

COMMENT

A “SIMPLE” PROBATE SHOULD NOT BE THIS COMPLICATED: PRINCIPLES AND PROPOSALS FOR REVISING WISCONSIN’S STATUTES FOR PROBATE SUMMARY PROCEDURES

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Piecemeal changes to the Wisconsin probate summary procedures have unintentionally shifted the burdens and risks associated with settling small estates. For example, summary settlement and summary assignment, which were intended to be simple and straightforward, have fallen into disuse because they are cumbersome and confusing. On the other hand, transfers by affidavit are easy to use, but misuse is a risk, especially when estates up to \$50,000 are at stake. In addition, recent litigation and controversy demonstrate the uncertainty in the current probate-summary-procedure options.

This Comment analyzes the current Wisconsin probate-summary-procedure statutes and examines recent controversies and confusions. To explore alternatives, this Comment considers the Uniform Probate Code, responses from attorneys and county officials, and legislative drafting style. Finally, this Comment offers principles and proposals for revising the Wisconsin statutes to renew the usefulness of this niche of the probate code.

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INTRODUCTION

Settling small estates in direct and efficient ways can be frustrating and confusing for both attorneys and lay people. During the past thirty-five years, the Wisconsin legislature enacted and made piecemeal amendments to chapter 867 of the Wisconsin Statutes, Wisconsin's probate summary procedures.¹ Various changes in the summary

1. WIS. STAT. ch. 867 (2005–06). Although the substantive portions of the Wisconsin probate code were comprehensively revised in 1998, the procedural sections, including chapter 867, were not. HOWARD S. ERLANGER, WISCONSIN'S NEW PROBATE CODE 1 & n.1 (1998). Chapter 867 provides for the following seven summary procedures:

Summary settlement may be used if an estate is \$50,000 or less and a spouse or one or more minor children survive.

procedures have produced some unintended results related to the burdens and risks associated with various options in the probate continuum. For example, summary settlement is intended to be a simple method for disposing of an estate of \$50,000 or less, but it has become cumbersome and complicated to the point that most people opt for the overinclusive, but more familiar, informal probate or choose the easier, but riskier, transfer-by-affidavit process.

As a result of the shifts in the summary-probate options, use of summary settlement and summary assignment has declined, while use of transfer by affidavit has likely risen.² This shift has left the

Summary assignment may be used if an estate is \$50,000 or less and subject to creditors and summary settlement does not apply.

Transfer by affidavit may be used to transfer assets of \$50,000 or less without court supervision.

Termination of joint tenancy and life estate are administrative, nonprobate methods to designate the survivor of a property interest.

Summary confirmation of interest in property is used to claim an interest (and terminate a decedent's interest) in property passing through any of several possible nonprobate transfers.

Determination of descent of property is used if an intestate estate has not been administered within six years of the decedent's death and heirs are uncertain.

Special administration is used if a designated person is needed to conduct the affairs of an estate in the absence of a personal representative.

Wis. STAT. §§ 867.01(1)(b), .02(1), .03(1g); .046(1m); .05(1); .07-.21.

2. For example, from 2005 to 2006, the number of estates disposed through summary assignment and summary settlement dropped by over 22 percent (from 1130 estates in 2005 to 872 estates in 2006). OFFICE OF COURT OPERATIONS, WIS. COURT SYS., YEAREND PROBATE DISPOSITION SUMMARY STATEWIDE REPORT (2005), *available at* <http://www.wicourts.gov/about/pubs/circuit/docs/probatestate05.pdf> [hereinafter 2005 OFFICE OF COURT OPERATIONS REPORT]; OFFICE OF COURT OPERATIONS, WIS. COURT SYS., YEAREND PROBATE DISPOSITION SUMMARY STATEWIDE REPORT (2006), *available at* <http://www.wicourts.gov/about/pubs/circuit/docs/probatestate06.pdf> [hereinafter 2006 OFFICE OF COURT OPERATIONS REPORT]. This drop coincided with the increase in estate value allowed for transfers by affidavit in 2006. *See* 2005 Wis. Sess. Laws 216. Even more dramatically, summary-assignment and summary-settlement dispositions dropped over 57 percent from 2006 to 2007 (from 872 estates to 373 estates). OFFICE OF COURT OPERATIONS, WIS. COURT SYS., YEAREND PROBATE DISPOSITION SUMMARY STATEWIDE REPORT (2007), *available at* <http://www.wicourts.gov/about/pubs/circuit/docs/probatestate07.pdf>. While transfers by affidavit are not tracked or recorded and therefore cannot be counted in statewide statistics, county officials and attorneys agree that the increased value allowance will certainly increase the use of affidavit transfers. Questionnaire Responses from Wisconsin State Bar Attorneys and Wisconsin Registers in Probate, via e-mail (2007) (on file with author) [hereinafter Questionnaire Responses]. Research for this Comment included responses from an e-mail questionnaire sent to attorneys in the Wisconsin State Bar's Real Property, Probate and Trust Law Section as well as to registers in probate

summary-settlement and summary-assignment procedures on the brink of extinction. Faced with the potential demise of those two summary procedures, the state legislature can take one of three courses of action. First, it could do nothing and let the procedures simply become obsolete relics within the statutes. Second, it could make a few changes to maintain minimal usefulness.³ Third, it could revise the statutes to establish a viable niche for summary procedures within the continuum of probate options. This Comment advocates the third option, which will renew the utility of probate summary procedures.

While summary procedures account for only a portion of estate dispositions each year,⁴ the niche is important for at least two estate scenarios. First, poor families are served by summary procedures when an estate is valued at \$50,000 or less because the procedures prioritize family allowances over certain creditor rights and permit families to distribute an estate with minimal court involvement and expense.⁵ With a simple procedure for settling a small estate, families can save time, since the median time for disposing of an estate under summary assignment is less than half the median time under informal probate.⁶ Time savings translate into real economic savings for families, too. These savings include lower attorney's fees, fewer missed hours from work, and lower court costs.⁷

A second scenario involves estates with most assets transferred outside probate, such as through a trust or life-insurance-beneficiary

around Wisconsin. While not an empirical study, the twenty-eight respondents offered an understanding of the actual use of the probate code. *See id.*

3. For example, the value of estates for summary settlement and summary assignment could be raised above \$50,000 to distinguish those procedures from transfer by affidavit. However, such a change does not address problems that motivate people to use informal probate instead of a summary procedure.

4. In 2006, summary assignment and summary settlement accounted for 872 out of a total of 11,928 estate dispositions. 2006 OFFICE OF COURT OPERATIONS REPORT, *supra* note 2. Other summary procedures were used to dispose of an additional 158 estates in 2006, and the state statistics do not include transfers by affidavit. *Id.*

5. For example, summary settlement or summary assignment provides protections for spouses, minor children, and those dealing with creditors when the estate is valued at \$50,000 or less. WIS. STAT. §§ 867.01-.02.

6. In 2006, the median time for disposition was 373 days for informal probate, 169 days for summary assignment, and 52 days for summary settlement. 2006 OFFICE OF COURT OPERATIONS REPORT, *supra* note 2. While length of time for disposition is less for summary procedures than for informal probate, efficiency is undercut by the confusion and complexity of the current summary procedures, not to mention the number of estates currently settled under informal probate that might have been settled under an improved summary procedure. *See infra* Part III.B.1.

7. Court costs are nominally the same for informal probate and summary settlement for the same-sized estate; however, under informal probate, additional costs may arise for personal-representative expenses and services. *See* WIS. STAT. § 857.05.

designation, and then transferring remaining assets up to \$50,000 with a summary procedure.⁸ In this scenario, a family member or trustee can tie up loose ends of an estate with a simple, inexpensive procedure.

Despite the intention of efficient and inexpensive procedures for courts and survivors, the simple disposition of an estate can be complicated by overlapping provisions, gaps, and confusing language, all of which warrant revision.⁹ One indication that the statutes should be revised is that the language and options within the statutes may lead to different interpretations and applications.¹⁰ For example, some statutes present parallel procedures but with slight differences that may be intentional or accidental.¹¹ Also, statutory provisions can be long and confusing for anyone needing to use them.¹²

Furthermore, chapter 867 has been the source of recent controversies and litigation. In 2006, controversy arose when estate values for transfers by affidavit were increased against the wishes of many registers in probate across the state.¹³ In that same year, the Wisconsin Supreme Court heard a dispute that questioned which subsection of the statute applied to survivor rights to pension benefits.¹⁴ Improved statutory language within a comprehensive probate scheme can assist both attorneys settling estates for clients and survivors settling estates pro se. This Comment describes the shortcomings of the current statutory scheme and offers recommendations as a starting point for legislators to work toward revision.

8. Typically, such estates can be simply settled with a transfer by affidavit. *Id.* § 867.03.

9. Compare *id.* §§ 867.01–.21 (providing for various summary procedures and special administration in sixteen sections), with UNIF. PROBATE CODE §§ 3-1201 to -1204 (amended 2006) (providing for summary settlement of small estates in four short sections).

10. See, e.g., *Maciolek v. City of Milwaukee Employees’ Ret. Sys. Annuity & Pension Bd.*, 2006 WI 10, ¶¶ 20–21, 288 Wis. 2d 62, 709 N.W.2d 360 (clarifying that the requirement of a court-issued certificate is not in conflict with the legislative intent to allow estate settlement without probate).

