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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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JUNEAU, ALASKA 99811
907-465-3810

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	10/25/85	10 AM
" "	1/27/86	2 pm

Alaska State Legislature



House of Representatives House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

House Bill 408 was heard by the House Judiciary Committee during an interim work session on October 25, 1985. See tapes I & J dated October 25.

COMMITTEE REPORT

HOUSE

4/20

Rule

(7)

FURTHER:

4/29/85

Date: _____

The Committee on JUDICIARY has had HR 408

"An Act providing for the adoption of the Uniform Simultaneous Death Act."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 408 (Good) same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

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[Signature]

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[Signature]

[Signature]

CHAIRMAN

Original sponsors: Gruenberg, Taylor,
Clocksin, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 409 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the adoption of the Uniform
7 Simultaneous Death Act."

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

9 * Section 1. AS 13.06.035 is amended to read:

10 Sec. 13.06.035. EVIDENCE AS TO DEATH OR STATUS. In proceedings
11 under AS 13.06 - AS 13.36, and AS 13.43 the rules of evidence in
12 courts of general jurisdiction including any relating to simultaneous
13 deaths, are applicable unless specifically displaced by AS 13.06 -
14 AS 13.36 or AS 13.43. In addition, the following rules relating to
15 determination of death and status are applicable:

16 (1) a certified or authenticated copy of a death certifi-
17 cate purporting to be issued by an official or agency of the place
18 where the death purportedly occurred is prima facie proof of the fact,
19 place, date and time of death and the identity of the decedent;

20 (2) a certified or authenticated copy of any record or
21 report of a governmental agency, domestic or foreign, that a person is
22 missing, detained, dead, or alive is prima facie evidence of the
23 status and of the dates, circumstances and places disclosed by the
24 record or report;

25 (3) a person who is absent for a continuous period of five
26 years, during which the person has not been heard from, and whose
27 absence is not satisfactorily explained after diligent search or
28 inquiry is presumed to be dead; the person's death is presumed to have
29 occurred at the end of the period unless there is sufficient evidence

1 for determining that death occurred earlier.

2 * Sec. 2. AS 13 is amended by adding a new chapter to read:

3 CHAPTER 43. UNIFORM SIMULTANEOUS DEATH ACT.

4 Sec. 13.43.010. NO SUFFICIENT EVIDENCE OF SURVIVORSHIP. Except
5 as otherwise provided in this chapter, when the title to property or
6 the devolution of property depends upon priority of death and there is
7 no sufficient evidence that the persons have died other than simulta-
8 neously, the property of each person shall be disposed of as if that
9 person had survived.

10 Sec. 13.43.020. SURVIVAL OF BENEFICIARIES. When two or more
11 beneficiaries are designated to take successively by reason of
12 survivorship under another person's disposition of property and there
13 is no sufficient evidence that the beneficiaries died otherwise than
14 simultaneously, the property disposed of shall be divided into as many
15 equal portions as there are successive beneficiaries and the portions
16 shall be distributed to those who would have taken if each designated
17 beneficiary had survived.

18 Sec. 13.43.030. JOINT TENANTS OR TENANTS BY THE ENTIRETY. (a)
19 When there is no sufficient evidence that two joint tenants or tenants
20 by the entirety have died other than simultaneously the property held
21 in that manner shall be distributed one-half as if one had survived
22 and one-half as if the other had survived.

23 (b) When property is held by more than two joint tenants and
24 there is no sufficient evidence that all joint tenants have died other
25 than simultaneously the joint property distributed shall be in the
26 proportion that one bears to the whole number of joint tenants.

27 (c) In this section, "joint tenants" includes owners of property
28 held under circumstances that entitle one or more to the whole of the
29 property on the death of the other or others.

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Sec. 13.43.040. COMMUNITY PROPERTY. When a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died other than simultaneously, one-half of all the community property shall pass as if the husband had survived and as if that one-half were the husband's separate property, and the other one-half of all the community property shall pass as if the wife had survived and as if that one-half were the wife's separate property.

Sec. 13.43.050. INSURANCE POLICIES. (a) When the insured and the beneficiary in a policy of life or accident insurance that is not community property have died and there is no sufficient evidence that they have died other than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(b) When a policy of life or accident insurance is community property of the insured and spouse and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under AS 13.-43.040.

Sec. 13.43.060. INAPPLICABLE SECTIONS IF DECEDENT PROVIDES OTHERWISE. The provisions of this chapter do not apply in the case of wills, living trusts, deeds, contracts of insurance, or any other situation when provision is made for distribution of property different from the provisions of this chapter, or when provision is made for a presumption as to survivorship that results in a distribution of property different from that provided for under this chapter.

Sec. 13.43.070. UNIFORMITY OF INTERPRETATION. This chapter shall be applied and construed to achieve its general purpose to make uniform the law with respect to the subject of this chapter among those states that enact it.

1 Sec. 13.43.030. SHORT TITLE. This chapter may be cited as the
2 Uniform Simultaneous Death Act.

3 * Sec. 3. APPLICABILITY. The provisions of sec. 2 of this Act do not
4 apply to the distribution of the property of a person who died before the
5 effective date of this Act.
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AMENDMENT

Offered in the House Judiciary Committee by Gruenberg

TO: CSHB 408 (Judiciary)

Page 2, lines 10 - 22:

Strike present AS 13.43.020 and substitute:

SURVIVAL OF BENEFICIARIES. When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that such beneficiaries have died other than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and such portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

Commentary: Since the original Uniform Simultaneous Death Act was promulgated in 1940, 46 states, the District of Columbia and the Virgin Islands have enacted it. 32 of the 46 jurisdictions changed the language in this section substantially. 28 of the 32 use the language proposed in the amendment, which is taken verbatim from Connecticut law.

Ford
7/2/85

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IN THE HOUSE BY GRUENBERG, TAYLOR, CLOCKSON,
M.M.MILLER AND PETTYJOHN

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 408
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for the adoption of the Uniform
Simultaneous Death Act."

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

* Section 1. AS 13 is amended by adding a new chapter to read:

CHAPTER 43. UNIFORM SIMULTANEOUS DEATH ACT.

Sec. 13.43.010. NO SUFFICIENT EVIDENCE OF SURVIVORSHIP. Except
as otherwise provided in this chapter, when the title to property or
the devolution of property depends upon priority of death and there is
no sufficient evidence that the persons have died other than simulta-
neously, the property of each person shall be disposed of as if that
person had survived.

Sec. 13.43.020. SURVIVAL OF BENEFICIARIES. (a) Except as
provided in (b) of this section, if property is so disposed of that
the right of a beneficiary to succeed to an interest in the property
is conditional upon the beneficiary surviving another person, and both
persons die, and there is no sufficient evidence that the two have
died other than simultaneously, the beneficiary is considered not to
have survived. If there is no sufficient evidence that two or more
beneficiaries have died other than simultaneously and property has
been disposed of in such a way that at the time of their death each of
the beneficiaries would have been entitled to the property if the
beneficiary had survived the others, the property shall be divided
into as many equal portions as there were beneficiaries and these
portions shall be distributed respectively to those who would have

1 taken in the event that each of the beneficiaries had survived.

2 (b) If property is so disposed of that the right of a benefi-
3 ciary to succeed to an interest in the property is conditional upon
4 the beneficiary surviving the testator, and both persons die, the
5 provisions of AS 13.11.220 apply.

6 Sec. 13.43.030. JOINT TENANTS OR TENANTS BY THE ENTIRETY. (a)
7 When there is no sufficient evidence that two joint tenants or tenants
8 by the entirety have died other than simultaneously the property held
9 in that manner shall be distributed one-half as if one had survived
10 and one-half as if the other had survived.

11 (b) When property is held by more than two joint tenants and
12 there is no sufficient evidence that all joint tenants have died other
13 than simultaneously the joint property distributed shall be in the
14 proportion that one bears to the whole number of joint tenants.

15 (c) In this section, "joint tenants" includes owners of property
16 held under circumstances that entitle one or more to the whole of the
17 property on the death of the other or others.

18 Sec. 13.43.040. COMMUNITY PROPERTY. When a husband and wife
19 have died, leaving community property, and there is no sufficient
20 evidence that they have died other than simultaneously, one-half of
21 all the community property shall pass as if the husband had survived
22 and as if that one-half were the husband's separate property, and the
23 other one-half of all the community property shall pass as if the wife
24 had survived and as if that one-half were the wife's separate prop-
25 erty.

26 Sec. 13.43.050. INSURANCE POLICIES. (a) When the insured and
27 the beneficiary in a policy of life or accident insurance that is not
28 community property have died and there is no sufficient evidence that
29 they have died other than simultaneously the proceeds of the policy

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shall be distributed as if the insured had survived the beneficiary.

(b) When a policy of life or accident insurance is community property of the insured and spouse and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under AS 13.43.040.

Sec. 13.43.060. INAPPLICABLE SECTIONS IF DECEDENT PROVIDES OTHERWISE. The provisions of this chapter do not apply in the case of wills, living trusts, deeds, contracts of insurance, or any other situation when provision is made for distribution of property different from the provisions of this chapter, or when provision is made for a presumption as to survivorship that results in a distribution of property different from that provided for under this chapter.

Sec. 13.43.070. UNIFORMITY OF INTERPRETATION. This chapter shall be applied and construed to achieve its general purpose to make uniform the law with respect to the subject of this chapter among those states that enact it.

Sec. 13.43.080. SHORT TITLE. This chapter may be cited as the Uniform Simultaneous Death Act.

* Sec. 2. APPLICABILITY. The provisions of this Act do not apply to the distribution of the property of a person who died before the effective date of this Act.

Ford-
12/2/85

Original sponsors: Gruenberg, Taylor,
Clocksin, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 408 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the adoption of the Uniform
7 Simultaneous Death Act."

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11 under AS 13.06 - AS 13.36, and AS 13.43 the rules of evidence in
12 courts of general jurisdiction including any relating to simultaneous
13 deaths, are applicable unless specifically displaced by AS 13.06 -
14 AS 13.36 or AS 13.43. In addition, the following rules relating to
15 determination of death and status are applicable:

16 (1) a certified or authenticated copy of a death certifi-
17 cate purporting to be issued by an official or agency of the place
18 where the death purportedly occurred is prima facie proof of the fact,
19 place, date and time of death and the identity of the decedent;

20 (2) a certified or authenticated copy of any record or
21 report of a governmental agency, domestic or foreign, that a person is
22 missing, detained, dead, or alive is prima facie evidence of the
23 status and of the dates, circumstances and places disclosed by the
24 record or report;

25 (3) a person who is absent for a continuous period of five
26 years, during which the person has not been heard from, and whose
27 absence is not satisfactorily explained after diligent search or
28 inquiry is presumed to be dead; the person's death is presumed to have
29 occurred at the end of the period unless there is sufficient evidence

1 for determining that death occurred earlier.

2 * Sec. 2. AS 13 is amended by adding a new chapter to read:

3 CHAPTER 43. UNIFORM SIMULTANEOUS DEATH ACT.

4 Sec. 13.43.010. NO SUFFICIENT EVIDENCE OF SURVIVORSHIP. Except
5 as otherwise provided in this chapter, when the title to property or
6 the devolution of property depends upon priority of death and there is
7 no sufficient evidence that the persons have died other than simulta-
8 neously, the property of each person shall be disposed of as if that
9 person had survived.

10 Sec. 13.43.020. SURVIVAL OF BENEFICIARIES. If property is so
11 disposed of that the right of a beneficiary to succeed to an interest
12 in the property is conditional upon the beneficiary surviving another
13 person, and both persons die, and there is no sufficient evidence that
14 the two have died other than simultaneously, the beneficiary shall be
15 considered not to have survived. If there is no sufficient evidence
16 that two or more beneficiaries have died other than simultaneously and
17 property has been disposed of in such a way that at the time of their
18 death each of the beneficiaries would have been entitled to the prop-
19 erty if the beneficiary had survived the others, the property shall be
20 divided into as many equal portions as there were beneficiaries and
21 these portions shall be distributed respectively to those who would
22 have taken in the event that each of the beneficiaries had survived.

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24 When there is no sufficient evidence that two joint tenants or tenants
25 by the entirety have died other than simultaneously the property held
26 in that manner shall be distributed one-half as if one had survived
27 and one-half as if the other had survived.

28 (b) When property is held by more than two joint tenants and
29 there is no sufficient evidence that all joint tenants have died other

1 than simultaneously the joint property distributed shall be in the
2 proportion that one bears to the whole number of joint tenants.

3 (c) In this section, "joint tenants" includes owners of property
4 held under circumstances that entitle one or more to the whole of the
5 property on the death of the other or others.

6 Sec. 13.43.040. COMMUNITY PROPERTY. When a husband and wife
7 have died, leaving community property, and there is no sufficient
8 evidence that they have died other than simultaneously, one-half of
9 all the community property shall pass as if the husband had survived
10 and as if that one-half were the husband's separate property, and the
11 other one-half of all the community property shall pass as if the wife
12 had survived and as if that one-half were the wife's separate prop-
13 erty.

14 Sec. 13.43.050. INSURANCE POLICIES. (a) When the insured and
15 the beneficiary in a policy of life or accident insurance that is not
16 community property have died and there is no sufficient evidence that
17 they have died other than simultaneously the proceeds of the policy
18 shall be distributed as if the insured had survived the beneficiary.

19 (b) When a policy of life or accident insurance is community
20 property of the insured and spouse and there is no alternative benefi-
21 ciary except the estate or personal representatives of the insured,
22 the proceeds shall be distributed as community property under AS 13.-
23 43.040.

