Hargrove, Kohl-Welles and Tom.

Staff: Kim Johnson (786-7472)

Background: Current law provides procedures for the administration, or "settlement," of a deceased person's estate without the intervention of a court. Under this process, absent objections or contrary provisions in the will, the court appoints a personal representative and provides the representative with nonintervention powers.

A personal representative, with nonintervention powers, must file a declaration of completion with the court when the administration of the estate has been completed. Within five days of the date of filing the declaration, the personal representative must mail a copy of the declaration to each heir. The content of the notice is set out in statute. At this point, an heir has the option of filing a petition requesting the court to approve the reasonableness of the fees paid to the personal representative, or for an accounting.

If the heir does not file the petition, then the amount of the fees paid will be deemed reasonable and the personal representative will be automatically discharged without further order of the court. In instances where an heir does file a petition, it is the duty of the personal representative to request the court to set a hearing date, and provide notice of the hearing date to the petitioner. There currently is no duty to notify any other heirs of the hearing.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Engrossed Bill: When an heir, legatee, or devisee petitions the court to approve the reasonableness of the fees or for an accounting, the burden of requesting the court to set a hearing date and providing notice of the hearing is shifted from the personal representative to the petitioner. Additionally, the petitioner must provide notice at least ten days before the hearing on the petition, of the hearing to the same heirs, legatees, and devisees to whom the personal representative provided a copy of the declaration of completion. The notice provision and responsibility for requesting a hearing date apply regardless of whether the personal representative retains the power to deal with a federal, state, or local tax authority.

If the petitioner fails to provide the required notice, then the acts of the personal representative will be deemed approved and the personal representative will be automatically discharged.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The reason we are requesting this bill is to eliminate a point of confusion in the law. If an heir/beneficiary to an estate has questions with the accounting of the estate, or if they have concerns with the fees paid to the personal representative and others, then they must file a petition within 30 days of receiving the declaration of completion. If the heir files a petition with the court, then currently the law requires that a personal representative (executor) set the hearing date and provide notice. This is odd because it requires the personal representative to set a hearing date for someone else's petition. This can be problematic too because in some instances the personal representative will not want the hearing to take place and can delay setting the hearing date. This bill allows a petitioner to request that the court set the hearing date thus ending the confusion and possible abuse of the system by personal representatives.

The other issue this bill corrects is that under current law other beneficiaries are not notified if there is a petition filed and hearing set so that the court can determine whether the fees paid were reasonable. These beneficiaries have an interest in the substance and outcome of such a hearing and should be given notice. This bill fixes this issue.

Persons Testifying: PRO: Beth McCaw, Washington State Bar Association Real Property Probate & Trust Section.