

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 6, 1963

CHAPTER 38

AN ACT

Relating to decedents' estates; and providing for an effective date.

(C.S.S.B. 39)

Be it enacted by the Legislature of the State of Alaska:

Section 1. AS 13.05.010 is amended to read:

Sec. 13.05.010. **Who May Make.** Every person of sound mind who is 19 or more years of age may devise by last will all his property, real or personal, under the rules and limitations provided by law.

Sec. 2. AS 13.05 is amended by adding a new section to read:

Sec. 13.05.105. **Election to Surviving Husband or Wife.** (a) If a testator or testatrix leaving a surviving wife or husband bequeaths or devises away from the surviving wife or husband more than two-thirds of his or her net estate, the surviving wife or husband, in his or her option and notwithstanding the will, may take and receive one-third of the net estate of the testator or testatrix. The right to receive one-third of the net estate may be waived in writing in a premarital or submarital agreement.

(b) The surviving wife or husband must exercise the option by filing in the court in which the will is admitted to probate, within three months, his or her election, in writing, to take and receive one-third of the net estate unless election has been waived by a premarital or submarital agreement. Upon the filing of the election within that time, the will is inoperative as to that one-third of the net estate. The failure to make and file the election within the three-month period is conclusive evidence of the consent of the surviving wife or husband to the provisions of the will.

(c) If the surviving spouse is incompetent, the guardian of the spouse or, if there is no guardian, the court shall

make the election for the spouse which is considered more advantageous to the spouse, and the election is considered as effectual as if made by a competent spouse.

(d) The election set out in this section may be made and filed within three months from the admission to probate of any will admitted to probate before the effective date of this section. Failure to make and file the election within the period of three months is conclusive evidence of the consent of the surviving wife or husband to the provisions of the will.

Sec. 3. AS 13.05.120 is repealed and re-enacted to read:

Sec. 13.05.120. **Subsequent Marriage or Divorce.** (a) A will made by an unmarried person is revoked by his or her subsequent marriage unless provision has been made for the spouse by some settlement or prenuptial agreement, or unless the spouse is provided for by name in the will.

(b) A divorce subsequent to the making of a will revokes the will as to the divorced spouse.

Sec. 4. AS 13.15.130 is amended to read:

Sec. 13.15.130. **Limitation on Contest of Wills.** (a) When a will has been admitted to probate, any person interested may, at any time within three months after the entry of the order of probate, contest the will or its validity.

(b) If a person entitled to contest the probate of a will or its validity is laboring under any legal disability, the time in which he may institute the contest is extended three months from and after the removal of the disability or three

months from and after the appointment of a guardian ad litem or a guardian of the estate of the person laboring under the legal disability.

(c) A foreign will may be contested and annulled within the same time and in the same manner as wills executed and proven in the state.

Sec. 5. AS 13.20.010(2) is amended to read:

(2) minors under 19 years of age, except as provided in sec. 20 of this chapter;

Sec. 6. AS 13.20.020 is amended to read:

Sec. 13.20.020. **Nonresidents and Minors as Executors.** If a person is named in a will as executor who is a nonresident of the state or a minor under 19 years of age, upon the removal of the disability, he is entitled to qualify as the executor, if he applies within 30 days from the removal of the disability, if he is otherwise competent. If, in the meantime, the administrator with the will annexed has been appointed, his powers and duties cease with the qualification of the executor. If another executor has qualified and is acting as such, they become joint executors. However, a person named as executor who is a resident at the time of this appointment but becomes a nonresident, or a person who is a nonresident at the time of his appointment as an executor and does not become a resident may qualify to serve or to continue to serve as executor by filing a bond to be approved by the judge and, in addition, the executor shall appoint a lawyer who practices law in the judicial district in which the estate is being probated upon whom service of all papers may be made. The appointment shall be in writing and shall be filed in the court with all other papers of the estate.

Sec. 7. AS 13.20.030 is amended to read:

Sec. 13.20.030. **Letters Testamentary and Letters of Administration with Will Annexed.** When a will is proven, letters testamentary are issued to the person, persons, corporation, or national or state banking association named as executor or executors, or to such of them as give notice of their acceptance of the trust

and are qualified. If all the persons, corporations, or national or state banking associations named decline to accept or are disqualified, letters of administration with the will annexed are issued to the person to whom the administration would have been granted if there had been no will.

