

## **Part 1 General Provisions**

### **75-3-101 Devolution of estate at death -- Restrictions.**

The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates. Upon the death of a person his real and personal property devolves to persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estate, or in the absence of testamentary disposition, to his heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, rights of creditors, elective share of the surviving spouse, and administration.

Enacted by Chapter 150, 1975 General Session

### **75-3-102 Necessity of order of probate for will.**

Except as provided in Section 75-3-1201, to be effective to prove the transfer of any property or to nominate a personal representative, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court, except that a duly executed and unrevoked will which has not been probated may be admitted as evidence of a devise if both:

- (1) no court proceeding concerning the succession or administration of the estate was commenced during the time period for testacy proceedings; and
- (2) either the devisee or the devisee's successors and assigns possessed the property devised in accordance with the provisions of the will, or the property devised was not possessed or claimed by anyone by virtue of the decedent's title during the time period for testacy proceedings.

Amended by Chapter 364, 2013 General Session

### **75-3-103 Necessity of appointment for administration.**

Except as otherwise provided in Title 75, Chapter 4, Foreign Personal Representatives - Ancillary Administration, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

Enacted by Chapter 150, 1975 General Session

### **75-3-104 Claims against decedent -- Necessity of administration.**

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Chapter 3, Probate of Wills and Administration. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in Section 75-3-1004 or from a former personal representative individually liable as provided in Section 75-3-1005. This section has no application to a proceeding by a secured

creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

Enacted by Chapter 150, 1975 General Session

**75-3-105 Proceedings affecting devolution and administration -- Jurisdiction of subject matter.**

- (1) Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this chapter and may petition the court for orders in formal proceedings within the court's jurisdiction, including, but not limited to those described in this chapter. The court may hear and determine formal proceedings involving administration and distribution of decedents' estates after notice to interested persons in conformity with Section 75-1-401. Persons notified are bound though less than all interested persons may have been given notice.
- (2) For purposes of this code, formal proceedings involving administration and distribution of decedent's estates shall include proceedings to determine the heirs of a decedent and proceedings to construe a duly probated will of a decedent, whether or not the estate of the decedent is being, or previously has been, administered or distributed.

Enacted by Chapter 150, 1975 General Session

**75-3-106 Scope of proceedings -- Proceedings independent -- Exception.**

- (1) Unless supervised administration as described in Part 5, Supervised Administration, is involved:
  - (a) Each proceeding before the court or registrar is independent of any other proceeding involving the same estate.
  - (b) Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this chapter, no petition is defective because it fails to embrace all matters which might then be the subject of a final order.
  - (c) Proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives.
  - (d) A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

Enacted by Chapter 150, 1975 General Session

**75-3-107 Probate and testacy proceedings -- Ultimate time limit -- Presumption and order of intestacy.**

- (1) No informal probate proceeding or formal testacy proceeding, other than a proceeding to probate a will previously probated at the testator's domicile, may be commenced more than three years after the decedent's death, except:
  - (a) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding.

- (b) Appropriate probate or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person.
  - (c) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of 12 months from the informal probate or three years from the decedent's death.
- (2) The limitations provided in Subsection (1) do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under Subsection (1)(a) or (b), the date on which a testacy proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.
- (3) If no will is probated within three years from death, the presumption of intestacy is final and the court shall upon filing a proper petition enter an order to that effect.
- (4) Notwithstanding the time restriction in Subsection (1), the court has continuing jurisdiction to:
- (a) determine what property was owned by the decedent at the time of death; and
  - (b) appoint, formally or informally, a personal representative or special administrator to administer the decedent's estate.

Amended by Chapter 142, 2014 General Session

**75-3-108 Statutes of limitation on decedent's cause of action.**

No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of his death shall apply to bar a cause of action surviving the decedent's death sooner than 12 months after death. A cause of action which, but for this section, would have been barred less than 12 months after death, is barred after 12 months unless tolled.

Enacted by Chapter 150, 1975 General Session

**75-3-109 Letters upon several estates jointly.**

- (1) Upon petition by any person interested in two or more estates, the court may, after notice and hearing, grant letters upon these estates jointly if administration has not commenced with respect to any such estate and if:
- (a) All or any part of the estate of one decedent has descended from another decedent; or
  - (b) Two or more decedents held any property during their lifetimes as tenants-in-common and if the persons entitled under the wills of these decedents or under the law of intestate succession to receive the estates of these decedents are the same.
- (2) If letters are granted upon two or more estates jointly under this section, these estates shall be administered the same as if they were but one estate except that claims may be enforced only against the estate to which they relate.

Enacted by Chapter 194, 1977 General Session