

LDIR#223
PROBATE

61-11-3 Thru 7

ADMINISTRATIONS BY COMMISSIONER

-11-3 Ammended as follows

1. All references to \$1,000.00 be deleted
Substitute \$5,000.00 applies to 61-11-3 thru 6

Note:

Note: see comments on 61-11-1

2. delete "forty days" line 8 page 2137
substitute "twenty days"

Note: see comments on preferences for administration

NEW SECTION following 61-11-7

Estate of \$500 or under: Summary sale of decedents effects to pay funeral expenses: Withdrawl of Bank Deposits; collection of debts;

When a commissioner takes possession of the estate of a decedent as provided in this chapter, and it appears that the total value of the estate is under \$500, the commissioner may order the summary sale of any personal property belonging to the decedent, and the withdrawl of any money on deposit with any bank, and collect any claim or indebtedness or claim that may be owing to the decedent. The money received from any such sale of collection shall be used to defray the expenses of the burial of the decedent and the expenses of his last illness; the balance, if any, shall be used to ~~pay~~ pay the other claims as they may be summarily ascertained by the commissioner and according to their preference under the law; and there shall be no administration upon the estate unless additional property is discovered. ~~The~~ above procedure applies wether or not there is a will of the decedent in existance, if the executor therein named refuses to act, or if the will does not appoint an executor. No notice shall be required of these proceedings.

Same; Proceedings: Fees :Sales: Record: Unclaimed Balance:

Such sales may be made with or without notice, as the commissioner may elect, and title to the property shall pass without further confirmation. The commissioner ~~shall~~ may ~~charge~~ charge against moneys thus received all necessary expenditures and retain as compensation for services rendered a fee of \$10.00. The commissioner shall keep a record of the property of the decedent that came into his hands, and the disposition that he made thereof, if any, and vouchers for all expenditures.

Any money or other property remaining in the hands of the ~~the~~ commissioner which is unclaimed

17
6:00
7:00
2:00
6
70.00
*

HUGH M...

750.00

EEch
Bb

6

6

Handwritten notes and scribbles

QUESTIONNAIRE

YOUR NAME: Gladys Stabler

1. Do you have extensive, limited, or little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

Yes

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

Yes

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

(a) by eliminating some of the procedural steps?
If your answer is "Yes", would you please state which steps you believe should be set aside:

Real property descends directly to the heir upon the death of the ancestor subject to his debts. Binswanger v. Henninger, 1A 509. The present procedural steps required in the sale of real property are designed to protect the rights of heirs. Our chief aim should be to protect the rights of heirs, not to make it easy for the attorney.

(b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment:

Yes, if the estate is solvent.

(c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment: The provisions of Section 61-14-10 as amended by Chap. 106 SLA 1955 are helpful. My suggestion: under the present provisions of law I believe the provisions of Chap. 106 SLA 1955 may be extended to guardians; I suggest, however, that same be made specific to apply to guardians.

5. Do you believe one , two , or three appraisers

QUESTIONNAIRE

YOUR NAME:

John R. Connolly

1. Do you have LL extensive, LV limited, or L- little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices? *yes*

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved? *yes, if there could also be some method of approval for such final accounting.*

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

(a) by eliminating some of the procedural steps? *yes.*
If your answer is "Yes", would you please state which steps you believe should be set aside: *public sale omitted with safeguards.*

(b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment:

(c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment:

5. Do you believe one 1 or two 1, or three L appraisors

QUESTIONNAIRE

YOUR NAME: John H. Dimond

1. Do you have / extensive, X / limited, or / little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

Perhaps not "dual" compensation; but he should receive something in addition to the usual attorney's fee charged.

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

Yes.

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

(a) by eliminating some of the procedural steps?
If your answer is "Yes", would you please state which steps you believe should be set aside:

(b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law? Yes.

Comment:

(c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment: Yes, but how about the heirs in whom the real property is vested at the time of death? This would be of considerable advantage in many cases, but it also could be dangerous if a Commissioner were influenced to O.K. a sale when it really wasn't essential.

5. Do you believe one X /, two /, or three / appraisors

QUESTIONNAIRE

YOUR NAME:

1. Do you have extensive, limited, or little, if any probate practice?

Have had a very considerable amount of probate practice during the past forty five years

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

Yes. In many cases it expedites the work of administration and it often saves some expense.

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

Yes. This should cover the steps taken in handling the property of deceased, payment of claims, disposition of property and method employed to transfer real property, etc.

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

- (a) by eliminating some of the procedural steps? Yes
If your answer is "Yes", would you please state which steps you believe should be set aside:

As outlined by Mr. Banfield at the meeting of the Alaska Bar Association on May 27th, 1958

- (b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment: Yes; when it is definitely established just who are the heirs or devisees. This would need to be carefully handled in cases of intestacy.

- (c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment: Only for purpose of payment of claims where there is no other property from which they can be paid. Real property of a deceased person vests in the heirs on the death of the testator or intestate. Any law which would authorize the probate judge to order such property sold should contemplate this.