Sec. 8. AS 13.20.040(3) is amended to read:

(3) any other person, corporation, or national or state banking association competent and qualified whom the court may select.

Sec. 9. AS 13.20 is amended by adding a new section to art. 4 to read:

Sec. 13.20.325. **Variance with Uniform Act.** Secs. 270-320 of this chapter govern, notwithstanding a conflict between these sections and the Uniform Partnership Act (AS 32.05).

Sec. 10. AS 13.30 is amended by adding new sections to read:

Sec. 13.30.002. **Collection of Personal Property by Distributees.** The distributees of an estate are entitled to the personal property of the estate without awaiting the appointment of a personal representative or the probate of a will if

(1) no petition for the appointment of a personal representative is pending or has been granted;

(2) 30 days have elapsed since the death of the decedent;

(3) the value of the entire assets of the estate does not exceed \$2,000;

(4) there are no known creditors, and no inheritance tax is due; and

(5) there is furnished to any person owing money to the estate or having custody of property or evidence of interest in property of the estate an affidavit showing the existence of the conditions set out in this section and the right of the distributees to receive the money or property or to have the evidence transferred.

Sec. 13.30.003. **Determination of Title to Real Property.** (a) The distributees of an estate are entitled to the real property of the estate and may make record evidence of title without the appointment

of a personal representative or the probate of a will if

(1) no petition for the appointment of a personal representative is pending or has been granted;

(2) 30 days have elapsed since the death of the decedent;

(3) the value of the entire assets of the estate does not exceed \$2,000;

(4) there are no known creditors, and no inheritance tax is due;

(5) there is furnished to any person having custody of real property of the estate or acting as registrar or transfer agent of any evidence of interest, property, or right in the estate an affidavit showing the existence of the conditions set out in (1) - (4) of this section and the right of the distributees to receive the property or to have the evidence transferred;

(6) there is recorded in the office of the recorder of each recording district where the real property is situated an affidavit executed by any person having knowledge of the facts showing the existence of the conditions set out in (1) - (5) of this section, describing the real property, naming the persons entitled to the property, and showing their right to succeed to the property, and stating that there are no unsecured claims against the decedent or his estate, including the expenses of the funeral and last illness;

(7) a notice is published in a newspaper of general circulation in each judicial district in which the property is located not less than once a week for four successive weeks; the notice shall describe the real property, state that an affidavit has been recorded on behalf of the persons who claim to be entitled to succeed to the real property showing the names of the distributees and their right to succeed to the property, and notify all persons having claims against the decedent or his estate to file a petition for the appointment of a personal representative within three months after the first publication of the notice or be barred from asserting a right or claim against the real property described;

(8) there is recorded in the office of the recorder in each recording district in which the property is situated proof

of publication of the notice; and

(9) no petition for the appointment of a personal representative is filed within three months after the first publication of the notice.

(b) The occurrence of the conditions in (a) of this section has the same effect in establishing the right of distributees to succeed to the real property as if complete administration had occurred; but nothing in this section affects the rights of secured creditors with respect to real property or the right of the state to collect inheritance taxes.

Sec. 13.30.004. Effect of Affidavit.

The person making payment, delivery, transfer, or issuance under the affidavit described in secs. 2 and 3 of this chapter is released to the same extent as if the person had made payment, delivery, transfer, or issuance to a personal representative of the decedent. The person is not required to see to the application of the payment, delivery, transfer, or issuance, or to inquire into the truth of any statement in the affidavit. The distributees to whom payment, delivery, transfer, or issuance is made are answerable to any person having a prior right and are accountable to any personal representative subsequently appointed.

Sec. 13.30.005. Suit by Distributees. If the person to whom the affidavit described in secs. 2 and 3 of this chapter is delivered refuses to pay, deliver, transfer, or issue the property as provided in secs. 2 - 4 of this chapter, it may be recovered or compelled in an action brought for that purpose by or on behalf of the distributees entitled to it upon proof of the facts required to be stated in the affidavit.

