

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

MEMORANDUM

Date: March 24, 2015
To: Representative Olson, Chair
House Labor and Commerce Committee
From: Representative Josephson
Re: Additional Documents for House Bill 114

Representative Olson:

Attached are statutes relating to intestate succession. Please include these in the committee packet for the committee members to reference in the instance that they have questions about unclaimed estates.

Best Regards,

A handwritten signature in cursive script that reads "Andy Josephson".

Chapter 13.12. INTESTACY, WILLS, AND DONATIVE TRANSFERS

Editors Notes -

Section 19, ch. 75, SLA 1996, provides, in regard to the enactment of this chapter by Sec. 3, ch. 75, SLA 1996, as follows: "(a) Except as otherwise provided in (b) of this section or in this Act,

"(1) this Act applies to the governing instruments executed by decedents dying on or after January 1, 1997;

"(2) this Act applies to a proceeding in court pending on or begun on or after January 1, 1997, regardless of the time of the death of the decedent, except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of the infeasibility of applying the procedures of this Act;

"(3) an act done before January 1, 1997, in any proceeding and an accrued right are not impaired by this Act; if a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that began to run under a statute before January 1, 1997, the provisions of the statute apply to that right on and after January 1, 1997;

"(4) a rule of construction or presumption provided in this Act, applies to governing instruments executed before January 1, 1997, unless there is a clear indication of a contrary intent.

"(b) AS 13.33.301, 13.33.302, 13.33.303, 13.33.304, 13.33.305, 13.33.306, 13.33.307, 13.33.308, 13.33.309, and 13.33.310, enacted by sec. 12 of this Act, apply to registrations of securities in beneficiary form made before, on, or after January 1, 1997, by decedents dying on or after January 1, 1997.

"(c) In this section, "court," "governing instrument," and "proceeding" have the meanings given in AS 13.06.050, amended by sec. 2 of this Act."

Collateral Refs -

Regan, Morgan, and English, Tax, Estate & Financial Planning for the Elderly (Matthew Bender).

Fiore, Friedlich, Chevat, and McInerny, Modern Estate Planning (Matthew Bender).

Freeman and Rapkin, Planning for Large Estates (Matthew Bender).

Gilfix, Morgan, and English, Tax, Estate & Financial Planning for the Elderly: Forms and Practice (Matthew Bender).

Joseph H. Murphy, Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

J.K. Lasser Institute, Estate Tax Techniques (Matthew Bender).

Article 01. INTESTATE SUCCESSION

Sec. 13.12.101. Intestate estate.

(a) A part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in AS 13.06 - AS 13.36, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share of the individual or member.

History -

(Sec. 3 ch 75 SLA 1996)

Decisions -

Real property descends directly to the heir upon the death of the ancestor "subject to his debts." *Binswanger v. Henninger*, 1 Alaska 509 (1902).

Individual property. - Boat and skiff were properly treated as the individual property of an intestate decedent's husband, even though they were purchased during the marriage with marital funds, because his name alone was on the title and thus he was the presumptive owner. The equitable distribution framework for divorce proceedings does not apply in probate proceedings. *Pestrikoff v. Hoff*, 278 P.3d 281 (Alaska 2012).

And probate jurisdiction lies only to enforce liens. - The heir obtains title by descent, and not through the process of the probate court. His title vests immediately upon the death of the ancestor, and the only jurisdiction through probate lies to enforce the lien of the ancestor's debts against the real property. If there are no debts, the heir becomes vested at once with a complete title. *Binswanger v. Henninger*, 1 Alaska 509 (1902).

Collateral Refs -

23 Am. Jur. 2d, Descent and Distribution, Sec. 1 et seq.

26A C.J.S., Descent and Distribution, Sec. 1 - 115.

Family settlement of intestate estate. 29 ALR3d 174.

Subsequently discovered will: right to probate subsequently discovered will as affected by completed prior proceedings in intestate administration. 2 ALR4th 1315.

Sec. 13.12.102. Share of spouse.

(a) Except as provided in (b) of this section, the intestate share of a decedent's surviving spouse is

(1) the entire intestate estate if

(A) no descendant or parent of the decedent survives the decedent;

or

(B) all of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;

(2) the first \$200,000, plus three-fourths of any balance of the intestate

estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

(3) the first \$150,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first \$100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

(b) The intestate share of the surviving spouse in settlement common stock or other inalienable stock in a corporation organized under the laws of the state under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is

(1) all of it if there is no surviving issue; or

(2) one-half of it if the decedent is survived by issue.

History -

(Sec. 3 ch 75 SLA 1996; am Sec. 17 ch 56 SLA 2005)

Amendment Notes -

The 2005 amendment, effective June 25, 2005, updated a federal reference in subsection (b).