11. See, e.g., WIS. STAT. §§ 867.01(3), .02(2)(am) (making no mention of a will under summary settlement but anticipating a will with summary assignment); *id.* §§ 867.01(3)(b), .02(2)(f) (providing for special administrators for each procedure but listing the provision in a different place within each section).

12. See, e.g., *id.* § 867.03(1g) (stating the general provision for transfer by affidavit in a 158-word sentence and three inclusive subsections that add another seventy-one words).

13. Interview with Robert Knoll, Register in Probate, Milwaukee County, in Madison, Wis. (Nov. 27, 2006). A register in probate is the county official who oversees the probate process in regard to appropriate forms, procedures, and court involvement. See WIS. STAT. §§ 851.72–.73 (explaining the duties and powers of registers in probate).

14. *Maciolek*, 2006 WI 10, ¶¶ 1, 7.

To explore the problems with the current probate summary procedures and highlight benefits of revision, this Comment uses the following illustration:¹⁵ In October 2006, Mike Wilson, 50, and his brother Steve, 45, were settling their father's affairs following his death a month earlier. Their father, a widower, had left a will designating equal distribution of his few assets to his two sons—personal belongings and \$40,000 in a bank account. After consulting the Web site for the county register in probate, Mike learned that the estate could be settled in any number of ways. For this estate, nearly all of the options of probate administration¹⁶ were available to the brothers, with varying levels of formality and the accompanying safeguards, costs, and court involvement.

If the brothers wished to settle the estate under formal probate, they would petition the court for administration, after which the court would appoint a personal representative,¹⁷ prove the will,¹⁸ and conduct several hearings to settle and distribute the estate.¹⁹ Alternatively, informal probate would offer the brothers fewer formalities but still include court involvement in settling the estate.²⁰ The major drawbacks of formal or informal probate are the various documents involved, the time involved,²¹ and the likely attorney's fees.

Part I of this Comment continues Mike and Steve's pursuit of a probate solution, with detailed descriptions of the current summary procedures. Part II evaluates controversies and confusion over the current statutes, including recent controversy surrounding transfers by affidavit, the Wisconsin Supreme Court's *Maciolek v. City of*

15. The Introduction story is entirely hypothetical; persons and events are fictional and for purposes of illustration only.

16. "'Administration' means any proceeding relating to a decedent's estate whether testate or intestate." WIS. STAT. § 851.01.

17. A personal representative is appointed by the court to conduct the activities of an estate, especially collecting assets and settling debts. A personal representative uses court-issued documents, known as *letters*, to show his or her authority when dealing with others. *Id.* § 851.23.

18. In general, an uncontested will is proved when a signing witness of the will makes a sworn statement in court "that the will was executed as required by the statutes and that the testator was of sound mind, of full age, and not acting under any restraint." *Id.* § 856.15(1).

19. *Id.* chs. 856–63.

20. Informal probate includes petitioning the court for administration of the estate and appointment of a personal representative, with most of the activity of settling the estate done by the personal representative. Additional supervision by the court is provided only on an as-needed basis until the final closing of the estate. *Id.* §§ 865.01–.21.

21. In 2006, the median lengths of time to settle estates by formal probate and informal probate were 434 days and 373 days, respectively. 2006 OFFICE OF COURT OPERATIONS REPORT, *supra* note 2.

Milwaukee Employes’ Retirement System Annuity & Pension Board decision, and other statutory confusion. Part III analyzes the Uniform Probate Code (including its adoption in Michigan and Minnesota), considerations from Wisconsin attorneys and registers of probate, and conventions of statutory drafting, which it uses as a basis to propose revisions for the statutes.

I. OPTIONS AND STEPS IN THE CURRENT WISCONSIN STATUTES CHAPTER 867

A. Overview

The various probate summary procedures are part of a continuum of options in the Wisconsin probate code.²² Formal probate with full court supervision of the administration is at one end of the continuum.²³ Next on the continuum, informal probate includes court administration but with supervision only when needed.²⁴ The summary procedures of chapter 867 complete the continuum with options, in descending order of formality, of summary settlement or assignment and transfer by affidavit.²⁵ Additional options include termination of joint tenancy or life estate, confirmation of interest in property, determination of descent, and special administration.²⁶

A petitioner’s standing and the value of the estate determine whether to use a summary procedure.²⁷ A person has standing to petition for summary settlement or summary assignment if he or she has the same standing necessary to petition for formal administration;²⁸ that is, either the petitioner is named in the will as the personal representative or is another “person interested.”²⁹ Alternatively, if

22. WIS. STAT. chs. 851–82.

23. *Id.* chs. 856–63.

24. *Id.* §§ 865.01, .03–.04. If a dispute or issue arises during informal probate, the process may be converted to formal proceedings for the remainder of the process or to settle the particular issue. *Id.* § 865.03. To convert an informal probate to formal probate, the personal representative or an interested party demands formal proceedings in writing. *Id.*

25. *Id.* §§ 867.01–.035.

26. *Id.* §§ 867.04–.21.

27. *Id.* §§ 867.01(1), .01(3)(ac), .02(1), .02(2)(ac).

28. *Id.* §§ 867.01(3)(ac), .02(2)(ac).

29. *Id.* § 865.07(1). Wisconsin statutes section 851.21 defines *person interested* as any of the following:

(a) An heir of the decedent.

(b) Except as provided in s. 853.32(2)(e), a beneficiary named in any document offered for probate as the will of the decedent and includes a

neither a personal representative nor a person interested has petitioned within thirty days of the decedent's death, other parties may petition.³⁰ Standing for transfer by affidavit is available to a smaller group of persons, namely an heir, a trustee of a trust of the decedent, or a guardian of the decedent.³¹ The value of an estate for summary settlement, summary assignment, or transfer by affidavit is limited to no more than \$50,000, less debts secured by property of the estate.³² The following Sections explain each of the summary procedures, continuing the example of Mike and Steve for pertinent illustrations.

B. Summary Settlement and Summary Assignment

Sections 867.01 and 867.02 for summary settlement and summary assignment entail two variations of the same process for estates valued at \$50,000 or less.³³ Summary settlement is used when a spouse or minor children survive the decedent.³⁴ Alternatively, summary settlement may be used when the debts of an estate exceed the assets.³⁵ Summary assignment is used when no spouse or minor children survive and the estate is subject to creditors.³⁶

The process for either summary settlement or summary assignment proceeds with filing a petition, possible notice to others, and distribution of assets.³⁷ First, a person with standing initiates the petition.³⁸ The petition includes a detailed statement of the property of

person named or acting as a trustee of any trust, inter vivos or testamentary, named as a beneficiary.

(c) A beneficiary of a trust created under any document offered for probate as the will of the decedent.

(d) A person named as personal representative in any document offered for probate as the will of the decedent.

(e) Additional persons as the court by order includes as "interested persons."

30. *Id.* § 856.07(2) (specifying that those who may petition after thirty days are "any person who was guardian of the decedent at the time of the decedent's death, any creditor of the decedent, anyone who has a cause of action or who has a right of appeal which cannot be maintained without the appointment of a personal representative or anyone who has an interest in property which is or may be part of the estate").

31. *Id.* § 867.03(1g).

32. *Id.* §§ 867.01(1)(b), .02(1), .03(1g).

33. *Id.* §§ 867.01-.02.

34. *Id.* § 867.01(1)(b).

35. *Id.* § 867.01(1)(a).

36. *Id.* § 867.02(1).

37. *Id.* §§ 867.01(3), .02(2).

38. *Id.* §§ 867.01(3)(ac), .02(2)(ac).

the estate, including secured debts, names and addresses of persons interested, and notations of whether the decedent or the decedent’s spouse received certain public benefits.³⁹ Furthermore, for a summary assignment, the petition must specify that the estate cannot be settled under summary settlement, whether a will has been located, and the names and addresses of the decedent’s creditors.⁴⁰

Next, the court may proceed with or without notice to persons interested.⁴¹ Under summary assignment, notice to creditors and to the Department of Health and Family Services (DHFS) is required.⁴² Finally, the court assigns assets according to a will or statutory intestacy succession.⁴³ The court issues orders to collect debts owed to the decedent, terminate life estates or joint tenancies, and distribute property.⁴⁴ Additional steps are available at the court’s discretion or if relevant, such as appointment of a special administrator⁴⁵ or recording real estate with the register of deeds.⁴⁶

When Mike and Steve look at summary settlement and summary assignment, they can readily eliminate summary settlement because there was no surviving spouse (their mother predeceased their father) or surviving minor children. However, it is not entirely clear that summary assignment is an appropriate option for them either since it refers to estates subject to creditors.

C. Transfer by Affidavit

Transfer by affidavit provides for movement of probate assets with total value of \$50,000 or less from the decedent to a survivor or someone acting on the survivor’s behalf.⁴⁷ Court involvement is not necessary for this type of transfer.⁴⁸ An heir, a trustee for a trust of the

39. *Id.* §§ 867.01(3)(am), .02(2)(am).

40. *Id.* § 867.02(2)(am).

41. *Id.* §§ 867.01(3)(d), .02(2)(d).

42. *Id.* § 867.02(2)(d). Notice to the DHFS is required as part of the Wisconsin Medicaid Estate Recovery Program, which seeks repayment for services from a recipient’s estate (or from a spouse’s estate if the Medicaid recipient predeceased). DIV. OF HEALTH CARE ACCESS & ACCOUNTABILITY, DEP’T OF HEALTH & FAMILY SERVS., WISCONSIN MEDICAID ESTATE RECOVERY PROGRAM 7 (2006), *available at* <http://dhfs.wisconsin.gov/medicaid1/recpubs/erp/phc13032.pdf>.

