Alaska State Legislature

Senate

JUNEAU, ALASKA

The Honorable ~~Chaney Croft~~ House Judiciary

It is the intent of the Senate Health, Education, and Social Services committee in introducing and passing Senate bill # 696 to provide a pilot satellite television project for the state of Alaska. House CS for

The $1.5 million appropriation is designed to provide a full-time satellite transponder leased for one year. This will provide one channel of television for selected villages, and bring live satellite coverage to the urban areas. The transponder may also be used to implement Health and Education video services to Alaska.

The appropriation goes to the Governor's Office of Telecommunications (GOT). The GOT is responsible for the completion of the project, however they have the authority to contract with any other state agency or private contractor for assistance with the project.

The village site selections shall be made by the Alaska Federation of Natives telecommunications committee, with the concurrence of the GOT. The AFN committee will work with the GOT and the AEBC in determining programming.

Commercial and Public broadcast stations with access to a large earth station will have the opportunity to receive network programs via the state-leased transponder. This will offer same-day viewing for many network programs, and allow live satellite broadcast for public affairs and special events state-wide.

This pilot program will offer the opportunity to determine the best technical and administrative procedure for a state-wide program. The GOT shall report to the next legislative session their recommendations for the implementation of a state-wide satellite television system.

conversations dovetailed directly into the development of what RCA calls the "mid-route" earth stations. These are satellite earth stations which are larger than the small ones now being installed in rural communities, and smaller than the very large stations at Talkeetna or Lena Point. They will be used for trunking telecommunications services throughout the state in the areas which do not require a Talkeetna-sized earth station but which must carry a substantial amount of traffic.

Professor Merritt has been examining the specifications for these mid-route stations, and is making suggestions to both RCA and the U. S. Air Force regarding them.

Professor Stanley has been present at many of the Kansas City meetings regarding the negotiations over the lease of the WACS.

Trips to Washington, D. C. have been necessary, as usual, because of a substantial amount of activity before the Federal Communications Commission (FCC). There are several cases which substantially affect Alaska. One of these cases involves the authority to serve Alaska on an interim basis with communications satellites, pending final decision by the FCC in various cases now before it. Recently the Legislature, at our urging, passed House Resolution 4 and Senate Resolution 2, directed to the FCC, addressing this particular case. We expect a decision by the FCC on the applications for reconsideration of the interim authority within a matter of a week or so.

The other cases pending before the FCC address the permanent authority to serve Alaska with communications satellites. These are highly complex and drawn out, and the FCC may not be deciding them for many months or even a year or so. Basically, the dispute is between RCA companies and American Telephone and Telegraph (AT&T). Other applicants have satellites which do not, in our view, seriously address the needs of Alaska.

II. DEVELOPMENTS REGARDING TELEVISION

The Television Advisory Committee, established at the request of the Subcommittee of the Council in December, met twice in February in Anchorage. This committee is made up of representatives of the private sector in broadcasting, representatives of cable television operators, public broadcasters, and state agencies which include the Alaska Educational Broadcasting Commission (AEBC) and the Alaska Public Utilities Commission (APUC). Of course, the GOT is also represented, as well as the Legislative Select Committee.

The TV Advisory Committee was established to address the practical problems involved in eventually providing television programming on a much broader and timely scale throughout rural and urban Alaska. It seemed clear to me that the state would eventually become involved in activities of this sort. I was concerned that this be done in an orderly and reasonable way.

The December 15 meeting of the TV Advisory Committee was addressed in the report submitted by the Subcommittee of the Legislative Council at the beginning of the current session.

At the February 6 and February 27 meetings of the TV Advisory Committee, we became much more involved in the particulars of providing television programming to rural areas and to the urban areas in a more timely way.

At first we talked about a three-step procedure. Under this hypothetical situation, the state would begin by providing support (part or whole) for the purchase of television programming from the urban broadcasters which would then be played on video tape machines connected to mini-TV transmitters in rural areas. This is very much like the kinds of services that are provided to the Alyeska Pipeline camps by Northern Television and Midnight Sun Broadcasting. At first this seemed to be a very modest proposal. It was throught that"bicycling"video tapes by mail throughout rural Alaska would be much more inexpensive than the use of a satellite.

Continuing in this hypothetical, the next step would be the provision of this programming by satellite from a center in Alaska. The programming center would obtain programs from the stations in, say, Anchorage, and transmit this out to the rural areas through the use of the small earth stations with the added "black box" that makes television reception possible.

The third step has many variations. It is the much more grandiose operation which I suggested in October and which was then reported in the press. That would involve the state and the private broadcasters jointly operating a tape delay center somewhere in Alaska to provide services to the private broadcasters in the urban areas and to the rural communities through the use of the small earth stations. This would probably require several television channels on satellites, one or more up-links from the lower 48, and extensive investments in video tape equipment that is compatible with the highest signal quality expected in commercial

broadcasting. There are many ways this last step can be done, and we do not expect that the state or the private broadcasters would be involved in such a program or any of the suggested variations for several years.

After the discussion of these matters in the February 6 meeting, several of us investigated costs. The Legislative Consultants were looking carefully into the matter of the "black box" to be added to the small earth stations, as were representatives of the GOT and RCA Alascom. At the behest of all three, RCA Laboratories has been testing various units presently available on the market. Additionally, Mr. Donald Bond, who is a consultant to the various RCA companies in these matters, has been examining cost figures, and so has the staff of the GOT.

As a result of estimates from these various sources, and particularly as the result of projections made within the staff of the GOT, the TV Advisory committee came to the tentative conclusion that the first step may not be economical. That is, that the bicycling of video tapes by mail to various mini-TV stations may be more costly in the long run than beginning with the use of a satellite transponder. This occurs largely because of the cost of obtaining satellite time for only a few hours, rather than continuously.

We are told by RCA Alascom that a transponder can be obtained through lease for one year, including some terrestrial line charges, for $500,000 if it is "unprotected", and that we can obtain one for $720,000 if we wish one to be fully protected. One satellite transponder can carry one television signal to a small earth station. It may well be able to carry two television signals simultaneously to the larger earth stations in the urban centers in Alaska. The usual charges for satellite time for television range from $200 to $800 per hour. On the other hand, a transponder leased for one year, which will always have the capacity of one or more television signals, including some line charges, comes to $57.26 per hour, based on the $500,000 figures.

For this reason, we started talking about the leasing of a transponder and starting at what had been termed Step 2.

As we all know, things move incredibly fast in a legislative session, particularly toward the end. Since the discussions on these subjects, a bill has been introduced in the Senate to provide appropriation for $1.5 million to the GOT for

lease of a transponder and the provision of mini-TV transmitters and the television "black boxes" for 24 rural communities. A bill already in House Finance has been amended to include these same amounts for the same purposes. Each bill has passed through the committee system and is sitting in the respective Rules Committees for calendaring. I understand the Senate Bill is calendared for floor action some time this week.

The advantages of the demonstration project anticipated by this legislation are many, in my view. Rather than have the state jump in with a huge program without any experience in the area, it provides for a modest program, many of the facets of which would be financially supported by others. In each prospective application of the transponder, someone is having to pick up another part of the tab. By providing services to the urban broadcasters for obtaining their time-value programming (newscasts, etc.), we can obtain the consideration of program rights to network programs not otherwise available for the rural areas. By providing the bare bones station to the rural communities (only the "black box" and the mini-TV transmitter), we are encouraging each village to obtain other equipment itself. A village could have a tremendous amount of flexibility by purchasing for itself two video tape machines (the smaller ones can be obtained for approximately $1300 each) and appropriate switching capacity, in order to have much more control over the source of programming being transmitted in the rural area. That is, a village might not want or like one particular program being transmitted from the satellite. If it had a library of video tapes, it could then play another video tape, which might be an entertainment program or an educational or news program. The second video tape machine could be used to record the program being transmitted from the satellite, in the event that it was, after all, desired for viewing by the residents. The extent to which such additional activities or equipment were used would depend upon the village itself.

The same thing holds true for the private broadcasters, in that some, but not all, of their line charges and terrestrial charges would be included in the tariff. They would have to pick up some of the tab in this respect. State agencies, like the University of Alaska and the Department of Education, would have to develop all of their own programming or software, and probably should pay the GOT for any satellite time used. Their uses would be subject, of course, to the priorities of the rural project and the urban broadcasters.

In the demonstration project, only 24 rural communities would be included. This starts us on a very small scale to determine what the problems are and what may be wrong with this way of doing things. The legislation anticipates that the GOT would then report back to the 10th Alaska Legislature and explain what these problems have been and make proposals for future activities. It might be that a different kind of partnership between private and public sectors is required; it might be that certain unforseen legal problems arose; it might be that certain unforseen technical problems arose with respect to the use of the small earth stations and the television-receive "black boxes"; it might be that such a project might be useful in ways not at all anticipated at the present time.

The House Select Committee on Telecommunications very much supports the legislation which would provide for the demonstration project at a cost of $1.5 million. We feel this is a much better idea than waiting one, two or three years and finding a great amount of pressure for an un-planned and possibly unwise project that would cost many millions more. This way we can find out what we are doing and what we are talking about doing, and what will work. Then, a future Legislature can decide whether it wishes to do this on a large scale or in a different way.

The Television Advisory Committee will meet again here in Juneau on Friday, March 26 at 2 p.m. We are told that most of the participants can be there. Considering the timing of the Senate calendar, this will probably come after the Senate has considered and (hopefully) passed the appropriation for the television demonstration project. Therefore, we will probably be talking about the nuts and bolts details of the television demonstration project, and it may be of substantial interest to both urban and rural members. That meeting will be held in the House Resources Committee Room.

III CURRENT LEGISLATION

Other matters which have been pending before the Legislature regarding telecommunications have had the attention of the House Select Committee and of the Consultants.