Decisions -

Superior court did not err in approving method of distribution of wrongful death proceeds not in accord with Alaska's laws governing inheritance of intestate estates. - See *Horsford v. Estate of Horsford*, 561 P.2d 722 (Alaska 1977) (decided under former AS 13.11.010).

Cited in *Engbreth v. Moore*, 567 P.2d 305 (Alaska 1977) (decided under former AS 13.11.010).

Collateral Refs -

23 Am. Jur. 2d, Descent and Distribution, Sec. 108 - 133.

26A C.J.S., Descent and Distribution, Sec. 48 - 60.

Separation agreement as affecting right of inheritance. 34 ALR2d 1020.

What passes under provision of will that spouse shall take share of estate allowed or provided by law, or a provision of similar import. 36 ALR2d 147.

Rights in decedent's estate as between legal and putative spouse. 81 ALR3d 6.

Sec. 13.12.103. Share of heirs other than surviving spouse.

A part of the intestate estate not passing to the decedent's surviving spouse under AS 13.12.102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents,

half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

History -

(Sec. 3 ch 75 SLA 1996)

Decisions -

Distribution by paragraph (3) of former law. - Paragraph (3) distributes the intestate's estate to the issue of his parents when he dies without surviving spouse, issue, or parent. *Smith v. Estate of Peters*, 741 P.2d 1172 (Alaska 1987) (decided under former AS 13.11.015).

Culturally adopted daughter and heir of a deceased shareholder of a native corporation was entitled under the Alaska laws of intestate succession to receive shares of the corporation stock in which the supreme court applied the doctrine of equitable adoption. *Calista Corp. v. Mann*, 564 P.2d 53 (Alaska 1977) (decided under former AS 13.11.015).

Superior court did not err in approving method of distribution of wrongful death proceeds not in accord with Alaska's laws governing inheritance of intestate estates. - See *Horsford v. Estate of Horsford*, 561 P.2d 722 (Alaska 1977) (decided under former AS 13.11.015).

Collateral Refs -

23 Am. Jur. 2d, Descent and Distribution, Sec. 41 - 107.

26A C.J.S., Descent and Distribution, Sec. 19 - 47.

What law, in point of time, governs as to inheritance from adoptive parent. 18 ALR2d 960.

Descent and distribution to nieces and nephews as per stirpes or per capita. 19 ALR2d 191.

Descent and distribution to and among cousins. 54 ALR2d 1009.

Descent and distribution to and among uncles and aunts. 55 ALR2d 634.

Descent and distribution from stepparents to stepchildren or vice versa. 63 ALR2d 303.

Sec. 13.12.104. Requirement that heir survive decedent for 120 hours.

An individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the state under AS 13.12.105.

History -

(Sec. 3 ch 75 SLA 1996)

Sec. 13.12.105. No taker.

If there is no taker under this chapter,

(1) personal property in the intestate estate passes to the state and is subject to AS 34.45.280 - 34.45.780; if notice to heirs, substantially equivalent to that required by AS 34.45.310, has been given by the personal representative or other person, AS 34.45.310 does not apply;

(2) real property in the intestate estate passes to the state and is subject to AS 38.95.200 - 38.95.270.

History -

(Sec. 3 ch 75 SLA 1996)

Decisions -

An action between the state and a bank as to the right to the possession of a deposit is a proceeding in rem. *Territory of Alaska v. First Nat'l Bank*, 41 F.2d 186 (9th Cir. 1930).

Bank is protected by judgment directing delivery of deposit to state. - Turning a bank deposit over to the state in obedience to a valid judgment would fully protect the bank. *Territory of Alaska v. First Nat'l Bank*, 22 F.2d 377 (9th Cir. 1927).

Sec. 13.12.106. Representation.

(a) If, under AS 13.12.103(1), all or part of a decedent's intestate estate passes by representation to the decedent's descendants, the estate or part of the estate passing is divided into as many equal shares as there are

(1) surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and

(2) deceased descendants in the same generation who left surviving descendants, if any.

(b) Under (a) of this section, each surviving descendant in the nearest generation is allocated one share, and the remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(c) If, under AS 13.12.103(3) or (4), all or part of a decedent's intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate passing is divided into as many equal shares as there are

(1) surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and

(2) deceased descendants in the same generation who left surviving descendants, if any.

(d) Under (c) of this section, each surviving descendant in the nearest generation is allocated one share, and the remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(e) In this section, "deceased descendant," "deceased parent," or "deceased

grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under AS 13.12.104.

History -

(Sec. 3 ch 75 SLA 1996)

Sec. 13.12.107. Kindred of half blood.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

History -

(Sec. 3 ch 75 SLA 1996)

Sec. 13.12.108. After-born heirs.

An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

History -

(Sec. 3 ch 75 SLA 1996)