24 Sec. 13.43.060. INAPPLICABLE SECTIONS IF DECEDENT PROVIDES
25 OTHERWISE. The provisions of this chapter do not apply in the case of
26 wills, living trusts, deeds, contracts of insurance, or any other
27 situation when provision is made for distribution of property differ-
28 ent from the provisions of this chapter, or when provision is made for
29 a presumption as to survivorship that results in a distribution of

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property different from that provided for under this chapter.

Sec. 13.43.070. UNIFORMITY OF INTERPRETATION. This chapter shall be applied and construed to achieve its general purpose to make uniform the law with respect to the subject of this chapter among those states that enact it.

Sec. 13.43.080. SHORT TITLE. This chapter may be cited as the Uniform Simultaneous Death Act.

* Sec. 3. APPLICABILITY. The provisions of sec. 2 of this Act do not apply to the distribution of the property of a person who died before the effective date of this Act.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 408
Title: Uniform Simultaneous Death Act.

Sponsor: Gruenberg
Requestor: House Judiciary Committee
Date of Request: 1/13/86

FISCAL DETAIL

Agency Affected: None
Program Category Affected: None

BRU, Program or Subprogram(s) Affected: None

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS: -0-

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Hayden Kaden, Committee Counsel Phone: 465-4990
Division: House Judiciary Committee Date: 1/13/86
Approved by ^{Chairman} ~~Committee Counsel~~: [Signature] Date: 1/13/86
Agency: House Judiciary Committee

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

State of Alaska

COMMITTEES

HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES
(Co-Chairman)
HOUSE JUDICIARY
HOUSE COMMUNITY AND
REGIONAL AFFAIRS



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4968

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6944

Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

October 30, 1985

The Honorable Mike M. Miller
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 408, Uniform Simultaneous Death Act

Dear Mr. Chairman:

Thank you very much for holding a hearing on this bill Friday, October 25, 1985. Because it seems to be non-controversial, important, and with wide support, I hope that we could have hearing on this as quickly as possible during the next legislative session, hopefully within the first two weeks and possibly in conjunction with HB 356, (re: Assignment of Group Life Insurance Policies).


As I discussed with Hayden after the committee meeting, I would appreciate the "sponsor substitute" being offered as a "committee substitute", with an additional section amending AS 13.06.035 as indicated in the enclosed pen and ink amended statute.

Again, Mike, thank you very much on holding a hearing on all four bills.

With respect to the other two bills, HB 358 and HB 368, I am communicating with the Alaska Bar Association and we will work further on these before I request a hearing.

I hope you had a good trip back to Juneau.

Cordially,


Max F. Gruenberg, Jr.

Sec. 13.06.035. Evidence as to death or status. In proceedings under AS 13.06 — ~~AS 13.36~~, the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by AS 13.06 — ~~AS 13.36~~. In addition, the following rules relating to determination of death and status are applicable:

(1) a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

(2) a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

(3) a person who is absent for a continuous period of five years, during which the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead; the person's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier. (§ 1 ch 78 SLA 1972)

NOTES TO DECISIONS

When presumption that life continues overcome. — Although it is often said that life is presumed to continue, it is well settled that this so-called presumptive overcome when the person is shown

to have been exposed to a serious danger at or about the time of his disappearance. Sunny Point Packing Co. v. Faigh, 63 F.2d 921 (9th Cir. 1933).

Sec. 13.06.040. Acts by holder of general power. For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are considered to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power. (§ 1 ch 78 SLA 1972)

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 4, 1985

SUBJECT: HB 408 - Uniform Simultaneous Death Act

TO: Representative M.M. Miller
House Judiciary Committee

FROM: Michael F. Ford *M.F.*
Legislative Counsel

The following is a section by section analysis of HB 408:

Section 1

13.43.010 - States the general rule, that in cases of simultaneous death the property of each person shall be disposed of as if that person had survived. This is a legal presumption that is simple, and avoids the difficulty of proving survivorship.

13.43.020 - Applies the same presumption of survivorship to a beneficiary or beneficiaries in simultaneous death situations.

13.43.030 - Provides for distribution of property held by joint tenants or tenants by the entirety in simultaneous death cases.

13.43.040 - Provides for distribution of community property in cases of simultaneous death of a husband and wife.

13.43.050 - Subsection (a) creates a conclusive presumption that when an insured and beneficiary die simultaneously, proceeds shall be distributed as if the insured had survived. This is presumed to be the intention of the insured, but the insured would be able to provide otherwise in the contract of insurance, if it does not. Subsection (b) provides that when insurance is community property and an alternative beneficiary is not selected, proceeds are distributed as community property under 13.43.040.

Representative M.M. Miller
October 4, 1985
Page 2

13.43.060 - Allows a person to provide for a different kind of distribution of property than is provided in this chapter.

13.43.070 - Uniformity provision.

13.43.080 - Citation section.

Section 2 - This Act will not apply to distribution of property of those persons dying before the effective date of the Act.

MFF:mkr
M1:031

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

July 1, 1985

SUBJECT: HB 358 and HB 408

TO: Representative Gruenberg
Chair, HESS Committee
Attn: Nancy Bennett

FROM: Michael F. Ford *M. F.*
Legislative Counsel

This is in response to your inquiries regarding HB 358 and HB 408.

HB 358 by repealing and reenacting AS 13.31.070 substantially changes the existing law concerning providing for payment or transfer of certain property upon a person's death. The current law, AS 13.31.070, provides in subsection (a) that a transfer of money, property or other benefits by certain written instruments will be considered nontestamentary and therefore be transferred outside of the probate code. Subsection (a) of HB 358 broadens the scope of the existing law, by providing that "bonus, profit-sharing," and "retirement annuity" instruments as well as an "employee-benefit plan" may also be considered a nontestamentary transfer and need not pass through a decedent's estate.

The existing numbered subparagraphs of subsection (a) of AS 13.31.070 concerning the types of provisions that are nontestamentary at death, are not changed by HB 358, however two new subsections are added to existing law. Subsection (b) provides that the payments and transfers designated by subsection (a) remain nontestamentary regardless of ownership rights otherwise reserved to the settlor and whether they are payable to directly to the beneficiary or through a trust. Further, the trust can be funded or unfunded and amendable or revokable.

Representative Gruenberg
July 1, 1985
Page 2

Subsection (c) provides that the proceeds of the nontestamentary transfer or payments are not subject to the debts, inheritance taxes, or estate taxes of the decedent to any greater extent than if the proceeds were payable to a named beneficiary other than the estate of the decedent.

Subsection (d) of HB 358 is identical to subsection (b) in existing law.

HB 408 provides for adoption of the Uniform Simultaneous Death Act. Prior to 1972, an abbreviated version of the Uniform Simultaneous Death Act was in place in AS 13.13.010-13.13.070 (ch. 80 SLA 1949). In 1972 Title 13 was repealed and the Uniform Probate Code was adopted, which also caused the repeal of the Uniform Simultaneous Death Act (ch 78 SLA 1972). This enactment treated the issue of simultaneous death as an question of evidence to be resolved by the courts. See AS 13.06.035. As a result of these changes, Alaska was deleted from the table of jurisdictions in which the Uniform Simultaneous Death Act was in effect. (See commentary at page 559, vol. 81, Uniform Law Annotated)

Your question concerning the 120-hour survival requirement of AS 13.11.220, raises a matter that will require a change to HB 408. Regarding testate succession, AS 13.11.220 requires that the heir survive by at least 120 hours the death of the testator. Although this statute and HB 408 are not in conflict, in order to clearly indicate when AS 13.11.220 will apply in situations of simultaneous death, it will be necessary to revise AS 13.43.020 in HB 408.

I have taken the liberty of drafting a sponsor substitute that makes the necessary changes. If you prefer to change HB 408 in a different manner please let me know.

MFF:ojb
J15/055



ALASKA BAR ASSOCIATION

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PROBATE LAW SECTION

March 11, 1985

Representative Max Gruenberg
Pouch V
Juneau, AK 99811

RE: Prospective Amendments to Uniform Probate
Code deemed desirable by Probate Law Section
and Taxation Law Section of Alaska Bar
Association

Dear Mr. Gruenberg:

In response to your letter to the Alaska Bar Association, I have talked with David Shaftel and Rodney Kleedehn of the Alaska Bar Association's Taxation Law Section and with members of the Probate Law Section and offer the following as amendments to the Uniform Probate Code as enacted in Alaska.

Please note that the provisions under the letter from Mr. Goerig referring to the Uniform Simultaneous Death Act were essentially to be part of the Uniform Probate Code but were inadvertently eliminated when the Code was adopted in 1973. Alaska happens to be one of the few remaining states which does not have a specific provision in this regard.

Trigg Davis has advised me he would be willing to meet with you regarding these modifications to the statute as well as the proposed modification under the Taxation Law Section's letterhead as proposed by Dave Shaftel and Rodney Kleedehn.

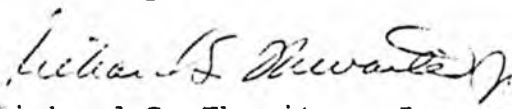
Both committees are currently working on more extensive proposals; however, those proposals will probably be pursued through the Code Revision Commission some time this Fall. These provisions were considered by all to be relatively non-controversial and fairly straightforward.

Mr. Max Gruenberg
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Your assistance in enacting these statutes will do much to bring Alaska residents up to par with the residents of other states in the area of estate and gift tax planning.

Your cooperation in this regard is greatly appreciated. If I can be of any assistance, please feel free to contact me.

Sincerely,


Richard S. Thwaites, Jr.

RST:lj

Enclosures

cc: David G. Shaftel, Esq.
G. Rodney Kleedehn, Esq.
George E. Goerig, Jr., Esq.
Trigg T. Davis, Esq.

UNIFORM SIMULTANEOUS DEATH ACT

Table of Jurisdictions Wherein Act Has Been Adopted

Jurisdiction	Laws	Effective Date	Statutory Citation
Alabama	1949, p. 852	9-7-1949	Code 1975, §§ 43-7-1 to 43-7-8.
Arizona	1959, c. 77	6-20-1959	A.R.S. §§ 14-2804 to 14-2810.
Arkansas	1941, Act 15	1-30-1941*	Ark.Stats. §§ 61-124 to 61-130.
California	1945, p. 1885	9-15-1945	West's Ann.Cal.Prob.Code, §§ 296 to 296.8.
Colorado	1967, p. 104	3-14-1967	C.R.S.1973, 15-11-613.
Connecticut	1943, c. 266, p. 272	10-1-1943	C.G.S.A. § 45-287.
Delaware	1945, c. 234	4-18-1945*	12 Del.C. §§ 701 to 707.
Dist. of Columbia	1965, 79 Stat. 700	1-1-1966	D.C.Code 1981, §§ 19-501 to 19-506.
Florida	1941, c. 20884	6-12-1941	West's F.S.A. § 732.601.
Georgia	1966, p. 606	7-1-1966	O.C.G.A. §§ 53-11-1 to 53-11-6.
Hawaii	1941, Act 74	4-22-1941	HRS §§ 534-1 to 534-5.
Idaho	1943, c. 83	2-23-1943*	I.C. § 15-2-613.
Illinois	1941, vol. 1, p. 6	7-16-1941	S.H.A. ch. 110½, §§ 3-1, 3-2.
Indiana	1941, c. 49	2-24-1941*	West's A.I.C. 29-2-14-1 to 29-2-14-8.
Iowa	1963, c. 326	1-1-1964	I.C.A. §§ 633.523 to 633.528.
Kansas	1947, c. 239	6-30-1947*	K.S.A. 58-701 to 58-707.
Kentucky	1942, c. 79	3-5-1942	KRS 397.010 to 397.080.
Maine	1941, c. 111	3-29-1941	18-A M.R.S.A. § 2-805.
Maryland	1941, c. 191	6-1-1941	Code, Courts and Judicial Proceedings, §§ 10-301 to 10-807.
Massachusetts	1941, c. 549	7-27-1941	M.G.L.A. c. 190A, §§ 1 to 8.
Michigan	1941, No. 73	4-13-1942	M.C.L.A. §§ 720.101 to 720.103.
Minnesota	1943, c. 248	4-2-1943*	M.S.A. § 525.90.
Mississippi	1956, c. 214	7-1-1956	Code 1972, §§ 91-3-1 to 91-3-15
Missouri	1947, Vol. 1, p. 13	9-10-1947	V.A.M.S. §§ 471.010 to 471.080.
Nebraska	1947, c. 112	3-8-1947	R.R.S.1943, §§ 30-121 to 30-128.
Nevada	1949, c. 44	3-9-1949*	N.R.S. 135.010 to 135.090.
New Hampshire	1941, c. 55	4-8-1941	RSA 563:1 to 563:9.
New Jersey	1947, c. 384	7-3-1947	N.J.S.A. 3B:6-1 to 3B:6-7.
New Mexico	1959, c. 172	3-31-1959	NMSA 1978, §§ 45-8-1 to 45-8-8.
New York	1966, c. 952	9-1-1967	McKinney's EPTL 2-1.6.
North Carolina	1947, c. 1016	4-5-1947	G.S. §§ 28A-24-1 to 28A-24-7.
North Dakota	1943, c. 211	3-17-1943	NDCC 31-12-01 to 31-12-06.
Oklahoma	1959, c. 385	10-2-1959	58 Okl.St. Ann. §§ 1001 to 1008.
Oregon	1947, c. 555	4-21-1947	ORS 112.575 to 112.645.
Pennsylvania	1972, No. 164	7-1-1972	20 Pa.C.S.A. §§ 8501 to 8505.
Rhode Island	1947, c. 1871	4-28-1947	*Gen.Laws 1956, §§ 33-2-1 to 33-2-9.
South Carolina	1948, p. 1753	4-3-1948	Code 1976, §§ 21-9-10 to 21-9-20.
South Dakota	1941, c. 332	3-4-1941	SDCL 29-8-1 to 29-8-8.
Tennessee	1941, c. 59	2-10-1941	T.C.A. §§ 31-501 to 31-508.
Texas	1955, c. 55	1-1-1956	V.A.T.S.Probate Code, § 47.
Utah	1953, c. 78	5-12-1953	U.C.A.1953, 75-2-1001 to 75-2-1008.
Vermont	1941, No. 41	3-21-1941	14 V.S.A. §§ 621 to 627.
Virgin Islands	1957, c. 3	9-1-1957	15 V.I.C. § 88.
Virginia	1942, c. 63	2-25-1942	Code 1950, §§ 64.1-97 to 64.1-104.
Washington	1943, c. 113	3-16-1943	West's RCWA 11.05.010 to 11.05.910.
West Virginia	1953, c. 66	2-18-1953	Code, 42-5-1 to 42-5-10.
Wisconsin	1941, c. 284	6-25-1941	W.S.A. 851.55.
Wyoming	1941, c. 94	2-21-1941	W.S.1977, §§ 2-13-101 to 2-1-107.