43. *See* WIS. STAT. §§ 867.01(3)(f), .02(2)(g).

44. *Id.*

45. *Id.* §§ 867.01(3)(b), .02(2)(f).

46. *Id.* §§ 867.01(3)(h), .02(2)(h).

47. *Id.* § 867.03. The statute explicitly indicates that the affiant collecting the asset is obligated to distribute according to statutory hierarchy of claims, including creditors and rightful heirs or beneficiaries. *Id.* § 867.03(2g).

48. *See id.* § 867.03(1g).

decedent, or a guardian of the decedent at the time of death may sign an affidavit.⁴⁹ The affiant has the affidavit notarized and then presents it to any holder of the decedent's assets.⁵⁰ Affidavits for transfers of real property must be recorded with the county register of deeds.⁵¹

An additional section allows the DHFS to initiate a transfer of assets by affidavit if the decedent or decedent's spouse received certain public benefits.⁵² The department may initiate the process if no interested person has begun probate or summary proceedings in the twenty days following the decedent's death.⁵³ Also, the department distributes assets upon written demand to any creditors with claims of higher statutory priority.⁵⁴

As Mike and Steve consider all the options under the probate code, transfer by affidavit seems simple and inexpensive. Court involvement is not needed, and they can execute the affidavit without an attorney. Therefore, they will incur no fees for court filings or attorneys. On the other hand, any dispute between the brothers will not be preemptively addressed by the court. For instance, if Mike collects the bank assets first with no intention to share with Steve, Steve might have little recourse short of filing legal action against Mike.

Since analysis and comparison of informal probate, summary settlement, summary assignment, and transfer by affidavit are central to this Comment, table 1 displays the various factors, both to summarize the preceding two sections and for later reference.

49. *Id.*

50. *Id.*

51. *Id.* § 867.03(2m).

52. *Id.* § 867.035; *see also* DIV. OF HEALTH CARE ACCESS & ACCOUNTABILITY, *supra* note 42, at 7, 12.

53. WIS. STAT. § 867.035(1)(a)(1).

54. *Id.* § 867.035(3). Types of claims and priority of payment are statutorily designated. *Id.* § 859.25(1).

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A "Simple" Probate

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TABLE 1:
COMPARISON OF INFORMAL PROBATE, SUMMARY SETTLEMENT,
SUMMARY ASSIGNMENT, AND TRANSFER BY AFFIDAVIT

	Informal Probate	Summary Settlement	Summary Assignment	Transfer by Affidavit
Who may initiate the proceeding?	The personal representative named in the will or a "person interested."	The personal representative named in the will or a "person interested."	The personal representative named in the will or a "person interested."	An heir, guardian, or trustee.
Who acts on behalf of the estate?	The personal representative, as appointed by the court.	The initiating person (petitioner) or a court-appointed special administrator.	The initiating person (petitioner) or a court-appointed special administrator.	The initiating person (affiant) takes responsibility for distributing the assets.
What estate value is allowed? (probate assets only)	Any value.	Estates valued up to \$50,000, less debts secured by the estate.	Estates valued up to \$50,000, less debts secured by the estate.	Estates valued up to \$50,000.
Are there any other required conditions?	No.	The value of the estate does not exceed allowances under section 859.25(1)(a)-(g) OR Value of estate does not exceed \$50,000 and the spouse or minor children survive.	The value of the estate does not exceed \$50,000 and cannot be settled under summary settlement. (This section assumes that the estate is subject to creditors.)	No.
Is inventory required?	Yes.	Yes.	Yes.	No. The affidavit must state, however, that the estate is valued at \$50,000 or less.
Is notice given to creditors?	Yes, notice is published three times.	Only DHFS is given notice if the decedent or spouse received certain medical benefits.	Yes, notice is published once.	Only DHFS is given notice if the decedent or spouse received certain medical benefits. The affiant may give notice to creditors.
What documents are recorded?	All documents and proceedings are recorded.	All documents and proceedings are recorded.	All documents and proceedings are recorded.	The affidavit is recorded with the register of deeds only for real property.

D. Nonprobate Transfers and Determination of Descent

Several additional provisions complete the simple end of the continuum for estate settlement—termination of joint tenancy and life estate, summary confirmation of interest in property, and determination of descent.⁵⁵

Joint tenancies and life estates may be terminated in regard to any property⁵⁶ or with additional steps for real property.⁵⁷ Because successors to joint tenancies and life estates receive property by operation of law, the statutes simply provide for a court certificate verifying the nature of the property, the termination of the joint or life interest, and the successor's right.⁵⁸ If real property is involved, the transfer is recorded with the register of deeds.⁵⁹

Confirmation of interest in property also deals with nonprobate assets that may pass to the decedent's spouse, a beneficiary of a marital-property agreement, or a beneficiary of a statutory nonprobate transfer.⁶⁰ The first of two subsections provides the general process of transfer, which results in a court-issued certificate that the successor uses to claim the property.⁶¹ The second subsection lists various types of assets that may typically pass outside of probate to a named beneficiary who simply confirms his or her current interest in the asset with a death certificate and a copy of any other relevant document.⁶²

A final simple probate procedure, determination of descent, applies to intestate estates that have not been administered for six years or more.⁶³ This option provides a method of settling an old estate to determine whom the proper recipients are, such as when a family-held asset is sold after several generations of informal "inheritance."⁶⁴ Furthermore, the Wisconsin Department of Revenue may petition for a

55. *Id.* §§ 867.04–.05. See *supra* note 1 for descriptions of each type of estate-settlement procedure.

56. WIS. STAT. § 867.04.

57. *Id.* § 867.045(1).

58. *Id.* §§ 867.04, .045(1).

59. *Id.* § 867.045(1)(j).

60. *Id.* § 867.046(1m), (2).

61. *Id.* § 867.046(1m).

62. *Id.* § 867.046(2). Assets that may pass under this subsection are "an interest in any real property, a vendor's interest in a land contract, an interest in a savings or checking account, an interest in a security, a mortgagee's interest in a mortgage, or an interest in property passing under s. 705.20 (1) [s. 705.10 (1)] [nonprobate transfers], including an interest in survivorship marital property." *Id.*

63. *Id.* § 867.05(1).

64. Telephone Interview with Sally Lunde, Register in Probate, Waukesha County, Wis. (Jan. 19, 2007).

special administrator to determine whether the estate, upon transfer, is subject to estate tax.⁶⁵

E. Special Administration

Special administration has flexibility that can accommodate a number of matters related to settling estates.⁶⁶ A special administrator may be assigned within formal and informal probate proceedings,⁶⁷ as well as within summary-settlement and summary-assignment proceedings.⁶⁸ A special administrator has an assigned capacity similar to that of a personal representative but typically within a narrower scope.⁶⁹ Sometimes, however, a special administrator may be appointed to handle simple matters, and some attorneys and registers in probate treat special administration as a stand-alone procedural option if that single action is all that is needed.⁷⁰

Resuming the example of the Wilson brothers, Mike or Steve can be appointed special administrator if they use summary assignment. Since summary assignment does not provide for the appointment of a personal representative as a matter of course, they will petition for appointment of a special administrator if debts need to be paid or assets collected on behalf of the estate before its final disposition. Sometimes transfer agents for stock-company or brokerage accounts request a letter of administration issued by the court to the special administrator before transferring assets.⁷¹

II. CONTROVERSIES AND CONFUSION WITH THE CURRENT STATUTES

While some of the summary procedures are simple or apply to narrow categories of assets, several of the statutory options have generated significant controversy or confusion. This Part examines the various controversies and confusion with the current statutes, beginning with concerns over the increase in estate values for transfers by

65. WIS. STAT. § 867.05(5).

66. *Id.* § 867.07.

67. If matters arise before a personal representative is appointed or after the personal representative has been discharged, a special administrator may be appointed to handle such affairs. *Id.* § 867.07(2), (4), (6).

68. *Id.* § 867.07(3).

69. *See id.* § 867.07(1)–(7).

70. Interview with David Flesch, Probate Registrar and Circuit Court Commissioner, Dane County, in Madison, Wis. (Nov. 7, 2006); Interview with Howard Sweet, Attorney, Hurley, Burish & Stanton, S.C., in Madison, Wis. (Dec. 18, 2006).

71. Interview with David Flesch, *supra* note 70.

affidavit, then continuing with recent litigation and ongoing confusion in statutory language.

A. Controversy over Increase in Value of Assets for Transfer by Affidavit

In early 2006, the Wisconsin legislature increased the dollar amount for transfer by affidavit, which caused significant concern among state registers in probate.⁷² The legislature increased the permitted estate value for transfers by affidavit from \$20,000 to \$50,000.⁷³ According to the legislative drafting file, the increase was intended to reflect the current understanding of what constitutes a small estate.⁷⁴ At the same time, the drafting committee wanted to clarify that the first person to claim an asset did not necessarily become the rightful owner.⁷⁵ Therefore, as a safeguard against abuse or mistake, the drafting committee added a subsection on the responsibility of an affiant in such a transfer.⁷⁶

Yet many registers in probate around Wisconsin were opposed to raising the amount that could be transferred because of the potential for misuse.⁷⁷ They believed that without court supervision or filing of paperwork with the county, a deceitful person could improperly claim assets.⁷⁸ They were concerned that creditors would not be notified or paid.⁷⁹ Furthermore, the leadership of the Wisconsin Registers in Probate Association felt that its members had not been consulted on the

72. Interview with Robert Knoll, *supra* note 13.

73. 2005 Wis. Sess. Laws 216.