House Bill 633, adding to the standards by which the APUC decides rate cases, has passed the House and is now in Senate Committee. HB 631, which creates a communications carrier section within the APUC, has been approved by the House Judiciary Committee and the House Finance Committee. The House Finance Committee did amend the fiscal note attached to that bill because a substantial reduction.

f.l. SB696

STATE OF ALASKA

JAY HAMMOND, GOVERNOR

DEPARTMENT OF EDUCATION

ALASKA EDUCATIONAL BROADCASTING COMMISSION / 308 G STREET— ANCHORAGE 99501

March 16, 1976

Representative Terry Gardiner
Pouch V
State Capitol
Juneau, AK 99811

Dear Representative Gardiner:

There has been legislative interest in finding funds that would bring television to the bush. This will take better advantage of the money that has already been appropriated for satellite communications. Among these efforts are House Bill 778, Senate Bill 696, and Senate Resolutions #63 and #74; there may be more. Some estimates of the cost of these services range around $3,000,000.

A radio network would take full advantage of money appropriated and would serve more with an attractive cost-benefit ratio. For less than $150,000 the first year and with a declining amount yearly, existing radio stations could be interconnected via satellite to make news and informational material available so that all Alaskans could be informed of what Alaska is doing. It could encompass the various 'Legislative Reports' and let Rural Alaska know what Urban Alaska already knows of the happenings in the distant capital as well as let the capital city know what is going on in the distant villages.

Attached is a rough draft.

I would be delighted to refine this concept articulated by knowledgeable Alaskan Communicators. I would gladly testify on the merits of this concept compatible to the efforts to bring television to the bush.

Had there been more time, it would have been prepared for the Governor's budget. However, I was not on duty until September 2 and was not aware of the needs of existing radio stations so fully, nor was I aware of the many who had messages they wished to intimately and instantaneously communicate with the entire state.

A radio network is an economic way of bringing the state together. It would improve existing public radio services and save costs. Radio, the 'kid brother,' is less romantic than the gaudy and four way stacked (color, sight, sound, motion) glamorous 'big sister,' but radio could let a lot more people know a lot more of the time about what 'inside' Alaska is about for a lot less money. Television is mostly 'outside.' TV costs so much to produce, it has to be that way. Broadcasting is a good family and plays well together. Don't forget the 'kid'!

Perhaps either in the Free Conference Committee or by amendment to existing bills or resolutions, consideration might be given to a complimentary and related Alaskan Communication need: An Alaska Radio Network.

Respectfully yours,

James G. Croll
Executive Director

bkm

Attachment

SIGN-ON!

. . . an irregular newsletter whose frequency is on the state of public broadcasting

ALASKA EDUCATIONAL BROADCASTING COMMISSION

Feb. '76 Volume 1 Issue 5

AN ALASKAN RADIO NETWORK:

WHO? Produced and/or contracted for by the AEBC which was enabled by legislators to be and which is politically insulated. AEBC a part of Department of Education.

WHAT? A radio central studio capable of receiving, editing, and distributing the best of National Public Radio, Radio Canada International, and existing Alaska Public Funded Radio Stations costing not more than $150,000 per year.

WHERE? The product is as near as the nearest radio set with Radio Central located in the existing office space leased by the AEBC in Anchorage.

WHEN? To start September 1, 1976, with service consisting of not less than 4, nor more than 12 hours a day, 7 days a week.

WHY?

1) To interconnect Alaskans with other Alaskans with an instantaneous and intimate sound.

2) To make the Capital City as close as the nearest radio set and to let rural Alaska hear a portion of the information made available now to urban Alaska.

3) To bring sound reports of the happenings of the nation and world, relevant to Alaska, to all Alaskans.

4) To bolster and assist all distant Alaska stations with a skeletal news, educational and informational format.

5) To have an Alaskan voice available to transmit to other state and national networks and stations.

". . . . Were it left for me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter . . . " *Thomas Jefferson*

". . . . Bethel receives no DAILY NEWS, no FAIRBANKS MINERS, no SOUTHEAST EMPIRES, and only 26 DAILY TIMES on an average day when any papers at all get there. The Bethel service area purchases 235 TUNDRA DRUMS (local paper) every two weeks. It takes up to 10 days for a TUNDRA DRUMS to get from Bethel to Kwethluk (17 miles away) through the mail. KYUK broadcasts three expanded and 5 capsule news shows per day and there are over 5,000 radio sets in the coverage area . . . ." *Jim Croll, former KYUK Mgr.*

Memo: Terry Gardiner
From: Eric Eckholm
Re: legislative intent, SB 696
4/16/76

As per your request, here is suggested addition to Senate letter of intent for SB 696.

Add, after paragraph 2;

The priority use for a state-leased transponder is to provide television coverage for public and commercial ~~stations in~~ facilities in urban and rural areas. To the extent that time is available beyond this basic intent, the GOT shall utilize the satellite time for any use in the public interest. The GOT shall include in the report to the legislature a plan for comprehensive satellite use, not limited to Television broadcasting.

or something like that....ee

file SB696

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Alaska Legislative Council
Subcommittee on Telecommunications

17 March 1976

To: Senator J. Kerttula

From: Robert P. Merritt, Legislative Consultant

Subject: Television Demonstration Project

The information contained in this memo was compiled from material presented to the House Select Committee on Telecommunications, the Alaska Federation of Natives, Inc. Telecommunication Committee, the Governor's Telecommunication Advisory Committee, and members of the Alaska State Senate.

A demonstration project to accelerate the delivery of "same day" television programming to urban areas of Alaska and provide access to television for 24 rural communities not now receiving television will cost $1,500,000 for the first year.

This project will lease a satellite transponder from the common carrier for $500,000 per year for distribution of about 5 hours per day of television programs to the 24 rural communities. The AFN Telecommunications Committee supports the television demonstration, and has agreed to accept the responsibility to assist tne Governor's Office of Telecommunications (GOT) to select the 24 communities and advise the GOT of the villagers' wishes on program content.

The 24 television receiver units (demodulators) will be installed at existing bush earth station locations. The receivers cost $10,000 each, installed, and represent a technological break through stimulated by this procurement. At each village, the television program will be broadcast over a mini-transmitter to the homes and community center in the village. The transmitters cost $10,000 each, installed, including the transmitting antenna, video switching panel and audio control.

Additional expense will be incurred in obtaining program material from the four national networks and tape and film libraries.

17 March 1976

Some of these programs will be tape delayed and then transmitted up to the satellite from the lower 48 states or from an Alaska programming center.

The cost of programs, delay centers and management will be $520,000.

Lease of one full time transponder	$500,000
24 Earth Stations at $10,000 each	240,000
24 Mini-transmitters at $10,000 each	240,000
Programs, delay center, management	520,000
TOTAL	$1,500,000

The state-leased transponder will be available 24 hours each day. When not being used for the bush transmission, the transponder will be made available to commercial and public broadcasters to bring same day network programs to Alaska. The delay and schedule arrangement would be arranged by the urban broadcasters.

Some programs may be broadcast in real time to both urban and rural locations on the single transponder. A developmental project will be initiated for transmission of two simultaneous television programs into large (10 meter) earth stations.

The television demonstration project will not delay the implementation of the vital bush telephone system, nor will it divert any funds from that system procurement.

The GOT is required to report to the next legislative session their recommendations for the implementation of a state-wide satellite television system.

Included with this memo is the statement of legislative intent prepared by the Senate Health, Education and Social Services Committee for Senate Bill #696.

MEMO

TO: TERRY GARDINER

FROM: RICK SVOBODNY

RE: Larry Golden's concerns with SB 696.

After reading SB 696 and the Senate Health, Education and Social Services Committee's letter of intent it appears clear to me that the legislation deals solely with satellite television. In order to use a satellite transponder for other than television I would suggest that SB 696 be amended to read as follows:

> "The sum of 1.5 million dollars is appropriated from the general fund to the Office of the Governor, office of telecommunications for a satellite transponder lease project to demonstrate the feasibility of satellite communications in Alaska, priority being given to satellite television."

Along with this amendment would go a letter of intent explaining that the transponder lease project should not be limited solely to television.

The letter of intent should be something like the following:

The House Judiciary Committee by amending SB 696 has intended to expand the nature of the transponder lease project. The committee, recognizing such a project as an experiment intends that the Governor's office of telecommunications consider the use of satellite communication in a more flexible manner than originally proposed. The lease of a satellite transponder for television communication is highly desirable, however, there are many possible applications of satellite communications and it is the desire of the House Judiciary Committee that the Governor's office of telecommunications consider some of these possibilities in addition to satellite television broadcast.

In a pilot project of this nature, experimentation should be commenced regarding alternative methods of communication and should explore the applicability of satellite communications to diverse groups of Alaskans.

4-17-76

added new section to 6.11 to add $150,000 for a radio broadcast system. Public radio net

New section to latter of intent

I had spoken with Fran ~~Ed~~ about my concerns with 696 and gave her a bit of background on Satellite communications. She expressed concern with the Bill as it had been initially presented to her by GOT & Brown - Was There justification for state funding of a satellite project when goals were to extend ~~to~~ network T.V. ~~Programming to~~ to rural Alaska and reduce delay time for programming into urban Alaska? As it turns out the governor had some concerns revolving around creating an expectation for continued state funding to ~~additional broadcasting~~ provide network broadcasting to the bush etc. Fran and several persons in the Governor's office expressed interest in the kinds of ~~public~~ additional public uses I had mentioned. In the meantime Robert Walpe (Director of GOT) indicated to me his philosophical commitment in favor of trying such utilizations. The Governor, Brown, Ferguson and GOT worked out some sort (Tuesday 4/13) of informal agreement that some of these utilizations should be looked into during the pilot project and that the commercial broadcasters would have to make some kinds of compromises for transponder time.