Sec. 13.30.006. Settlement Directed by Court. When a judge receives information that a person has died in his judicial district leaving an estate of \$2,000 or less and no qualified person has appeared to take charge of the assets, the judge may immediately appoint some person, corporation, or attorney to settle the estate in the manner provided for in settlement of estates of \$2,000 or less, or the appointee may administer the estate in the manner provided for in the administration of estates of \$6,000 or less.

Sec. 11. AS 13.30.010 is amended to read:

Sec. 13.30.010. **Notice to Creditors.** If, in the administration of the estate of a deceased person in the state, the appraisal of the property shows the value of all of the property of the estate is \$6,000 or less, the judge may, in his discretion, order that no notice to creditors be published as is required by law in the administration of estates of deceased persons, and the judge may order that the notices to creditors be posted instead in three public places in the judicial district in which the estate is being administered. The posted notices shall require all persons having claims against the estate to present them to the executor or administrator with proper vouchers within 60 days from the date of posting the notices.

Sec. 12. AS 13.30.020 is amended by adding a subsection (c) to read:

(c) The judge may permit the executor or administrator to lease or mortgage any property of the estate if he considers it in the best interest of the estate.

Sec. 13. AS 13.30.030(a) is amended to read:

(a) At the expiration of 60 days from the date of posting the notices to creditors, the executor or administrator shall file in court his final report and account with proper vouchers. The report and account shall be in the form and contain the information required by law in estates having the value of more than \$6,000. Upon the filing of the report and account, the judge shall require that notice of it be given by posting notices to that effect in three public places in the judicial district. The notices shall also state that, at a certain time not less than 10 days after the date of posting the notices, a hearing will be had by the judge upon the final report and account and of any objections.

Sec. 14. AS 13.30.050 is amended to read:

Sec. 13.30.050. **Notice of Hearing on Final Report and Account Not Required.** If estates are valued at \$6,000 or less, as provided in sec. 10 of this chapter, it is not necessary to publish a notice of hearing upon the final report and account of the executor or administrator as is required in other cases. Upon the report of the executor or administrator

showing that the order or decision of the judge on the final report and account has been complied with, the executor or administrator may be discharged.

Sec. 15. AS 13.30.100 is amended to read:

Sec. 13.30.100. **Preservation of Property before Administration.** The judge is empowered within his judicial district, when the occasion requires, to take charge of and preserve, before administration, the property and estates of a deceased person subject to administration under secs. 1 - 100 of this chapter. Upon the appointment of an executor or an administrator of the estate of a decedent which may have been taken in charge by a judge, the judge shall deliver all the property of the estate which has come into his possession to the executor or administrator, together with a statement of his expense in connection with the care and preservation of the property and estate. All necessary expenses incurred by a judge for the care and preservation of an estate under this section are a charge against the estate and shall be paid by the executor or administrator as a part of the expenses of the administration.

Sec. 16. AS 13.30 is amended by adding a new section to read:

Sec. 13.30.111. **Procedure in Nonintervention Wills.** If the last will and testament of a decedent provides that the estate shall be settled without the intervention of any court, title of the decedent passes to the devisees or heirs on death. It is necessary only that the executor, or person or corporation nominated in his place if he fails to serve, submit the will to the court, prove it, secure letters testamentary, file an inventory, and submit proof of solvency. Thereafter, the estate shall be managed and settled without the intervention of any court. However, notice to creditors requiring them to submit their claims within three months shall be published once each week for four weeks in a newspaper of general circulation in the judicial district where the will is probated. The party probating the will may file a final account with the court if he desires, and he shall make a report of any inheritance tax due the state or the United States and pay the same from estate funds. Nothing contained in this

section shall be construed to prevent the court from ordering the filing of a final account if a petition demanding a final account is filed by an heir, devisee, legatee, creditor, the state or federal government, or a person showing he is adversely affected by failure to file the account.

Sec. 17. AS 13.30.150 is amended to read:

Sec. 13.30.150. Award of Entire Estate. No other or further awards to the widow and children shall be made from the estate of the decedent for her or their maintenance and support except that, should the value of the estate not exceed \$500 over and above \$8,000, the judge may, upon petition filed for that purpose, by decree provide that the whole estate, after payment of funeral expenses, expenses of last illness, and of administration be set apart for the widow and minor children in like manner and with like effect as in other cases under secs. 120 - 150 of this chapter providing for the support of the widow and minor children.