74. HOWARD S. ERLANGER, NOTES TO LRB 05-0135/P8 AMENDMENTS TO THE WISCONSIN PROBATE CODE 106 (2006).

75. *Id.*

76. *Id.* The statutory subsection regarding the affiant's obligation states,

By accepting the decedent's property under this section the heir, trustee, or guardian assumes a duty to apply the property transferred for the payment of obligations according to priorities established under s. 859.25 and to distribute any balance to those persons designated in the appropriate governing instrument, as defined in s. 854.01, of the decedent or if there is no governing instrument, according to the rules of intestate succession under ch. 852. An heir or guardian may publish a notice to creditors in the same manner and with the same effect as a trustee under s. 701.065. This subsection does not prohibit any appropriate person from requesting administration of the decedent's estate under s. 856.07 or ch. 865.

WIS. STAT. § 867.03(2g) (2005-06).

77. Interview with Robert Knoll, *supra* note 13.

78. *Id.*

79. *Id.*

change, and therefore it opposed the legislation because its concerns had not received full hearing.⁸⁰

B. Litigation: Maciolek

The most recent litigation in Wisconsin regarding chapter 867 was *Maciolek v. City of Milwaukee Employees’ Retirement System Annuity and Pension Board* in 2006.⁸¹ Agnes Maciolek sued the management of her late husband’s pension fund, Milwaukee Employees’ Retirement System Annuity and Pension Board (MERS), disputing which subsection of chapter 867 applied to the pension benefit.⁸² As part of a marital agreement, Maciolek and her husband had executed a “Washington Will.”⁸³ Such an agreement passed their assets to a trust for the surviving spouse without going through probate.⁸⁴ Also, they included a clause that directed anyone holding assets to transfer them to the survivor without court involvement.⁸⁵ Following her husband’s death in 2001, Maciolek notified MERS of her property interest in her late husband’s pension under subsection 867.046(2).⁸⁶ However, the pension did not provide for a beneficiary designation, and MERS considered the process under subsection 867.046(1m) to be the proper procedure.⁸⁷ On the basis of that conclusion, MERS requested a court certificate from Maciolek.⁸⁸ Relying on the marital agreement, Maciolek indicated that she did not want any court involvement.⁸⁹

The dispute escalated to the Wisconsin Supreme Court, and, in April 2006, the court found in favor of MERS.⁹⁰ In considering the statutory aspects of the dispute, the court looked at the statutes relating to marital-property agreements (including Washington Wills),⁹¹

80. *Id.* A short timeline, along with a changed hearing schedule, prevented the association’s members from fully representing their position before the state senate committee. Only one member of the association was able to appear briefly at the hearing. Telephone Interview with Sally Lunde, *supra* note 64. Sections III.B.2–3 discuss further the concerns about the increased limit in context of proposing revisions.

81. 2006 WI 10, 288 Wis. 2d 62, 709 N.W.2d 360.

82. *Id.* ¶ 1.

83. *Id.* ¶ 3. The term *Washington Will* commonly refers to a marital-property agreement in which spouses agree to pass property upon the death of either spouse without probate proceedings. *See* WIS. STAT. § 766.58(3)(f) (2005–06).

84. *Maciolek*, 2006 WI 10, ¶ 3.

85. *Id.*

86. *Id.* ¶ 6.

87. *Id.* ¶ 7.

88. *Id.*

89. *See id.* ¶ 6.

90. *Id.* ¶ 31.

91. *Id.* ¶ 11.

nonprobate transfers at death (which include marital-property agreements),⁹² general rules for transfers at death,⁹³ and summary confirmation of an interest in property.⁹⁴ In finding that MERS could require Maciolek to follow the procedure of subsection 867.046(1m), the court laid out its analysis in three parts.⁹⁵

First, the court found that the certification process in subsection 867.046(1m), while requiring some court involvement, is not a probate proceeding and does not conflict with the legislative intent of allowing persons to avoid probate.⁹⁶ Furthermore, MERS was not a party to the marital agreement and could not be contractually bound to it.⁹⁷

Second, the court held that the statutory subsection that protects payers for transfers at death narrowly defined *governing instrument*.⁹⁸ The court interpreted that subsection to mean that a governing instrument was “a filed verified statement under s. 865.201 [confirmation of interest in property under informal probate], a certificate under s. 867.046 (1m) [which was at issue] or a recorded application under s. 867.046 (5) [recording of termination of property interest].”⁹⁹ Since the court found that a marital-property agreement was not included in the provision for payer protection, it concluded that MERS properly rejected Maciolek’s transfer request solely on the basis of her marital-property agreement.¹⁰⁰

Third, the court declined to expand the list of assets included in subsection 867.046(2) to include any assets provided for in subsection (1m).¹⁰¹ Subsection (2) specifically mentioned certain types of real-estate or financial interests, and a pension asset was not included.¹⁰² Any other property was to be transferred under subsection (1m).¹⁰³ To ignore the designated assets in subsection (2) would result in an illogical outcome where the list became a mere surplusage.¹⁰⁴ The court rejected that proposition and held that Maciolek had to comply with the

92. *Id.* ¶ 12.

93. *Id.* ¶ 13.

94. *Id.* ¶ 14.

95. *Id.* ¶ 15.

96. *Id.* ¶ 21.

97. *Id.* ¶ 22.

98. *Id.* ¶¶ 23–25.

99. *Id.* ¶ 23 (quoting WIS. STAT. § 854.23(1) (2003–04)).

100. *Id.* ¶ 26.

101. *Id.* ¶ 28.

102. *Id.*

103. *Id.* ¶ 27.

104. *Id.* ¶ 28.

general provision since the asset she sought was not included in the specific provision.¹⁰⁵

In response to *Maciolek*, the legislature passed statutory revisions to counter several of the court’s implied and express interpretations of the probate code.¹⁰⁶ Pertinent to chapter 867, the legislature expanded summary confirmation regarding both the types of property that could be transferred and the lists of parties who can apply.¹⁰⁷ The drafting committee determined that this change squared the statute with current practice.¹⁰⁸ More importantly, the drafting committee saw its changes as stopgap measures until chapter 867 could be reviewed for comprehensive revision.¹⁰⁹

C. Confusion within the Statutes

Even when legal disputes do not arise, the structure and terminology of the statutes can cause confusion. Various aspects of statutory language can confuse either because of poor drafting or unwieldy amendments.¹¹⁰

1. FORMAT OF SUMMARY SETTLEMENT AND SUMMARY ASSIGNMENT

The format of Wisconsin summary settlement and summary assignment shows both confusion from lack of parallel structure and the need to consolidate redundant provisions.¹¹¹ Summary settlement and summary assignment follow essentially the same framework.¹¹² However, several features depart from the parallel structure either out of necessity or out of drafting incongruity.¹¹³ As an example of

105. *Id.*

106. HOWARD S. ERLANGER, SUMMARY OF 2005 ACT 216—PROBATE CODE TRAILER BILL (2006), <http://www.wisbar.org/AM/Template.cfm?template=/cm/contentdisplay.cfm&contentfileid=7358>. The drafting committee considered the court in *Maciolek* to have misread several of the applicable statutes and sought to remedy the discrepancy through legislation and additional comments in the drafting notes. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *See, e.g.*, Lawrence H. Averill, Jr., *An Eclectic History and Analysis of the 1990 Uniform Probate Code*, 55 ALB. L. REV. 891, 906 (1992) (commenting that inconsistent drafting weakened the Uniform Probate Code).

111. *Compare* WIS. STAT. § 867.01 (2005–06), *with id.* § 867.02.

112. *Id.* §§ 867.01, .02.

113. *See, e.g., id.* §§ 867.01(3)(d), .02(2)(d) (stating different notice requirements because creditors are not notified for summary settlement, but creditors are notified for summary assignment); *id.* §§ 867.01(3)(b), .02(2)(f) (providing for

structural problems, the first subsections of summary settlement and summary assignment are laid out side by side in table 2. The text of the summary-assignment statute is divided and spaced to align parallel provisions with summary settlement.

TABLE 2:
ILLUSTRATION OF INCONGRUOUS FORMATTING IN SUMMARY-
SETTLEMENT AND SUMMARY-ASSIGNMENT PROVISIONS

Summary Settlement under Section 867.01	Summary Assignment under Section 867.02
<p>(1) AVAILABILITY. The court shall summarily settle the estate of a deceased person without the appointment of a personal representative:</p> <p>(a) Whenever the estate, less the amount of the debts for which any property in the estate is security, does not exceed in value the costs, expenses, allowances and claims under s. 859.25 (1) (a) to (g).</p> <p>(b) Whenever the estate, less the amount of the debts for which any property in the estate is security, does not exceed \$50,000 in value and the decedent is survived by a spouse or one or more minor children or both.</p> <p>(2) WHEN COMMENCED UNDER OTHER PROCEDURE. An estate, administration of which has been commenced under ch. 856, may be terminated under this section at any time that it is found to meet the requirements of this section.</p>	<p>(1) AVAILABILITY. The court shall summarily assign the estate of a deceased person without the appointment of a personal representative . . .</p> <p>if the estate, less the amount of the debts for which any property in the estate is security, does not exceed \$50,000 in value and the estate cannot be summarily settled under s. 867.01.</p> <p>An estate, administration of which has been commenced under ch. 856, or a summary settlement commenced under s. 867.01 may be terminated under this section at any time that it is found to meet the requirements of this section.</p>

Comparing the availability sections of summary settlement and summary assignment demonstrates the structural incongruity. First, the availability of the procedures is different for each out of necessity because they address slightly different estate scenarios.¹¹⁴ However, a

special administrators for each procedure but listing the procedures in a different order in each section, for no apparent reason).