Commercial Broadcasters
G.O.T. - Walpe - Shafanaw
Fred Brown
Frank Ferguson
Fran Ulmer
} should be notified about Hearings and invited

Potential Govt. Users. D.O.E. Health & Social Services
Brad Watson (information officer)

How when or when ~~Pass~~ This informal agreement would be implimented, I don't Know

Larry

My file
SB696

TO; Fred Brown, Terry Gardiner, Frank Ferguson
FROM; Larry Goldin
RE; SB 696

Senate Bill 696, appropriating funds to the Governor's Office of Telecommunications (GOT) to lease a satellite transponder for a one year pilot project is a meritorious piece of legislation by virtue of its ability to help improve the quality and efficiency of television communication for entertainment and educational purposes. There are however many possible applications of satellite communications technology besides carrying network programming to Alaska. These include but are by no means limited to;

- Teleconferencing involving several persons far distant to each other
- Data and facsimile transmission to and from outlying areas
- Local government or citizen access via satellite to information stored in distant computers
- Ordering and transmission of audio-visual and possibly printed library materials
- Coordination of information and planning of local governments
- Two way communication between citizens and beureaucrats
- Legislative reporting to constituents
- Two way legislative communication such as making testimony before committees via satellite without leaving home communities
- Facilitation of a statewide educational radio or TV system

If the pilot project is to demonstrate the viability of satellite communications within Alaska, it should explore the applicability of some of these other uses at the same time it benefits Alaskans by bringing them improved national network TV. Access to transponder time and GOT expertise should not be limited solely to broadcasters and government. Non-profit or public interest groups should be allowed to explore the applicability of satellite technology to their day to day communications needs as they carry on business accross the state and with the lower 48. Expenditure of tax dollars clearly justifies granting access to consumers' groups, fishermen's cooperatives, villiage corporations, The League of Women Voters, The Capital Site Selection Committee, The Alaska Growth Policy Council and other like groups. More efficient and extensive statewide communication within and among such groups will increase citizens' abilities to carry out projects and make input to public policy, thus making our democracy more participatory.

While it would be unwise to encumber SB 696 (and subsequently GOT) with a long list of specifics and procedures, it might be advisable to draft a letter of legislative intent which in general terms expresses the legislatures thinking on the kinds of possible uses mentioned herein. Such a letter could also spell out legislative intent concerning public institution and citizen group access to the State leased transponder, recognizing the needs of the network broadcast segment of the pilot project. An earlier letter of intent from the Senate H&SS Committee refers to uses beyond network TV only by stating, "The transponder may also be used to impliment Health and Education Video services to Alaska." Perhaps a statement is needed which expresses a more active concern. There is presently no statement concerning public access to the transponder.

SB

717

"An Act amending the Uniform Probate Code."

COMMITTEE REPORT

4/7/76

HOUSE

Mr. Speaker: Date May 24 1976

The Committee on JUDICIARY has had SB 717 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

CHAIRMAN'S REPORT
FOR
SB 717

The House Judiciary Committee has relied heavily on the "official comments" to the amendments to the Uniform Probate Code, as promulgated August 2-8, 1975 in Quebec City, Canada, by the National Conference of Commissioners of Uniform State Laws.

The committee adopts those comments, along with the material appearing in Senate Journal Supplement No. 9 (April 1, 1976) as expressive of the committee's intent in supporting this bill. We note specifically the statement on page 3 of that supplement that none of the amendments "reflect any pulling back from, or marked extension of, any of the principles or provisions of the Code."

_____
Terry Gardiner, Chairman
House Judiciary Committee

AMENDMENTS TO THE UNIFORM PROBATE CODE

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-FOURTH YEAR
IN QUEBEC CITY, CANADA
AUGUST 2-8, 1975

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NATIONAL CONFERENCE OF COMMISSIONERS ON

UNIFORM STATE LAWS

645 N. Michigan Ave., Suite 510

Chicago, Illinois 60611

PROBATE CODE

1975 TECHNICAL AMENDMENTS

[Additions shown by underscoring

deletions shown by cancellation]

13.06.050 .050 1.

SECTION 1-201. [General Definitions.]... (10) "Distributee" means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

Add to Comment

> In 1975, the Joint Editorial Board recommended the addition of the last sentence to the definition in (10) of "distributee". The purpose of the addition is to extend to trustees of inter vivos, receptacle trusts, the same power to act as distributees of devised assets that is given to testamentary trustees. "Distributees" are enabled, by section 3-910, to create a good title to devised assets in purchasers, even though possibilities remain open that the devised assets or the proceeds from any sale thereof may be reclaimed for some other person interested in the estate. Also, 3-1004 and 3-1006 relate to "distributees".

13.11.015 .015 2.

SECTION 2-103. [Share of Heirs Other Than Surviving Spouse.] The part of the intestate estate not passing to the surviving spouse

under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, ~~to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation;~~ to the issue of the parents or either of them by representation.

(4) (unchanged).

Added Comment

In 1975, the Joint Editorial Board recommended replacement of the original text of subsection (3) which referred to "brothers and sisters" of the decedent, and to their issue. The new language is much simpler, and it avoids the problem that "brother" and "sister" are not defined terms. "Issue" by contrast is defined in 1-201 (21). The definition refers to other defined terms, "parent" and "child", both of which refer to section 2-109 where the effect of illegitimacy and adoption on relationships for inheritance purposes is spelled out.

3.

13.11.045

SECTION 2-109. [Meaning of Child and Related Terms.] If, for purposes of intestate succession, a relationship of parent and

child must be established to determine succession by, through, or from a person,

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

(2) In cases not covered by (1), a person is the child of its parents regardless of the marital status of its parents and the parent and child relationship may be established under the [Uniform Parentage Act].

ALTERNATIVE SUBSECTION (2) FOR STATES THAT HAVE NOT ADOPTED THE UNIFORM PARENTAGE ACT.

[(2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(i) the natural parents participated in a ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.]

Added Comment

The change from "that" to "either" as the third from the last word in subsection (1) was recommended by the Joint Editorial Board so that children would not be detached from any natural

relatives for inheritance purposes because of adoption by the spouse of one of its natural parents. The change in this section, which is referred to by the definitions in Section 1-201 of "child", "issue" and "parent", affects, inter alia, the meaning of Sections 2-102, 2-103, 2-106, 2-302, 2-401, 2-402, 2-403, 2-404 and 2-605. As one consequence, the child of a deceased father who has been adopted by the mother's new spouse does not cease to be "issue" of his father and his parents, and so, under 2-605, would take a devise from one of his natural, paternal grandparents in favor of the child's deceased father who predeceased the testator. This situation is suggested by In re Estate of Bissell, 342 N.Y.S. (2d) 718.

The recommended addition of a new section 2-114 dealing with the possibility of double inheritance where a person establishes relationships to a decedent through two lines of relatives is attributable, in part, to the change recommended in 2-109 (1).

The approval in 1973 by the National Conference of Commissioners on Uniform State Laws of the Uniform Parentage Act reflects a change of policy by the Conference regarding the status of children born out of wedlock to one which is inconsistent with 2-109(2) of the Code as approved in 1969. The new language of 2-109(2) conforms the Uniform Probate Code to the Uniform Parentage Act. In view of the fact that eight states have enacted the 1969 version of 2-109(2), the former language is retained, in brackets, to indicate that states may, consistently with enactment of the Uniform Probate Code, accept either form of approved language.

4.

Add a new section as follows:

13.11. ~~#10~~ 065

SECTION 2-114. [Persons Related to Decedent Through Two Lines.] A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.

Comment

This language is identical to that appearing as section 2-112 in U.P.C. Working Drafts 3 and 4,

and as section 2-110 in Working Draft 5. The section was dropped because, with adoptions serving to transplant adopted children from all natural relationships to full relationship with adoptive relatives, and inheritance eliminated as between persons more distantly related than descendants of a common grandparent, the prospects of double inheritance seemed too remote to warrant the burden of an extra section. The changes recommended in 2-109(1) increase the prospects of double inheritance to the point where the addition of 2-114 seemed desirable. The section would have potential application in the not uncommon case where a deceased person's brother or sister marries the spouse of the decedent and adopts a child of the former marriage; it would block inheritance through two lines if the adopting parent died thereafter leaving the child as a natural and adopted grandchild of its grandparents.

5.

13.11.075

SECTION 2-202. [Augmented Estate.] The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i) any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

(ii) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction

with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(iii) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(iv) any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed $3,000.00.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a

trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which a state documentary fee is noted pursuant to [insert appropriate reference] is prima facie evidence that the transfer described therein was made to a bona fide purchaser.

Added Comment

In 1975, the Joint Editorial Board recommended the addition of reference to bona fide purchaser in (1), "to a donee" in (1)(iv) and the addition of sub-paragraph (3) to the above section to reflect recommendations evolved in discussions by committees of the Colorado Bar Association to meet title problems that had been identified under the Code as originally enacted. One problem that should be cured by the amendments arose when real property experts in Colorado took the position that, since any transfer might be found to be for less than "adequate and full consideration in money or money's worth," the language of the original text, all deeds from married persons had to be joined in by the spouse, lest the grantor die within two years and the grantee be subjected to the claim that the value involved was a part of the augmented estate.

Also, the Joint Editorial Board in 1975 recommended the addition in 2-202(2)(i) of language referring to property moving to the surviving spouse via joint and survivorship holdings with the decedent. The addition would not, in all probability, change the meaning of the subsection, but it would clarify it in relation to jointly held property which will be present in a great number of cases.

13.11.010
SECTION 2-205. [Proceeding for Elective Share; Time Limit.]

(a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the Court and mailing or delivering to the personal representative, ~~a petition for the elective share within 6 months after the first publication of notice to creditors for filing claims which arose before the death of the deceedent~~ if any, a petition for the elective share within 9 months after the date of death, or within 6 months after the probate of the decedent's will, whichever limitation last expires; provided, however, that non-probate transfers, described in Section 2-202(1), shall not be included within the augmented estate for the purpose of computing the elective share, if the petition is filed later than 9 months from death.

The Court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the Court.