5. Do you believe one , two , or three appraisors

QUESTIONNAIRE

YOUR NAME:

1. Do you have extensive, limited, or little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

No

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

No

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

(a) by eliminating some of the procedural steps? _____
If your answer is "Yes", would you please state which steps you believe should be set aside:

Will see you later

(b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment:

Yes

(c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment:

Yes

5. Do you believe one , two , or three appraisors

QUESTIONNAIRE

YOUR NAME: Warren C. Christianson

- 1. Do you have / / extensive, / / limited, or / / little, if any probate practice?

Average - i.e. very little?

- 2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

Yes

- 3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

Yes DEFINITELY

- 4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

- (a) by eliminating some of the procedural steps? Yes - If your answer is "Yes", would you please state which steps you believe should be set aside:

Shorten Time of Notice - More flexibility in Allowance of Private Sale And if creditors pt - Actual Served notice on heirs & legatess should eliminate published notice

- (b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment: Yes - See Above

- (c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment: Yes

No need to distinguish between Real & Personal Property.

- 5. Do you believe one / /, two / X /, or three / / appraisors

QUESTIONNAIRE

YOUR NAME:

M. E. Monagle

1. Do you have extensive, limited, or little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices? *yes*

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved? *yes*

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:
 - (a) by eliminating some of the procedural steps?
If your answer is "Yes", would you please state which steps you believe should be set aside:

 - (b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law? *No*

Comment: *✓*

 - (c) to permit a private sale when the Commissioner deems it proper and necessary? *yes*

Comment:

5. Do you believe one , two , or three appraisors are necessary to evaluate the property of an estate?

QUESTIONNAIRE

YOUR NAME:

1. Do you have extensive, limited, or little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

Yes, but we ordinarily waive attorney's commission

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

NO!

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

(a) by eliminating some of the procedural steps? Yes
If your answer is "Yes", would you please state which steps you believe should be set aside:

Whole procedure is too cumbersome, full of costly processes unnecessarily painful

(b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment: Yes would accomplish simplification

(c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment: Yes (see 4a + 4b)

5. Do you believe one , two , or three appraisors ? are necessary to evaluate the property of an estate?

James White

QUESTIONNAIRE

YOUR NAME:

1. Do you have extensive, limited, or X little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

no

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

yes -

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

(a) by eliminating some of the procedural steps?
If your answer is "Yes", would you please state which steps you believe should be set aside:

(b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment: *yes -*

(c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment: *By Bid*

5. Do you believe one 1 , two ; or three appraisors

QUESTIONNAIRE

YOUR NAME:

1. Do you have extensive, limited, or little, if any probate practice?

2. Do you believe an attorney should be allowed to serve in the dual capacity of administrator (or executor) and attorney, and receive compensation for both offices?

Yes but the administrator fee should be limited to

3. Do you believe an executor should be required to file a final accounting, in affidavit form, with the Commissioner's Court where a non-intervention will is involved?

50% of the usual fee

yes

4. Do you believe the present provisions relative to the sale of property of the estate should be modified:

(a) by eliminating some of the procedural steps? *yes*
If your answer is "Yes", would you please state which steps you believe should be set aside:

(b) to permit a sale when all the heirs or devisees who have any interest in said property consent to the same without requiring conformity to the applicable section of law?

Comment: *yes*

(c) to permit a private sale when the Commissioner deems it proper and necessary?

Comment: *Yes*

... on three appraisers

SUCCESSION (REAL PROPERTY)

INTESTATE



- (1) Widow or Widower and children*

$\frac{1}{2}$ of real property



Children divide remainder equally (if deceased child to issue 1 by representation)

- (1) Children* (no widow or widower)

All children divide equally (if deceased child to issue 1 by representation)



- (1) Widow or Widower and Lineal descendants*

$\frac{1}{2}$ of real property



All lineal descendants share remainder equally if same degree of kinship, otherwise by representation

- (1) Lineal descendants* (no widow or widower or surviving children)

All lineal descendants share equally if same degree of kinship, otherwise by representation



- (2) Widower or Widow (no lineal descendants)



- (2) Father and Mother

Share equally



- (2) Surviving Father and Mother



- (3) Brothers and Sisters

All brothers and sisters divide equally (if deceased brother or sister to issue by representation)



SUCCESSION (REAL PROPERTY)

INTESTATE



- (1) Widow or Widower and children*
 $\frac{1}{2}$ of real property Children divide remainder equally (if deceased child to issue 1 by representation)



- (1) Children* (no widow or widower)
All children divide equally (if deceased child to issue 1 by representation)



- (1) Widow or Widower and Lineal descendants*
 $\frac{1}{2}$ of real property All lineal descendants share remainder equally if same degree of kinship, otherwise by representation



- (1) Lineal descendants* (no widow or widower or surviving children)
All lineal descendants share equally if same degree of kinship, otherwise by representation