* Date of approval.

SIMULTANEOUS DEATH

Historical Note

The Uniform Simultaneous Death Act was approved by the National Conference of Commissioners on Uniform State Laws, and the American Bar Association, in 1940. The Act was subsequently amended in 1953 and similarly approved.

PREFATORY NOTE

After more than five years study a Uniform Simultaneous Death Act has been approved by the National Conference of Commissioners on Uniform State Laws and recommended to the various legislatures for adoption. Two considerations justify the hope that the Act which is presented herewith will be received favorably by the legislative bodies of the various States. It may be a sad commentary, but the pace of modern living with its multiple forms of transportation has caused the instances of simultaneous death to occur with much greater frequency than in the past. More and more therefore courts will be called upon to administer the estates of persons who have died under circumstances that there is no evidence of survivorship and it is desirable to have a workable and uniform rule to apply in such instances. The second consideration which should recommend this Act to the various legislative bodies is the unsatisfactory variety of methods that have been devised either as a result of jurisprudence or the result of legislation to administer this troublesome legal situation. Some States have set arbitrary presumptions which are employed by the courts to determine the devolution of property. In other States there is the "common law rule" which indulges no presumption one way or the other and leaves the matter to the respective claimants to prove survivorship. Both situations seem to be unrealistic. Prescribed presumptions frequently ignore the facts of life. For instance in some States it is presumed (conclusively) that an adult in good health survives a minor child or infant. If the minor happened to be the son or daughter of the adult it is more reasonable to suppose that the adult would have used every expedient to protect the child even at the sacrifice of his own life. In those States where there is no presumption whatever indulged courts are faced with an anachronism. The reason for the difficulty of administration is that it is impossible to know which of the persons has survived. Yet the "common law rule" in effect says that the person who claims by virtue of an alleged survivorship must prove the survivorship which is tantamount to demanding the impossible.

The theory of the present Act makes no effort whatever to resolve the un-resolvable. The formula is a simple one and easily applied. The theory of the present Act is that as to the property of each person he is presumed to be the survivor and it is administered accordingly.

Perhaps a word ought to be said with respect to Section four which deals with contracts of insurance. The Act provides that when the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise

SIMULTANEOUS DEATH

than simultaneously the proceeds of the policy shall be distributed as if the insured had survived. Obviously this section creates a conclusive presumption. The special circumstances seem to justify the creation of a presumption relative to the survivorship of the insured or beneficiary. By providing that the insured presumably survived it is thought that the result will most nearly approximate the intention of the real party in interest. If it does not, he is at liberty to provide otherwise in the contract of insurance.

General Statutory Notes

Alaska. L.1972, c. 78, repealed former title 13 of the Alaska Statutes and enacted a new title 13 in lieu thereof. While the new title 13 contains provisions relating to simultaneous deaths (see A.S. §§ 13.06.035 and 13.11.220), they are not in substantial conformity with the uniform act. Accordingly, Alaska has been deleted from the table of jurisdictions wherein the uniform act has been adopted.

California. Adds sections as follows:

"§ 296.41. Proceeding to determine simultaneous death; petition; notice of hearing; service. When it is deemed that, in accordance with the provisions of this chapter, any persons have died under circumstances where there is no sufficient evidence that they have died otherwise than simultaneously, the executor or administrator of any such person, or any other person interested in the estate of any such person, may file a petition, in the estate proceeding where he received his appointment, or in which he claims an interest, seeking to have it determined that such persons died under circumstances where there is no sufficient evidence that they died otherwise than simultaneously. The clerk shall set the petition for hearing by the court and cause notice thereof to be personally served at least 10 days before the date of the hearing upon the executor or administrator of each other person claimed to have so died. If the representative of any such other person is also the petitioner then, in lieu of personal service upon him, such notice shall be mailed to the heirs and devisees of such other person, so far as they are known to

the petitioner, at least 10 days before the date of hearing."

"§ 296.42. Proceeding by executor or administrator to determine simultaneous death; hearing; determination of order of death; jurisdiction. At the time appointed, the court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition and any objections thereto that may have been filed or presented; and if, after a full hearing, the court is satisfied that the named persons are dead and that there is no sufficient evidence that they died other than simultaneously, it shall make an order to that effect. If the court is satisfied that the named persons are dead and that they did not die simultaneously then the court shall make an order setting forth the order in which such persons died. Such order when it becomes final shall be a binding determination of the facts therein set forth and conclusive as against the personal representatives of the deceased persons named in the order and against all persons claiming by, through or under any such deceased persons. The probate court which first acquires jurisdiction under Section 296.41 shall have exclusive jurisdiction to determine, by its order, that there is no sufficient evidence that the named persons died otherwise than simultaneously or to determine the order in which the named persons died."

Florida. L.1974, c. 74-106, repealed West's F.S.A. § 736.05, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of the Florida Probate Code in West's F.S.A. § 736.801.

SIMULTANEOUS DEATH

Illinois. The Illinois Act was repealed and reenacted by L.1975, P.A. 79-328. While the reenacted Illinois Act remains a substantial adoption of the Uniform Act, it now contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Maine. L.1979, c. 540, repealed 18 M.R.S.A. §§ 1101 to 1108, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of the Maine Probate Code in 18-A M.R.S.A. § 2-805, effective Jan. 1, 1981.

Said 18-A M.R.S.A. § 2-805 contains the following additional provision: "This section shall not apply to the distribution of the property of any person dying before July 26, 1941, nor to the distribution of the proceeds of any policy of life or accident insurance the effective date of which is prior to that date."

Michigan. Adds a section as follows:

"720.105. Application of act; not retroactive. Sec. 5. ACT NOT RETROACTIVE. This act shall not apply to the distribution of the property of a person who has died before it takes effect."

Montana. L.1974, c. 365, repealed the Uniform Simultaneous Death Act (R.C.M.1947, §§ 91-423 to 91-430) and enacted provisions in the Montana Probate Code which relate to the same subject matter but which are not in substantial conformity with the Uniform Act. See R.C.M.1947, §§ 91A-2-104 and 91A-2-601. Accordingly, Montana has been deleted from the table of jurisdictions wherein the uniform act has been adopted.

New Jersey. L.1981, c. 405, repealed N.J.S.A. 3A:5-1 to 3A:5-8, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of N.J.S.A. Title 3B, Administration of Estates—Decedents and Others in N.J.S.A. 3B:6-1 to 3B:6-7, effective May 1, 1982.

South Dakota. The enactment of the South Dakota Uniform Probate Code (SDCL 29A-1-101 to 29A-8-101)

by SL 1974, c. 196, effective Jan. 1, 1976, superseded the provisions of the South Dakota Uniform Simultaneous Death Act (SDCL 29-8-1 to 29-8-8) despite the fact that the latter act was never actually repealed. Now, however, the South Dakota Uniform Probate Code has been repealed by SL 1976, c. 175, § 2 and SL 1976, c. 177, § 3, effective July 1, 1976. SL 1976, c. 175, § 1 and SL 1976, c. 177, § 2, provided for the promulgation of rules by the Supreme Court for the orderly transition of actions started pursuant to the procedures set forth in the Uniform Probate Code to the procedures set forth in SDCL Titles 29 and 30. Thus, the provisions of the South Dakota Uniform Simultaneous Death Act as they existed prior to the adoption of the Uniform Probate Code are again in effect.

Adds a section as follows:

"29-8-5. Estates to which chapter applies.—This chapter shall not apply to the distribution of the property of a person who has died before July 1, 1941."

Texas. The Texas Act has been significantly amended and while it remains a substantial adoption of the Uniform Act, it now contains numerous variations, omissions and additional matter which cannot be clearly indicated by statutory notes.

Utah. L.1975, c. 150, repealed U.C.A.1953, 74-5-1 to 74-5-8, which formerly constituted the Uniform Simultaneous Death Act, and reenacted said Uniform Act as part of the Utah Probate Code in U.C.A.1953, 75-2-1001 to 75-2-1008, effective July 1, 1977.

Adds a section as follows:

"75-2-1008. Death before taking effect of act.—This part shall not apply to the distribution of the property of a person who has died before it takes effect."

Virginia. Adds a section as follows:

"§ 64.1-101. Chapter not retroactive.—This chapter shall not apply to the distribution of the property of a person who died prior to June twenty-seventh, nineteen hundred forty-two."

UNIFORM SIMULTANEOUS DEATH ACT

An Act providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously, and to make uniform the law with reference thereto.

1940 ACT

Amended in 1953

Sec.

1. No Sufficient Evidence of Survivorship.
2. Survival of Beneficiaries.
3. Joint Tenants or Tenants by the Entirety.
4. Community Property.
5. Insurance Policies.
6. Act Does Not Apply If Decedent Provides Otherwise.
7. Uniformity of Interpretation.
8. Short Title.
9. Repeal.
10. Severability.
11. Time of Taking Effect.

Be it enacted

§ 1. No Sufficient Evidence of Survivorship

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

Action in Adopting Jurisdictions

Variations from Official Text:

Idaho. Adds "Subject to extension by the provisions of section 15-2-104 and section 15-2-601 of this code" preceding "where the title".

Kentucky. Omits this section.

Missouri. Inserts "as determined by a court of competent jurisdiction", following "simultaneously."

Oklahoma. Inserts "of two or more persons" following "death" and "to establish" following "evidence".

Wisconsin. Substitutes "If" for "Where", and inserts "or she" following "he".

Law Review Commentaries

Burden of proof and presumptions. John T. McNaughton. 35 Boston U. L.Rev. 481 (1955).

Common disaster, burden of proving survivorship. 27 Iowa L.Rev. 137 (1941).

Common disaster clauses in estate planning. Robert H. Wyshak. 34 Mass.L.Q. 22 (1949).

Degree of evidence concerning survival necessary to take case out from operation of Uniform Simultaneous Death Act. 28 Chicago—Kent L.Rev. 375 (1950).

Disposition of property in event of death in common accident, use of mutual reciprocal wills. Edward S. Boyles. Texas Bar J. 57 (1949).

Drafting a simple will. Don H. McLucas. 39 Ill.Bar J. 78 (1950).

Effect of simultaneous death of joint tenants or tenants by the entirety. 14 Intra.L.Rev. [N.Y.] 130 (1959).

Estate planning for common disaster. 38 Boston U.L.Rev. 257 (1958).

Evidence of survivorship in common disaster cases. John E. Tracy and John J. Adams. 38 Mich.L.Rev. 801 (1940).

Federal estate tax, marital deduction for property passing. Harry A. Blackmun. 36 Minn.Law Review 50 (1951).

Interpretation of "common disaster" provisions in wills. 1 Syracuse L.Rev. 457 (1950).

Law of survival in case of death by common disaster as it is related to distribution of property. Frederick A. Wislizenus. 6 St. Louis L. Rev. 1 (1921).

New developments in will drafting. George P. Ettenheim. 22 Wis.Bar Bull. 25 (1949).

Presumption in case of death by common disaster. 1 Iowa L.Rev. 93 (1925).

Presumption of order of death in common calamity, the steamboat house. D. H. Redfearn. 9 Fla.L.J. 405, 423 (1935).

Presumptions, simultaneous death. Williams H. De Parcq. 70 Minn.Law Review 308 (1956).

Simultaneous Death Act as it pertains to the marital deduction. Frederic Sammond. 38 Marquette L.Rev. 169 (1954).

Simultaneous death statute. 1 U. Fla.L.R. 75 (1948).

Sins of oversight in wills and trusts. Paul B. Sargent. 30 Boston U.L.Rev. 301 (1950).

Status of entireties in Florida. 5 Miami L.Q. 592 (1951).

Statutory solution of the problem of survival in a common disaster. 50 Harvard L.Rev. 344 (1930).

Tenancy by the entireties in Florida. John M. Starling. 14 U.Fla.L.R. 111 (1941).

Library References

Death \Leftrightarrow 5.

C.J.S. Death § 11.

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§ 1
Note 6

1. Common law

Under common law, there was no presumption either of survivorship or of simultaneous death. *Sherman v. Roe*, 1953, 202 S.W.2d 393, 153 Tex. 1. See, also, *In re Conover's Estate*, 1965, 259 N.Y.S.2d 618, 46 Misc.2d 336.

At common law, property rights of husband and wife killed in common disaster are disposed of as if death occurred at same time. *In re Conover's Estate*, 1965, 259 N.Y.S.2d 618, 46 Misc.2d 336.

Where two or more persons perished in the same disaster, there was no presumption at common law that either survived or that all perished simultaneously. *Glover v. Davis*, Tex. 1963, 369 S.W.2d 227.

2. Constitutionality

This Act is constitutional. *In re Meade's Estate*, 1964, 39 Cal.Rptr. 278, 228 Cal.App.2d 169.