(d) After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears

appropriate under Section 2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the Court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the Court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

Comment

In 1975, the Joint Editorial Board recommended changes in subsection (a) that were designed to meet a question, arising under the original text, of whether the right to an elective share was ever barred in cases of unadministered estates. The new language also has the effect of clearing included, non-probate transfers to persons other than the surviving spouse of the lien of any possible elective share proceeding unless the spouse's action is commenced within nine months after death. This bar on efforts to recapture non-probate assets for an elective share does not apply to probate assets. These assets may be controlled by a will that may not be offered for probate until as late as three years from death. As to these, the limitation on the surviving spouse's proceeding is six months after the probate.

7.

13.11.095

SECTION 2-206. [Effect of Election on Benefits by Will or Statute.]

(a) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the

~~provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 2-207(b), as if the surviving spouse had predeceased the testator.~~

~~(b) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse was intended to be in lieu of these rights, he is not so entitled if he does not renounce the provision so made for him in the will.~~ A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

Added Comment

In 1975, the Joint Editorial Board recommended changes in this and the following section that reverse the position of the original text which permitted an electing spouse to accept or reject particular benefits as provided him by the decedent without reducing the dollar value of his elective share. The new language in this section, replacing former 2-206(a) and (b), does not mention renunciation of transfers which is now dealt with in 2-207. The remaining content of this section is restricted to a simple statement indicating that the family exemptions described by Article II Part 4 may be distributed from the probate estate without reference to whether an elective share right is asserted, and without being charged to the electing spouse as a part of the elective share. In the view of the Board,

deletion of language in the original form of 2-206(b), dealing with devises that are intended to be in lieu of family exemptions, does not alter the ability of a testator, by express provision in the will, from putting a surviving spouse to an election between accepting the devises provided or accepting the family exemptions provided by law. This matter is dealt with in 2-401, 2-402, 2-403 and 2-404.

8.

13.(1.100
SECTION 2-207. [Charging Spouse with Gifts Received; Liability Of Others For Balance of Elective Share.]

(a) ~~In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or interstate succession or other means and which has not been renounced, including that described in Section 2-202(2), is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.~~ In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth one half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

(b) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented

estate in proportion to the value of their interests therein.

(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

Added Comment

In 1975, the Joint Editorial Board recommended changes in section 2-206 and subsection (a) of this section which have the effect of protecting a decedent's plan as far as it provides values for the surviving spouse. The spouse is not compelled to accept the benefits devised by the decedent, but if these benefits are rejected, the values involved are charged to the electing spouse as if the devises were accepted. The second sentence of new subsection (a) provides a rebuttable presumption of the value of a life estate or an interest in a trust, when this form of benefit is provided for an electing spouse by the decedent's plan.

9.

13.11.16

SECTION 2-504. [Self-proved Will.] An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF _____

COUNTY OF _____

We, ___, ___, and ___, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time, 18 or more years of age, of sound mind and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledged before me by the testator, and subscribed and sworn to before me by ___, and ___, witnesses, this ___ day of ___, _____.

(Seal) (Signed) _____

_____
(Official capacity of officer)

(a) Any will may be simultaneously executed, attested, and made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19__, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

The State of _____

County of _____

Subscribed, sworn to and acknowledged before me by _____, the testator and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal) (Signed) _____

_____

(Official capacity of officer)

(b) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in form and content substantially as follows:

The State of _____

County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal) (Signed) _____

_____
(Official capacity of officer)

Added Comment

The original text of this section directed that the officer who assisted the execution of a self-proved will be authorized to act by virtue of the laws of "this State", thereby restricting this mode of execution to wills offered for probate in the state where they were executed. Also, the original text authorized only the addition to an already signed and witnessed will, of an acknowledgment of the testator and affidavits of the witnesses, thereby requiring testator and witnesses to sign twice even though the entire execution ceremony occurred in the presence of a notary or other official. In 1975, the Joint Editorial Board recommended the substitution of new text that eliminates these problems.

10.

13.11.225

SECTION 2-602. [Choice of Law as to Meaning and Effect of Wills.] The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in Part 2 of this Article, the provisions relating to exempt property

and allowances described in Part 4 of this Article, or any other public policy of this state otherwise applicable to the disposition.

Added Comment

In 1975, the Joint Editorial Board recommended the addition of explicit reference to the elective share described in Article II, Part 2, and the exemptions and allowances described in Article II, Part 4, as embodying policies of this state which may not be circumvented by a testator's choice of applicable law.

11.

13.11.255

SECTION 2-608. [Nonademption of Specific Devises in Certain Cases; Sale by Conservator; Unpaid Proceeds of Sale, Condemnation or Insurance.]

(a) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (b).

(b) A specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

~~(3) any proceeds unpaid at death on fire or casualty insurance on the property; and~~

~~(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.~~

[NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES; UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE; SALE BY CONSERVATOR.]

(A) A specified devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

(B) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year.

The right of the specific devisee, under this subsection is reduced by any right he has under subsection (A).

Added Comment

In 1975, the Joint Editorial Board recommended a re-ordering of the title of this section and a reversal of the original order of the subsections. This recommendation was designed to correct an unintended interpretation of the section to the effect that all of the events described in subsections (a) and (b) had relevance only when the testator was under a conservatorship. The original intent of the section, made more apparent by this re-ordering, was to prevent ademption in all cases involving sale, condemnation or destruction of specifically devised assets where testator's death occurred before the proceeds of the sale, condemnation or any insurance, had been paid to the testator.

12.

13.11.770

SECTION 2-611. [Construction of Generic Terms to Accord with Relationships as Defined for Intestate Succession.] Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession. ~~But a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.~~ [But a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.]

Added Comment

In 1975, the Joint Editorial Board recommended that the section end with the words, "of intestate succession.", in order to align the section with the Uniform Parentage Act of 1973. The Board also recommended retention, as a bracketed alternative form for states that do not enact the Uniform Parentage Act, of the language of the 1969 text

beginning with "but a person born out of wedlock", and continuing through to the end of the original section.

[Change #31 affects Section 2-801. It appears at page 39, infra.]

13.
13.11.300

SECTION 2-802. [Effect of Divorce, Annulment, and Decree of Separation.]

already law

(a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of Parts 1, 2, 3 & 4 of this Article, and of Section 3-203, a surviving spouse does not include:

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

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

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

Added Comment

In 1975, the Joint Editorial Board recommended the addition, in the preliminary statement of subsection (b), of explicit reference to Section

3-203 which controls priorities for appointment as personal representative.

14.

13.14.030

SECTION 3-106. [Proceedings Within the Jurisdiction of Court; Service; Jurisdiction Over Persons.] In proceedings within the exclusive jurisdiction of the Court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the Court in respect to property in or subject to the laws of this state by notice in conformity with Section 1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

Added Comment

The Joint Editorial Board, in 1975, recommended the addition after "rule", of the language "and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration." This addition, coupled with the exceptions to the limitations provisions in 3-108 that permit proceedings to construe wills and to determine heirs of intestates to be commenced more than three years after death, clarifies the purpose of the draftsmen to offer a probate proceeding to aid the determination of rights of inheritance of estates that were not opened for administration within the time permitted by section 3-108.

15.

13.16.080

SECTION 3-301. [Informal Probate or Appointment Proceedings; Application; Contents.]

(a) Applications for informal probate or informal appointment shall be directed to the Registrar, and verified by the applicant to

be accurate and complete to the best of his knowledge and belief as to the following information:

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

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

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

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

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

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

(vi) that the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, that circumstances as described by Section 3-108 authorizing tardy probate or appointment have occurred.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed;

(iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

~~(iv) that the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, that circumstances as described by Section 3-108 authorizing tardy probate or appointment have occurred.~~ [Recast as (vi) in (1) above.]

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

(i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating

to property having a situs in this state under Section 1-301, or, a statement why any such instrument of which he may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to

the appointment under Section 3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Section 3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

(b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

Added Comment

In 1975, the Joint Editorial Board recommended the addition of sub-section (b) to reflect an improvement accomplished in the first enactment in Idaho. The addition, which is a form of long-arm provision that affects everyone who acts as an applicant in informal proceedings, in conjunction with 1-106 provides a remedy in the court of probate against anyone who might make known misstatements in an application.

The addition is not needed in the case of an applicant who becomes a personal representative as a result of his application, for the implied consent provided in 3-602 would cover the matter. Also, the requirement that the applicant state that time limits on informal probate and appointment have not run, formerly appearing as (iv) under (2) was expanded to refer to informal appointment and moved into (1). Correcting an oversight in the original text, this change coordinates the statements required in an application with the limitations provisions of section 3-108.

16.

13.16.105

SECTION 3-306. [Informal Probate; Notice Requirements.]

[*] The moving party must give notice as described by Section 1-401 of his application for informal probate (1) to any person demanding it pursuant to Section 3-204; and (2) to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

[(b) If an informal probate is granted, within 30 days the applicant shall give written information of the probate to the heirs and devisees. The information shall include the name and address of the applicant, the name and location of the court granting the informal probate, and the date of the probate. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by 3-705. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate.]

* This paragraph becomes (a) if the optional (b) is accepted.

Added Comment

In 1975, the Joint Editorial Board recommended the addition, as a bracketed, optional provision, of subsection (b). The recommendation was derived from a provision added to the Code in Idaho at the time of original enactment. The Board viewed the addition as interesting,

to the attention of enacting states as an optional addition. The Board views the informational notice required by section 3-705 to be of more importance in preventing injustices under the Code, because the opening of an estate via appointment of a personal representative instantly gives the estate representative powers over estate assets that can be used wrongfully and to the possible detriment of interested persons. Hence, the 3-705 duty is a part of the recommended Code, rather than a bracketed, optional provision. By contrast, the informal probate of a will that is not accompanied or followed by appointment of a personal representative only serves to shift the burden of making the next move to disinterested heirs who, inter alia, may initiate a 3-401 formal testacy proceeding to contest the will at any time within the limitations prescribed by section 3-108.