114. *Id.* §§ 867.01(1), .02(1).

common feature is presented differently in each—when an estate settlement is begun under a different procedure, such as informal probate, it may be terminated if one of the summary procedures is appropriate.¹¹⁵ Summary settlement formats this provision as subsection (2), while summary assignment includes it within the general paragraph regarding availability.¹¹⁶ If the two sections are meant to express the same thing, they should be structured the same way.¹¹⁷

In the next section for either summary settlement or summary assignment, the petition contents are laid out differently for each, even though the contents are nearly identical.¹¹⁸ For summary settlement, the first item of the petition is “facts required by sub. (1)”; that is, the estate’s debts exceed its assets, or the value is not more than \$50,000 and spouse or minor children survive.¹¹⁹ In contrast, the summary-assignment petition covers the same type of disclosure with “[a] statement that the estate does not exceed \$50,000 in value and cannot be summarily settled under s. 867.01.”¹²⁰ Again, the two sections are confusing because parallel provisions are structured differently.¹²¹

The remaining subsections contain both significant similarity, suggesting that the two sections could be combined, and a few notable variables, suggesting that incongruity is still an issue. Specifically, the sections on appointment of a special administrator, bond, and notice could be combined into a single statute. The lack of parallel provisions for filing a will and the lack of parallel format of special-administrator appointment suggest that the two statutes either need to be revised for parallel structure or combined for simplicity.¹²²

2. PROBLEMS WITH SUMMARY-PROCEDURE DETAILS

Throughout chapter 867, various details are confusing and inconsistent, especially in summary settlement, summary assignment, and transfer by affidavit. Potential confusion may occur with undefined terms, such as *settlement*, *assignment*, and *transfer*.¹²³ Black’s Law

115. *Id.* §§ 867.01(2), .02(1).

116. *Compare id.* § 867.01(2), *with id.* § 867.02(1).

117. *See, e.g.,* Averill, *supra* note 110, at 906–07 (commenting that inconsistent headings weakened the Uniform Probate Code).

118. *Compare* WIS. STAT. § 867.01(3)(am), *with id.* § 867.02(2)(am).

119. *Id.* § 867.01(3)(am)(1).

120. *Id.* § 867.02(2)(am)(1).

121. *See, e.g.,* Averill, *supra* note 110, at 906 (commenting that inconsistent format weakened the Uniform Probate Code).

122. Part III.B–C proposes more detailed revision suggestions.

123. General definitions for the probate chapters are provided in the statutes, but *settlement*, *assignment*, and *transfer* are not included. WIS. STAT. §§ 851.01–.31.

Dictionary gives little guidance,¹²⁴ and registers in probate and attorneys see no distinct meanings among the terms in practice.¹²⁵

Furthermore, gaps in the statutes may lead to confusion. One example is whether a will is anticipated and how it would be handled in summary settlement or summary assignment.¹²⁶ Also, if a transfer by affidavit is misused, no remedy is specifically mentioned.¹²⁷ Moreover, the transfer-by-affidavit statute section is silent regarding multiple recipients and how property is collected and distributed to them.¹²⁸

D. Confusion in Application of the Statutes

The wide range of summary procedures and the wide range of users likely lead to varied application of the provisions.¹²⁹ Any given attorney, lay person, register in probate, or financial-institution transfer agent may have different goals or expectations regarding summary procedures.¹³⁰ Personal preferences will lead individual users to select different procedures.¹³¹ Furthermore, confusion is possible in the application of the statutes because different registers in probate and judges in different counties implement the procedures differently.¹³² For example, some registers consider special administration an available stand-alone procedure for simple estate matters, and some consider special administration a way to facilitate other statutory procedures.¹³³ Part III addresses the various controversies and confusions in the current statutes and considers principles and recommendations from various sources for revision.

124. *Assignment* is simply “[t]he transfer of rights or property.” BLACK’S LAW DICTIONARY 128 (8th ed. 2004). Only *common-law assignment* and *assignment for the benefit of creditors* suggest that the terms relate to assets being transferred to creditors. *Id.* at 128–29. *Settlement* is defined as “[t]he conveyance of property—or of interests in property—to provide for one or more beneficiaries.” *Id.* at 1404. *Transfer* is the most generic of the three terms: “Any mode of disposing of or parting with an asset or an interest in an asset.” *Id.* at 1535.

125. Interview with Robert Knoll, *supra* note 13.

126. WIS. STAT. § 867.01(3)(am) (making no reference to a will in petition requirements for summary settlement); *id.* § 867.02(2)(am)–(b) (requiring a summary-assignment petition to include a statement regarding whether the will was located and requiring a copy of the will be filed with the petition).

127. *Id.* § 867.03(2g).

128. *Id.*

129. Interview with Catherine Priebe Hertzberg, Attorney, Davis & Kuelthau, S.C., in Madison, Wis. (Feb. 1, 2007).

130. Interview with David Flesch, *supra* note 70.

131. Interview with Howard Sweet, *supra* note 70.

132. *Id.*

133. Interview with David Flesch, *supra* note 70; Interview with Robert Knoll, *supra* note 13.

III. PRINCIPLES AND PROPOSALS FOR REVISION OF STATUTES

The following analysis and proposed recommendations are meant to encourage the legislature to consider a thorough revision of chapter 867 for simplicity, clarity, and consistency. Although this Comment does not attempt to comprehensively rewrite the statutes, concrete examples will highlight the major areas needing improvement. This Part considers the model language of the Uniform Probate Code (UPC), including Minnesota’s and Michigan’s adaptations of the UPC, comments and concerns from those who use Wisconsin’s summary procedures, and legislative-drafting conventions. Each Section concludes with principles and proposals that have emerged from each source.

A. *Considerations of the Uniform Probate Code*

The UPC, along with its adoption and adaptation by Minnesota and Michigan, offers a model for attempts to compare and revise Wisconsin’s summary procedures. The UPC was prepared in 1969,¹³⁴ and about one third of all states adopted it during the 1970s and 1980s.¹³⁵ Subsequent revisions gave rise to the UPC of 1990.¹³⁶ Even when individual states do not officially adopt the UPC, it is frequently the starting point for revision of probate codes around the country.¹³⁷ This Section considers three aspects of the uniform code—UPC summary procedures, adaptation of the UPC by Minnesota and Michigan as sample states, and UPC principles for revision of Wisconsin’s summary procedures.

1. UPC SUMMARY PROCEDURES

The UPC covers probate summary procedures in four sections contained in article 3, part 12, Collection of Personal Property by Affidavit and Summary Administration Procedure for Small Estates.¹³⁸ The first UPC summary section is Collection of Personal Property by Affidavit and is comparable to Wisconsin’s transfer by affidavit.¹³⁹ This

134. Averill, *supra* note 110, at 896.

135. *Id.* at 900.

136. *Id.* at 898.

137. *See, e.g.,* ERLANGER, *supra* note 1, at 3.

138. UNIF. PROBATE CODE §§ 3-1201 to -1204 (amended 2006).

139. *Compare id.* § 3-1201, with Wis. STAT. § 867.03 (2005-06).

section describes transfers as actions done by the holder of the property as an obligation to the recipient:¹⁴⁰

[A]ny person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action^[141] belonging to the decedent shall make payment of the indebtedness or deliver the . . . property . . . to a person claiming to be the successor of the decedent.¹⁴²

For a successor to claim payment of a debt or property under this section, he or she must present an affidavit stating the following: (1) the estate, less liens and encumbrances, is valued at \$5,000 or less;¹⁴³ (2) thirty days have passed since the decedent's death; (3) an application or petition for appointment of a personal representative for the estate is neither pending nor has been granted; and (4) the successor claiming the property is entitled to it.¹⁴⁴ Finally, this section provides that a transfer agent shall change the registered ownership of a corporate security to the successor upon presentation of a valid affidavit.¹⁴⁵

The second summary section of the UPC is Effect of Affidavit.¹⁴⁶ In this section, any person honoring an affidavit, as described in the preceding section, is released of obligation in the same manner as if dealing with a personal representative.¹⁴⁷ A recipient of an affidavit is not obligated to assure that the proper person receives the property and is not required to investigate the veracity of statements in the affidavit.¹⁴⁸ Furthermore, an affiant may bring legal action to compel persons owing a debt or holding an asset to transfer it if they refuse to honor the affidavit.¹⁴⁹ Finally, an affiant receiving property is

140. UNIF. PROBATE CODE § 3-1201.

141. A *chose in action* is a property right typically defined in terms of the potential for recovery through a lawsuit, as in “[t]he right to bring an action to recover a debt, money, or thing.” BLACK’S LAW DICTIONARY 258 (8th ed. 2004).

142. UNIF. PROBATE CODE § 3-1201.

143. This section of the UPC retains the originally approved dollar value. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* § 3-1202.

147. *Id.* The UPC provides for broad protection of those dealing with personal representatives in good faith “as if the personal representative properly exercised his power.” *Id.* § 3-714. The UPC does not distinguish between a personal representative and a special administrator, so the duties described here being performed by a personal representative are comparable to those of a special administrator under the Wisconsin summary-procedure statutes. *Id.* § 1-201(35).