3. Purpose

The purpose of Uniform Simultaneous Death Act is to supplant the former arbitrary and complicated presumption of survivorship with effective, workable and equitable rules applicable to the ever-increasing number of cases where two or more persons have died under such circumstances that there is no sufficient evidence to indicate that they have died otherwise than simultaneously. *In re Estate of Schmidt*, 1968, 67 Cal. Rptr. 847, 261 Cal.App.2d 262. See, also, *Azvedo v. Benevolent Soc. of Cal.*, 1954, 270 P.2d 948, 125 C.A.2d Supp. 894; *In re Rowley's Estate*, 1967, 65 Cal.Rptr. 139, 257 Cal.App.2d 224; *In re Estate of Bobula*, 1966, 25 A.D.2d 241, 269 N.Y.S.2d 599.

Purpose of Georgia Simultaneous Death Act is to solve problem of proper devolution of property when distribution depends upon order of death and the circumstances are such that the order of death is not ascertainable. *Wien's Estate v. C. I. R.*, C.A.Ga. 1971, 441 F.2d 32.

Uniform Simultaneous Death Act was adopted to provide more realistic

answer to problem of who died first in common accident. *In re Sugino's Estate*, 1968, 73 Cal.Rptr. 150, 267 Cal.App.2d 591, 39 A.L.R.3d 1325.

4. Law governing

In interpleader suit to determine right to proceeds of son's life policies as between administrators of father and son who were killed in same automobile accident, West's Ann. Cal. Probate Code, § 296.3, requiring distribution of policy proceeds as if insured had survived beneficiary in absence of evidence that insured and beneficiary dies otherwise than simultaneously was applicable, to the complete exclusion of West's Ann. Cal. Probate Code, § 256 governing disposition of property when dependent upon priority of death. *Hahn v. Padre*, C.A. Cal. 1957, 235 F.2d 356.

5. Construction with other laws

Antilapse statute and Uniform Simultaneous Death Act are in pari materia and will be construed accordingly. *Brundige v. Alexander*, Tenn. 1976, 547 S.W.2d 232.

6. Generally

Where two or more persons perish in a common disaster and there is no proof as to which died first, the Uniform Simultaneous Death Act furnishes a guide in the absence of evidence by which the descent of property may be judicially determined and creates a presumption that death of the parties was simultaneous. *In re Estate of Schmidt*, 1968, 67 Cal. Rptr. 847, 261 Cal.App.2d 262.

Uniform Simultaneous Death Act is not rule of evidence, as such, but one of substantive law that governs devolution of property under certain circumstances. *In re Moran's Estate*, 1970, 32 Ill. Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Uniform Simultaneous Death Act is not a rule of evidence and does not afford any presumption as to survivorship but is rule of substantive law controlling devolution of property of persons who die in common disaster. *Brundige v. Alexander*, Tenn. 1976, 547 S.W.2d 232.

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SIMULTANEOUS DEATH

Note 7

7. Distribution of estate

Where husband and wife who left identical wills, each leaving everything to the other were found dead in their apartment from gas poison, and husband left no relations while wife left nephews and nieces, wife's nephews and nieces were entitled to estates of both decedents regardless of who survived the other, as against city's contention that property of each decedent should be disposed of as if he or she survived and husband's estate escheated to school board. *Mayor and City Council of Baltimore v. White*, 1948, 56 A.2d 824, 189 Md. 571.

Where wife willed all her property to husband upon condition that he survive her, and husband and wife were killed simultaneously in automobile accident, husband's son by prior marriage did not acquire title through father to real estate owned by wife upon her death. *Stanley v. Gieseking*, 1952, 105 N.E.2d 171, 230 Ind. 690.

Where persons die in common disaster so that death would appear to be simultaneous, disposition of property will be made according to estate, powers and trust law. In re *Bucci's Will*, 1968, 203 N.Y.S.2d 994, 57 Misc.2d 1001.

Where actual survivorship of parties fatally injured in common disaster cannot be ascertained, property of each passes as though each survived. In re *Spatafora's Estate*, 1962, 229 N.Y.S.2d 601, 35 Misc.2d 128.

Where decedent and her husband died in a common disaster and no proof was submitted as to who died first, her estate would be distributed as if she survived her husband. In re *Hoffer's Will*, 1958, 172 N.Y.S.2d 850, 10 Misc.2d 311.

Where two or more persons perish in a common accident, or otherwise under circumstances where positive credible evidence other than a mere factual inference based on the physique of one being superior to that of the other, or others, is lacking, former *McKinney's Decedent Estate Law*, § 89 [now *McKinney's EPTL* § 2-1.6], controls absolutely, to the effect that

the property of each person shall be disposed of as if, between or among persons in question, such person had been the survivor. In re *Di Bella's Estate*, 1953, 125 N.Y.S.2d 755.

Where husband and wife died under circumstances which would make the order in which they died difficult, if not impossible, of proof, and the parents of husband filed a petition for letters of administration as husband's only distributees, the mother of wife, who paid for wife's funeral expenses, was entitled to reimbursement from husband's estate. In re *Lane's Estate*, 1950, 102 N.Y.S.2d 333, 199 Misc. 35.

Where husband and wife met their deaths accidentally in their home from gas asphyxiation, and there was no showing which of the two died first, property of husband would be disposed of as if he had survived his wife, and the wife's property would be disposed of as if she had survived husband, and therefore the brother of the wife had no interest in the property of the deceased husband and was without standing to attack appointment of public administrator to administer deceased husband's estate. In re *Gerasmoff's Estate*, 1950, 96 N.Y.S.2d 142.

Where complaint alleged that mother and son died by asphyxiation as result of suicide and homicide committed by mother, and it could not be determined that mother and son died otherwise than simultaneously, and mother's will left entire estate to her son and made no other provision in event of failure of son to survive mother, under this section, testamentary gift to son lapsed and for purposes of distribution of her estate, the mother died intestate. In re *Meyer's Estate*, 1950, 94 N.Y.S.2d 620, 276 App.Div. 972.

Where husband and wife died on same day from natural causes and there was no evidence to establish whether husband survived or predeceased his wife, husband's estate was required to be distributed as if he had survived his wife. In re *Dunham's Will*, 1947, 69 N.Y.S.2d 572, 188 Misc. 1026.

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§ 1
Note 9

Provision in husband's will which totally disinherited wife if they both died at or about the same time as the result of a common disaster was valid even if wife survived by 13 or 14 minutes following automobile accident and did not consent to the will. *In re Messenger's Estate*, 1972, 494 P.2d 1107, 208 Kan. 763.

This Act was not applicable in determination of whether woman whose husband and daughter were both killed in vehicle accident bound to have resulted from husband's negligence was entitled to entire recovery rather than moiety since it dealt with title to or devolution of property as distinguished from statutory right to recover for wrongful death, but resort to common-law rule that there is no presumption of survivorship was required. *McCallum v. Harris*, Ky.1964, 379 S.W.2d 438.

Where testators did not die simultaneously, provisions of will governing disposition of estate in event of simultaneous death never became operative. *Sutton v. Salley*, Fla.App. 1970, 370 So.2d 425, certiorari denied 381 So.2d 760.

Where will set up a trust and provided that income should be paid to life tenant and upon her death corpus should be divided among certain remaindermen, as a class, who survived the life tenant, estate of remainderman who died with the life tenant in a common airplane disaster, there being no proof that they died other than simultaneously, shared equally with other remainderman in the corpus of the trust under statute. *Miami Beach First Nat. Bank v. Miami Beach First Nat. Bank*, 1951, 52 So.2d 893.

8. Estate taxes

This Act was not applicable for purpose of determining whether corpus of *inter vivos* trust created by husband for wife's benefit before effective date of act should be included in wife's taxable estate. *In re Conover's Estate*, 1965, 259 N.Y.S.2d 618, 46 Misc.2d 336.

9. Burden of proof

Party whose claim is dependent on survivorship has burden of proving the fact by preponderance of the evidence. *In re Schmidt's Estate*, 1968, 67 Cal.Rptr. 847, 261 Cal.App.2d 262.

Where two persons die in common disaster, there is no presumption as to which person survived, and no presumption that deaths were simultaneous, and burden of proof is on party claiming survivorship to establish it as fact or by evidence which fairly warrants inference of survivorship. *Matter of Bausch's Estates*, 1979, 420 N.Y.S.2d 181, 100 Misc.2d 817.

In case of death from common disaster, there is no presumption as to who survived nor any presumption that deaths were simultaneous, but burden of proof is on party asserting survivorship to establish it as a fact or at least by evidence which would fairly warrant inference of survivorship. *In re Spatafora's Estate*, 1962, 229 N.Y.S.2d 601, 35 Misc.2d 128.

Party asserting that wife, who was killed in a common disaster with her husband, survived her husband, had burden of proving survival by wife. *In re Dukszta's Estate*, 1948, 87 N.Y.S.2d 245, 193 Misc. 720, reversed on other grounds 90 N.Y.S.2d 686, 275 App.Div. 915, reargument denied 92 N.Y.S.2d 310, 275 App.Div. 1035.

Under this section whenever proof is lacking that a specific person survived, court deems that all died in same instant and burden of proof falls on parties whose claim is dependent on survivorship to establish that fact and sufficient evidence is evidence that satisfies an unprejudiced mind. *In re Cruson's Estate*, 1950, 221 P.2d 892, 189 Or. 537.

In absence of legislation there is no presumption of survivorship, and none of simultaneous death but when a showing is made that decedents perished in a common disaster, survivorship will be deemed unascertainable, in absence of sufficient evidence showing that one of them outlived the other or others and burden of proof falls on party whose claim is dependent on survivorship to establish that fact. *Id.*

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In proceeding by state to escheat estate of deceased woman who was killed along with her husband in automobile accident, burden of proving that husband survived rested on parties claiming as legal heirs of husband. *Id.*

Under the Simultaneous Death Act, the burden of proof falls upon the party whose claim is dependent upon survivorship. *Matter of Viviano's Estate*, Mo.App.1981, 621 S.W.2d 130.

On petition to determine order of death, it was position of wife's estate that wife survived her husband and, thus, wife's estate had the burden to establish same. *Id.*

10. Evidence of survival—Applicability of statute

Provision in Georgia Simultaneous Death Act that statute will apply if there is not sufficient proof that parties have died otherwise than simultaneously does not require proof that the parties actually died at the same instant; rather the statute applies in all cases of common disaster where it is impossible to prove which of the parties died first. *Wien's Estate v. C. I. R.*, C.A.Ga.1971, 441 F.2d 32.

The Uniform Simultaneous Death Act is inapplicable if there is evidence as to which of the parties survived the other or if there are particular circumstances from which the fact of survivorship may be inferred. *In re Estate of Schmidt*, 1988, 67 Cal.Rptr. 847, 261 Cal.App.2d 262.

If there is any sufficient evidence that either party survived other even when deaths occur at substantially the same time, the Uniform Simultaneous Death Act is inapplicable and the question of survivorship must be determined as any other fact. *Id.*

If burden of proving survivorship is met, survival by one second is enough to make the Uniform Simultaneous Death Act inapplicable. *Id.*

If there is any sufficient evidence that either party survived other, even when deaths occur at substantially the same time, Uniform Simultaneous Death Act is inapplicable, and question of survivorship

must be determined as any other fact. *In re Rowley's Estate*, 1967, 65 Cal.Rptr. 139, 257 Cal.App.2d 324.

In view of satisfactory proof that husband predeceased wife by about five minutes, though both died of injuries sustained in common accident, Uniform Simultaneous Death Act was not applicable to govern distribution of their assets. *Matter of Bausch's Estates*, 1979, 420 N.Y.S.2d 181, 100 Misc.2d 817.

The Uniform Simultaneous Death Act would be rendered almost useless by proffered literal interpretation of Act that unless evidence supports conclusion that decedents expired at same instant, Act does not apply and court must determine which one survived other, no matter how difficult the task, and such literal interpretation has not been adopted by Oregon court, or by majority of courts, but, rather, Act has been construed to mean that if it cannot be determined by sufficient evidence which decedent died first, Act becomes applicable. *Matter of Campbell's Estate*, 1982, 641 P.2d 610, 58 Or.App. 222, review denied 651 P.2d 143, 293 Or. 146.

This Act is not applicable where there is sufficient evidence that the persons concerned had died otherwise than simultaneously. *United Trust Co. v. Pyke*, 1937, 427 P.2d 67, 109 Kan. 1.

Where there is sufficient evidence to determine that one party survived another, the Simultaneous Death Statute and statute concerning distribution of property of joint tenants or tenants by the entirety, are not applicable. *In re Davenport's Estates*, 1958, 323 P.2d 611, 79 Idaho 548.

This section is inapplicable if there is evidence as to which party survived the other or if there are particular circumstances from which fact of survivorship may be inferred. *Sauers v. Stolz*, 1950, 218 P.2d 741, 121 Colo. 456.

Survival by one second would be enough to make Simultaneous Death Act inapplicable. *Matter of Viv-*

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ano's Estate, Mo.App.1981, 624 S.W.2d 130.

Where husband and wife received fatal injuries in same accident but wife, although never regaining consciousness, did not die until 17 days later, Ark.Stats. § 61-124 et seq. relating to disposition of property when devolution depends upon priority of death and there is no evidence that persons have died otherwise than simultaneously was inapplicable. *Smith v. Smith*, 1958, 317 S.W.2d 275, 229 Ark. 579.

11. — Admissibility

Question of coroner's qualification to express his opinions on issue whether one of two persons who died at approximately the same time had survived the other was for trial court's determination in proceeding under Uniform Simultaneous Death Act, for determination that there was no sufficient evidence that the two persons had died otherwise than simultaneously. In re *Rowley's Estate*, 1967, 65 Cal.Rptr. 139, 257 Cal.App.2d 324.