17.

13.16.365

SECTION 3-706. [Duty of Personal Representative; Inventory and Appraisement.] Within 3 months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to interested persons who request it ~~or he may file the original of the inventory with the court.~~ He may also file the original of the inventory with the court.

Added Comment

In 1975, the Joint Editorial Board recommended elimination of the word "or" that

separated the language dealing with the duty to send a copy of the inventory to interested persons requesting it, from the final part of the paragraph dealing with filing of the original. The purpose of the change was to prevent a literal interpretation of the original text that would have permitted a personal representative who filed the original inventory with the court to avoid compliance with requests for copies from interested persons.

18.

13-16.455

SECTION 3-802. [Statutes of Limitations.] Unless an estate is insolvent the personal representative, with the consent of all successors whose interests would be affected may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under Section 3-804 is equivalent to commencement of a proceeding on the claim.

Added Comment

In 1975, the Joint Editorial Board recommended a change that makes it clear that only those successors who would be affected thereby, must agree to a waiver of a defense of limitations available to an estate. As the original text stood, the section appeared to require the consent of "all successors," even though this would include some who, under the rules of abatement, could not possibly be affected by allowance and payment of the claim in question.

13.16.470

SECTION 3-805. [Classification of Claims.]

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

(1) costs and expenses of administration;

~~(2) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;~~

~~(3) debts and taxes with preference under federal law of the laws of this state;~~

~~(4) all other claims.~~

(2) reasonable funeral expenses;

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

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

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

(6) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Comment

In 1975, the Joint Editorial Board recommended the separation of funeral expenses from the items now accorded fourth priority. Under federal law, funeral expenses, but not debts incurred by the decedent can be given priority

over claims of the United States.

20.

13.16.515

SECTION 3-814. [Encumbered Assets.] If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has ~~filed~~ presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

Added Comment

In 1975, the Joint Editorial Board recommended substitution of the word "presented", in the first sentence, for the word "filed" in the original text. The change aligns this section with Section 3-804 which describes several methods, including mailing or delivery to the personal representative, as methods of protecting a claim against non-claim provisions of the Code.

21.

13.16.580

SECTION 3-910. [Purchasers from Distributees Protected.] If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to ~~for value from~~ a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of ~~any claims of the estate~~ rights of any interested person in the estate and incurs no personal

liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated prior to execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated prior to the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was made for value.

Added Comment

In 1975, the Joint Editorial Board recommended additions that strengthen the protection extended by this section to bona fide purchasers from distributees. The additional language was derived from recommendations evolved with respect to the Colorado version of the Code by probate and title authorities who agreed on language to relieve title assurers of doubts they had identified in relation to some cases.

22.

13.16.635

SECTION 3-1004. [Liability of Distributees to Claimants.] After assets of an estate have been distributed and subject to Section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family

allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

Added Comment

In 1975, the Joint Editorial Board recommended the addition, after "claimants for amounts" in the second sentence, of "received as exempt property, homestead or family allowances, or for amounts..." The purpose of the addition was to prevent unpaid creditors of a decedent from attempting to enforce their claims against a spouse or child who had received a distribution of exempt values.

23.

13.21.055

SECTION 4-301. [Jurisdiction by Act of Foreign Personal Representative.] A foreign personal representative submits ~~himself~~ personally to the jurisdiction of the Courts of this state in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in Section 4-204, (2) receiving payment of money or taking delivery of personal property under Section 4-201, or (3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

Added Comment

In 1975, the Joint Editorial Board recommended substitution of the word "personally" for

"himself", in the preliminary language of the first sentence. Also, language restricting the submission to jurisdiction to cases involving the estate was added in 1975.

24.

13.26.035

SECTION 5-202. [Testamentary Appointment of Guardian of Minor.] The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under Section 5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the Court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation.

Comment

In 1975, the Joint Editorial Board recommended the addition of the last sentence to adopt a safeguard suggested by the first enactment of the Code in Idaho.

25.

13.26.040

SECTION 5-203. [Objection by Minor of Fourteen or Older to Testamentary Appointment.] A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the Court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice

of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the Court in a proper proceeding of the testamentary nominee, or any other suitable person.

Comment

In 1975, the Joint Editorial Board recommended the addition of the words "notice of" in the first sentence, to relate the section to notice requirements then being added to section 5-202.

26.

13.26.120

SECTION 5-306. [Termination of Guardianship for Incapacitated Person.] The authority and responsibility of a guardian for an incapacitated person terminates upon death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 5-306. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

already in Ak. law

Comment

In 1975, the Joint Editorial Board recommended the addition of the last sentence. The addition makes explicit that termination of a guardian's authority, like termination of the authority of a personal representative as described by Section 3-608, has no effect on the guardian's liability for prior acts or on his liability to account.

27.

13.26.300

SECTION 5-428. [Claims Against Protected Person; Enforcement.]

(a) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance.

A claim may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of Court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(b) A claimant whose claim has not been paid may petition the Court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

Comment

In 1975, the Joint Editorial Board recommended the addition of the third sentence in (a) in order to provide a definition of the time when a claim is deemed presented.

Already have

28.

13.26.320

SECTION 5-432. [New section] [Foreign Conservator; Proof of Authority; Bond; Powers] If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a Court in this State in a [county] in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon non-resident parties generally.

Comment

This section, approved following recommendation in 1975 of the Joint Editorial Board, extends concepts described in Article IV, Part 2 for personal representatives, to conservators. The recommendation was suggested by an addition to the Idaho Probate Code at the time of its enactment in 1971.

29.

13.31.020

SECTION 6-104. [Right of Survivorship.]

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership

interests under Section 6-103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.T.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.T.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.T.O.D. payees survive, there is no right of survivorship in event of death of a P.T.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(b) if the account is a P.O.D. account,

(1) on death of one of two or more original payees the rights to any sums remaining on deposit are governed by subsection (a) of this section.

(2) on death of the sole original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries if surviving,

~~or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent, if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.~~

(c) If the account is a trust account,

(1) on death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection (a) of this section.

(2) On death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

Added Comment

In 1975, the Joint Editorial Board recommended expansion of subsections (b) and (c) so that the subsections now deal explicitly with cases

involving multiple original payees in P.O.D. accounts, and multiple trustees in trust accounts. These changes were conceived to clarify, rather than to change, the text.

30.

13.31.030

SECTION 6-106. [Accounts and Transfers Nontestamentary.] Any transfers resulting from the application of Section 6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles I-IV of this Code, except as provided in sections 2-201 through 2-207, and except as a consequence of, and to the extent directed by, 6-107.

Added Comment

The closing reference to Article II, Part 2, and to 6-107 was added in 1975 at the recommendation of the Joint Editorial Board to clarify the intention of the original text.

31.

13.11.295

SECTION 2-801. [Renunciation of Succession.]

(a) A person ~~(or his personal representative)~~ or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or ~~person designated to take pursuant to~~ appointee under a power of appointment exercised by a testamentary instrument, may renounce in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written ~~instrument within the time and at the place hereinafter provided~~ renunciation under this Act. The right to renounce does not survive the death of the person having it. The instrument shall (1) describe the property ~~or part thereof~~ or interest ~~therein~~ renounced, ~~(ii)~~ be signed by ~~the person renouncing and (iii) declare~~

~~the renunciation and the extent thereof;~~ (2) declare the renunciation and extent thereof, and (3) be signed by the person renouncing.

COMMENT

Who May Disclaim: At common law it was settled that the taker of property under a will had the right to accept or reject a legacy or devise (per Abbott, C.J. in *Townson* v. *Tickell*, 3 B &.Ald 3, 1 36, 106 Eng. Rep 575, 576). The same rule prevails in the United States (*Peter* v. *Peter*, 343 Ill. 493, 175 NE 846 (1931), 75 ALR 890). It is said that no one can make another an owner of an estate against his consent by devising it to him. See, for example, *People* v. *Flanagan*, 331 Ill 203, 162 NE 848, (1928) 60 ALR 305:

> "The law is clear that a legatee or devisee is under no obligation to accept a testamentary gift . . . and he may renounce the gift, by which act the estate will descend to the heir or pass in some other direction under the will . . ."

Under the rule permitting the disclaimer of testate successions, the disclaimed interest related back to the date of the testator's death so that the interest did not vest in the grantee but remained in the original owner as if the will had never been executed (*People* v. *Flanagan*, supra).

Unlike the devisee or legatee, an heir had no common law power to prevent passage of title to himself by disclaimer. "An heir at law is the only person in whom the law of England vests property, whether he will or not," declares Williams on Real Property, and adds, "No disclaimer that he may make will have any effect, though, of course, he may as soon as he pleases dispose of the property by ordinary conveyance." (Williams on Law of Real Property 75 [2d Am. Ed. 1857]. See also 6 Page on Wills [Bowe-Parker Revision] Section 49.1.)

The difference between testate and intestate successions in respect to the right to disclaim, has produced a number of illogical and undesirable consequences. An heir who sought to reject his inheritance was subjected to the Federal gift tax on the theory that since he could not prevent the passage of title to himself, any act done to rid himself of the interest necessarily involved a transfer subject to gift tax liability [*Hardenberg* v. *Com'r*, 198 F.2d 63 (8th Cir.) cert. denied, 344 U.S. 863, (1952) aff'g 17 T.C. 166 (1951); *Maxwell* v. *Com'r*, 17 T.C. 1589 (1952). See Lauritzen, Only God Can Make an Heir, 48 NWL Rev. 568; Annotation 170 ALR 435]. On the other hand, a legatee or devisee who rejected a legacy or devise under the will incurred no such tax consequences [*Brown* v. *Routzahn*, 63 F. 2d 914 (6th Cir.) cert. denied, 290 U.S. 641 (1933)].

Section 1 places an heir on the same basis as a devisee or legatee and provides that he and others upon whom successions may devolve, have the full right to disclaim in whole or in part the passage of property to them, with the same legal consequences applying in all such cases.

