



LAWS OF ALASKA

1973

Source

HCSSB 140

Chapter No.

56

AN ACT

Relating to the Uniform Probate Code; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 13.06.050(11) is amended to read:

(11) "estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code as originally constituted and as it exists from time to time during administration;

* Sec. 2. AS 13.11.090(a) is amended to read:

(a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative a petition for the elective share within six months after the first publication of notice to creditors for filing claims which arose before the death of the decedent. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

* Sec. 3. AS 13.11.125 is amended to read:

ARTICLE 4. EXEMPT PROPERTY AND ALLOWANCES.

Sec. 13.11.125. HOMESTEAD ALLOWANCE. A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of \$12,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$12,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any

share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

- * Sec. 4. AS 13.11.130 is amended to read:

Sec. 13.11.130. EXEMPT PROPERTY. In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding \$3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than \$3,500, or if there is not \$3,500 worth of exempt property in the estate, the spouse is or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$3,500 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

- * Sec. 5. AS 13.11.135(a) is amended to read:

(a) In addition to the right to homestead allowance and exempt property allowance, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

- * Sec. 6. AS 13.11.140 is amended to read:

Sec. 13.11.140. SOURCE, DETERMINATION AND DOCUMENTATION. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property allowance. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt

property allowance. The personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property allowance. He may determine the family allowance in a lump sum not exceeding \$6,000 or periodic installments not exceeding \$500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

- * Sec. 7. AS 13.11.150 is amended to read:

Sec. 13.11.150. WHO MAY MAKE A WILL. Any person 18 or more years of age who is of sound mind may make a will.

- * Sec. 8. AS 13.11.173 is repealed.

- * Sec. 9. AS 13.11.225 is amended to read:

Sec. 13.11.225. CHOICE OF LAW AS TO MEANING AND EFFECT OF WILLS. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in secs. 70 - 100 of this chapter, the provisions relating to exempt property and allowances described in secs. 125 - 140 of this chapter, or any other public policy of this state otherwise applicable to the disposition.

- * Sec. 10. AS 13.11.300(b) is amended to read:

(b) For purposes of secs. 5 - 140 of this chapter and AS 13.16.065, a surviving spouse does not include

(1) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife,

(2) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

- * Sec. 11. AS 13.16.065(c) is amended to read:

(c) A person entitled to letters under (a)(2) - (5) of this section, and a person aged 18 and over who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person aged 18 and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

* Sec. 12. AS 13.16.080(1) is amended to read:

(1) Every application for informal probate of a will or for informal appointment of a personal representative other than a special or successor representative, shall contain the following:

(A) a statement of the interest of the applicant;

(B) the name, and date of death of the decedent, his age, and the judicial district and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(C) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(D) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(E) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

* Sec. 13. AS 13.16.115(b) is amended to read:

(b) Unless sec. 300 of this chapter controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in sec. 290(c) of this chapter has been appointed in a judicial district of this state, that (unless the applicant is the domiciliary personal representative or his nominee) the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

* Sec. 14. AS 13.16.255 is repealed and re-enacted to read:

Sec. 13.16.255. BOND REQUIRED; EXCEPTIONS. A personal representative shall execute and file a bond with the registrar unless

(1) the estate is testate and the will expressly waives surety bond as to the person qualifying as personal representative;

(2) the devisees or the heirs file written waiver of surety bond;

(3) the personal representative is a qualified corporate fiduciary; or

(4) the personal representative, pursuant to statute, has deposited cash or collateral with an agency of the state to secure performance of his duties.

* Sec. 15. AS 13.16.420 is amended to read:

Sec. 13.16.420. CO-REPRESENTATIVES: WHEN JOINT ACTION REQUIRED. If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and gives a receipt for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve with him or if advised by the personal representative with whom they deal that he has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

* Sec. 16. AS 13.16.470(a) is repealed and re-enacted to read:

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral expenses;

(3) debts and taxes with preference under federal law;

(4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(5) debts and taxes with preference under other laws of this state;

(6) all other claims.

* Sec. 17. AS 13.16.610(f) is amended to read:

(f) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code the determination

of the court in respect thereto shall be prima facie correct.

* Sec. 18. AS 13.21.010 is repealed.

* Sec. 19. AS 13.21.015 is amended to read:

Sec. 13.21.015. PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE WITHOUT LOCAL ADMINISTRATION. At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action, belonging to the estate of the nonresident decedent may pay the debt, and deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

(1) the date of the death of the nonresident decedent;

(2) that no local administration, or application or petition therefor, is pending in this state;

(3) that the domiciliary foreign personal representative is entitled to payment or delivery.

* Sec. 20. AS 13.21.020 is amended to read:

Sec. 13.21.020. PAYMENT OR DELIVERY DISCHARGES. Payment or delivery made in good faith under the provisions of sec. 15 of this chapter releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

* Sec. 21. AS 13.21.055 is amended to read:

Sec. 13.21.055. JURISDICTION BY ACT OF FOREIGN PERSONAL REPRESENTATIVE. A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in sec. 30 of this chapter, (2) receiving payment of money or taking delivery of personal property under sec. 15 of this chapter, or (3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (2) of this section is limited to the money or value of personal property collected.