148. *Id.* § 3-1202.

149. *Id.*

answerable to an estate's personal representative or anyone having a superior right.¹⁵⁰

The third UPC summary section is Summary Administrative Procedure for small estates,¹⁵¹ comparable to Wisconsin's summary settlement and summary assignment. Rather than placing a ceiling on an estate in dollar value, this section states that if the estate's value, less liens and encumbrances, does not exceed various allowances,¹⁵² then the personal representative may distribute the estate to those entitled to it.¹⁵³ Notice to creditors is not required, and a personal representative files a closing statement according to the next section.¹⁵⁴

The fourth section, Closing by Sworn Statement of Personal Representative, concludes the summary procedures of the UPC.¹⁵⁵ To close an estate under this section, a personal representative prepares a statement specifying that (1) to the best of the personal representative's knowledge, the value of the estate does not exceed the allowances; (2) the estate has been distributed to the proper recipients; and (3) a copy of the closing statement has been sent to all distributees of the estate, known creditors, and claimants and all distributees whose interests may be affected have been sent a full written account of the personal representative's administration of the estate.¹⁵⁶ The personal representative's responsibilities terminate if there are no pending actions or proceedings regarding the personal representative one year after the closing statement is filed.¹⁵⁷ Finally, a closing statement under this section has the same effect as one under formal or informal probate administration with a personal representative.¹⁵⁸

2. CONSIDERATIONS FROM SELECT UPC STATES

In considering state adoption of the UPC, this Section looks at summary-procedure statutes of two states neighboring Wisconsin: Michigan and Minnesota. Adoption and adaptation of the UPC in these states show the workability and the flexibility of the UPC.

150. *Id.*

151. *Id.* § 3-1203.

152. The allowances are "homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent." *Id.*

153. *Id.*

154. *Id.*

155. *Id.* § 3-1204.

156. *Id.*

157. *Id.*

158. *Id.* §§ 3-1003(b), -1204.

Michigan has added two sections and adopted the four UPC sections nearly verbatim.¹⁵⁹ The first section of Michigan's code relevant to this Comment parallels the UPC section titled Collection of Personal Property by Affidavit.¹⁶⁰ This section requires a successor to present the decedent's death certificate along with the statement to claim property up to \$15,000 in value.¹⁶¹ Another addition to this section is a requirement that the statement include "[t]he name and address of each other person that is entitled to a share of the property and the portion to which each is entitled."¹⁶² In order to safeguard against wrongful acquisition, the statute directs that the standard form include a notice that falsified statements "may subject the person swearing to the statement to prosecution for perjury."¹⁶³

The next section of Michigan's code closely follows the UPC section titled Effect of Affidavit.¹⁶⁴ Slight changes in Michigan's code include dividing the UPC's original single paragraph into two subsections for a more readable format.¹⁶⁵ The final two sections of Michigan's code closely follow the UPC's Summary Administration Proceedings and Closing sections.¹⁶⁶ Only a few minor grammatical or word-order changes were made.¹⁶⁷

Minnesota also adopted the four sections of the UPC summary procedures and added its own changes.¹⁶⁸ Minnesota's first section, regarding collection of property by affidavit, added a requirement of a certified death certificate and set the maximum value of an estate under the section at \$20,000.¹⁶⁹ A noteworthy change to this section involves the right of county or state agencies with authorized claims against the estate to seek property with an affidavit.¹⁷⁰

159. Compare *id.* §§ 3-1201 to -1204, with MICH. COMP. LAWS §§ 700.3981-.3988 (2006).

160. MICH. COMP. LAWS § 700.3983. This statutory section refers to the document as a *sworn statement*, rather than an *affidavit*. *Id.*

161. *Id.* § 700.3983(1).

162. *Id.* § 700.3983(1)(e).

163. *Id.* § 700.3983(3).

164. Compare UNIF. PROBATE CODE § 3-1202, with MICH. COMP. LAWS § 700.3984.

165. MICH. COMP. LAWS § 700.3984.

166. Compare UNIF. PROBATE CODE §§ 3-1203, -1204, with MICH. COMP. LAWS §§ 700.3987, .3988.

167. Compare UNIF. PROBATE CODE §§ 3-1203, -1204, with MICH. COMP. LAWS §§ 700.3987, .3988.

168. Compare UNIF. PROBATE CODE §§ 3-1201 to -1204, with MINN. STAT. §§ 524.3-1201 to -1204 (2006).

169. MINN. STAT. § 524.3-1201(a).

170. *Id.* § 524.3-1201(a)(4).

Minnesota’s summary-proceedings section is significantly expanded from the UPC’s third section.¹⁷¹ The first subsection is roughly parallel to the UPC section, laying out the allowances permitted before the estate is valued and granting the court authority to disburse the property without notice to creditors.¹⁷² Additional subsections provide for the court’s final decree or order and summary distribution, laying out the court’s discretion in determining the appropriateness of using this procedure as well as the court’s satisfaction in the allowances.¹⁷³ Other subsections allow for court discretion in appointing a personal representative, distributing estate assets of up to \$100,000 beyond the allowances, and remedying an improper distribution.¹⁷⁴ Minnesota’s section on closing a small estate is essentially the same as the UPC, with only a few inconsequential differences.¹⁷⁵

3. PRINCIPLES AND PROPOSALS FROM THE UPC

The UPC, with its hallmarks of simplicity and reduced formalities, offers an excellent starting point for revisions to the Wisconsin probate summary procedures. Furthermore, the adaptations of Michigan and Minnesota offer possibilities for including additional explanations or formalities for protecting rightful recipients.

Several strong recommendations emerge from the considerations of the UPC and its adoption in sample states. First, like Michigan’s statute, more features of affidavit transfers should be added to allow for multiple claimants. Likewise, such a provision gives an affiant fair warning about claiming and distributing the asset properly, which is further emphasized by a warning of perjury as a penalty. Second, summary-assignment and summary-settlement provisions should be combined to eliminate redundancy—the variables of surviving spouse, minor children, or creditors can be addressed simply by providing allowances, such as the UPC and sample states demonstrate. Third, a personal representative, as provided in the UPC, can facilitate a summary settlement. Finally, overall drafting conventions emerge from Michigan’s and Minnesota’s adoption and adaptation of the UPC, such

171. Compare UNIF. PROBATE CODE § 3-1203, with MINN. STAT. § 524.3-1203.

172. MINN. STAT. § 524.3-1203, subdiv. 1.

173. *Id.* § 524.3-1203, subdivs. 2-3.

174. *Id.* § 524.3-1203, subdivs. 4-5.

175. Compare UNIF. PROBATE CODE § 3-1204, with MINN. STAT. § 524.3-1204.

as the use of short, clear sections with headings and an outline format for sections with multiple provisions.

Clear and streamlined options would have given Mike and Steve Wilson two better options to consider for settling their father's small estate. First, if they wanted court supervision to safeguard their interests against each other, a summary procedure would properly settle the estate. Such a procedure would take into account family allowances, medical allowances, and creditors (none of which were pertinent for the brothers). It would also formally recognize the will and distribute the estate accordingly, with any present or future disputes overseen by the court. Second, if Mike and Steve agreed on all matters to be settled, they could have executed an affidavit transfer. With provisions like Michigan's, the Wilson brothers would take their designated shares with a single document, and the state would have a modicum of oversight with their sworn statement that they were subjecting themselves to charges of perjury if they improperly executed the affidavit.

*B. Considerations from Those Who Use
Wisconsin's Summary Procedures*

In addition to the UPC, actual users of chapter 867—registers in probate and attorneys—give insight into its effectiveness and the need for revision.¹⁷⁶ This Section considers the decreased use of summary assignment and summary settlement, the increased use of transfer by affidavit, concerns of potential abuse of transfers, and proposals for revision from users of the procedures.

1. USE OF SUMMARY SETTLEMENT AND SUMMARY ASSIGNMENT
IS EXPECTED TO DECREASE

Registers in probate and attorneys generally agree that the usefulness of summary settlement and summary assignment has diminished because of estate-value limits and the complexity of the process.¹⁷⁷ First, the value of estates that may be settled by summary settlement or summary assignment is \$50,000,¹⁷⁸ and that value was matched by a 2006 legislative increase in estate value for transfers by affidavit.¹⁷⁹ Therefore, fewer survivors will likely settle estates with

176. Questionnaire Responses, *supra* note 2.

177. Interview with David Flesch, *supra* note 70; Interview with Howard Sweet, *supra* note 70.

178. WIS. STAT. §§ 867.01–.02 (2005–06).

179. 2005 Wis. Act 216, § 235.

summary settlement or summary assignment now that the easier process is available for the same-size estate.¹⁸⁰

Second, features of summary settlement and summary assignment make them nearly as complicated as informal probate. The lack of a personal representative to act on behalf of the estate and the required forms make summary settlement or summary assignment less desirable than informal probate.¹⁸¹ For example, informal probate includes court supervision, just like summary settlement or summary assignment, but with a personal representative in place for the whole process.¹⁸² The personal representative plays a role similar to a special administrator in a summary settlement or summary assignment but without the uncertainty or delay of seeking the appointment when a need or issue arises.¹⁸³ Thus, registers in probate and attorneys often recommend informal probate over summary settlement or summary assignment because a personal representative is frequently desired.¹⁸⁴ Furthermore, the forms for petitioning the court for summary settlement or summary assignment are just as long and involved as the form for informal administration.¹⁸⁵ As a result of the increased value for transfer by affidavit and the preference for informal probate, summary settlement and summary assignment likely will continue to decrease in use.