Successive disclaimers are permitted by the express inclusion of "person succeeding to a disclaimed interest" among those who may disclaim.

Beneficiary: The term beneficiary is used in a broad sense to include any person entitled, but for his disclaimer, to possess or enjoy an equitable or legal interest, present or future, in the property or interest, including a power to consume, appoint, or apply it for any purpose or to enforce the transfer in any respect.

Section 1 extends the right to disclaim to the representative of an incapacitated or protected person. This accords with the general rule that the probate or surrogate court in the exercise of its traditional jurisdiction over the person and estate of a minor or incompetent may authorize or direct the guardian, conservator or committee to exercise the right on behalf of his ward when it is in the ward's interest to do so. *Davis* v. *Mather*, 309 Ill. 284, 141 N.E. 209 (1923).

On the other hand, absent a statute, the general rule is that the right to disclaim is personal to the person entitled to exercise it, and dies with him in the absence of fraud or concealment or conflict of interest of his representative, even though the time within which the right might have been utilized has not expired and even though he may be incompetent. *Rock Island Bank & Trust Co.* v. *First Nat. Bank of Rock Island*, 26 Ill.2d 47, 185 N.E.2d 890, (1962), 3 ALR 3d 114. Section 1 adopts this position by stating that the right to disclaim does not survive the death of the person having it.

The Act makes no provision here or elsewhere, for an extension of time to disclaim or other relief from a strict observance of the statutory requirements for disclaimer and the time limitations for expressing the right of disclaimer applies to persons under disability as well as to others.

What May be Disclaimed: Section 1 specifies that the "succession" to any property, real or personal or interest therein, may be disclaimed, and it is immaterial whether it derives by way of will, intestacy, exercise of a power of appointment or disclaimer. It would include the right to renounce any survivorship interest in the community in a community property state. Cf *U.S.* v. *Mitchell*, 403 U.S. 190, (1971), rev'g 430 F.2d (5th Cir. 1970), aff'g 51 T.C. 641 (1969).

Future Interests: Section 1 contemplates the disclaimer of future interests by reference to "beneficiary under a testamentary instrument" and "appointee under a power of appointment." The time for making such a disclaimer is dealt with in Section 2.

Partial Disclaimer: The status of partial disclaimers has been uncertain in many states. The result has often turned on whether the gift is "severable" or constitutes a "single, aggregate" gift [*Olgesby* v. *Springfield Marine Bank*, 395 Ill. 37, 69 N.E.2d 269 (1946); *Brown* v. *Routzahn*, supra]. Section 1 makes it clear that a partial, as well as a total, disclaimer is permitted.

Discretionary administrative and investment powers under a trust have been held to constitute a "severable" interest and subject to partial disclaimer. *Estate of Harry C. Jaecker*, 58 T.C. 166, CCH Dec. 31,356 (1972).

Method of Disclaiming: In many states no satisfactory case law has existed as to the form and manner of making disclaimers of devises or legacies under wills. See Annotation 93 ALR2d 8 — What Constitutes or Establishes Beneficiary's Acceptance of Renunciation of Bequest or Devise. Because certainty of titles and the expeditious administration of estates makes definiteness desirable in this area, Section 1 requires a disclaimer to (i) describe the property or interest disclaimed; (ii) declare the disclaimer and the extent thereof; and (iii) be signed by the disclaimant.

~~(b)~~ The writing specified in ~~(a)~~ must be filed within ~~(6)~~ months after the death of the decedent or the donee of the power, or if the taker of the property is not then finally ascertained not later than ~~(6)~~ months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the Court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

~~(c)~~ Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person re-

(b) (1) An instrument renouncing a present interest shall be filed not later than [6] months after the death of the decedent or the donee of the power.

(2) An instrument renouncing a future interest shall be filed not later than [6] months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.

(3) The renunciation shall be filed in the [probate] court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the [Recorder of Deeds] of the county in which the real estate is situated.*

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*If Torrens system is in effect, add provisions to comply with local law.

COMMENT

Time for Making Disclaimer: At common law, no specific time evolved within which disclaimer had to be made. The only requirement was that it be within a "reasonable" time (*In re Wilson's Estate*, 298 NY 398, 83 NE2d 852 (1949); *Ewing* v. *Rountree*, 228 F.Supp. 137 (D.C. Tenn 1964). As a result, divergent holdings were reached by the courts (*Brown* v. *Routzahn*, 63 F. 2d 914, (6th Cir.), cert. denied, 290 U.S. 641 (1933). Section 2 fixes a definite time for filing of disclaimers. This approach follows the pattern of the Federal estate tax law which prescribed the time for filing estate tax returns in terms of the decedent's death. The time allowed should overlast the time for filing claims and contesting the will and enable the executor or administrator to know with certainty who the takers of the estate will be.

(b) (1) An instrument renouncing a present interest shall be filed not later than [6] months after the death of the decedent or the donee of the power.

(2) An instrument renouncing a future interest shall be filed not later than [6] months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.

(3) The renunciation shall be filed in the [probate] court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the [Recorder of Deeds] of the county in which the real estate is situated.*

*If Torrens system is in effect, add provisions to comply with local law.

COMMENT

Time for Making Disclaimer: At common law, no specific time evolved within which disclaimer had to be made. The only requirement was that it be within a "reasonable" time (*In re Wilson's Estate*, 298 NY 398, 83 NE2d 852 (1949); *Ewing* v. *Rountree*, 228 F.Supp. 137 (D.C. Tenn 1964)). As a result, divergent holdings were reached by the courts (*Brown* v. *Routzahn*, 63 F. 2d 914, (6th Cir.), cert. denied, 290 U.S. 641 (1933). Section 2 fixes a definite time for filing of disclaimers. This approach follows the pattern of the Federal estate tax law which prescribed the time for filing estate tax returns in terms of the decedent's death. The time allowed should overlast the time for filing claims and contesting the will and enable the executor or administrator to know with certainty who the takers of the estate will be.

On the other hand, it should not be so long as to work against an early determination of the acceptance or rejection of succession to an estate, or increase the risk of inadvertent acceptance of the benefits of the property, creating an estoppel. In the case of future interests the disclaimer period should run from the time the takers of the interest are finally ascertained and their interests indefeasibly fixed. *Seifner* v. *Weller*, 171 S.W.2d 617 (Mo., 1943). For the consequence of selecting too short a period, see *Brodhag* v. *U.S.*, 319 F. Supp 747 (S.D. W.Va., 1970) involving a 2-month period fixed by West Virginia law.

In the case of future interests it should be noted that the person need not wait until the occurrence of the determinative event before filing a disclaimer, but may do so at any time after the death of the decedent or donee, so long as it is made "not later than" the prescribed period.

Federal Gift Tax Implications: Disclaimers have significance under the Federal gift tax law. Section 2511(a) of the Internal Revenue Code imposes a gift tax upon the transfer of property by gift whether the transfer is in trust or otherwise, and whether the gift is direct or indirect. The Treasury regulations under this section state that where local law gives the beneficiary, heir or next-of-kin an unqualified right to refuse to accept ownership of property transferred from a decedent, whether by will or by intestacy, a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a "reasonable time" after knowledge of the existence of the transfer.

A "reasonable time" for gift tax purposes is not defined in the Code or regulations. It has been held that the courts will look to the law of the states in determining the question, (*Brown* v. *Routzahn*, 63 F.2d 914 (6th Cir.) cert. denied, 290 U.S. 641 (1933)), not conclusively, but as relevant and having probative value (*Keinath* v. *C.I.R.* 480 F.2d 57, (8th Cir., 1973), rev'g 58 T.C. 352, (1972)), and that an unequivocal disclaimer filed within 6 months of the determinative event is made within a "reasonable time." It has been held, further, that as regards future interests, the "reasonable time" period runs from the termination of the preceding estate or interest, and not from the time the transfer was made, *Keinath* v. *C.I.R.*, supra.

Place of Filing Disclaimer: Section 2 requires a disclaimer to be filed in the probate court. If real property or an interest therein is involved, a copy of the disclaimer may also be recorded in the office of the recorder of deeds or other appropriate office in the county in which the real estate is situated. If the Torrens system is in effect, appropriate provisions should be added to comply with local law.

Notice: A copy of the disclaimer is required to be delivered in person or mailed by registered or certified mail to the personal representative or other fiduciary of the decedent or of the donee of the power as the case may be.

(c) Unless the decedent or donee of the power has otherwise provided, the property or interest renounced devolves as if the person renouncing had predeceased the decedent or, if the person renouncing is designated to take under a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.

Devolution of Disclaimed Property: When a beneficiary disclaims his interest under a will, the question arises as to what happens to the rejected interest. In *People* v. *Flanagin*, 331 Ill. 203, 162 N.E. 848 (1928), 60 ALR 305, the court, quoting the New York case of *Burritt* v. *Sillman*, 13 N.Y. 93 (1855) said that the disclaimed property will "descend to the heir or pass in some other direction under the will." From this, it may be assumed that the court meant that if the decedent left no will, the renounced interest passed according to the rules of descent, but if he left a will, it passed according to its terms.

It has been generally thought that devolution in the case of disclaimer should be the same as in the case of lapse, which is controlled by sections of the probate law. Section 3 of the Act takes this approach. It provides that unless the will of the decedent or the donee of the power has otherwise provided, the disclaimed interest devolves as if the disclaimant had predeceased the decedent or the donee of the power. In every case the disclaimer relates back to the date of the death of the decedent or of the donee. The provision that the disclaimer "relates back", codifies the rule that a renunciation of a devise or legacy relates to the date of death of the decedent or donee and prevents the succession from becoming operative in favor of the disclaimant. See *In re Wilson's Estate*, 298 N.Y. 398, 83 N.E. 2d 852 (1949). Also, *Bouse, for use of State* v. *Hull*, 168 Md. 1, 176 A. 645 (1935).