In proceeding by state to escheat estate of deceased woman who was killed, along with her husband, in automobile accident, death certificates signed by county coroner showing that deaths of deceased and her husband occurred synchronously, constituted material evidence and were admissible to establish that deaths were concurrent. In re *Cruson's Estate*, 1950, 221 P.2d 892, 189 Or. 537.

In proceeding by state to escheat estate of deceased woman who was killed, along with her husband in automobile accident, where mortician gave all data and facts he had as to appearance and injuries of deceased parties at time they were discovered after accident, his opinion as to which of the parties survived the other was inadmissible. *Id.*

12. — Sufficiency

The presumption of simultaneous death created by the Uniform Simultaneous Death Act was not intended to take the place of competent, positive and direct evidence, and the fact

of survivorship requires no higher degree of proof than any other fact in the case. In re *Estate of Schmidt*, 1968, 67 Cal.Rptr. 847, 261 Cal.App.2d 262.

Finding that wife who died in same automobile crash as husband died of basal skull fracture and survived husband by 10 to 15 minutes was supported by evidence, including eyewitness testimony that wife was bleeding extensively from her ears for a period of time after the accident and breathed, gasped and moaned which actions some experts interpreted as signs of life as opposed to post mortem reactions. *Id.*

Fact that deaths occur substantially or approximately at same time does not make the death simultaneous under Uniform Simultaneous Death Act. In re *Rowley's Estate*, 1967, 65 Cal.Rptr. 139, 257 Cal.App.2d 324.

The words "sufficient evidence" as used in this Act mean preponderance of the evidence. *Estate of Moran*, 1978, 24 Ill.Dec. 312, 385 N.E.2d 79, 67 Ill.App.3d 576, affirmed; 2 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Evidence that wife of administrator and her parents died when an airplane in which they were passengers crashed at speed of 175 miles per hour into a mountainside, and that death of wife was due to the "dismemberment and destruction of [her] skull and body," her head having been crushed and her body torn in half by the force of the crash, was sufficient to support finding that wife and her parents died instantaneously and simultaneously. *Ohashi v. Blanchard*, 1974, 314 N.E.2d 887, 2 Mass.App. 863.

There is no presumption when persons die in common disaster that by reason of sex or physical condition, one person survived another. In re *Bucci's Will*, 1968, 293 N.Y.S.2d 994, 57 Misc.2d 1001.

Where mother and daughter perished in common accident, fact that daughter was younger and in better physical health than her mother was irrelevant in determining question of

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survivorship between mother and daughter in absence of other evidence. In re Di Bella's Estate, 1953, 125 N.Y.S.2d 755.

In proceeding for revocation of letters of administration, evidence of attending physician was sufficient to establish that wife survived her husband by approximately one hour. In re Rose's Estate, 1951, 106 N.Y.S.2d 235, 201 Misc. 470.

No physical condition such as sex, relative ages or physiques, or circumstance that one of two persons whose survivorship of other is in question was suffering from some malady or any other physical condition which, logically, might seem to be a basis of probability in relation to survivorship, can be considered as constituting basis of presumption that physically superior person survived the other. In re Di Bella's Estate, 1950, 100 N.Y.S.2d 763, 199 Misc. 847, affirmed 107 N.Y.S.2d 929, 279 App.Div. 689.

Under this section if there is proof by petitioning party sufficient to show by a fair preponderance of evidence that one party survived the other, one second would be sufficient. *Id.*

Courts will look at whole case to determine which of two victims of a common disaster survived, if there are circumstances tending to prove survivorship, but court will not attempt to solve question if only the fact of death by common disaster appears. In re Dukszta's Estate, 1948, 87 N.Y.S.2d 245, 193 Misc. 720, reversed on other grounds 90 N.Y.S.2d 636, 275 App.Div. 915, reargument denied 92 N.Y.S.2d 310, 275 App.Div. 1035.

In proceeding by state to escheat estate of deceased woman who was killed along with her husband in automobile accident, evidence was insufficient to establish which, if either, of the parties survived the other, and estate of wife would be treated as though she survived and escheat to state. In re Cruson's Estate, 1950, 221 P.2d 892, 189 Or. 537.

The presumption under this section of simultaneous death could not be

invoked where two lay witnesses testified without contradiction or impeachment that after automobile accident wife's body was twisted and showed no heartbeat, while husband's heartbeat was perceptible and he was bleeding in spurts. *Sauers v. Stolz*, 1950, 218 P.2d 741, 121 Colo. 456.

Simultaneous Death Act does not apply if there is any sufficient evidence that one joint tenant outlived the other. *Matter of Viviano's Estate*, Mo.App.1081, 624 S.W.2d 130.

Death certificates indicating simultaneous death, severe nature of collision, and testimony of emergency personnel who arrived at the scene shortly after the crash, constituted substantial evidence supporting trial court's determination that husband and wife died simultaneously in automobile accident. *Id.*

Where life policy provisions coincided with provision of this Act and all evidence pointed toward simultaneous death of insured and beneficiary, insured presumably survived beneficiary, in absence of proof to contrary. *Belt v. Baser*, 1964, 383 S.W.2d 657, 238 Ark. 644.

If all parties in automobile collision case are unquestionably dead before anyone arrives at the scene or observes any of them alive, it would be necessary to rely on circumstantial evidence in order to prove survivorship and they would have to be considered to have died simultaneously under this section. *Glover v. Davis*, Tex.1962, 360 S.W.2d 924, affirmed 366 S.W.2d 227.

In case in which evidence was presented which indicated that wife died before husband but expert medical testimony was presented which would indicate that such evidence was inconclusive, trial court did not err in determining that husband and wife died simultaneously for purposes of probate of their respective estates. In re Shine's Estate, Fla. App.1980, 389 So.2d 1191, review denied 397 So.2d 779.

That deaths occurred otherwise than simultaneously within meaning of Uniform Simultaneous Death Law,

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may be established by a preponderance of the evidence, and it is not necessary that the showing be made by proof beyond reasonable doubt. *Rimmer v. Tesla*, Fla.1967, 201 So.2d 573.

Death certificates, each of which recited that decedent named therein died at approximately 9:00 a. m. of same morning, were not prima facie evidence of simultaneous deaths under statute making death certificates prima facie evidence of facts recited therein. *Id.*

Thoroughness or comprehensiveness of examination by doctor who attempted but failed to find carotid pulse in neck of one victim of automobile accident but observed another victim breathing for approximately 15 minutes thereafter went only to weight of his testimony that their deaths were other than simultaneous and not to its competency or credibility. *Id.*

13. Questions of fact

This Act does not alter rules of evidence; there is no presumption of survivorship, which is a fact to be established like any other fact. *Estate of Moran*, 1978, 24 Ill.Dec. 312, 385 N.E.2d 79, 67 Ill.App.3d 576, af-

firmed 32 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Where there is a common disaster, there is no presumption of survivorship, nor is there a presumption that death occurred simultaneously but survivorship is a fact to be established by evidence as any other fact. *In re Di Bella's Estate*, 1951, 107 N.Y.S.2d 929, 279 App.Div. 689.

The question whether one survives another is to be determined as a matter of fact by evidence. *United Trust Co. v. Pyke*, 1967, 427 P.2d 67, 199 Kan. 1.

14. Review

Upon issue whether persons dying at approximately the same time have died simultaneously, finding of survivorship must be sustained on appeal if supported by substantial evidence. *In re Rowley's Estate*, 1967, 65 Cal. Rptr. 139, 257 Cal.App.2d 324.

On review of proceeding, under Uniform Simultaneous Death Act, for determination whether two persons, who had died at approximately the same time, had died otherwise than simultaneously, whether members of reviewing court would have arrived at conclusion, as did trial court, that one of the persons had survived the other would not be decisive. *Id.*

§ 2. Survival of Beneficiaries

If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived.

As amended August 1953.

Amendments

Section, prior to amendment of 1953, read as follows: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than si-

multaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

California. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Connecticut. Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and such portions shall be distributed respectively to those who would have taken

in the event that each designated beneficiary had survived."

Delaware. Section reads: "Where 2 or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

District of Columbia. In the second sentence, omits "of such beneficiaries" following "of their death each", omits "such" following "as there were", and substitutes "the" for "such" following "that each of".

Florida. Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is insufficient evidence that the beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal parts as there are successive beneficiaries and the parts shall be distributed to those who would have taken if each designated beneficiary had survived."

Hawaii. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that

these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Idaho. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Indiana. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Iowa. Section reads: "Where two or more beneficiaries are designated to take successively, by reason of survivorship, under another person's disposition of property, and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Kansas. Section reads: "Where two or more beneficiaries are designated to take successively or alter-

nately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate beneficiaries, and the portion allocable to each beneficiary shall be distributed as if he or she had survived all the other beneficiaries."

Maine. Section reads: "Where a testamentary disposition of property depends upon the priority of death of the designated beneficiaries and there is no sufficient evidence that these beneficiaries died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are designated beneficiaries and these portions shall be distributed respectively to those who would take in the event that each designated beneficiary were the survivor."

Maryland. Section reads: "Where two or more beneficiaries are designated to take successively because of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died other than simultaneously, the property disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed to those who would have taken in the event that each designated beneficiary had survived."

Michigan. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Minnesota. Section reads: "Where two or more beneficiaries are desig-

nated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Mississippi. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Nebraska. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Nevada. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

New Hampshire. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

New Jersey. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

New York. Section reads: "Where a testamentary disposition of property depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries and such portions shall be distributed respectively to those who would have taken the whole property in the event that the designated beneficiary through whom they take had survived."

North Carolina. Section reads: "(a) Other than as provided in subsection (b) below, if property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person and both persons die, and there is no sufficient evidence that the two have died other than simultaneously, the beneficiary shall be deemed not to have survived."

"(b) If property is so disposed of that it is to be distributed among such members of a class as survive another person and there is no sufficient evidence that one or more members of the class and such other person died other than simultaneously, each member of the class so dying will be deemed to have survived such other person.

"(c) If property is so disposed of that its disposition depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries who would have taken the whole property if they had survived and such portions shall be distributed respectively to each such beneficiary."

North Dakota. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Oklahoma. Inserts "to establish" following "evidence" in both instances.

Oregon. Inserts "all of" following "evidence that" in the second instance.

Pennsylvania. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as

there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Rhode Island. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

South Carolina. Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

South Dakota. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Tennessee. Section reads: "Where two (2) or more beneficiaries are designated to take successively (by reason of survivorship) under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died other-

wise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Vermont. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is not sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Virgin Islands. Section reads: "Where a testamentary disposition of property depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are alternative beneficiaries and such portions shall be distributed respectively to those who would have taken the whole property in the event that the designated beneficiary through whom they take had survived."

Virginia. Section reads: "When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there

are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Washington. Section reads: "Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternative beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries."

West Virginia. Section reads: "Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Wyoming. Section reads: "Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successively beneficiaries and those portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived."

Library References

Death § 5.

C.J.S. Death § 11.

Notes of Decisions

Generally 1
Evidence of survival 2

1. Generally

Status of absolute owner, who was also primary beneficiary of life policy, as beneficiary would not support inclusion of proceeds in estate of owner, who under Oregon Uniform Simultaneous Death Act was presumed to have predeceased insured. *Chown's Estate v. C.I.R.*, C.A.9, 1970, 428 F.2d 1395.

Under Uniform Simultaneous Death Act, there is no presumption of survivorship based upon age, sex, or condition of health. In *re Moran's Estate*, 1979, 32 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

Fairly interpreted, provision in will, which was substantially the same as this Act, meant that when all evidence was assembled and was not sufficient to show which one died first, then testator was presumed to have survived beneficiaries named in will. In *re Roland's Estate*, 1963, 244 N.Y.S.2d 743, 40 Misc.2d 1018.

2. Evidence of survival

Under former McKinney's Decedent Estate Law § 18 [now McKinney's EPTL § 5-1.1], respecting setting up of trust for benefit of widow in lieu of her right to election, only requirement is that income of trust be payable to surviving spouse for life, and if court cannot be satisfied on all available evidence that her life had extended beyond that of her husband, under will provision substantially in accordance with this Act, trustee will not be required to set aside income for her estate. In *re Roland's Estate*, 1963, 244 N.Y.S.2d 743, 40 Misc.2d 1018.

Where wife was shot five times in the head by husband who sometime thereafter shot and killed himself this Act was not applicable in probate contest between administrator of husband's estate and administrator of wife's estate respecting claims of inheritance, joint tenancy survivorship, and proceeds under life insurance contracts, in view of evidence showing that any one of five bullets would have caused almost instantaneous death. *United Trust Co. v. Pyke*, 1967, 427 P.2d 67, 199 Kan. 1.

§ 3. Joint Tenants or Tenants by the Entirety

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

As amended August 1953.

Amendments

The 1953 amendment added the last paragraph defining "joint tenants".