* Sec. 22. AS 13.26.015(1) is amended to read:

(1) the minor, if he has attained the age of 18 years or is married;

* Sec. 23. AS 13.26.035 is amended to read:

Sec. 13.26.035. TESTAMENTARY APPOINTMENT OF GUARDIAN OF MINOR. The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under sec. 40 of this chapter, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation.

- * Sec. 24. AS 13.26.040 is amended to read:

Sec. 13.26.040. OBJECTION BY MINOR OF 14 OR OLDER TO TESTAMENTARY APPOINTMENT. A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee, or any other suitable person.

- * Sec. 25. AS 13.26.045 is amended to read:

Sec. 13.26.045. COURT APPOINTMENT OF GUARDIAN OF MINOR: CONDITIONS FOR APPOINTMENT. The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. A guardian appointed by will as provided in sec. 35 of this chapter whose appointment has not been prevented or nullified under sec. 40 of this chapter has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

- * Sec. 26. AS 13.26.070(4) is amended to read:

(4) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by court on petition of any person interested in the minor's welfare or as required by court rule.

- * Sec. 27. AS 13.26.120 is amended to read:

Sec. 13.26.120. TERMINATION OF GUARDIANSHIP FOR INCAPACITATED PERSON. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in sec. 125 of this chapter. Testamentary appointment under an informally probated will terminates if the

will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

- * Sec. 28. AS 13.26.150(a)(4)(B) is amended to read:

(B) receive money and tangible property deliverable to the ward and apply the money and property for support, care and education of the ward; but, he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible; he must exercise care to conserve any excess for the ward's needs;

- * Sec. 29. AS 13.26.280(a) is amended to read:

(a) A conservator has all of the powers conferred herein and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of 18 years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in sec. 70 of this chapter until the minor attains the age of 18 or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by secs. 30 - 85 of this chapter.

- * Sec. 30. AS 13.26.280(c)(7) and (22) are amended to read:

(7) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(22) pay any sum distributable to a protected person or his dependent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

- * Sec. 31. AS 13.26.300(a) is repealed and re-enacted to read:

(a) A conservator shall pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitations relating to the claim until 30 days after its disallowance. A claim may be presented by either of the following methods:

(1) the claimant may deliver or mail to the

conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed;

(2) The claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court and deliver or mail a copy of the statement to the conservator.

* Sec. 32. AS 13.26 is amended by adding a new section to read:

Sec. 13.26.320. FOREIGN CONSERVATORS. If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a court in this state in a judicial district in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

* Sec. 33. AS 13.31.030 is amended to read:

Sec. 13.31.030. ACCOUNTS AND TRANSFERS NONTESTAMENTARY. Any transfers resulting from the application of sec. 20 of this chapter are effective by reason of the account contracts involved and are not to be considered as testamentary or subject to AS 13.06.005 - AS 13.21.075.

* Sec. 34. AS 09.55.570 is amended to read:

Sec. 09.55.570. ALL CAUSES OF ACTION SURVIVE. All causes of action by one person against another, whether arising on contract or otherwise, except those involving defamation of character, survive to the personal representatives of the former and against the personal representatives of the latter, but this shall not be construed so as to abate an action for a wrong where any party has died after the verdict or to defeat or prejudice the right of action given by AS 09.15.010. The personal representatives may maintain an action thereon against the party against whom the cause of action accrued, or, after his death, against his personal representatives.

* Sec. 35. AS 13.11.045(1) is amended to read:

(1) An adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent;

* Sec. 36. Except as provided in the Uniform Probate Code (AS 13.06 - 13.36),

(1) the Uniform Probate Code applies to any wills of decedents dying after December 31, 1972;

(2) the Uniform Probate Code applies to any proceedings

in court pending on January 1, 1973, or commenced after that date, regardless of the time of the death of the decedent, except to the extent that the supreme court, by rule, makes available to any party the right to elect whether to proceed under the laws as they existed before January 1, 1973, or under the code;

(3) every personal representative, including a person administering an estate of a person under a disability, holding an appointment on January 1, 1973, continues to hold the appointment but has only the powers conferred by the code and is subject to the duties imposed with respect to any act occurring or done after that date;

(4) an act done before January 1, 1973, in any proceedings and any accrued right is not impaired by the code; if a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before January 1, 1973, the provisions shall remain in force with respect to that right;

(5) any rule of construction or presumption provided in the code applies to instruments executed and multiple party accounts opened before January 1, 1973, unless there is a clear indication of a contrary intent of the parties;

(6) any cause of action arising, or proceeding commenced, before January 1, 1973, shall be, at the discretion of the parties, and with the approval of the court, treated as though the laws pertaining to it before January 1, 1973, were still in force.

* Sec. 37. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.