However, a few features of summary settlement and summary assignment may offer continued usefulness, even in their present iteration.¹⁸⁶ First, the range of persons who can initiate a proceeding is broader for summary procedures than for transfers by affidavit, so small estates could still be summarily settled by someone in the broader category.¹⁸⁷ Second, a minor child cannot sign an affidavit, but a

180. Interview with David Flesch, *supra* note 70.

181. *Id.*

182. WIS. STAT. § 865.02.

183. Interview with David Flesch, *supra* note 70.

184. Interview with Robert Knoll, *supra* note 13.

185. See WIS. CIR. CTS., APPLICATION FOR INFORMAL ADMINISTRATION (FORM PR-1801) (2007), available at <http://www.wicourts.gov/forms1/circuit.htm> (follow “Informal Administration” hyperlink under “Probate”; then follow “Form English” hyperlink under “Application for Informal Administration”); WIS. CIR. CTS., SUMMARY, SETTLEMENT-PETITION (FORM PR-1835) (2007), available at <http://www.wicourts.gov/forms1/circuit.htm> (follow “Summary Settlement” hyperlink under “Probate”; then follow “Form English” hyperlink under “Summary Settlement-Petition”); WIS. CIR. CTS., SUMMARY ASSIGNMENT-PETITION (FORM PR-1840) (2007), available at <http://www.wicourts.gov/forms1/circuit.htm> (follow “Summary Assignment” hyperlink under “Probate”; then follow “Form English” hyperlink under “Summary Assignment-Petition”).

186. Interview with Robert Knoll, *supra* note 13.

187. Compare WIS. STAT. § 867.01(3)(ac) (naming those who may initiate summary settlement as *persons interested* by reference to section 856.07), with §

guardian for the child could pursue a summary settlement on the child's behalf.¹⁸⁸ Finally, if transfer by affidavit is cumbersome or inappropriate for transferring real estate to multiple recipients, then summary settlement is a better option.¹⁸⁹

2. TRANSFER-BY-AFFIDAVIT USE IS EXPECTED TO INCREASE

Since the increase in estate value for transfers by affidavit, this procedure is available for more estates, and its use is expected to increase.¹⁹⁰ Transfer by affidavit is easy, efficient, and low cost, and it does not involve the court.¹⁹¹ With an estate value increased to \$50,000 (from \$20,000), more estates can be settled in this manner.¹⁹² Also, a person can claim and distribute assets with a notarized affidavit, without any petitions or hearings before a court.¹⁹³ On the other hand, some risk exists for a survivor to abuse the absence of court supervision.¹⁹⁴

3. CONCERNS ABOUT TRANSFER BY AFFIDAVIT ARE MIXED

Competing attitudes, ambiguities in application, and concerns of misuse draw several issues to the surface regarding transfers by affidavit. Competing attitudes express a contrast between a statutorily controlled, court-supervised system versus an independent, lay-person-motivated approach.¹⁹⁵ This contrast can be expressed both pragmatically and philosophically.¹⁹⁶

From a pragmatic viewpoint, many registers in probate fear that a dishonest or misinformed person will claim assets with an affidavit and not distribute them to the rightful recipients, either creditors or family members.¹⁹⁷ With estates valued up to \$50,000, many registers are concerned that too much is at stake and that there is no accountability

867.03(1g) (naming an heir, trustee, or guardian as those who may initiate a transfer by affidavit).

188. Interview with Robert Knoll, *supra* note 13.

189. Interview with Catherine Priebe Hertzberg, *supra* note 129.

190. Interview with David Flesch, *supra* note 70.

191. *Id.*

192. *Id.*

193. *Id.*

194. Interview with Robert Knoll, *supra* note 13.

195. Interview with Howard Sweet, *supra* note 70.

196. *Id.*; John H. Martin, *Justice and Efficiency under a Model of Estate Settlement*, 66 VA. L. REV. 727, 735-36 n.34 (1980).

197. Questionnaire Responses, *supra* note 2.

for dishonest affiants.¹⁹⁸ Some registers suggest lowering the estate values to reduce the amount at stake.¹⁹⁹ Since the statute is already enacted and the value amount is presumed irreversible, many registers alternatively advocate for stricter accountability for affidavit transfers.²⁰⁰ Suggestions for such accountability include filing the affidavit with the county and giving notice to creditors.²⁰¹

The other side of the pragmatic argument is that assets of small estates should be allowed to be transferred with minimal government involvement.²⁰² Forms, petitions, and court hearings (or even visits to the county probate office) add time and expense to the process for survivors.²⁰³ With a simple transfer process, the rightful recipients obtain the estate assets in the vast majority of cases.²⁰⁴

From a philosophical perspective, scholars, attorneys, and registers in probate express their attitudes about the purpose of the probate system, even when small estates are involved.²⁰⁵ One side of the discussion is that even small estates should be supervised to some extent by the government.²⁰⁶ That supervision may be handled formally, informally, or summarily, but many registers in probate favor a system with recorded documents, notice to creditors, and the court’s watchful eye in case of deceitful survivors.²⁰⁷

On the other side of the philosophical perspective, scholars and lawyers often favor the autonomy of the decedent, or at least the survivors, in determining the disposition of an estate.²⁰⁸ Transfers by affidavit allow maximum autonomy without court supervision and few requirements from the government.²⁰⁹ Remedies for misuse exist, such as subjecting a wrongful claimant to charges of false swearing,²¹⁰ even if the printed forms contain only cursory warnings.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. Interview with Howard Sweet, *supra* note 70.

203. *Id.*

204. *Id.*

205. Martin, *supra* note 196, at 735–36 n.34.

206. *Id.* (citing opponents of the less restrictive UPC who argued “court-centered procedures are essential to safeguard the interests of beneficiaries”).

207. Questionnaire Responses, *supra* note 2.

208. *See, e.g.*, Martin, *supra* note 196, at 756 (citing the UPC to support the argument “that the parties themselves should select the procedure to be used for settlement”).

209. Interview with David Flesch, *supra* note 70.

210. *See* WIS. STAT. § 946.32(1)(a) (2005–06) (imposing a felony sanction against anyone who “[u]nder oath or affirmation makes or subscribes a false statement

Whether advocating for maximum autonomy or safeguarding interests of creditors or rightful recipients, four issues surface regarding transfers by affidavit. First, ambiguity or gaps in the statute can complicate an estate settlement. One example of ambiguity is how an asset may be claimed by multiple recipients.²¹¹ Also, if multiple persons receive real estate, questions arise regarding how clear title or liens are addressed.²¹² Finally, if a transfer is limited to assets valued up to \$50,000, does a \$100,000 home qualify if it is subject to a \$50,000 mortgage?²¹³

Second, whether creditors should be given notice is an issue. In general, probate procedures balance the interests of survivors, especially a spouse or minor children, against the interests of creditors.²¹⁴ Summary-settlement and summary-assignment proceedings provide for notice to creditors even if they may not be fully satisfied.²¹⁵ In contrast, a user of a transfer affidavit is only required to give notice to the DHFS if the decedent received certain public benefits.²¹⁶ The affiant's obligation to distribute the asset to the proper recipients, including creditors, is specified as an obligation, but notice to such parties is only optional.²¹⁷

Third, registers in probate are concerned that a deceitful person will abuse the system by collecting assets, keeping them, and not distributing them to the rightful recipients.²¹⁸ The common concern is that such abuse will go undetected because the affidavit is not recorded anywhere, and, therefore, a rightful recipient will not even know whom to pursue for recourse.²¹⁹ Also, the expense of litigation to challenge a wrongful taker is usually cost prohibitive when the dispute is under \$50,000.²²⁰

Finally, remedies for abuse of affidavit transfers are unclear.²²¹ One possibility is the rightful recipient taking legal action against the

which he or she does not believe is true, when such oath or affirmation is authorized or required by law").

211. Questionnaire Responses, *supra* note 2.

212. *Id.*

213. *Id.*

214. *See, e.g.*, Wis. STAT. § 859.25 (addressing priority of payment of claims and allowances); *id.* §§ 861.31, .33; *id.* § 861.35 (addressing allowances available to a surviving spouse and minor children).

215. *Id.* §§ 867.01(3)(g), .02(2)(d), .02(4).

216. *Id.* § 867.03(1m).

217. *Id.* § 867.03(2g).

218. Questionnaire Responses, *supra* note 2.

219. *Id.*

220. *Id.*

221. *Id.*

wrongful claimant.²²² Another potential remedy is to draw the estate back into the probate court’s supervision.²²³ Also, Wisconsin, like most states, protects the party who transferred the asset in good faith from legal recourse.²²⁴

The extent of affidavit-transfer abuse or mistake in Wisconsin is not known, and it is too early for any empirical study to document.²²⁵ Registers in probate are concerned about potential abuse, but specific examples are few.²²⁶ On the other hand, some registers and many attorneys favor the current, higher amount for such transfers because it makes the process easier for survivors and keeps those small estates off the courts’ dockets.²²⁷

4. PRINCIPLES AND PROPOSALS FROM COMMENTS OF ATTORNEYS AND REGISTERS IN PROBATE

On the basis of the specific comments from attorneys and registers in probate, summary settlement and summary assignment need streamlining. Also, aspects and safeguards of transfers by affidavit need to be addressed.