Sec. 18. AS 13.30.250 is amended to read:

Sec. 13.30.250. Notice to Creditors. Every executor or administrator shall, immediately after his appointment, publish a notice thereof in some newspaper published in the judicial district, if there is one, or otherwise in a paper as may be designated by the judge, once a week for four successive weeks. In case of publication in a paper published outside the judicial district, the executor or administrator shall also post a notice in at least three public places to be designated by the judge in his order, one of which shall be at or immediately adjacent to the post office nearest the residence of the decedent at the time of his death. The notice shall require all persons having claims against the estate to present them with proper vouchers, within three months from the date of the notice, to the executor or administrator, at a place within the judicial district specified. Before the expiration of the three months, a copy of the notice as published with the proper proof of publication shall be filed with the judge.

Sec. 19. AS 13.30.260 is amended to read:

Sec. 13.30.260. Time for Presenting Claims. A claim not presented within three months after the first publication of the notice is not barred, but it cannot be paid until the claims presented within that period have been satisfied, and, if the claim is not then due or if it is contingent, it shall, nevertheless, be presented as any other claim. Until the administration has been completed, a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable.

Sec. 20. AS 13.30.340 is amended to read:

Sec. 13.30.340. Order of Payment. The charges and claims against the estate which have been presented and allowed, or presented and disallowed but subsequently established by judgment within the first three months after the date of the notice of appointment of the executor or administrator, except when a longer period is allowed if the claim is in litigation, shall be paid in the following order, and those presented and allowed or established in like manner and with each succeeding period of three months during the continuance of the administration in the same manner;

(1) funeral charges and expenses of last illness;

(2) taxes of whatever nature due the United States for which lien claim has been filed for record in accordance with AS 43.10.090;

(3) taxes of whatever nature due the state for which it holds a prior, paramount lien;

(4) all other taxes of whatever nature to whomsoever due and all debts which at decedent's death were a lien upon his property or a right or interest therein according to the respective priority of the several liens of the taxes and debts;

(5) wages earned by employees of decedent within the 90 days immediately preceding the death of the decedent;

(6) debts preferred by the bankruptcy laws of the United States; and

(7) all other claims against the estate.

Sec. 21. AS 13.30.360 is amended to read:

Sec. 13.30.360. **Proration.** Except as specially provided in secs. 340 and 350 of this chapter, if the estate is insufficient to pay all the claims and charges of any one class, payable within any period of three months during the administration, as provided in sec. 340 of this chapter, each creditor of the class is paid in proportion to the amount of his claim and not otherwise.

Sec. 22. AS 13.30.490 is amended to read:

Sec. 13.30.490. **Order for Sale of Real Property.** If, upon the hearing, the judge finds it is necessary that the real property or any portion of it should be sold, he shall make the order accordingly and prescribe the terms of the sale, whether for cash, credit, or both, and, if the property cannot be divided without probable injury and loss to the estate, he may order that it or any specific lot or portion of it be sold wholly, whether otherwise necessary or not. The judge may order that the real property be sold at private sale if he considers it in the best interest of the estate.

Sec. 23. AS 13.30.500 is repealed and re-enacted to read:

Sec. 13.30.500. **Terms and Manner of Sale.** (a) Upon the order's being made, the executor or administrator shall sell the property therein specified upon the terms and in the manner directed.

(b) If the order does not specify the manner of sale, then the sale shall be made in the same manner as property is sold on execution. However, the judge may, if he considers it best, order the property to be sold on the premises. When the property is offered for sale in the same manner as property is sold on execution, and no bid or acceptable bid is received, the judge shall, upon application of the executor or administrator, direct that the property may be sold at a private sale.

(c) When the sale is upon credit, the executor or administrator shall take the note of the purchaser for the purchase money, with a mortgage upon the prop-

erty to secure payment.

Sec. 24. AS 13.30 is amended by adding a new section to art. 6 to read:

Sec. 13.30.675. **Request by Heirs to Sell Real Property.** When all claims, debts, and expenses have been paid and real property remains in the hands of the executor or administrator, he may sell the real property if the heir or heirs so direct in a written request which has been acknowledged as in a deed and filed in the court having the probate of the estate.

