

Part 9

Special Provisions Relating to Distribution

75-3-901 Successors' rights if no administration.

In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption, or intestacy may establish title thereto by proof of the decedent's ownership, his death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

Enacted by Chapter 150, 1975 General Session

75-3-902 Distribution -- Order in which assets appropriated -- Abatement.

(1) Except as provided in Subsection (3) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (a) property not disposed of by the will;
- (b) residuary devisees;
- (c) general devisees;
- (d) specific devisees.

(2) For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(3) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in Subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(4) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Amended by Chapter 306, 2007 General Session

75-3-903 Right of retainer.

The amount of a noncontingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to him in a direct proceeding for recovery of the debt.

Enacted by Chapter 150, 1975 General Session

75-3-904 Interest on general pecuniary devise.

General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

Enacted by Chapter 150, 1975 General Session

75-3-905 Penalty clause for contest.

A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

Enacted by Chapter 150, 1975 General Session

75-3-906 Distribution in kind -- Valuation -- Method.

- (1) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:
 - (a) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in Section 75-2-403 shall receive the items selected.
 - (b) Any homestead or family allowance or devise payable in money may be satisfied by value in kind provided:
 - (i) the person entitled to the payment has not demanded payment in cash;
 - (ii) the property distributed in kind is valued at fair market value as of the date of its distribution; and
 - (iii) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.
 - (c) For the purpose of valuation under Subsection (1)(b) above, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.
 - (d) The residuary estate shall be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.
- (2) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset he is to receive, if not waived earlier in writing, terminates if he fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

Amended by Chapter 39, 1998 General Session

75-3-907 Distribution in kind -- Evidence.

If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring, or releasing the assets to the distributee as evidence of the distributee's title to the property.

Enacted by Chapter 150, 1975 General Session

75-3-908 Distribution -- Right or title of distributee.

Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

Enacted by Chapter 150, 1975 General Session

75-3-909 Improper distribution -- Liability of distributee.

Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if he has the property. If he does not have the property, then he is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by him.

Enacted by Chapter 150, 1975 General Session

75-3-910 Purchasers from distributees protected.

If property distributed in kind or a security interest therein is acquired for value in good faith and without notice of any adverse claim by a purchaser from or lender to 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 the distributee, 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 or 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 section, 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.

Enacted by Chapter 194, 1977 General Session

75-3-911 Partition for purpose of distribution.

When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs

or devisees may petition the court, prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

Enacted by Chapter 150, 1975 General Session

75-3-912 Private agreements among successors to decedent binding on personal representative.

Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement, subject to his obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing contained in this section relieves trustees of any duties owed to beneficiaries of trusts.

Enacted by Chapter 150, 1975 General Session

75-3-913 Distributions to trustee.

- (1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the qualified beneficiaries as provided in Section 75-7-811.
- (2) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if he apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves; and he may withhold distribution until the court has acted.
- (3) No inference of negligence on the part of the personal representative shall be drawn from his failure to exercise the authority conferred by Subsections (1) and (2).

Amended by Chapter 89, 2004 General Session

75-3-914 Disposition of unclaimed assets.

- (1) If an heir, devisee or claimant cannot be found, the personal representative shall distribute the share of the missing person to his conservator, if any, but otherwise to the state treasurer for the benefit of the state school fund.
- (2) The money received by the state treasurer shall be paid to the person entitled on proof of his right to it or, if the state treasurer refuses or fails to pay, the person may petition the court which appointed the personal representative, whereupon the court upon notice to the state treasurer may determine the person entitled to the money and order the treasurer to pay it to him. No interest is allowed thereon, and the heir, devisee, or claimant shall pay all costs and expenses incident to the proceeding.

Enacted by Chapter 150, 1975 General Session

75-3-915 Distribution to person under disability.

A personal representative may discharge his obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this code or otherwise to give a valid receipt and discharge for the distribution.

Enacted by Chapter 150, 1975 General Session

75-3-916 Apportionment of estate taxes.

(1) As used in this section:

- (a) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;
- (b) "Fiduciary" means personal representative, executor, administrator of any description, or trustee;
- (c) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;
- (d) "Person interested in the estate" means any person, including a personal representative, conservator, guardian, or trustee entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest in property included in the decedent's taxable estate;
- (e) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and
- (f) "Tax" means the federal estate tax and the inheritance, estate, or other death tax payable to this state and interest and penalties imposed in addition to the tax but specifically does not include the federal generation skipping transfer tax.

(2) Unless otherwise provided in the will or other dispositive instrument, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose. If the decedent's will or other dispositive instrument directs a method of apportionment of tax different from the method described in this code, the method described in the will or other dispositive instrument controls.

- (3)
- (a) The court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the court of the county in which the decedent was domiciled at death shall determine the apportionment of the tax upon the petition of the person required to pay the tax.
 - (b) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in Subsection (2), because of special circumstances, it may direct the apportionment in the manner it finds equitable.
 - (c) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate concerning the determination of the amount and apportionment of the tax shall be apportioned as provided in Subsection (2) and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in Subsection (2), it may direct the apportionment equitably.

- (d) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.
 - (e) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this code, the determination of the court in this regard is prima facie correct.
- (4)
- (a) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his possession and distributable to any person interested in the estate, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax, the fiduciary or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this section.
 - (b) If property held by the fiduciary or other person required to pay the tax is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the court having jurisdiction of the administration of the estate.
- (5)
- (a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate, and any deductions and credits allowed by the law imposing the tax.
 - (b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal.
 - (c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.
 - (d) Any credit for inheritance, succession, or estate taxes or taxes of this nature in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment of the tax to the extent that, or in proportion as, the credit reduces the tax.
 - (e) To the extent that property passing to or in trust for a surviving spouse or child or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in Subsection (2), and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

- (6) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.
- (7) Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding within a reasonable time after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.
- (8) Subject to this section, a fiduciary acting in another state or a person required to pay the tax who is domiciled in another state may institute an action in the courts of this state and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this state or who owns property in this state subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.
- (9) This section does not apply to the apportionment of expenses incurred in connection with the determination of the amount and apportionment of the taxes due on account of the death of decedents dying prior to July 1, 1983.

Amended by Chapter 226, 1983 General Session

75-3-917 Certain formula clauses to be construed to refer to federal estate and generation-skipping transfer tax rules applicable to estates of decedents dying after December 31, 2009.

- (1) A will or trust of a decedent who dies after December 31, 2009 and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "generation-skipping transfer tax exemption" or "GST exemption," or that measures a share of an estate or trust based on the amount that can pass free of federal estate or generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be considered to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009.
 - (a) This provision may not apply with respect to a will or trust executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

- (b) The reference to January 1, 2011 in Subsection (1) shall, if the federal estate and generation-skipping transfer tax becomes effective before that date, refer instead to the first date on which the tax becomes legally effective.
- (2) A proceeding to determine whether the decedent intended that the references under Subsection (1) be construed with respect to the law as it existed after December 31, 2009, shall be filed within 12 months of the date of death of the testator or grantor. It may be filed by the personal representative or any affected beneficiary under the will or other instrument.

Enacted by Chapter 223, 2010 General Session