



LAWS OF ALASKA

1976

Source

SB 717

Chapter No.

154

AN ACT

Amending the Uniform Probate Code.

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

* Section 1. AS 13.06.050(10) is amended to read:

(10) "distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser; a testamentary trustee is a distributee only to the extent of distributed assets or increment to them 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;

* Sec. 2. AS 13.11.015(3) is amended to read:

(3) if there is no surviving issue or parent, to the issue of the parents or either of them by representation;

* Sec. 3. AS 13.11.045(1) is amended to read:

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

* Sec. 4. AS 13.11 is amended by adding a new section to read:

Sec. 13.11.065. 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.

* Sec. 5. AS 13.11.075(a) is amended to read:

(a) "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:

(A) 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;

(B) 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 principle for his own benefit;

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

(D) 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.

(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 paragraph:

(A) 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 considered to have been paid by the decedent;

(B) 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 before the decedent's death is not treated as property derived from the decedent;

(C) 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 instrument which is recorded under AS 34.15 or AS 45.05 and which bears a notation of that recordation is prima facie evidence that the transfer described in it was made to a bona fide purchaser.

* Sec. 6. AS 13.11.090(a) is amended to read:

(a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of death, or within six months after the probate of the decedent's will, whichever limitation expires last; however, nonprobate transfers, described in sec. 75(a)(1) of this chapter, may not be included within the augmented estate for the purpose of computing the elective share, if the petition is filed later than nine months after 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.

* Sec. 7. AS 13.11.095 is amended to read:

Sec. 13.11.095. EFFECT OF ELECTION ON BENEFITS BY WILL OR STATUTE. (a) [deleted]

(b) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

* Sec. 8. AS 13.11.100(a) is amended to read:

(a) 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.

* Sec. 9. AS 13.11.165 is repealed and re-enacted to read:

Sec. 13.11.165. SELF-PROVED WILL. (a) Any will may be simultaneously executed, attested, and made self-proved, by the acknowledgment of it 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 sworn, 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 expressed in it, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____ and _____, the witnesses, sign our names to this instrument, and, being first sworn, 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, signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

The State of _____
County of _____ [or _____ Judicial District]

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 after its execution be made self-proved by the acknowledgment of it 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 _____ [or _____ Judicial District]

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first sworn, 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 expressed in it, 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 each witness' knowledge the testator was at that time 18 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)

* Sec. 10. AS 13.11.295 is repealed and re-enacted to read:

Sec. 13.11.295. RENUNCIATION OF SUCCESSION. (a) A person 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 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 in it, including a future interest, by filing a written renunciation under this section. The right to renounce does not survive the death of the person having it. The instrument shall

- (1) describe the property or interest renounced;
 - (2) declare the renunciation and extent of it;
- and
- (3) be signed by the person renouncing.

(b) The following requirements apply to renunciations:

- (1) an instrument renouncing a present interest shall be filed not later than six 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 six 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 court in the judicial district 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 in it is renounced, a copy of the renunciation may be recorded in the office of the recorder of the judicial district in which the real estate is situated.

(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.

(d) The following rules apply to the right to renounce:

- (1) the right to renounce property or an interest in it is barred by

- (A) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract for it;

(B) a written waiver of the right to renounce;

(C) an acceptance of the property or interest or benefit under it; or

(D) a sale of the property or interest under judicial sale made before the renunciation is effected;

(2) the right to renounce exists regardless of 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.

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

(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 section has not expired, or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be renounced within six months after the effective date of this Act.

* Sec. 11. AS 13.16.030 is amended to read:

Sec. 13.16.030. PROCEEDINGS WITHIN THE EXCLUSIVE 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 proceedings concern estates that have not been and cannot at the time of these proceedings 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 AS 13.-06.110. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

* Sec. 12. AS 13.16.080 is amended to read:

Sec. 13.16.080. 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:

(A) a statement of the interest of the

applicant;

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

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

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

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

(F) a statement that the time limit for informal probate as provided in secs. 80 - 130 of this chapter has not expired either because three years or less have passed since the decedent's death, or, if more than three years from death have passed, that circumstances as described by sec. 40 of this chapter 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) of this subsection:

(A) 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;

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

(C) 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.

(D) [deleted]

(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) of this section:

(A) 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 AS 13.06.060, or a statement why any such instrument of which he may be aware is not being probated;

(B) 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 sec. 65 of this chapter.

(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 sec. 290(c) of this chapter, 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.

* Sec. 13. AS 13.16.105 is amended by adding a new subsection to read:

(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 sec. 360 of this chapter. 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.

* Sec. 14. AS 13.16.365(b) is amended to read:

(b) The personal representative shall send a copy of the inventory to interested persons who request it. He may

also file the original of the inventory with the court.

* Sec. 15. AS 13.16.455 is amended to read:

Sec. 13.16.455. 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 four 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 sec. 465 of this chapter is equivalent to commencement of a proceeding on the claim.

* Sec. 16. AS 13.16.515 is amended to read:

Sec. 13.16.515. 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 of it, 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 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.

* Sec. 17. AS 13.16.580 is amended to read:

Sec. 13.16.580. PURCHASERS FROM DISTRIBUTEES PROTECTED. If property distributed in kind or a security interest in it is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, the purchaser or lender takes title free of 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 before 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 before the distribution. Any instrument described in this section which is recorded under AS 34.15 or AS 45.05 and which bears a notation of that recordation is prima facie evidence that the transfer described in it was made for value.

* Sec. 18. AS 13.16.635 is amended to read:

Sec. 13.16.635. LIABILITY OF DISTRIBUTEES TO CLAIMANTS. After assets of an estate have been distributed and subject to sec. 645 of this chapter, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee is 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 fails 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.

* Sec. 19. AS 13.31.020(b) is repealed and re-enacted to read:

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

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

(2) on the 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 after the original payee's death unless the terms of the account or deposit agreement expressly provide for survivorship between them.

* Sec. 20. AS 13.31.020(c) is repealed and re-enacted to read:

(c) If the account is a trust account,

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

(2) on the 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 after the trustee's death unless the terms of the account or deposit agreement expressly provide for survivorship between them.

* Sec. 21. AS 13.31.030 is amended to read:

Sec. 13.31.030. ACCOUNTS AND TRANSFERS NONTESTAMENTARY. Any transfers resulting from the application of sec. 20 of this chapter are effective by reason of the account

contracts involved and are not to be considered as testamentary or subject to AS 13.06.005 - 13.21.075, except as provided in AS 13.11.070 - 13.11.100, and except as a consequence of, and to the extent directed by, sec. 35 of this chapter.