- (2) Widower or Widow (no lineal descendants)



- (2) Father and Mother
Share equally



- (2) Surviving Father and Mother



- (3) Brothers and Sisters

All brothers and sisters divide equally (if deceased brother or sister to issue by representation)



(4) Mother (no lineal descendants)

PROPOSED OUTLINE FOR ALASKA PROBATE CODE

Art. I: Wills

Part 1. Execution

Part 2. Revocation

Part 3. Taking Against the Will

Part 4. Miscellaneous Provisions

Art. II: Descent and Distribution

Art. III: General Administration

Part 1. Probate and Grant of Administration

Part 2. Administrators and Executors

Part 3. Bonds

Part 4. Inventory

Part 5. Allowances

Part 6. Management

Part 7. Claims

Part 8. Sales

Part 9. Accounting

Part 10. Distribution and Discharge

Art. IV: Administration of Small Estates

Art. V: Ancillary Administration

Art. VI: Administration of Partnership Interest

Art. VII: Guardianship

Art. VIII: Formal Provisions

A PRELIMINARY REPORT
ON THE STUDY DEVOTED TO
REVISION OF THE PROBATE CODE

Prepared by the
Alaska Legislative Council Staff

Henry J. Camarot
Executive Director

PROPOSED ALASKA PROBATE CODE

ARTICLE I

WILLS

Part 1. Execution

Section 1.01. WHO MAY EXECUTE A WILL. Every person of sound mind, who has attained the age of 19 years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof, or of the maritime service, may make a will.

COMMENT:

Present Alaska law permits a person who is 21 years of age to make a will. Sec. 59-1-2, ACLA 1949. However, in view of the fact that the state constitution permits persons age 19 to vote, and that the general age of majority has recently been changed to 19 (Sec. 20-1-1, ACLA 1949, as amended by Ch. 37, SLA 1959) the present law is amended to reflect these policy decisions.

Many states make exceptions of varying degrees for persons in the armed forces or married. See Rees, "American Wills Statutes," 46 VIR. L. REV. 613 at 635-5 (1960). The complete alleviation of the age requirement is taken from the Indiana provision. Ind. Ann. Stat. (Repl. Vol. 1953) Sec. 6-501. See also, Gen. Tex. Probate Code Ann. (1956) Sec. 57.

Sec. 1.02. EXECUTION. The execution of a will, other than a holographic or nuncupative will, must be by the signature of the testator and of at least two witnesses as follows:

- (1) Testator. The testator shall signify to the attesting witnesses that the instrument is his will and either
 - (a) Himself sign, or
 - (b) Acknowledge his signature already made, or
 - (c) At his direction and in his presence have

ARTICLE IV

ADMINISTRATION OF SMALL ESTATES

GENERAL COMMENT:

Under present Alaska law, three groups of provisions are applicable to administration of small estates: (1) Sec. 61-10-1, ACLA 1949 dispensing with administration when a decedent specifies it in his will, and certain other conditions are met; (2) certain general provisions (Secs. 61-11-1 to 61-11-7, ACLA 1949) relating to settlement of estates of less than \$1,000 with reduced administration; and (3) a special provision (Secs. 61-19-1 to 61-19-3, ACLA 1949) relating to estates of Indians and other Aboriginal peoples.

The first procedure, dependent in part on the will of a testator, is entirely inapplicable in cases of intestacy. Further, in the case of small estates, it is a reasonable assumption that few wills will be made with advice from counsel familiar with the impracticalities of administration. Therefore, the utilization of the section for estates where it is most needed seems remote.

The second existing procedure also seems to accomplish little. Administration costs, though reduced, are still existent, together with court costs which are often substantial. In the case of an estate of only a few hundred dollars, the entire estate may go toward paying costs of administration.

Whereas the third procedure may prove useful in certain instances, it would seem most efficacious to work out an applicable general procedure whereby special provisions need not be enacted for Indians. Different procedures for different races should be avoided if one provision could meaningfully apply to all groups. A provision of general application has the effect of avoiding litigation as to the application of a special section to persons of mixed racial ancestry.

The suggested revision sets forth three basic procedures for minimizing administration of small estates. The first (Secs. 4.01-4.04) relates to estates of less than \$1500, and eliminates administration entirely unless an interested party petitions for it. The procedure is available to all parties and entails the transfer of property without judicial supervision, by means of affidavit. Separate provisions govern the transfer of real and personal property, commensurate with the desire to settle questions of title to real property as quickly as possible.

The second procedure (Secs. 4.10-4.13) is only open to those parties who are entitled to a family allowance. It provides for a summary distribution of a small estate to the surviving spouse or minor children where the estate, exclusive of homestead, would be entirely consumed in the payment of a family allowance. The upper limit on the amount distributed is that to be prescribed in Art. III of the revised code, which will state the minimum family allowance. (For present allowance provisions, see Secs. 61-12-2, 61-12-3. Also see Sec. 61-12-4 which contemplates the setting apart of the entire estate for support, but in-