Action in Adopting Jurisdictions

Variations from Official Text:

- Alabama.** Omits last paragraph.
- Arizona.** Omits "or tenants by the entirety" and adds "with the exception of community property" following "other or others".
- California.** Omits "or tenants by the entirety", substitutes "administered upon, distributed, or otherwise dealt with" for "distributed", wherever appearing, and omits last paragraph.
- Colorado.** Omits reference to "tenants by the entirety".
- Connecticut.** Omits "or tenants by the entirety".
- District of Columbia.** Inserts "or descend as the case may be" following "distributed", where first appearing, and "or descended" following "distributed" where second appearing, and omits "other or" preceding "others".
- Florida.** Omits last paragraph.
- Georgia.** Section reads: "If any stocks, bonds, bank deposits or other intangible property shall be so owned that one of two joint owners is entitled to the whole on the death of the other and both persons die and there is no sufficient evidence that the two joint owners have died otherwise than simultaneously, these assets shall be distributed one-half as if one joint owner had survived and one-half as if the other joint owner had survived. If there are more than two joint owners and there is no sufficient evidence that all have died otherwise than simultaneously, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner had survived."
- Hawaii.** Omits last paragraph.
- Idaho.** Omits reference to "tenants by the entirety"; omits last paragraph.
- Indiana.** Omits last paragraph.
- Iowa.** Omits "or tenants by the entirety"; omits last paragraph.
- Kansas.** In first paragraph, second sentence reads: "Where more than two joint tenants have died and there is no sufficient evidence that they died otherwise than simultaneously the property so held shall be divided into as many equal shares as there were joint tenants and the share allocable to each shall be distributed as if he had survived all the others"; omits last paragraph.
- Maine.** Omits "or tenants by the entirety"; omits last paragraph.
- Massachusetts.** In first paragraph, second sentence reads: "Where more than two joint tenants have died and there is no sufficient evidence that they died otherwise than simultaneously the property so held shall be divided into as many equal shares as there were joint tenants and the share allocable to each shall be distributed as if he had survived all the others"; omits last paragraph.
- Michigan.** Omits last paragraph.
- Minnesota.** Omits last paragraph.
- Mississippi.** Omits "or tenants by the entirety"; omits last paragraph.
- Nebraska.** Omits reference to "tenants by the entirety"; omits last paragraph.
- Nevada.** Omits last paragraph.
- New Hampshire.** Omits last paragraph.
- New Jersey.** Omits last paragraph.
- New Mexico.** Omits reference to "tenants by the entirety"; omits last paragraph.
- New York.** Omits last paragraph.
- North Carolina.** Omits last paragraph.
- North Dakota.** Omits last paragraph.
- Oklahoma.** Inserts "to establish" following "evidence".

SIMULTANEOUS DEATH

§ 3

Pennsylvania. Omits last paragraph.

Rhode Island. Omits last paragraph.

South Carolina. Omits last paragraph.

South Dakota. Omits last paragraph.

Tennessee. Omits last paragraph.

Utah. Omits last paragraph.

Vermont. Omits last paragraph.

Virgin Islands. Omits last paragraph.

Virginia. Omits last paragraph.

Washington. Omits "or tenants by the entirety".

West Virginia. Omits last paragraph.

Wisconsin. Omits last paragraph.

Wyoming. Omits last paragraph.

Law Review Commentaries

Joint tenancy property and estate planning. Henry R. Barber and Bernard G. Segatto. 1959 Law Forum 1022.

Legal consequences of joint ownership. Stuart M. Mamer. 1959 Law Forum 944.

Severance or destruction of a joint tenancy. 32 Iowa L.Rev. 539 (1947).

Tax incidents of joint ownership. J. Nelson Young. 1959 Law Forum 972.

Testamentary survivorship provisions: Effect on tenancies by the entirety under New York's Simultaneous Death Act. 44 Albany L.Rev. 680 (1980).

Library References

Death §5.

C.J.S. Death § 11.

Notes of Decisions

Distribution of property 1
Evidence of survival 2
Presumptions 3

1. Distribution of property

One half of joint tenancy property which husband and wife owned prior to their simultaneous deaths passed under will of husband to trustee named in his will and the other half passed under will of wife, under this Act providing that property held in joint tenancy shall be administered upon, distributed, or otherwise dealt with one-half as if one tenant had survived and one-half as if the other had survived. In re Meade's Estate, 77p.1064, 39 Cal.Rptr. 278.

Uniform Simultaneous Death Act controls disposition of property held by decedent as tenants by entireties. Brundige v. Alexander, Tenn.1976, 547 S.W.2d 232.

Where testatrix and her husband, beneficiary under residuary clause, were killed in common accident, Uniform Simultaneous Death Act applied to property held by entireties so that testatrix' one-half interest in property passed under will. Id.

In actions for declaratory judgment as to how assets of estates of deceased husband and wife, who were fatally injured in automobile accident, should be distributed, and to quiet and determine title to realty held by husband and wife, individually or as tenants by the entirety, evidence sustained trial court's finding that deceased wife survived deceased husband and that therefore heirs of deceased wife had title to property held by husband and wife by the entirety and an undivided one-half interest in the separate estate of the deceased husband. Schmitt v. Pierce, Mo.1970, 344 S.W.2d 120.

Where husband and wife came to their death simultaneously and at

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that time they were the owners as tenants by the entirety of the homestead and were joint owners of certain personal property, and the only surviving heirs of either of them consisted of brothers and sisters, the estate of the wife was entitled to one-half of the cash in a safety deposit box which was in the name of husband and in the name of the wife as a deputy. *Adams v. Gardener*, Mo. App.1951, 237 S.W.2d 495, 241 Mo. App. 275.

2. Evidence of survival

Where there is sufficient evidence to determine that one party survived another, the statute is not applicable. *In re Davenport's Estates*, 1958, 323 P.2d 611, 79 Idaho 548.

Where question in action was whether one deceased spouse survived the other deceased spouse, or whether they died simultaneously in automobile collision within meaning of V.A.M.S. § 471.010 et seq., and defendants withdrew their objection to admission of opinions of plaintiffs' witnesses as to whether deceased husband and wife were alive or dead when witnesses reached scene of accident on condition that defendants be permitted to offer like testimony, and plaintiffs' witnesses gave their opinions, opinions of defendants' lay witnesses of equal qualifications to plaintiffs' lay witnesses should have been received under curative admissibility rule and position taken by parties at the trial. *Schmitt v. Pierce*, Mo.1960, 344 S.W.2d 120.

Sufficient proof of survivorship for a short time, if only one second, of first tenant by the entirety after death of second tenant by the entirety serves to permit first tenant by the entirety to act as a conduit of title to his or her heirs under V.A.M.S. § 471.010 et seq. *Id.*

In action by the administrator of the estate of a wife against the administratrix of the estate of husband to require the turn over of a certain sum alleged to belong to the estate of wife, evidence sustained finding of trial court that husband and wife were the owners as tenants by the

entirety of the homestead and were the joint owners of certain personal property and that husband and wife came to their death simultaneously. *Adams v. Gardener*, Mo.App.1951, 237 S.W.2d 495, 241 Mo.App. 275.

Wife's administratrix was entitled to administer real property formerly held by husband and wife by entireties where testimony of doctor who examined them immediately after automobile collision was sufficient to establish that wife survived husband by at least 15 minutes, despite recital in each death certificate that decedent named therein died at approximately 9:00 a. m. of same morning. *Reimmer v. Tesla*, Fla.1967, 201 So.2d 573.

Testimony of doctor, who arrived at scene within three or four minutes of automobile collision and immediately examined husband and wife involved therein, that husband had no carotid pulse in neck and therefore was dead but that wife continued to breathe for 15 minutes thereafter before expiring was sufficient to support finding that deaths of husband and wife occurred otherwise than simultaneously, in action instituted by wife's administratrix to establish right to administer real property formerly held by husband and wife by entireties. *Id.*

3. Presumptions

Where it was not established that wife, who died intestate, and husband, who died testate, died other than simultaneously, real estate and personal property held by such spouses as joint tenants or as tenants by entireties was required to be distributed one-half as if one spouse died first and one-half as if other died first, though will provided that in event of common accident it was to be presumed that wife predeceased husband. *Petition of Smith*, 1972, 282 N.E.2d 412, 361 Mass. 733.

No presumption is created by statute providing that if there is no sufficient evidence that two joint tenants or tenants by entirety have died otherwise than simultaneously property so held shall be distributed one-

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half as if one had survived and one-half as if other survived. *Id.*

Under Uniform Simultaneous Death Act section governing joint tenants or tenants by entirety, and section governing insured and beneficiary, there is neither presumption of survivorship nor presumption of simultaneous death, and such sections become applicable when two or more

persons have died under circumstances where there is insufficient evidence that one of them outlived other, and burden of proof is on party whose claim depends upon survivorship. *Matter of Campbell's Estate*, 1982, 641 P.2d 610, 56 Or.App. 222, review denied 651 P.2d 143, 293 Or. 146.

§ 4. Community Property

Where a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived [and as if said one-half were his separate property,] and the other one-half thereof shall pass as if the wife had survived [and as if said other one-half were her separate property.]

Added August 1953.

Historical Note

Former section 4, as originally enacted in 1940, is now covered by section 5.

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Omits this section.

Arizona. Changes certain language without affecting substance of section.

Arkansas. Omits this section.

California. Section reads:

"Where a husband and wife have died, leaving community property and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall be administered upon, distributed, or otherwise dealt with, as if the husband had survived and as if said one-half were his separate property and the other one-half thereof shall be administered upon, distributed, or otherwise dealt with, as if the wife had survived and as if said other one-half were her separate property, except as provided in Section 290.3.

"If a portion of the estate which was the community property of the husband and wife would otherwise escheat to the state under this section and Sections 201, 228, and 231, or if a portion of the estate which was separate property of a previously deceased spouse would otherwise escheat to the state under Section 229, because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such portion of the estate shall be distributed in equal shares to the children of the other spouse and to their descendants by right of representation or if such other spouse leaves no children, nor descendants of a deceased child, in equal shares to the parents of such other spouse, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of such other spouse and to their descendants by right of repre-

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sentation, or if such other spouse leaves neither parent, brother, sister, nor descendant of a deceased brother or sister, such portion of the estate goes to the next of kin of such other spouse in equal degree, except that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote."

Connecticut. Omits this section.

Delaware. Omits this section.

District of Columbia. Omits this section.

Florida. Omits this section.

Georgia. Omits this section.

Hawaii. Omits this section.

Idaho. Omits this section.

Indiana. Omits this section.

Iowa. Omits this section.

Kansas. Omits this section.

Kentucky. Omits this section.

Maine. Omits this section.

Maryland. Omits this section.

Massachusetts. Omits this section.

Michigan. Omits this section.

Minnesota. Omits this section.

Mississippi. Omits this section.

Missouri. Omits this section.

Nebraska. Omits this section.

Nevada. Omits bracketed material and adds "except as provided in NRS 135.070 [section 5 of Uniform Act]."

New Hampshire. Omits this section.

New Jersey. Omits this section.

New York. Omits this section.

North Carolina. Omits this section.

North Dakota. Omits this section.

Oklahoma. Inserts "to establish" following "evidence".

Oregon. Omits bracketed material.

Pennsylvania. Omits this section.

Rhode Island. Omits this section.

South Carolina. Omits this section.

South Dakota. Omits this section.

Tennessee. Omits this section.

Utah. Omits this section.

Vermont. Omits this section.

Virgin Islands. Omits this section.

Virginia. Omits this section.

Washington. Omits this section.

West Virginia. Omits this section.

Wisconsin. Omits this section.

Wyoming. Omits this section.

Library References

Death ⇨ 5.

C.J.S. Death § 11.

Notes of Decisions

Insurance proceeds 2
Law governing 1

1. Law governing

When community is dissolved in death, community status of property disappears with the community and the title cast upon surviving spouse is that of separate property and, though West's Ann.Cal.Probate Code §

298 et seq., are statutes of succession, that does not mean that in a proper case ultimate disposition under them may not be affected and changed by provisions of older statutes of succession. In re Hudson's Estate, 1958, 322 P.2d 987, 158 C.A.2d 385.

2. Insurance proceeds

See Notes of Decisions under section 5 of this Act, *infra*.

§ 5. Insurance Policies

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary, [except if the policy is community property of the insured and his spouse, and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under Section 4.]

Formerly § 4; renumbered 5 and amended August 1953.

Amendments

The 1953 amendment added the bracketed material.

Former section 5 as enacted in 1940, which related to retroactive effect of Act, was omitted in 1953.

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Omits bracketed material.

Arkansas. Omits bracketed material.

California. Omits bracketed material.

Colorado. Inserts ", or no alternative beneficiary" preceding "except the estate".

Connecticut. Omits bracketed material.

Delaware. Omits bracketed material.

District of Columbia. Omits bracketed material.

Florida. Omits bracketed material.

Georgia. Omits bracketed material.

Hawaii. Omits bracketed material.

Idaho. Omits bracketed material.

Indiana. Omits bracketed material.

Iowa. Omits bracketed material.

Kansas. Section reads: "Where the insured and the beneficiary in a policy or contract of life or endowment insurance or insurance against accident have died and there is no

sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy or contract shall be payable as if the insured had survived the beneficiary."

Kentucky. Omits bracketed material.

Maine. Section reads: "Where the decedents are the insured and the beneficiary respectively in policies of life or accident insurance and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of each policy shall be distributed as if the person whose life was insured therein survived."

Maryland. Omits bracketed material.

Massachusetts. Omits bracketed material.

Michigan. Omits bracketed material.

Minnesota. Omits bracketed material.

Mississippi. Omits bracketed material.

Missouri. Omits bracketed material.

Nebraska. Omits bracketed material.

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Note 1

Nevada. Omits bracketed material.

New Hampshire. Omits bracketed material.

New Jersey. Omits bracketed material.

New York. Omits bracketed material.

North Carolina. Omits bracketed material.

North Dakota. Omits bracketed material.

Oklahoma. Section reads: "Where the insured or the annuitant and the beneficiary in a policy of life or accident insurance or in an annuity contract have died and there is no sufficient evidence to establish that they have died other than simultaneously, the proceeds of the policy or contract shall be distributed as if the insured or annuitant had survived the beneficiary, except if the policy or contract is community property of the insured or annuitant and his spouse, and there is no alternative beneficiary, or no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under Section 4."

Oregon. Inserts "or any interest therein" following "except if the policy"; substitutes "the proceeds of such interest" for "the proceeds" immediately preceding "shall be distributed as community property".

Pennsylvania. Omits bracketed material.

Rhode Island. Omits bracketed material.

South Carolina. Omits bracketed material.

South Dakota. Omits bracketed material.

Utah. Omits bracketed material.

Vermont. Omits bracketed material.

Virgin Islands. Omits bracketed material.

Virginia. Omits bracketed material.