Because estate settlements by informal probate and transfers by affidavit have supplanted many settlements by summary procedures, a viable niche for summary procedures must be defined for continued usefulness. The current situation gives rise to two possibilities: elimination of summary settlement and summary assignment altogether or refining the probate continuum with revisions to the procedures. Under the first possibility, eliminating summary settlement and summary assignment would compel settlement of small estates under informal probate or transfer by affidavit. Such a scheme would comport with recent practice trends by giving survivors clear choices of a court-

222. See, e.g., WIS. STAT. § 854.25 (holding a wrongful recipient of property liable under general a transfer-at-death provision); *id.* § 865.14 (holding distributees liable if they received assets improperly under informal probate).

223. Interview with Robert Knoll, *supra* note 13; see also WIS. STAT. § 867.03(2g) (providing that the statute on transfer by affidavit “does not prohibit any appropriate person from requesting administration of the decedent’s estate under [formal or informal probate]”).

224. WIS. STAT. § 867.03(2). When an abuse of a transfer affidavit took place in Minnesota, the court held that state statute relieved a bank of liability after the rightful heir sued the bank for transferring assets to a fraudulent claimant. *Walker v. First Bank, Nat’l Ass’n*, No. C1-91-2514, 1992 WL 71999 (Minn. Ct. App. Apr. 14, 1992).

225. Interview with Howard Sweet, *supra* note 70.

226. Interview with Robert Knoll, *supra* note 13.

227. Interview with David Flesch, *supra* note 70; Interview with Howard Sweet, *supra* note 70.

administered informal probate or a simple do-it-yourself affidavit transfer. On the other hand, the estates previously settled under summary procedures, even if relatively few in number, would be forced to give up the ease or safeguards of the current options.

Alternatively, a clear niche for a single summary procedure may be defined in the probate continuum.²²⁸ First, a unified summary procedure eliminates confusion or redundancy between summary settlement and summary assignment. Second, the availability of transfers by affidavit should be narrowed to allow only successors to the property to use an affidavit.²²⁹ If transfers by affidavit are limited to successors to the property, all other parties would be required to use summary settlement, informal probate, or formal probate. Third, an additional narrowing of the affidavit transfer would direct real property to be transferred under summary, informal, or formal probate proceedings but not by affidavit. If real estate were settled only through a court-supervised probate proceeding, then issues of title, liens, and multiple recipients would be properly resolved. Finally, retaining a summary procedure within the probate continuum continues to offer an option that is simple yet includes the benefits of recorded documents and court supervision to protect survivors or creditors.

C. Textual Problems in Current Statutes

In addition to revising the content of the statutory procedures, good drafting conventions assist all users in understanding the provisions. Statutory drafting, specifically, format and language, is an important matter for comprehension and clarity.²³⁰ This Section looks at statutory-drafting conventions and structural concerns of consistency, parallel provisions, and elimination of redundancy. Furthermore, this Section addresses simplicity of language and sentence structure.

228. With the number of estates that may be settled under a given probate procedure as one measure of the procedure's usefulness, a simplified summary procedure will certainly regain numbers of estates previously settled unnecessarily with informal probate or settled improperly with affidavit transfers. Likewise, further restrictions on transfers by affidavit would shift some additional estates into the summary-procedure category. Of course, offering survivors choices for estate settlement, regardless of the number of estates that may be settled, may have inherent value.

229. Requiring the affiant to be the successor to the property may give some survivors pause if they are uncertain whether they are the proper recipient. Such pause would be appropriate and would likely prompt those survivors to resolve the uncertainty by seeking legal counsel or pursuing estate settlement with court proceedings under summary procedure. Likewise, trustees or attorneys who properly seek to use an affidavit would likely be undeterred by such a requirement.

230. Averill, *supra* note 110, at 906.

Finally, this Section considers gaps in the current provisions and offers proposals for revision.

1. STRUCTURE OF STATUTES SHOULD BE CONSISTENT AND PARALLEL

Statutory structure relates largely to the drafting style adopted by a given state and can relate to the current considerations from a comprehensive level to a specific level. On the comprehensive level, the summary procedures of chapter 867 should be reviewed with an eye to contemporary drafting principles that are used for any new legislation.²³¹ Suggestions include format, word choice, and sentence length.²³²

On the intermediate level—looking at Wisconsin’s probate code as a whole—consistency and parallel structure are most critical. Again, format, word choices, and sentence length are important.²³³ The sections of the probate code that were revised in 1998 could be a starting point for consistency and parallelism. Definitions should be added.²³⁴ Certain processes—such as proving a will, appointing a personal representative or special administrator, and giving notice to interested parties—are common across the probate code and should be as consistent as possible in structure and language.

Finally, at the specific level, consistency and parallelism would enhance the summary procedures of chapter 867. Several examples within summary settlement and summary assignment demonstrate the current lack of parallel structure.²³⁵

2. STRUCTURE OF STATUTES SHOULD ELIMINATE REDUNDANCIES

Streamlining the current statutes by eliminating redundancies is another recommendation for revision. First, the procedures for summary settlement and summary assignment should be combined, with options noted within a single section. Again, the UPC procedures, especially as adopted by neighboring states, offer models. Additionally, the statute should add definitions for frequently used concepts.²³⁶ For example, the transfer-by-affidavit statute refers to “any heir of the decedent, trustee of a revocable trust created by the decedent, or person

231. LEGISLATIVE REFERENCE BUREAU, WISCONSIN BILL DRAFTING MANUAL 2007–08 (2007).

232. *Id.* at 37.

233. *Id.* at 37–38.

234. *See, e.g., supra* notes 123–24.

235. *See supra* Part II.C.1.

236. LEGISLATIVE REFERENCE BUREAU, *supra* note 231, at 39.

who was guardian of the decedent at the time of the decedent's death,"²³⁷ and that class of people could be defined with a term such as *successor*.

Likewise, with transfers by affidavit, the current separate section relating to the DHFS could be incorporated into a single general section on transfer by affidavit. Such an incorporation could be similar to that of Minnesota's statute, which simply names a county or state agency with an authorized claim as a potential successor.²³⁸

Wisconsin's confirmation of property interest is currently covered under two subsections, and they should be scrutinized for potential consolidation.²³⁹ Such consolidation may provide additional clarity that could address future disputes like that in *Maciolek*.

No serious controversy or concern relating to termination of joint tenancies, termination of life estates, and determination of descent has been expressed; however, these sections may be reasonably relocated elsewhere in the probate code.²⁴⁰ The Wisconsin provisions for special administration are distributed over eight sections,²⁴¹ and consolidation could streamline those provisions as well. Likewise, the special-administration provisions could be reasonably relocated elsewhere, such as in the section relating to personal representatives.²⁴²

3. DETAILS SHOULD REFLECT SIMPLICITY OF LANGUAGE AND SIMPLICITY OF SENTENCE STRUCTURE

In addition to statutory consistency and format, word choice and sentence structure should be scrutinized for clarity and comprehension. Again, current drafting conventions and generally accepted probate-code terminology can assist the process. Word choices and definitions should be standardized, and sentence length and paragraph format should be made readable. For example, the unwieldy paragraph on the general use of affidavit transfers describes three types of affiants, at least four types of property, and three affidavit requirements—all within one long sentence.²⁴³

237. WIS. STAT. § 867.03(1g) (2005–06).

238. MINN. STAT. § 524.3-1201 (2006).

239. WIS. STAT. § 867.046(1m), (2).

240. *See, e.g., id.* § 865.20 (providing for termination of joint tenancy or life estate under informal probate).

241. *Id.* §§ 867.07–.21.

242. *See, e.g., UNIF. PROBATE CODE* §§ 3-601 to -618 (amended 2006) (providing for all actions and responsibilities of personal representatives and special administrators in one part).

243. WIS. STAT. § 867.03(1g).

4. GAPS SHOULD BE IDENTIFIED AND FILLED

Summary procedures of chapter 867 reveal several gaps. These include the statutes’ failure to address wills in the various provisions, all types of assets that are subject to confirmation of property interests, and remedies for abuse of transfers by affidavit. Filling these gaps will require policy makers’ thoughtful consideration and input from those who use the procedures, especially registers in probate, attorneys, and lay people.²⁴⁴

5. PRINCIPLES AND PROPOSALS OF GOOD LEGISLATIVE-DRAFTING STYLE

The preceding discussion explains four areas for statutory improvement through drafting style. First, revised summary procedures must conform to the statutory scheme and style of all state statutes, the rest of the probate code, and the internal nature of chapter 867. Second, redundancies should be eliminated. Third, the details should be clear and understandable in language and format. Fourth, additions to fill in gaps will address concerns raised by litigation, controversies, and studies.

CONCLUSION

With nearly as many estates settled by summary procedures as by formal probate annually in Wisconsin,²⁴⁵ chapter 867 serves an important niche in the probate code, especially for poor families and others with probate assets under \$50,000. The various controversies and statutory confusions indicate a need for improvement in the actual provisions as well as improvement in the drafting of the statutes. With careful consideration of the UPC, comments of those who use the statutes, and contemporary drafting style, a much improved chapter for probate summary procedure could result in a sensible, useful, and complete continuum of options for all types of estates.

244. Averill, *supra* note 110, at 902, 917–18 (commenting that studies and surveys, especially of actual probate effectiveness and “what most people would want,” could assist in revising probate statutes).

245. For example, in 2005, Wisconsin courts settled 1452 estates with formal probate and documented 1331 various probate summary procedures, not counting any transfers by affidavit, which are unrecorded. 2005 OFFICE OF COURT OPERATIONS REPORT, *supra* note 2.