Acceleration of Future Interests: If a life estate or other future interest is disclaimed, the problem is raised of whether succeeding interests or estates accelerate in possession or enjoyment or whether the disclaimed interest must be marshalled to await the actual happening of the contingency. Section 3 provides that remainder interests are accelerated, the second sentence specifically stating that any future interest which is to take effect in possession or enjoyment after the termination of the estate or interest disclaimed, takes effect as if the disclaimant had predeceased the deceased owner or deceased donee of the power. Thus, if T leaves his estate in trust to pay the income to his son for life, remainder to his son's children who survive him, and S. disclaims with two children then living, the remainder in the children accelerates; the trust terminates and the children receive possession and enjoyment, even though the son may subsequently have other children or that one or more of the living children may die during their father's lifetime.

Effect of Death or Disability of Person Entitled to Disclaim: The effect of death of a person entitled to disclaim, including one under disability, is discussed under Section 1. A guardian or conservator of the estate of an incapacitated or protected person may disclaim for the ward. Section 3 makes no provision for an extension of time or for other relief in case of disability from the observance of the statutory requirements for effective disclaimer. The intent is that the period for disclaimer applies to a person under disability as well as to others, and includes a court which purports to act on behalf of one under disability in the absence of fraud, misconduct or other unusual circumstances. *Pratt* v. *Baker*, 48 Ill.App.2d 442, 199 N.E.2d 307 (1964).

Rights of Creditors and Others: As regards creditors, taxing authorities and others, the provision for "relation back" has the legal effect of preventing a succession from becoming operative in favor of the disclaimant. The relation back is "for all purposes" which would include, among others for the purpose of rights of creditors, taxing authorities and assertion of dower. It is immaterial that the effect is to avoid the imposition of a higher death tax than would be the case if the interest had been accepted: *Estate of Aylsworth*, 74 Ill. App.2d 375, 219 N.E. 2d 779 (1966) [motive for the disclaimer is immaterial]; *People* v. *Flanagin*, 331 Ill. 203, 162 N.E. 848 (1928), 60 ALR 305; *Cook* v. *Dove*, 32 Ill.2d 109, 203 N.E.29 892 (1965) [upholding for inheritance tax the right of appointees to take by default rather than under the power-holder's exercise of power]; *Matter of Wolfe's Estate*, 179 N.Y. 599, 72 N.E. 1152 (1904); aff'g 89 App. Div. 349, 83 N.Y. Supp. 949 (1903); *Brown* v. *Routzahn*, 63 F.2d 914, (6th Cir.), cert. denied 290 U.S. 641 (1933); *In re Stone's Estate*, 132 Ia. 136, 109 N.W. 455 (1906); *Tax Commission* v. *Glass*, 119 Ohio St. 389, 164 N.E. 425 (1929); *U.S.* v. *McCrackin*, 189 F. Supp 632 (S.D. Ohio 1960).

Similarly, numerous cases have held that a devisee or legatee can disclaim a devise or legacy despite the claims of creditors: *Hoecker* v. *United Bank of Boulder*, 476 F.2d 838 (CA 10, 1973) aff'g 334 F. Supp. 1080 (D. Colo. 1971) (bankruptcy); *U.S.* v. *McCrackin*, supra (Federal income tax liens); *Shoonover v. Osborne*, 193 Ia. 474, 187 N.W. 20 (1922), *Bradford* v. *Calhoun*, 120 Tenn. 53, 109 S.W. 502 (1908), *Carter* v. *Carter*, 63 N.J.Eq. 726, 53 A. 169 (1902), *Estate of Hansen*, 109 Ill.App.2d 283, 248 N.E.2d 709 (1969) (judgment creditor); 37 Mich. L. Rev. 1168; 43 Yale L J 1030; 27 ALR 477; 133 ALR 1428. A creditor is not entitled to notice of the disclaimer (*In re Estate of Hansen*, 109 Ill.App.2d 283, N.E.2d 709, (1969)).

(d) (1) The right to renounce property or an interest therein is barred by (i) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor, (ii) a written waiver of the right to renounce, (iii) an acceptance of the property or interest or benefit thereunder, or (iv) a sale of the property or interest under judicial sale made before the renunciation is effected.

(2) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(3) The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

COMMENT

Bars to Disclaimer — Waiver — Estoppel: It may be necessary or advisable to sell real estate in a decedent's estate before the expiration of the period permitted for disclaimer. In such case, the possibility of a disclaimer being filed within the period, could be a deterrent to sale and delivery of good title. Section 4 expressly authorizes an heir, devisee, legatee or other person entitled to disclaim, to indicate in writing his intention to "waive" his right of disclaimer, and thus avoid any delay in the completion of a sale or other disposition of estate assets. The written waiver bars the right of the person subsequently to disclaim the property or interest therein and is binding on persons claiming through or under him.

Similarly, Section 4 provides that various acts of a person entitled to disclaim in regard to property or an interest therein, such as making an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, bars the right of the person to disclaim and is binding on all persons claiming through or under him.

Spendthrift Provisions: The existence of a limitation on the interest of an heir, legatee, devisee or other disclaimant in the nature of a spendthrift provision or similar restriction is expressly declared not to affect the right to disclaim. Without this provision, there might be a question as to whether the beneficiary of a spendthrift trust can disclaim under the statute (Griswold, Spendthrift Trust [2d Ed] Section 424, p 603). If a person who is under no legal disability wishes to refuse a beneficial interest under a trust, he should not be powerless to make an effective disclaimer even though the intended interest once accepted by him would be inalienable. (Scott on Trusts, Section 337.7, p 2683, 3d Ed.)

When a beneficial interest is accepted by a beneficiary, he cannot thereafter disclaim or release it (Griswold, supra, Section 534, p 603 note 48). As to what conduct amounts to an acceptance, see *In Re Wilson's Estate*, 298 NY 398, 83 NE2d 852 (1949).

Judicial Sale: The section provides that the right to disclaim is barred by a sale of the property or interest under a judicial sale. Judicial sales are ordered in many different types of proceeding such as foreclosure of mortgage or trust deed, enforcement of lien, partition proceedings and proceedings for the sale of real property of a decedent or ward for certain purposes. Probate laws frequently permit a representative to mortgage or pledge property of the decedent or ward in certain circumstances. Execution sales are made pursuant to a writ to satisfy a money judgment. Section 4 has the effect of providing that the making of a judicial sale for the account of the heir, devisee, or beneficiary, bars him from renouncing the property or interest. To be distinguished from a judicial sale, is a taking pursuant to eminent domain, which is considered to be a taking of property without the owner's consent and unrelated to his obligations or commitments. The right to disclaim the proceeds of a condemnation action if otherwise timely and in accordance with the Act, should not, therefore, be barred under this section.

(e) This Act does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

COMMENT

Section 5 provides that the right to disclaim under the law does not abridge the right of any person to waive, release, disclaim or renounce any property or interest therein under any other statute. The principal statutes to which this provision is pointed are those dealing with spousal renunciations and release of powers.

Being a codification of the common law in regard to the renunciation of the property, the Act is intended to constitute an *exclusive remedy* for the disclaimer of testamentary successions apart from those provided by other statutes, and supplants the common law right to disclaim.

(f) An interest in property existing on the effective date of this Act as to which, if a present interest, the time for filing a renunciation under this Act has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be renounced within [6] months after the effective date of this Act.

COMMENT

Section 6 deals with the application of the Act to property interests under instruments or in estates in existence on the effective date. If the interest is a present one and the filing time has not expired, the holder is given a full period after enactment within which to disclaim the interest. If the interest is a future one, the holder is given a full period after the interest becomes indefeasibly vested or the takers finally ascertained, after enactment in which to disclaim it. If T dies in 1960 trusteeing his estate to W for life, remainder to such of T's sons as are living at W's death and W dies in 1975, the Act permits a son to disclaim his remainder interest after it ripens even though it arises under an instrument predating the effective date of the Act. The application of statute to pre-existing instruments in like situations finds support in cases such as *Will of Allis*, 6 Wis2d 1, 94 NW2d 226, (1959), 69 ALR2d 1128.

Add to Comment
(first three paragraphs)

The above text, consists of sections 1 through 6 of Uniform Disclaimer of Transfers By Will, Intestacy or Appointment Act of 1973, redesignated as subsections a) through f).

The Comments following each subsection are the Official Comments to the 1973 statute. The word "renunciation" has been substituted for "disclaimer" because the original 2-801 used the term "renunciation" and several cross-references to this term appear in other sections of this Code. It is the view of the Joint Editorial Board that the terms "renunciation" and "disclaimer" have the same meaning.

The principal substantive difference between original 2-801 and the 1973 replacement therefor is that the former permitted renunciation by the personal representative of a person who might have renounced during his lifetime. Under the new uniform act, which is now the official text of 2-801, the right to renounce terminates upon the death of the person who might have renounced during his lifetime. Also, the original version was less precise than the present version in the important provisions of subsection (b) which govern the time for renunciation.

(The balance of the comment is the same as the original comment to 2-801.)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

IN ADDITION, THE JOINT EDITORIAL BOARD HAS RECOMMENDED THE FOLLOWING ADDITIONAL COMMENTS TO SECTIONS FOR WHICH NO AMENDMENTS HAVE BEEN RECOMMENDED

1.

SECTION 2-103. Add, at the end of the original comment as expanded by the paragraph on page 2 hereof:

The Joint Editorial Board gave careful consideration to a change in the Code's system for distribution among issue as recommended in Waggoner, "A Proposed Alternative to the Uniform Probate Code's System for Intestate Distribution Among Descendants," 66 Nw. U.L. Rev. 626 (1971). Though favored as a recommended

change in the Code by a majority of the Board, others opposed on the ground that the original text had been enacted already in several states, and that a change in this basic section of the Code would weaken the case for uniformity of probate law in all states. Nonetheless, since some states as of 1975 had adopted versions of the Code containing deviations from the original text of this and related sections, it was the concensus that Prof. Waggoner's recommendation and the statutory changes that would be necessary to implement it, should be described in Code commentary.