Washington. Omits bracketed material.

West Virginia. Omits bracketed material.

Wisconsin. Omits bracketed material.

Wyoming. Omits bracketed material.

Law Review Commentaries

Descent of insurance proceeds under Simultaneous Death Act. 25 So. Cal.L.R. (1952).

Effect of death in a common disaster upon the vested interest of a life insurance beneficiary. 9 St. Louis L.Rev. 230 (1924).

Library References

Death ⇐ 5.

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Notes of Decisions

Generally 4
Community property 7
Construction with other laws 1
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Policies within section 5
Taxation 9

1. Construction with other laws
West's Ann.Cal.Probate Code, §§ 201, 228, which provide who for purpose of distribution is considered to have died first in simultaneous or nearly simultaneous death of insured and beneficiary and husband and wife, must be construed with West's Ann. Cal.Probate Code, §§ 296.3, 296.4, relating to succession of property to deter-

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mine who is to succeed to estate. In re Wedemeyer's Estate, 1952, 240 P.2d 8, 109 C.A.2d 67.

2. Law governing

In interpleader suit to determine right to proceeds of son's life policies as between administrators of father and son who were killed in same automobile accident, West's Ann.Cal. Probate Code, § 296.3, requiring distribution of policy proceeds as if insured had survived beneficiary in absence of evidence that insured and beneficiary died otherwise than simultaneously was applicable, to the complete exclusion of West's Ann.Cal. Probate Code, § 296, governing disposition of property when dependent upon priority of death. Hahn v. Padre, C.A. Cal.1957, 235 F.2d 356.

Where husband as insured owned as community asset chose in action represented by life policy, which named his estate, as beneficiary, and husband and wife died intestate in airplane crash and West's Ann.Cal. Probate Code, § 201, provided for husband to receive one-half of chose in action to be distributed as if wife had died first, ultimate distribution would be controlled by West's Ann. Cal. Probate Code, § 223, regulating distribution of community property belonging to deceased and previously deceased spouse by virtue of community character on presumed prior death of wife. In re Wedemeyer's Estate, 1952, 240 P.2d 8, 109 C.A.2d 67.

3. Definitions

The term "insured" in West's RCWA 11.05.040 providing that if insured and beneficiary die simultaneously the policy proceeds shall be distributed as if insured survived beneficiary meant to refer to the person whose life is insured. In re Clise's Estates, 1964, 391 P.2d 547, 64 Wash.2d 320.

4. Generally

Where deaths of insured and beneficiary of accidental death policy occurred either simultaneously or insured survived beneficiary by a few minutes without exercising retained

right to change beneficiary of policy, proceeds of policy were payable to estate of insured. Mutual of Omaha Ins. Co. v. Losey, 1969, 170 N.W.2d 273, 17 Mich.App. 622.

5. Policies within section

Fact that one of the policies on life of husband, who died simultaneously with beneficiary-wife, provided for payment in form of continuing, monthly sums did not render policy an "annuity contract" and not an insurance policy within V.A.T.S. Probate Code, § 47(e) providing that if insured and beneficiary die simultaneously proceeds are to be distributed as if insured had survived beneficiary. Brown v. Lee, Tex.1963, 371 S.W.2d 694.

6. Contingent beneficiaries

Simultaneous deaths of husband and wife, who owned an insurance policy on the life of her husband in the face amount of \$60,000, extinguished wife's ownership rights in the policy; at that point, the rights of the contingent beneficiaries to the policy proceeds took precedence over any rights the wife may have had, and also terminated her ability to determine the disposition of the proceeds. Old Kent Bank & Trust Co. v. U. S., 430 F.2d 392.

7. Community property

Where husband, wife and children were killed simultaneously in airplane crash distribution of the two estates, consisting of insurance policies on husband's life purchased with community funds and payable to his estate, were properly ordered, in both estates, to be distributed one-half to mother of deceased husband and one-half to mother of deceased wife. In re Sugino's Estate, 1968, 73 Cal.Rptr. 150, 267 Cal.App.2d 591, 39 A.L.R.3d 1325.

Life policies of husband who died simultaneously with wife went to his estate and not to her estate, where their agreement made all their property community property which vested in survivor on death of either, agreement made no provision for distribution of property in event of simulta-

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neous deaths, will of each named the other as sole beneficiary and made no provision for distribution of estates in event of simultaneous deaths, and West's RCWA 11.05.040 provided that if insured and beneficiary should die simultaneously the policy proceeds should be distributed as if insured survived beneficiary. In re Clise's Estates, 1964, 301 P.2d 547, 64 Wash.2d 320.

Where a husband and wife purchased certain life policies upon their own lives with community funds, and named each other as the beneficiaries of such policies, and no alternative beneficiary was named in the policies, and neither insured had children, but both left collateral heirs, and both died simultaneously in an airplane accident, under West's RCW 11.04.050, husband's collateral heirs were entitled to all proceeds of the policies in which he was the named insured, and wife's collateral heirs were entitled to all proceeds of policies in which she was the named insured. In re Saunders' Estates, 1957, 317 P.2d 528, 51 Wash.2d 274.

Where husband as insured owned choses in action represented by life policies, which named wife beneficiary, as community asset and husband and wife died intestate in airplane crash and husband, who was presumed to have survived wife, took choses in action, at husband's death proceeds of policies had to be distributed in his estate according to West's Ann.Cal.Probate Code, § 228, providing for distribution of community property belonging to deceased and previously deceased spouse by virtue of community character on the presumed prior death of wife. In re Wedemeyer's Estate, 1952, 240 P.2d 8, 109 C.A.2d 67.

Where husband as insured owned choses in action represented by life policies, which named wife first beneficiary, as community asset and wife was presumed to have predeceased husband and wife's appointment as beneficiary lapsed and provision on behalf of husband's estate as secondary beneficiary became operative, change in beneficiary did not change character of property and did

not change applicability of West's Ann.Cal.Probate Code, § 228, providing for distribution of community property belonging to deceased and predeceased spouse. Id.

Where husband as insured owned community asset consisting of choses in action represented by life policies, which named wife first beneficiary, and wife was presumed to have predeceased husband who died in same accident, at death of wife her appointment as beneficiary lapsed and provision in behalf of husband's estate as secondary beneficiary became operative. Id.

Where there was no evidence as to which spouse died first, it was statutorily presumed that insured-husband survived for purposes of distributing proceeds from life insurance policies which were purchased with community funds. Brown v. Lee, Tex.1963, 371 S.W.2d 694.

8. Evidence of survival

Where insured and beneficiary of group policy were riding in automobile which was struck by train, insured's body was dismembered, beneficiary was found by engineer of train to be sitting in front of automobile apparently dead, and medical examiner who arrived a half hour later found beneficiary to be dead and noted death certificates that death of both occurred at same time, but was unable to say whether deaths were simultaneous, estate of insured was entitled to recover proceeds of policy. Prudential Ins. Co. of America v. Somers, 1957, 135 A.2d 365, 20 Conn.Sup. 351.

Use of term "direct evidence" in V.A.T.S. Probate Code, § 47(e), providing that when insured and beneficiary have died and there is no "direct evidence" that they have died otherwise than simultaneously, proceeds of policy shall be distributed as if insured had survived beneficiary, was intended to require a higher degree of proof than would have been required for "sufficient evidence" and that the question of death should not be left to conjecture or be determined alone on evidence having no

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foundation upon components usually regarded as reliable attributes of death. *Glover v. Davis*, Tex.1963, 366 S.W.2d 227.

In proceedings to determine which claimants were entitled to proceeds of life policy, where insured, his wife and two children were killed in an automobile collision, testimony merely to the appearance of death on the part of the father was not direct evidence that older daughter of insured survived the insured or that they died other than simultaneously. *Id.*

9. Taxation

Where husband and wife, each owning policies upon the life of the other in which owner was named as primary beneficiary, were killed in a common disaster under circumstances where it could not be established who died first, under the Georgia Simultaneous Death Act the ownership rights were in the estate of the owner at the moment of death, and ownership interests in the policies should have been valued according to procedures outlined in regulation basing value on the interpolated terminal reserve of the policy and should not have been included in the gross estates at value equal to the entire proceeds payable under the policies. *Wien's Estate v. C. I. R.*, C.A.Ga. 1971, 441 F.2d 32.

Application of Simultaneous Death Act is not tantamount to finding that parties in fact died simultaneously and will not support assumption that husband and wife each owning policies on the life of the other and who died in common disaster did die at the same instant so as to cause maturity of the policies to coincide with instant of the owner's death for purpose of determining amount includable in gross estate for estate tax purposes. *Id.*

Proceeds of life policy were not includable, for federal estate tax purposes, in estate of absolute owner, who was shown to have died at same time as insured in airplane crash and who under Oregon Uniform Simultaneous Death Act was presumed to have predeceased insured, on theo-

ry that policy became fully matured at instant of death, thereby giving to owner's interest the full value of the proceeds, which, for a fleeting instant, became the fair market value of her ownership interest. *Chown's Estate v. C. I. R.*, C.A.9 1970, 428 F.2d 1395.

Had executor of estate of absolute owner of life policy wished to claim that interpolated terminal reserve value of policy should not have been included, for estate tax purposes, in estate of owner, who under Oregon Uniform Simultaneous Death Act was presumed to have predeceased insured, executor would have been required to file claim for a refund, and, if that were denied, to pursue as remedy by an action in the district court; claim could not be raised in proceedings in tax court on deficiency assessment for failure to include proceeds of policy in estate. *Id.*

Statute, which provides that if there is no direct evidence that spouses died other than simultaneously, one-half of community shall be distributed as if husband survived and other half shall be distributed as if wife survived and which provides that statute is applicable to life insurance proceeds payable to estate of husband or wife, was not applicable, for inheritance tax purposes, to proceeds of policies on life of husband, who, together with wife and children, died in airplane crash, where insurance contracts provided that proceeds were to be paid to trust and trust agreement itself governed disposition of proceeds. *Bullock v. City Nat. Bank of Austin*, Tex.Civ.App.1977, 550 S.W.2d 763.

Value of wife's interest in policies, which insured husband's life, which were for term insurance without cash's surrender value and which had to be maintained in force by additional premium payments, was not one-half of proceeds of policies but was one-half of policies' interpolated terminal reserve value which had been stipulated to be zero; thus, for inheritance tax purposes after such spouses were killed in airplane crash, no part of proceeds of policies became a part of wife's estate. *Id.*

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§ 6. Act Does Not Apply If Decedent Provides Otherwise

This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this act, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided.

As amended August 1953.

Amendments

The 1953 amendment inserted "or any other situation" and added "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Section reads: "This chapter shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter or wherein provision is made for a presumption as to the order of survivorship if there is no sufficient evidence that the persons died otherwise than simultaneously, in which event full effect shall be given to the presumption so provided as to the order of survivorship."

California. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Connecticut. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Delaware. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Florida. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribu-

tion of property different from that here provided".

Hawaii. Omits this section.

Idaho. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Indiana. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Iowa. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Kansas. Section reads: "This act shall not apply to a will, living trust or deed wherein provision has been made for distribution different from the distribution under this act, or to a policy or contract of insurance wherein provision has been made for payment of its proceeds different from such payment under this act."

Kentucky. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

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Maine. Section reads: "This section shall not apply in the case of wills, deeds or contracts of insurance wherein provision has been made for distribution different from the provisions of said section."

Maryland. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Michigan. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Minnesota. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Mississippi. Section reads: "This chapter shall not apply in the case of wills, living trusts, deeds, contracts of insurance or other contracts wherein provision has been made for distribution of property different from the provisions of this chapter."

Nebraska. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Nevada. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

New Hampshire. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

New Jersey. Section reads: "This chapter shall not apply to a devolution of property of a decedent under a will or upon intestacy, where the law provides that in order to take on the devolution, a person shall survive

the decedent by 120 hours, living trusts, deeds, or contracts of insurance, wherein provision has been made for distribution of property different from the provisions of this chapter."

New York. Section reads: "This section shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein a provision other than that prescribed by this section has been made for disposition of property."

North Carolina. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

North Dakota. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Oklahoma. Section reads: "This Act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance or annuity, or any other instrument wherein provision is made for distribution of property different from the provisions of this Act, or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided, in all of which cases the provisions of such instrument shall be given effect."

Pennsylvania. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Rhode Island. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

South Carolina. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

South Dakota. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Tennessee. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Utah. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Vermont. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Virgin Islands. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Virginia. Section reads: "This chapter shall not apply in the case of wills or living trusts wherein provision is made for distribution of property different from the distribution that would be made under the provisions of this chapter, or in the case of deeds creating a joint tenancy or a tenancy by the entirety where any such deed or the will of any cotenant

makes specific provision for distribution of property different from the distribution that would be made under the provisions of this chapter and in favor of another cotenant, or in the case of contracts of insurance where either such contract or the will of the insured makes provisions for distribution of the proceeds different from the distribution that would be made under the provisions of this chapter, provided that, if an insurance company makes payment to any beneficiary designated in an insurance contract in accordance with § 64.1-100 without actual knowledge of such provision in the will of the insured, such insurance company shall not be liable to any person therefor, but the insured's personal representative may recover from such payee the full amount of such proceeds."

Washington. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

West Virginia. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Wyoming. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Library References

Death ⇐ 5.

C.J.S. Death § 11.

Notes of Decisions

1. Wills

Husband, whose will provided that if he and wife died within 30 days of each other it was to be conclusively presumed that wife survived husband, exercised option under section of Uniform Simultaneous Death Act to negate statutory presumption of testator's survival and substitute one of his own making; it was intention

of husband that presumption of wife's survivorship apply where spouses died within 30 days of each other but not as result of a common disaster, and this intention would be given effect. *Pannone v. McLaughlin*, 1977, 377 A.2d 597, 37 Md. App. 395.