Sec. 25. AS 13.30.680 is amended to read:

Sec. 13.30.680. **Executor or Administrator.** An executor or administrator shall, within three months from the date of the notice of his appointment, and within every six months thereafter until the administration is completed and he is discharged from his trust, render an account, verified by his own oath, and file it with the judge, showing the amount of money received and expended by him and from whom received and to whom paid, with the proper vouchers for the payments; the amount of the claims presented against the estate and allowed or disallowed and the name of the claimants of each; and any other matter necessary to show the condition of the affairs thereof.

Sec. 26. AS 13.30.700 is amended to read:

Sec. 13.30.700. **Order to Pay Claims and Expenses.** Within 30 days after the filing of the first account and at each semiannual account, the judge shall ascertain and determine if the estate is sufficient to satisfy the claim allowed by the executor or administrator, within the first three months or any succeeding period within six months after the date of the notice of his appointment, after paying the funeral charges and expenses of administration; and if so, he shall so order and direct. If the estate is insufficient for that purpose, he shall ascertain what per cent of the claims it is sufficient to satisfy, and order and direct accordingly.

Sec. 27. AS 13.30.710(a) is amended to read:

(a) When the estate is fully administered, it is the duty of the executor or

administrator to file his final account except in a nonintervention will when no order requires the filing of a final account as set out in sec. 111 of this chapter. The account shall be verified and contain a detailed statement of the amount of money received and expended by him, from whom received and to whom paid, and refer to the vouchers for payments, and the amount of money and property remaining unexpended or unappropriated. Upon the filing of the final account, the judge shall make an order setting the time and place for hearing objections to the final account, and directing notice of hearing to be given by publishing the order one time in a newspaper of general circulation in the judicial district, and posting notices in three public places in the judicial district for not less than 30 days.

Sec. 28. AS 13.30.870 is amended to read:

Sec. 13.30.870. **Partial Distribution.** At any time after the filing of the first account, an heir, devisee, or legatee may apply to the judge by petition for an order that he have the possession and rents and profits of the portion of the real property to which he may be entitled, and that payment be made to him of his legacy or distributive share of the personal property of the estate.

Sec. 29. AS 13.45.020(a) is amended to read:

(a) In this title

(1) "will" is construed to include all codicils as well as wills;

(2) "distributee" denotes a person who is entitled to the real and personal property of a decedent under will or under statutes of descent and distribution.

Sec. 30. AS 13.10.140, 13.15.010(8), 13.15.020, 13.15.040, 13.20.070, 13.20.080, 13.30.-060 - 13.30.090, 13.30.110, 13.30.920 - 13.30.-940, 13.40.010 - 13.40.030, and AS 13.35 are repealed.

Sec. 31. This Act takes effect on July 1, 1963, subject to the following provisions:

(1) All wills made under the law of this state as it existed before July 1, 1963, are valid if valid under that former law. However, if the will is amended, revoked, or added to after June 30, 1963, the validity of the entire will is governed by this Act.

(2) The provisions of this Act govern all proceedings in probate brought after June 30, 1963, and also all further procedure in proceedings in probate then pending. However, if the application of this Act in proceedings or parts thereof commenced under the law of this state as it existed before July 1, 1963, would not be feasible or would work injustice, the court may apply the former statutory provisions.

Approved April 9, 1963

CHAPTER 39

AN ACT

Relating to the deposit of state funds by the Department of Revenue.

(S.B. 104)

Be it enacted by the Legislature of the State of Alaska:

Section 1. AS 43.05.150(b) is amended to read:

(b) Before the department may deposit state funds in a bank, the bank shall (1) deposit with the department, as collateral security to secure the funds, bonds or other securities which are eligible to secure deposits of the United

States, the aggregate market value of which is at all times at least equal to the funds deposited; or (2) deposit other good bonds whose aggregate market value is at all times at least 20 per cent more than the deposits secured, and mortgages insured by the United States under the National Housing Act (approved June 27, 1934); or (3) furnish evidence satisfactory to the department that the required collateral secur-