The changes involved would appear in this section and in 2-106. The old and the revised text of these sections would be as follows if the Waggoner recommendation is accepted by an enacting state which decides that uniformity of the substantive rules of intestate succession is not vital:

> Change 2-103(1), (3) and (4) by altering, in each instance, the language referring to taking per capita or by representation, as follows:
> 2-103 . . .
> (1) to the issue of the decedent; to be distributed per capita at each generation as defined in section 2-106; ~~if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation;~~
>
> (3) if there is no surviving issue or parent, to the issue of the parents or either of them to be distributed per capita at each generation as defined in section 2-106; ~~by representation;~~
>
> (4) . . . or to the issue of the paternal grandparents if both are deceased to be distributed per capita at each generation as defined in section 2-106; ~~the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation.~~

Also, alter 2-106 as follows:

SECTION 2-106. [Per Capita at Each Generation.]

If per capita at each generation representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship which contains any surviving heirs and deceased persons in the same degree who left issue who survive the decedent. Each surviving heir in the nearest degree which contains any surviving heir is allocated one share and the remainder of the estate is divided in the same manner as if the heirs already allocated a share and their issue had predeceased the decedent. ~~receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.~~

2.

SECTION 3-203. Add, at the end of the present comment:

[New final paragraph] The meaning of "spouse" is determined by 2-802.

3.

SECTION 3-609. Add, at the end of the present comment:

See Section 3-718, which establishes the rule that a surviving co-executor may exercise all powers incident to the office unless the will provides otherwise. Read together, this section and 3-718 mean that the representative of a deceased co-representative would not have any duty or authority in relation to the office held by his decedent.

4.

SECTION 5-401. Replace the third sentence of the first paragraph of the present comment with the following:

Persons who may be subjected to the proceedings described here include a broad category of persons who, for a variety of different reasons, may be unable to manage their own property.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

JAY S. HAMMOND, GOVERNOR

STATE OF ALASKA

DEPARTMENT OF LAW
Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

March 25, 1976

The Honorable Robert Ziegler
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: 1975 Uniform Probate Code amendments

Dear Senator Ziegler: Bob

In my role as a Uniform Law Commissioner for Alaska, and knowing of your interest in the Uniform Probate Code (UPC), I am sending to you for your committee's consideration and possible introduction the amendments to the UPC promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1975. A bill proposing enactment of these amendments in Alaska is attached, as is a copy of the amendments and "official commentary" as distributed by the NCCUSL.

You may find the information in this letter and in the attached sheets sent to me by Professor Richard V. Wellman, educational director for the Joint Editorial Board for the Uniform Probate Code, helpful in preparing a committee report to be printed in the Senate Journal. Such a report, including reference to the NCCUSL official commentary, would provide an indication of legislative intent and a guide to future interpretation.

In preparing the attached bill, I have omitted or modified some of the sections included in the attached NCCUSL draft, as follows:

1. AS 13.11.045(a)(2) (U.P.C. section 2-109) is not proposed for amendment in this bill because the NCCUSL change was intended to provide an option for states which had enacted the Uniform Parentage Act (promulgated by the NCCUSL in 1973). Alaska has not enacted that Act. (That,

incidentally, is another matter which your committee may wish to consider; I have information available should you wish to see it at this time.)

2. AS 13.11.225 (U.P.C. section 2-602) was amended in 1973, adopting the same change now promulgated by the NCCUSL. See ch. 56 SLA 1973; 1973 Senate Journal Supplement No. 9; and 1973 House Journal, page 819.

2. AS 13.11.255 (U.P.C. section 2-608) is not proposed for change here because an intent statement in your committee report should suffice. The NCCUSL change would merely have reorganized the existing language of the section to forestall a possible interpretation question. I assume that Alaska would agree with the interpretation intended by the NCCUSL.

4. AS 13.11.270 (U.P.C. section 2-611) is not proposed for amendment because the proposed change is also one merely intended to provide an option for states which have enacted the Uniform Parentage Act.

5. AS 13.11.300 (U.P.C. section 2-802) was amended in 1973 in the manner suggested by the NCCUSL (see item 2, above).

6. In AS 13.16.030 (U.P.C. section 3-106), I have slightly changed the NCCUSL wording for clarity; no substantive difference from the intent expressed by the NCCUSL is intended.

7. AS 13.16.105(b) (U.P.C. section 3-306) is offered for legislative consideration, although the NCCUSL merely presents it as an optional provision.

8. The following statutes were amended in 1973 in the way currently recommended by the NCCUSL (see item 2, above), and therefore are not proposed for amendment in the attached bill:

AS 13.16.470 (U.P.C. section 3-605)
AS 13.21.055 (U.P.C. section 4-301)
AS 13.26.035 (U.P.C. section 5-202)
AS 13.26.040 (U.P.C. section 5-203)
AS 13.26.120 (U.P.C. section 5-306)
AS 13.26.300 (U.P.C. section 5-428)
AS 13.26.320 (U.P.C. section 5-432)

In addition to the statutory amendments proposed by the NCCUSL in the attached material, that organization is proposing additions to the "official commentary" accompanying the U.P.C. See the last few pages of the attached material.

Yours truly,

Arthur H. Peterson
Assistant Attorney General
Uniform Law Commissioner
for Alaska

AHP:md

Uniform Probate Code

1975 Technical Amendments

After approval and promulgation of the Uniform Probate Code in 1969, the National Conference of Commissioners on Uniform State Laws and The Real Property, Probate and Trust Law Section of the American Bar Association formed the Joint Editorial Board composed of five Commissioners and five representatives of the Section. Since the Fall of 1971, the Board has monitored the legal literature concerning the Code, searched reports about the Code by various bar and legislative study committees and examined the eleven enactments to date of the Code, for ways of strengthening and improving the Code. As changes and corrections were considered and approved by the Board, the text was released for the guidance of others then known by the Board to be considering the Code in preparation for partial or total enactment. Consequently, when West Publishing Company published the 1974 Edition of the Code, it was able to include an Appendix of recommendations concerning changes as previously released by the Board, and fifteen of the thirty-one changes approved by the National Conference in 1975 were included in this Appendix. Several of these, plus others that were not released by the Board before the 1975 annual meeting of the National Conference in Quebec City, already have been incorporated into the Code in one or more of the eleven full enactments.

The thirty-one changes recently approved by the National Conference are aptly described as technical amendments for none reflect any pulling back from, or marked extension of, any of the principles or provisions of the Code. Nineteen of the thirty-one changes involve mere word changes or re-arrangements of the ordering of sentences that improve or clarify sections and eliminate gaps in, or inconsistencies between, sections. Three of the changes, including two relating to inheritance rights of children born out of wedlock, and one that restructures the Code's provision regarding renunciation of rights arising via intestate or testate succession, merely conform the Probate Code to more recent acts of the National Conference; e.g. the Uniform Parentage Act (1973) and the Uniform Disclaimer of Transfers By Will, Intestacy or Appointment Act (1973).

Of the remaining nine amendments, two affect the Elective Share of the Surviving Spouse, one by adding more explicit language to protect bona fide purchasers from a deceased spouse and clarifying the time limits for the elective share remedy, and the other by charging an electing spouse with renounced values made available to her/him by the decedent. Two other amendments reflect a slight change in the original position of the Code vis a vis inheritance rights of, from or through adopted children.

The remaining changes add minor new safeguards and remedies to the Code's system for probate of wills and administration of estates. For example, a "long-arm" provision is added which will permit the court of probate to give a personal judgment against one who, as applicant in an informal proceeding, commits fraud or perjury. The Code as originally approved facilitates remedies for wrongful conduct against one who accepts letters of administration; the change extends the same procedural efficiency to remedies against all applicants. Another example is a change that adds as a duty for any person who obtains probate of a will in informal proceedings without seeking appointment of a personal representative, that he give information of the probate to interested persons. Also, a small change in section 3-106 makes it clear that interested persons can be bound by a probate court order determining heirs or construing a will if notice of the proceeding as prescribed by the Code in given to all interested persons and if the estate has not been, and cannot now be, opened for administration. This fills a gap in the text as originally approved by supplying a convenient court proceeding for resolving title questions that may occur where no one acts to secure probate of a will or administration within the limitations period, as provided in the original text, of three years from death.

Overall, the amendments demonstrate that a shake-down period for the Code now has passed, and that identified defects have been corrected and needed improvements have been added. Undoubtedly,

political and other local concerns will cause local changes and exclusions in future enactments modelled after the Code. Even so, the amendments, which show that considerable thought and effort already have been expended in national attempts to improve the Code, should serve to reduce the tendency of local draftsmen to make purely technical language and style changes.

file on hill

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

April 30, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 717 (Uniform Probate Code amendments)

Dear Terry Representative Gardiner:

Since I will be out of the state for three weeks, I wanted to send you this little written reminder of my interest in having the legislature pass SB 717 which is presently residing in your committee. The bill makes technical amendments to the Uniform Probate Code, as recommended by the National Conference of Commissioners on Uniform State Laws at their 1975 meeting. I am supporting this bill in my role as a Uniform Law Commissioner for Alaska.

Senate Journal Supplement No. 9 (April 1, 1976) contains both my March 25, 1976 letter to Senator Robert Zeigler, discussing this bill, and a general description of these amendments prepared by Professor Richard V. Wellman, Educational Director for the Joint Editorial Board for the Uniform Probate Code. A copy of that supplement is attached. In addition, the Senate Judiciary Committee has a copy of the "official commentary" prepared by the National Conference explaining each one of these amendments. The only comments on this bill that I have heard from private law practitioners have been in support.

Your favorable consideration of this matter will be appreciated. Thank you.

Yours truly,

Arthur H. Peterson
Assistant Attorney General
Alaska Commissioner on
Uniform State Laws

AHP:md

cc: The Honorable Mike Bradner
Speaker of the House