Wills which were executed by husband and wife who died simultane-

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SIMULTANEOUS DEATH

§ 11

ously and were proper in form and correctly executed were effective and controlled estates of husband and wife notwithstanding this Act. In re Meade's Estate, 1904, 39 Cal.Rptr. 278, 22S C.A.2d 169.

neither spouse ever having inherited from the other. Id.

Common disaster provision of will directing that under such circumstances testator's wife should be deemed to have predeceased him would be given its literal meaning so that gift to wife of testator was defeated where testator and his wife were fatally injured in automobile accident, although a wife survived testator's instantaneous death by a matter of three hours. In re Muller's Estate, 1966, 272 N.Y.S.2d 231, 50 Misc.2d 1068.

Terms of wills of husband and wife killed simultaneously were required to be given effect in accordance with this Act, and decedent's share of community property in each estate was disposable in same manner as if each spouse had survived and the community consisted of the whole of the estate of each spouse,

§ 7. Uniformity of Interpretation

This act shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

Library References

Statutes § 226.

C.J.S. Statutes § 371 et seq.

§ 8. Short Title

This act may be cited as the Uniform Simultaneous Death Act.

§ 9. Repeal

All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.

§ 10. Severability

If any of the provisions of this act or the application thereof to any persons or circumstances is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

§ 11. Time of Taking Effect

This act shall take effect

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AREA CODE 907

February 25, 1985

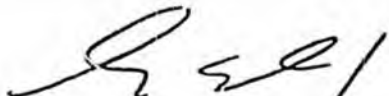
Richard S. Thwaites, Jr.
Chairman of the Alaska Bar Association
Probate Law Section
1031 West 4th Ave., Suite 500
Anchorage, AK 99501

Re: Introduction of the Uniform Simultaneous
Death Act in Alaska

Dear Dick:

Enclosed is a proposed statute relating to the Uniform Simultaneous Death Act. The statute provides for the disposition of non-probate property where there is no sufficient evidence that persons have died otherwise than simultaneously. I have left the provision regarding community property in the act because of the new statute which allows for community property status here in Alaska. The taxation law section supports enactment of this proposed statute.

Very truly yours,


George E. Goerig, Jr.
Attorney At Law

GEG/dvs

Enclosure

New language as intended to enhance clarity and conform style - no substantive change intended

UNIFORM SIMULTANEOUS DEATH ACT

An Act providing for the disposition of property where there is no sufficient evidence that persons have died otherwise than simultaneously, and to make uniform the law with reference thereto.

1940 ACT

Amended in 1953

Sec.

1. No Sufficient Evidence of Survivorship.
2. Survival of Beneficiaries.
3. Joint Tenants or Tenants by the Entirety.
4. Community Property.
5. Insurance Policies.
6. Act Does Not Apply If Decedent Provides Otherwise.
7. Uniformity of Interpretation.
8. Short Title.
9. Repeal.
10. Severability.
11. Time of Taking Effect.

Be it enacted

§ 1. No Sufficient Evidence of Survivorship

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this act.

Thence AS 12 11, 200-13 11 223
Action in Adopting Jurisdiction

Variations from Official Text:

Idaho. Adds "Subject to extension by the provisions of section 15-2-104 and section 15-2-801 of this code" preceding "where the title".

Kentucky. Omits this section.

Missouri. Inserts "as determined by a court of competent jurisdiction", following "simultaneously."

Oklahoma. Inserts "of two or more persons" following "death" and "to establish" following "evidence".

Wisconsin. Substitutes "If" for "Where", and inserts "or she" following "he".

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may be established by a preponderance of the evidence, and it is not necessary that the showing be made by proof beyond reasonable doubt. *Rimmer v. Tesla*, Fla.1967, 201 So.2d 573.

Death certificates, each of which recited that decedent named therein died at approximately 9:00 a. m. of same morning, were not prima facie evidence of simultaneous deaths under statute making death certificates prima facie evidence of facts recited therein. *Id.*

Thoroughness or comprehensiveness of examination by doctor who attempted but failed to find carotid pulse in neck of one victim of automobile accident but observed another victim breathing for approximately 15 minutes thereafter went only to weight of his testimony that their deaths were other than simultaneous and not to its competency or credibility. *Id.*

13. Questions of fact

This Act does not alter rules of evidence: there is no presumption of survivorship, which is a fact to be established like any other fact. *Estate of Moran*, 1978, 24 Ill.Dec. 312, 385 N.E.2d 79, 87 Ill.App.3d 576, affirmed 32 Ill.Dec. 349, 395 N.E.2d 579, 77 Ill.2d 147.

§ 2. Survival of Beneficiaries

If property is so disposed of that the right of a beneficiary to succeed to an interest therein is conditional upon his surviving another person, and both persons die, and there is no sufficient evidence that the two have died otherwise than simultaneously, the beneficiary shall be deemed not to have survived. If there is no sufficient evidence that two or more beneficiaries have died otherwise than simultaneously and property has been disposed of in such a way that at the time of their death each of such beneficiaries would have been entitled to the property if he had survived the others, the property shall be divided into as many equal portions as there were such beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each of such beneficiaries had survived. As amended August 1953.

Where there is a common disaster, there is no presumption of survivorship, nor is there a presumption that death occurred simultaneously but survivorship is a fact to be established by evidence as any other fact. *In re Di Bella's Estate*, 1951, 107 N.Y.S.2d 929, 279 App.Div. 689.

The question whether one survives another is to be determined as a matter of fact by evidence. *United Trust Co. v. Pyke*, 1967, 427 P.2d 67, 199 Kan. 1.

14. Review
Upon issue whether persons dying at approximately the same time have died simultaneously, finding of survivorship must be sustained on appeal if supported by substantial evidence. *In re Rowley's Estate*, 1967, 85 Cal. Rptr. 139, 257 Cal.App.2d 324.

On review of proceeding, under Uniform Simultaneous Death Act, for determination whether two persons, who had died at approximately the same time, had died otherwise than simultaneously, whether members of reviewing court would have arrived at conclusion, as did trial court, that one of the persons had survived the other would not be decisive. *Id.*

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Notes of Decisions

Generally 1
Evidence of survival 2

2. Evidence of survival

Under former McKinney's Decedent Estate Law § 18 [now McKinney's EPTL § 5-1.1], respecting setting up of trust for benefit of widow in lieu of her right to election, only requirement is that income of trust be payable to surviving spouse for life, and if court cannot be satisfied on all available evidence that her life had extended beyond that of her husband, under will provision substantially in accordance with this Act, trustee will not be required to set aside income for her estate. In re Roland's Estate, 1963, 244 N.Y.S.2d 743, 40 Misc.2d 1018.

Where wife was shot five times in the head by husband who sometime thereafter shot and killed himself this Act was not applicable in probate contest between administrator of husband's estate and administrator of wife's estate respecting claims of inheritance, joint tenancy survivorship, and proceeds under life insurance contracts, in view of evidence showing that any one of five bullets would have caused almost instantaneous death. United Trust Co. v. Pyke, 1967, 427 P.2d 67, 199 Kan. 1.

1. Generally

Status of absolute owner, who was also primary beneficiary of life policy, as beneficiary would not support inclusion of proceeds in estate of owner, who under Oregon Uniform Simultaneous Death Act was presumed to have predeceased insured. Chown's Estate v. C.I.R., C.A.9, 1970, 428 F.2d 1395.

Under Uniform Simultaneous Death Act, there is no presumption of survivorship based upon age, sex, or condition of health. In re Moran's Estate, 1970, 32 Ill.Dec. 349, 395 N.E.2d 570, 77 Ill.2d 147.

Fairly interpreted, provision in will, which was substantially the same as this Act, meant that when all evidence was assembled and was not sufficient to show which one died first, then testator was presumed to have survived beneficiaries named in will. In re Roland's Estate, 1963, 244 N.Y.S.2d 743, 40 Misc.2d 1018.

§ 3. Joint Tenants or Tenants by the Entirety

(a) Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously the property ~~shall~~ ^{is to be} distributed one-half as if one had survived and one-half as if the other had survived. ~~If there are more than two joint tenants and all of them have so died the property shall be distributed~~ ^{is to be distributed} shall be in the proportion that one bears to the whole number of joint tenants.

The term "joint tenants" includes owners of property held under circumstances which entitled one or more to the whole of the property on the death of the other or others.

As amended August 1953.

Amendments

The 1953 amendment added the last paragraph defining "joint tenants".

Index

that simultaneously the joint

(C) In this section

b. wife's estate is held for joint tenant - share divided 50%

SIMULTANEOUS DEATH

§ 4

half as if one had survived and one-half as if other survived. *Id.*

Under Uniform Simultaneous Death Act section governing joint tenants or tenants by entirety, and section governing insured and beneficiary, there is neither presumption of survivorship nor presumption of simultaneous death, and such sections become applicable when two or more

persons have died under circumstances where there is insufficient evidence that one of them outlived other, and burden of proof is on party whose claim depends upon survivorship. *Matter of Campbell's Estate*, 1982, 641 P.2d 610, 56 Or.App. 222, review denied 651 P.2d 143, 293 Or. 146.

Sec. 13.1 281
§ 4. **Community Property**

When
~~Where~~ a husband and wife have died, leaving community property, and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall pass as if the husband had survived [and as if said one-half were ~~his~~ separate property,] and the other one-half ~~thereof~~ shall pass as if the wife had survived [and as if said ~~one-half~~ *one-half* were ~~her~~ separate property.] *all the community*

P. 4
Added August 1953.

Historical Note

Former section 4, as originally enacted in 1940, is now covered by section 5.

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Omits this section.

Arizona. Changes certain language without affecting substance of section.

Arkansas. Omits this section.

California. Section reads:

"Where a husband and wife have died, leaving community property and there is no sufficient evidence that they have died otherwise than simultaneously, one-half of all the community property shall be administered upon, distributed, or otherwise dealt with, as if the husband had survived and as if said one-half were his separate property and the other one-half thereof shall be administered upon, distributed, or otherwise dealt with, as if the wife had survived and as if said other one-half were her separate property, except as provided in Section 2063.

"If a portion of the estate which was the community property of the husband and wife would otherwise escheat to the state under this section and Sections 201, 228, and 231, or if a portion of the estate which was separate property of a previously deceased spouse would otherwise escheat to the state under Section 229, because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such portion of the estate shall be distributed in equal shares to the children of the other spouse and to their descendants by right of representation, or if such other spouse leaves no children, nor descendants of a deceased child, in equal shares to the parents of such other spouse, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of such other spouse and to their descendants by right of repre-

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S.P. 11-282
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§ 5

§ 5. Insurance Policies

that is not community property

(a) ^{where} ~~Where~~ the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died other~~y~~ than simultaneously the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. ~~except if the policy is community property of the insured and his spouse and there is no alternative beneficiary except the estate or personal representatives of the insured, the proceeds shall be distributed as community property under Section 4.~~

(b) Where beneficiary's life or accident insurance

Formerly § 4; renumbered 5 and amended August 1953.

Amendments

The 1953 amendment added the bracketed material.

Former section 5 as enacted in 1940, which related to retroactive effect of Act, was omitted in 1953.

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Omits bracketed material.

Arkansas. Omits bracketed material.

California. Omits bracketed material.

Colorado. Inserts ", or no alternative beneficiary" preceding "except the estate".

Connecticut. Omits bracketed material.

Delaware. Omits bracketed material.

District of Columbia. Omits bracketed material.

Florida. Omits bracketed material.

Georgia. Omits bracketed material.

Hawaii. Omits bracketed material.

Idaho. Omits bracketed material.

Indiana. Omits bracketed material.

Iowa. Omits bracketed material.

Kansas. Section reads: "Where the insured and the beneficiary in a policy or contract of life or endowment insurance or insurance against accident have died and there is no

sufficient evidence that they have died otherwise than simultaneously the proceeds of the policy or contract shall be payable as if the insured had survived the beneficiary."

Kentucky. Omits bracketed material.

Maine. Section reads: "Where the decedents are the insured and the beneficiary respectively in policies of life or accident insurance and there is no sufficient evidence that they died otherwise than simultaneously, the proceeds of each policy shall be distributed as if the person whose life was insured therein survived."

Maryland. Omits bracketed material.

Massachusetts. Omits bracketed material.

Michigan. Omits bracketed material.

Minnesota. Omits bracketed material.

Mississippi. Omits bracketed material.

Missouri. Omits bracketed material.

Nebraska. Omits bracketed material.

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§ 6

SIMULTANEOUS DEATH

§ 6

~~Act Does Not Apply~~ If Decedent Provides Otherwise

This act shall not apply in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation where provision is made for distribution of property different from the provisions of this act, or where provision is made for a presumption as to survivorship, which results in a distribution of property different from that here provided for under RC 31.278-13.11 222.

As amended August 1953.

Amendments

The 1953 amendment inserted "or presumption as to survivorship which any other situation" and added "or results in a distribution of property where provision is made for a pre- different from that here provided".

Action in Adopting Jurisdictions

Variations from Official Text:

Alabama. Section reads: "This chapter shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter or wherein provision is made for a presumption as to the order of survivorship if there is no sufficient evidence that the persons died otherwise than simultaneously, in which event full effect shall be given to the presumption so provided as to the order of survivorship."

California. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Connecticut. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Delaware. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Florida. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribu-

tion of property different from that here provided".

Hawaii. Omits this section.

Idaho. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Indiana. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Iowa. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".

Kansas. Section reads: "This act shall not apply to a will, living trust or deed wherein provision has been made for distribution different from the distribution under this act, or to a policy or contract of insurance wherein provision has been made for payment of its proceeds different from such payment under this act."

Kentucky. Omits "or any other situation" and "or where provision is made for a presumption as to survivorship which results in a distribution of property different from that here provided".